

IN THE DISTRICT COURT  
DISTRICT OF NEW MEXICO  
SANTA FE DIVISION

07/27/10  
CLERK OF DISTRICT COURT

LOUIE CARBAJAL, et. al.,  
Plaintiffs,  
vs.  
ALBUQUERQUE PUBLIC SCHOOL  
DISTRICT,  
Defendant,  
vs.  
DEBORAH BURCIAGA, et. al.,  
Defendant Intervenors and  
Cross-Claimants.

No. Civ. 98-0279 MV/DJS

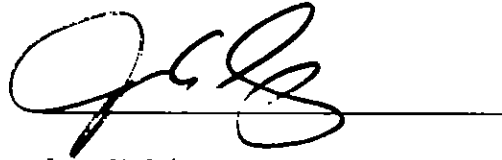
**JOINT MOTION FOR APPROVAL OF MODIFICATION OF  
SETTLEMENT AGREEMENT**

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Defendant Intervenors, Deborah Burciaga, et al. ("Intervenors") and Defendant, Albuquerque Public Schools ("APS"), hereby move the Court pursuant to Rule 7.1 for an Order Approving Modification of the Settlement Agreement filed on June 18, 1999 and approved by the Court. The Settlement Agreement and Release of Claims ("Settlement Agreement") is attached as Joint Exhibit 1. A Stipulated Order (attached as Joint Exhibit 2) modifying the original Settlement Agreement was entered by the Court on January 26, 2004. This motion is based upon the memorandum in support of modification of the Settlement Agreement submitted herewith.

Respectfully submitted,

Date: September 23, 2004



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Date: September 23, 2004

Telephonically approved 9/23/04

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## **JOINT EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO  
SANTA FE DIVISION

**FILED**  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

99 JUN 18 PM 3: 32

LOUIE CARBAJAL and LISA  
CARBAJAL, et. al.,

Plaintiffs,

vs.

ALBUQUERQUE PUBLIC SCHOOL  
DISTRICT,

Defendant,

vs.

DEBORAH BURCIAGA, et. al.,

Defendant Intervenors and  
Cross-Claimants.

*Robert M. Marshall*  
CLERK-SANTA FE

No. Civ. 98-0279 MV/DJS

**SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This Agreement and Release of Claims (Agreement) is entered into between Deborah Burciaga, Roberto Roibal, Elma Villanueva, Jason Gauna, Edward Farquhar, Martha Loya, Guadalupe Rojas, Felipe Martínez, Albuquerque Border City Project, American G.I. Forum, LULAC, Promotores de Derechos and Southwest Organizing Project, Defendant-Intervenors and Cross-Claimants (the "Defendant-Intervenors") and the Albuquerque Municipal School District No. 12, Counties of Bernalillo and Sandoval, New Mexico ("APS").

**INTRODUCTION**

- A. During the course of this action the Defendant-Intervenors through the discovery process and through informal exchanges of information between the Defendant-

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Intervenors and APS, have determined that APS has chosen pedagogically sound educational theories including two-way bilingual, maintenance bilingual, transitional bilingual, sheltered English content and English As A Second Language programs, in the provision of its alternative language services for its limited English proficient students, in order to provide them equal educational opportunities, help them overcome their English language barrier and access the school districts content curriculum.

- B. This Agreement addresses any gaps APS has in the implementation of its alternative language services for limited English proficient students, and strengthens the APS Plan for Educating Language Minority Students as agreed to between APS and the United States Department of Education Office for Civil Rights.
- C. The parties to this Agreement expect that implementation of this Agreement will strengthen APS' existing ability to measure and evaluate student progress and program effectiveness.

### **TERMS OF THE AGREEMENT**

1. This Agreement is adopted by the Defendant-Intervenors and APS to resolve a dispute as to the issue of APS' compliance with its legal obligations under federal and state law and regulations including the Civil Rights Act of 1871, 42 U.S.C. Section 1983, the Fourteenth Amendment of the United States Constitution; the Equal Educational Opportunities Act of 1974, 20 U.S.C. Sections 1703(f) and 1706; Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000(d) and regulations issued pursuant thereto, 34 C.F.R. Sections 100.1 *et seq.*; Title 1 of the

elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. Section 2701 *et seq.*; New Mexico Constitution, N.M. Const. Art. XII, Sec. 8, 10, and the New Mexico Bilingual Multicultural Education Act, N.M. Stats. Ann. Section 22-23-1 *et seq.* NMSA 1978, and its implementing regulations.

2. The Defendant-Intervenors and APS are satisfied that the best interests of the Defendant-Intervenors are properly and adequately addressed by this Agreement.

3. The Defendant-Intervenors maintained that APS discriminated against them by violating the terms of the foregoing provisions. APS denied and continues to deny that its actions or inactions with respect to the provision of services to students in the Albuquerque Public Schools is or has been in any way improper or unlawful as alleged by the Defendant-Intervenors.

4. The parties desire to avoid the time and expense related to the continued litigation of this action.

5. The Defendant-Intervenors and APS desire to focus their attention and efforts on improving the level and quality of educational services offered to all students in the Albuquerque Public Schools including students who are limited English proficient and linguistic minority students.

6. **NO ADMISSION OF LIABILITY.** This Agreement does not constitute an admission of liability or wrongdoing of any kind by APS, its Board, administrators and employees.

7. **AGREEMENT OF APS:**

(A) **Identification, Assessment and Placement, and Parent Communication**

(1) APS shall identify all limited English proficient ("LEP") students enrolled in its schools, for the purpose of providing them with an appropriate

educational program to address their English language development needs and provide equal access to the APS' core content curriculum.

(2) APS shall continue to identify, assess, and assign LEP students to alternative language services in accordance with the provisions of the 1998 District Manual for Serving Culturally and Linguistically Diverse Students pursuant to paragraph 10 as to modifications of the Agreement ("the District Manual") and the Albuquerque Public Schools Agreement for Corrective Action dated September 7, 1995 and Plan for Providing Educational Services To All Limited English Proficient Students, approved November 15, 1996 (collectively the "APS/OCR Agreement").

(3) APS shall continue to notify parents/guardians of LEP students about their child's assessment and assignment and any rights to request alternative language services in accordance with the District Manual and the APS/OCR Agreement.

(B) **Staffing and Recruitment**

(1) APS shall employ maximum good faith efforts to staff bilingual classrooms with certified teachers who hold a valid bilingual endorsement and who have demonstrated an acceptable ability to speak, read and write in the students' native language.

(2) APS shall employ maximum good faith efforts to staff ESL classrooms with certified teachers who hold a valid ESL endorsement.

(3) By December 31, 1999, APS will conduct a survey which will identify:

(a) the number of teachers needed to fully staff each bilingual designated school;

(b) the teachers in APS who hold a bilingual endorsement, by language and their current school assignment;

(c) the number and location of each designated bilingual class that is not staffed by a bilingual endorsed teacher;

(d) the total number and school assignment for each bilingual endorsed teacher, by language, not currently assigned to teach in a bilingual class;

(e) the number of teachers needed to fill designated ESL classes;

- (f) the teachers in APS who hold an ESL endorsement;
- (g) the number and location of each designated ESL class that is not staffed by an ESL endorsed teacher; and,
- (h) the number and school assignment for each ESL endorsed teacher not currently assigned to teach in an ESL class.

(4) By July 1 of each school year, APS shall update the data collected in the survey which is described in Paragraph (7)(B)(3) and, based on the results of the survey, the Human Resources Department shall recruit bilingual and ESL endorsed teachers to fill instructional positions as needed.

(5) The District's Human Resources Department shall develop and implement a plan for the recruitment of: (i) sufficient certified teachers with valid bilingual endorsements to fully staff each bilingual designated school; and, (ii) sufficient certified teachers with valid ESL endorsements to fully staff each school according to its LEP student enrollment. The recruitment plan shall be developed annually in collaboration with the Cross Cultural Unit and shall project the need for bilingual and ESL endorsed instructional staff for the upcoming school year and for the following two years.

(6) APS shall at a minimum take the following steps to ensure full and appropriate staffing of bilingual and ESL classrooms in the District:

- (a) establish formal relationships with the University of New Mexico for APS to acquire lists of potential qualified bilingual and ESL teacher candidates and current graduates and actively recruit these students for future employment in APS;
- (b) continue to fund incentive programs for teachers and Educational Assistants (paraprofessionals) to receive bilingual and/or ESL endorsements and increase advertising of the incentive program to maximize participation;
- (c) offer contracts of employment in the spring and early summer for the following school year to bilingual and ESL endorsed teachers.

(7) APS will make maximum good faith efforts in contract negotiations with the appropriate collective bargaining units to implement a hiring bonus for newly hired teachers who hold a valid bilingual or ESL endorsement and a pay differential for its teachers holding a valid bilingual endorsement, and assigned to



teach in a bilingual classroom or holding an ESL endorsement and assigned to teach in an ESL classroom.

(8) As an interim measure to address any shortfall of endorsed bilingual and/or ESL teaching staff APS may use certified teachers who have been trained in ESL methodologies, second language acquisition and bilingual strategies having successfully completed the 48 hour training program pursuant to the APS/OCR Agreement. APS may provide additional academic support to LEP students who as an interim measure are receiving their academic instruction through non-endorsed ESL and/or bilingual staff via tutors who have been trained or are being trained in ESL methodologies, second language acquisition and bilingual strategies, with the teacher 48 hour training program pursuant to the APS/OCR Agreement.. The additional support contemplated herein shall not replace the provision of primary academic instruction for LEP students through certified teaching staff.

(9) Each and every teacher who is assigned an LEP student and does not hold a valid bilingual or ESL endorsement, shall either have completed or be presently enrolled in the teacher 48 hour training program pursuant to the APS/OCR Agreement. Such teachers shall be expected to make annual progress towards completion of the training and complete it within two years. APS shall monitor teacher enrollment and progress in the training.

(C) **Sufficient and Appropriate ESL and Content Subject Matter Instruction for all LEP Students**

(1) APS shall provide each LEP student in APS who is a LAS level 1, or 2, a minimum of one hour of ESL instruction per day from a teacher with a valid ESL endorsement or State waiver on an approved certification plan. When deemed appropriate, LAS 3 level students will receive the same services.

(2) APS shall provide each and every LEP student who is a LAS level 1, 2, or 3 with instruction in all content subject classes through one of the following methods, in hierarchy order of preference: 1) native language instruction from a teacher with a valid bilingual endorsement or State waiver on an approved certification plan, 2) content ESL methodologies from a teacher with a valid ESL endorsement or State waiver on an approved certification plan, 3) native language instruction from a certified content subject matter teacher who can demonstrate an acceptable ability to speak read and write in the students' native language and has finished or is currently enrolled in the APS teacher training program pursuant as set out in Paragraph (7)(B)(8) and (B)(9), and finally, 4) content ESL methodologies from a certified content subject matter teacher who had successfully completed or is enrolled in the APS teacher training program as set out in Paragraph (7)(B)(8) and (B)(9).

**D. Continuity of Instructional Services**

(1) APS shall provide appropriate alternative language services based on the educational needs of the students. An important element of consideration in the provision of appropriate alternative language services is continuity of services in an educationally sound manner between elementary, middle and high school feeder patterns.

(2) APS shall provide home language literacy to students in middle and high school who have advanced from elementary schools that provide bilingual programs.

(3) APS shall develop and make available to parents, annually, an Alternative Language Services Cluster Plan which outlines services for students at each cluster elementary, middle and high school.

(4) Course offerings for LEP students at the middle and high school level shall provide LEP students access to the same range of classes and educational opportunities as are made available to native English speaking children. Content subject courses that are equivalent in content, scope and sequence to courses offered to all other students, shall be offered in the native language or through ESL content methodologies to LEP students at each middle and high school.

**(E) Bilingual Program Schools**

(1) APS desires to promote and expand bilingual education programs and better serve all students, including LEP students and those who desire to learn in native language and culture classes. In order to promote this goal, and increase such opportunities at schools which do not yet offer them, APS will implement a procedural directive stating that school Principals shall apply for funds from all available sources when there is sufficient interest at their school for home language and/or culture classes. APS shall develop a mechanism (i.e. survey, poll) the results of which will reflect the interest for such programs.

(2) APS schools offering bilingual programs, when possible, will offer native language instruction for core content classes in the manner of or according to the preference set forth in Section C.2. APS has developed a number of native language services for Spanish, Native American and Asian students and shall continue to seek bilingual staff who are able to provide native language instruction.

(3) APS shall ensure that bilingual classes offered pursuant to the New Mexico Bilingual/Multicultural Act are taught in the home language by bilingual endorsed teachers in accordance with the Act and the provisions of this Agreement.

(4) APS shall use sound educational practice when grouping LEP students with non-LEP students for bilingual native language literacy classes, grouping students according to need based on level of native speaking, reading and writing ability. This provision shall not be applicable to Two-Way bilingual instructional classes.

(5) APS shall assure that funds received by APS or by individual schools within APS pursuant to the New Mexico Bilingual/Multicultural Act will be used in accordance with the provisions of the Act.

(F) **Books and Instructional Materials**

APS shall purchase and provide appropriate and sufficient textbooks and instructional materials for each student in an alternative language services bilingual or ESAL classroom, and for each student in a native language or culture class pursuant to the State's Bilingual/Multicultural Act. This shall be done in accordance with the State of New Mexico's six year adoption cycle for textbooks and materials.

(G) **Equal Access to All Programs**

(1) APS shall provide equal access to District, State and Federal programs including Title 1 programs under the Elementary and Secondary Education Act, gifted and talented classes, and career education classes for all students including LEP and Hispanic students.

(2) APS shall strive through maximum good faith efforts to close the gap between the retention and drop-out rates for Anglo students and LEP and Hispanic national origin students in the District.

(3) By the end of the 1998-1999 school year, and for each year thereafter, the APS shall determine and publish the annual drop out rate, by national origin and by LEP, from each middle and secondary school.

(4) By September 15, 1999, APS shall develop and implement a District drop-out reduction plan with the purpose of eliminating any gaps between the LEP and Anglo student populations, and Hispanic and Anglo student populations.

(H) **District-Wide Accountability and Oversight**

(1) Each school Principal shall be responsible for on-going monitoring to assure that all LEP students in the school are being provided appropriate alternative language services in accordance with the District Manual, the APS/OCR Agreement and this Agreement. The provision of appropriate educational services

for LEP students lie in the first instance with the school Principal whose performance evaluation shall include this issue.

(2) Authority and responsibility of APS personnel to implement the APS/OCR Agreement, and the Agreement shall lie in the first instance with the Cluster Superintendents and is accomplished through district line authority and the State of New Mexico's administrative evaluation system. Criteria for the performance evaluation of Cluster Superintendents shall include these issues.

(3) The checklists found in the District Manual, Section V and Section VI (See Attachment A) for determining District's compliance with the APS/OCR Agreement and for meeting State Department of Education guidelines shall be incorporated into Section III of the School Compliance Review Document, dated April 1999, to be used as additional documentation and evidence required of school Principals in assessment of their school's compliance with program requirements for Bilingual-Multicultural Education and for alternative language services to LEP students. Completed checklists as described herein shall be reviewed by the Cluster Assistant as part of the school's compliance assessment and kept on file in the office of the Cluster Assistant Superintendent along with the other required School Compliance Review forms.

(I) **Program Evaluation and Measurement of Progress**

(1) APS shall collect annually and identify by year the following student information disaggregated by:

(a) student identification number, primary home language, language proficiency level (for all LEP students by year), race/ethnicity, country of birth, date enrolled in APS, date exited APS, school by year, grade level by year, grade retention, instructional program(s) by year (e.g. regular, bilingual, Title 1, gifted programs, special education, etc.) year entered program(s), year exited program(s), gender, and migrant status;

(b) list for each class taken, grades, language of instruction, and instructor for each class by year;

(c) direct indicators of student progress by year including standardized and non-standardized test results including state-mandated and district-mandate assessments, language assessment tests, and content subject matter tests and grades.

(2) By September 30, 2001, APS shall have developed a comprehensive system of data collection keyed to individual students and able to be cross-referenced by student characteristics, classroom characteristics, school characteristics and district characteristics. In the interim APS shall collect and preserve the data set forth in (1) above.

(3) By September 2001, APS shall have designed a program evaluation system which includes maintaining a longitudinal data base that will allow APS to compare the achievement of all students in a given grade individually, and as a grade cohort for succeeding years. Achievement shall be defined to include academic subject matter and English language acquisition. In the interim APS shall annually sample LEP student cohorts from elementary, middle and high schools in each cluster for evaluation of student achievement.

(4) APS shall review and evaluate annually the effectiveness of all professional development training programs provided pursuant to the APS/OCR Agreement. These evaluations shall be based, in part, on (i) objective evidence provided by participants of the training and others, and (ii) LEP student achievement in participant's classrooms and schools. APS shall develop and utilize an evaluation tool to measure and document the training participants' successful use of teaching and learning strategies in the classroom as provided through APS training.

**(J) Reporting Requirements**

APS shall provide an annual report as to their compliance with each and every section set out in paragraph 7 (A) through (I) on or before July 1 of each year. The first such report shall be due on July 1, 2000. Defendant-Intervenors through their undersigned attorneys shall have the right to request underlying documentation to verify reporting by the APS. Defendant-Intervenors shall consult in good faith with APS regarding the scope of information requested pursuant to this paragraph. APS shall provide to the Defendant-Intervenors through their undersigned attorneys the documentation collected pursuant to Paragraph 7(B)(3) on or before January 15, 2000.

8. AGREEMENT OF DEFENDANT-INTERVENORS. This Agreement shall expire September 30, 2003 unless Defendant-Intervenors file a motion for enforcement of the terms of this Agreement with the Court on or before the date of expiration. Before bringing any such motion to enforce compliance, Defendant-Intervenors, through their undersigned attorneys will use good faith efforts to resolve any disputes with APS. The Defendant-Intervenors agree to dismiss their claims with prejudice and hereinafter rely on this Agreement regarding resolution of their claims.

9. **ATTORNEYS FEES.** The APS agrees that the Defendant-Intervenors are entitled to attorneys fees and costs. The parties agree to bargain in good faith concerning the amount of fees and costs. Should the parties be unable to reach agreement the Defendant-Intervenors may move the Court for an award of fees and costs.

10. **MODIFICATION OF AGREEMENT.** Counsel of record for the Defendant-Intervenors and APS agree to confer with each other in good faith on the terms and purposes of this Agreement or any modification of this Agreement as the necessity arises in advance of petitioning the Court for relief from or modification of this Agreement.

11. **RETENTION OF JURISDICTION.** The Court shall retain jurisdiction supervising performance of the terms of the Agreement, and to grant such supplemental or corrective relief as may be necessary or appropriate.

12. **COURT APPROVAL.** The parties to this Agreement agree this Agreement is subject to the approval of the Court.

13. **AGREEMENT SUBJECT TO AVAILABILITY OF FUNDS.** The parties understand and agree that the terms and conditions of this Agreement, to the extent that this Agreement requires implementation of educational programs and services not required under federal law, are contingent on and subject to the availability of funds in accordance with the provisions of the Bateman Act § 6-6-11 NMSA 1978.

14. **GENERAL RELEASE.** Defendant Intervenors and their heirs, executors, administrators, successors, assigns and agents ("Releasers"), release APS of any and all claims against APS arising out of the Civil Rights Act of 1871, 42 U.S.C. Section 1983, the Fourteenth Amendment of the United States Constitution; the Equal Educational Opportunities Act of 1974, 20

U.S.C. Sections 1703(f) and 1706; Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000(d) and regulations issued pursuant thereto, 34 C.F.R. Sections 100.1 *et seq.*; Title I of the elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. Section 2701 *et seq.*; New Mexico Constitution, N.M. Const. Art. XII, Sec. 8, 10, and the New Mexico Bilingual Multicultural Education Act, N.M. Stats. Ann. Section 22-23-1 *et seq.* NMSA 1978, and its implementing regulations.

15. **AGREEMENT AND RELEASE UNDERSTOOD.** Defendant-Intervenors represent that they have thoroughly read this Agreement and Release, understand all its provisions and that they are voluntarily entering into this Agreement and Release. Defendant-Intervenors also represents that they have had sufficient time to consider this Agreement And Release and have had the benefit of legal counsel regarding this Agreement and Release. Defendant-Intervenors represent that, in executing this Agreement And Release, they do not rely on any inducements, promises, or representations made by APS or its agents, other than those set forth in the Agreement and Release.

16. **INTEGRATION.** This Settlement Agreement and Release contains the entire agreement between Defendant-Intervenors and APS, their agents and representatives.

17. **BINDING EFFECT.** This Agreement is binding on and benefits the parties hereto and their successors and assigns. This Agreement constitutes the entire agreement of the parties and may be modified only if signed by all the parties and/or Court. If any provision of this Agreement is deemed to be void or unenforceable, Defendant-Intervenors and APS agree that the remaining provisions of this Agreement shall be valid and enforceable.

JUDGE MARTHA VAQUÉZ  
UNITED STATES DISTRICT COURT

Deborah Burciaga  
Deborah Burciaga

Roberto Roibal  
Roberto Roibal

Elma Villanueva  
Elma Villanueva

Jason Gauha  
Jason Gauha

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Martha Loya

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Guadalupe Rojas

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Felipe Martínez

ALBUQUERQUE BORDER CITY  
PROJECT

AMERICAN G.I. FORUM

By: Valerie Pacini LMSW  
Its: Executive Director

By: Luisa Torres  
Its: STATE COMMANDER

LULAC

PROMOTORES DE DERECHOS

By: Consuelo S. Martins  
Its: State Director

By: Graciela Quintero  
Its: Board member

SOUTHWEST ORGANIZING PROJECT

ALBUQUERQUE PUBLIC SCHOOLS

By: [Signature]  
Its: Co-Director

By: Brad Allison  
Its Superintendent



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THE EXHIBITS ATTACHED TO THIS  
PLEADING ARE TOO VOLUMINOUS TO  
SCAN. SAID EXHIBITS ARE ATTACHED  
TO THE ORIGINAL PLEADING IN THE  
CASE FILE WHICH IS LOCATED IN THE  
RECORDS DEPARTMENT, U.S.  
DISTRICT COURT CLERK'S OFFICE.