# PACIFIC GROVE UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION REGULAR MEETING

Trustees

John Paff, President Brian Swanson, Clerk Cristy Dawson Dr. Frank Rivera III Carolyn Swanson Gabriella Gaona, Student Representative

**DATE:** Thursday, October 7, 2021

TIME:5:30 p.m. Closed Session6:30 p.m. Open Session

#### LOCATION: IN PERSON

Pacific Grove Unified School District Office 435 Hillcrest Avenue Pacific Grove, CA 93950

# VIRTUAL MEETING

Join Zoom Meeting https://pgusd.zoom.us/j/85095246916?pwd=VjdkZkR4NlJWSnhJUUZ0K1BTZFlnZz09 Meeting ID: 850 9524 6916 Passcode: 986894

One tap mobile +16699006833,,85095246916#,,,,\*986894# US (San Jose) +12532158782,,85095246916#,,,,\*986894# US (Tacoma)

Dial by your location +1 669 900 6833 US (San Jose) +1 253 215 8782 US (Tacoma) +1 346 248 7799 US (Houston) +1 929 205 6099 US (New York) +1 301 715 8592 US (Washington DC) +1 312 626 6799 US (Chicago) Meeting ID: 850 9524 6916 Passcode: 986894 Find your local number: https://pgusd.zoom.us/u/kbRx2aJchu

The Board of Education welcomes you to its meetings, which are regularly scheduled for the first and third Thursdays of the month. Regular Board Meetings shall be adjourned by 10:00 pm, unless extended to a specific time determined by a majority of the Board. This meeting may be extended no more than once and may be adjourned to a later date. Individuals who require special accommodation, including but not limited to an American Sign Language interpreter, accessible seating or documentation in accessible formats, should contact the Superintendent at least two days before the meeting date.

Any writings or documents that are public records and are provided to a majority of the Governing Board regarding an open session item on this agenda will be made available for public inspection in the District Office located at 435 Hillcrest Avenue, Pacific Grove during normal business hours.

# AGENDA AND ORDER OF BUSINESS

# I. <u>OPENING BUSINESS</u>

- A. Call to Order
- B. Roll Call
- C. Adoption of Agenda

Move:	Second:	Vote:

# II. <u>CLOSED SESSION</u>

- A. Identify Closed Session Topics The Board of Education will meet in Closed Session to consider matters appropriate for Closed Session in accordance with Education and Government Code.
  - 1. Negotiations Collective Bargaining Session planning and preparation with the PGTA for 2021-22 [Government Code § 3549.1 (d)] Executive session between the public school employer and its designated representatives, Buck Roggeman, Song Chin-Bendib and Ralph Gómez Porras, for the purpose of giving direction and updates.
  - Negotiations Collective Bargaining Session planning and preparation with the CSEA for 2021-22 [Government Code § 3549.1 (d)] Executive session between the public school employer and its designated representatives, Billie Mankey, Song Chin-Bendib and Ralph Gómez Porras for the purpose of giving direction and updates.
  - 3. Public Employee Discipline/Dismissal/Release/Complaint (2 cases) [Government Code § 54957]

# III. <u>RECONVENE IN OPEN SESSION</u>

- A. Report action taken in Closed Session:
  - 1. Negotiations Collective Bargaining Session planning and preparation with the PGTA for 2021-22 [Government Code § 3549.1 (d)]
  - 2. Negotiations Collective Bargaining Session planning and preparation with the CSEA for 2021-22 [Government Code § 3549.1 (d)]
  - 3. Public Employee Discipline/Dismissal/Release/Complaint (2 cases) [Government Code § 54957]
- B. Pledge of Allegiance

# IV. <u>COMMUNICATIONS</u>

- A. Written Communication
- B. Board Member Comments
- C. Superintendent Report
- D. PGUSD Staff Comments (Non Agenda Items)

# V. INDIVIDUALS DESIRING TO ADDRESS THE BOARD

Public comment on any item of interest to the public that is within the Board's jurisdiction will be heard. The Board may limit comments to no more than three (3) minutes for each agenda or non-agenda item; a total time for public input on each item is 20 minutes, pursuant to Board Policy 9323. Public comment will also be allowed on each specific action item prior to Board action thereon. This meeting of the Board of Education is a business meeting of the Board, conducted in public. Please note that the Brown Act limits the Board's ability to respond to public comment. The Board may choose to direct items to the Administration for action or place an item on a future agenda.

# VI. <u>CONSENT AGENDA</u>

Items listed under the Consent Agenda are considered to be routine and/or may have been discussed at a previous Board meeting. There is no discussion of these items prior to the Board vote unless a member of the Board requests specific items be discussed and/or removed from the Consent Agenda. Each item on the Consent Agenda approved by the Board of Trustees shall be deemed to have been considered in full and adopted as recommended.

A.	<u>Minutes of September 16, 2021 Board Meeting</u> Recommendation: (Ralph Gómez Porras, Superintendent) Approval of minutes as presented.	7
B.	<u>Minutes of September 25, 2021 Special Board Meeting</u> Recommendation: (Ralph Gómez Porras, Superintendent) Approval of minutes as presented.	15
C.	<u>Certificated Assignment Order #5</u> Recommendation: (Billie Mankey, Director II of Human Resources) The Administration recommends adoption of Certificated Assignment Order #5.	17
D.	<u>Classified Assignment Order #5</u> Recommendation: (Billie Mankey, Director II of Human Resources) The Administration recommends adoption of Classified Assignment Order #5.	20
E.	Acceptance of Donations Recommendation: (Song Chin-Bendib, Assistant Superintendent) The Administration Recommends that the Board approve acceptance of the donations referenced below.	22
F.	Out of County or Overnight Activities Recommendation: (Song Chin-Bendib, Assistant Superintendent) The Administration recommends that the Board approve or receive the request as presented.	23

H. University Agreements

- Peninsula College for placing student teachers, and the amendment from our California State University, Monterey Bay partner on mentor teacher pay. I. Contract for Services with Beem Video and Photography at Pacific Grove Middle School Recommendation: (Sean Roach, Pacific Grove Middle School Principal) The District Administration recommends the Board review and approve the contract for services with Beem Video and Photography at Pacific Grove Middle School to record, edit, and provide a media link for the Butterfly Music Concert Video to PGMS families and staff. J. Contract for Services with Best Instrument Repair Recommendation: (Lito Garcia, Pacific Grove High School Principal) The District Administration recommends the Board review and approve the contract for services with Best Instrument Repair for musical instrument sanitization services for the Pacific Grove High School music department for the 2021-2022 school year. K. Contract for Services with ImPact Applications, Inc. Recommendation: (Lito Garcia, Pacific Grove High School Principal) The District Administration recommends the Board review and approve the contract for services with ImPact Applications Inc. Move: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_ **ACTION/DISCUSSION** A. District Update on Response to COVID-19 Recommendation: (Ralph Gómez Porras, Superintendent) The District Administration will update the Board, staff and community on current District response and protocols to COVID-19. Move: Second: Vote: B. Resolution No. 1079 Proclaiming "Week of the School Administrator" Recommendation: (Billie Mankey, Director II of Human Resources) The Administration recommends that the Board review and adopt Resolution No. 1079, acknowledging Education Code 44015.1 and proclaiming the second full week in October as "Week of the School Administrator" this year being observed October 10-16, 2021. Move: \_\_\_\_\_ Second: \_\_\_\_\_ Vote:
- G. Warrant Schedules No. 635 Recommendation: (Song Chin-Bendib, Assistant Superintendent) As Assistant Superintendent for Business Services, I certify that I have reviewed the attached warrants for consistency with the District's budget, and purchasing and accounting practices and therefore, recommend Board approval.

Recommendation: (Billie Mankey, Director II of Human Resources) The District Administration recommends the Board review and approve the Memorandum of Understanding with Monterey

VII.

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	C. <u>Declaration of Need for Qualified Educators</u> Recommendation: (Billie Mankey, Director II of Human Resources) The Administration recommendations the Board review and adopt the Declaration of Need for Fully Qualified Educators to be filed with the Commission on Teacher Credentialing for the 2021-2022 school year.				
		Move: Second: Vote:			
	D.	<u>Shed Refurbishment Project at Robert Down Elementary School</u> Recommendation: (Sean Keller, Robert Down Elementary School Principal) The District Administration recommends the Board review and approve the proposal for Marlar Construction to lift an old physical education storage shed to determine what work and materials are needed to refurbish flooring and side walls.	79		
		Move: Second: Vote:			
	E.	Board Calendar/Future Meetings Recommendation: (Ralph Gómez Porras, Superintendent) The Administration recommends that the Board review and possibly modify meeting dates on the attached calendar and determine, given information from the Administration, whether additional Board dates or modifications need to be established.	81		
		Move: Second: Vote:			
VIII.	<u>IN</u>	FORMATION/DISCUSSION			
	A.	Review of Bus Ridership Recommendation: (Song Chin-Bendib, Assistant Superintendent for Business Services) The District Administration recommends that the Board review the bus ridership information compared with prior years.	84		
		Board Direction:			
	B.	Pacific Grove High School Teacher on Special Assignment Update Recommendation: (Ani Silva, Director of Curriculum and Special Projects) The District Administration recommends the Board hear a brief report from Dr. Larry Haggquist regarding the Teacher on Special Assignment (TOSA) position at Pacific Grove High School.	87		
		Board Direction:			
	C.	Review of District Enrollment and Attendance Since the Start of SchoolIRecommendation: (Song Chin-Bendib, Assistant Superintendent; Matthew Binder, Director of Education Technology) The District Administration recommends the Board review information regarding student enrollment and attendance since the start of the school year 2021-22.	138		
		Board Direction:			

D. Future Agenda Items

Recommendation: (Ralph Gómez Porras, Superintendent) The Administration recommends that the Board review the list of future agenda items and direct Administration to add items to the list and/or schedule items for a particular agenda.

- Added February 4, 2021: Return of affordable housing at a later date when more information becomes available (Fall 2021)
- Added June 17, 2021: A Board member requested a review of what the District learned from COVID (October 21, 2021)
- Added June 17, 2021: A Board member requested parent orientation to the Board meetings (currently working with CSBA to arrange for this, as of September 26, 2021)
- Added August 19, 2021: A Board member requested a review of discrimination policies and training for staff and students
- Added September 2, 2021: A Board member requested Board orientation
- Added September 2, 2021: A Board member requested staff recommendation on equity plan by November 18 Board meeting
- Added September 25, 2021: The Board will receive sample agenda formats to consider a potential change in current meeting protocols
- Added September 25, 2021: Media Relations/General Correspondence/Public Comment

Board Direction:

# IX. <u>ADJOURNMENT</u>

Next Regular Board meeting: October 21, 2021

# PACIFIC GROVE UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION Minutes of Regular Meeting of September 16, 2021 – District Office/Virtual

# I. <u>OPENED BUSINESS</u>

- A. Called to Order
- B. <u>Roll Call</u>

President: Clerk: Trustees Present:

Administration Present:

Board Recorder: Student Board Member Absent: 5:30 p.m.

Trustee Paff Trustee Brian Swanson Trustee Dawson Trustee Rivera Trustee Carolyn Swanson Superintendent Porras Asst. Superintendent Chin-Bendib Mandi Ackerman Gabriella Gaona

C. Adopted Agenda

MOTION <u>Dawson/Rivera</u> to adopt agenda as presented. Public comment: none Motion CARRIED 5 – 0

# II. <u>CLOSED SESSION</u>

- A. <u>Identified Closed Session Topics</u>
  - 1. Negotiations Collective Bargaining Session planning and preparation with the PGTA for 2021-22 [Government Code § 3549.1 (d)] Executive session between the public school employer and its designated representatives, Buck Roggeman, Song Chin-Bendib and Ralph Gómez Porras, for the purpose of giving direction and updates.
  - 2. Negotiations Collective Bargaining Session planning and preparation with the CSEA for 2021-22 [Government Code § 3549.1 (d)] Executive session between the public school employer and its designated representatives, Billie Mankey, Song Chin-Bendib and Ralph Gómez Porras for the purpose of giving direction and updates.
  - 3. Public Employee Discipline/Dismissal/Release/Complaint (1 case) [Government Code § 54957]
- B. Public comment on Closed Session Topics

None

C. <u>Adjourned to Closed Session</u> 5:32 p.m.

# III.RECONVENED IN OPEN SESSION6:31 p.m.

- A. <u>Reported action taken in Closed Session:</u>
  - 1. <u>Negotiations Collective Bargaining Session planning and preparation with the PGTA</u> for 2021-22 [Government Code § 3549.1 (d)]

The Board discussed this item.

2. <u>Negotiations - Collective Bargaining Session planning and preparation with the CSEA</u> for 2021-22 [Government Code § 3549.1 (d)]

The Board discussed this item.

3. <u>Public Employee Discipline/Dismissal/Release/Complaint (1 case) [Government Code § 54957]</u>

The Board discussed this item.

B. Pledge of Allegiance

Led By: Elliott Hazen

# IV. <u>COMMUNICATIONS</u>

# A. Written Communication

The Board received written communication regarding: foreign language program; COVID testing; vaccinations; Cal-Am regarding a potential loss of revenue; racial healing; diversity training programs; professional development opportunities regarding equity.

#### B. Board Member Comments

<u>Trustee Rivera</u> spoke about resources for Veterans, noting it would be a good idea to have a link on the District website for active duty/veterans including points of contact and available resources; spoke about the amazing feedback he has received regarding <u>Culinary teacher Jenn</u> <u>Erickson</u> at Pacific Grove High School; thanked <u>Forest Grove Elementary School Principal</u> <u>Buck Roggeman</u> for the tour of school, and noted the wonderful energy of students.

<u>Trustee Dawson</u> spoke about the recent passing of <u>Monterey County Board of Education</u> <u>Trustee Harvey Kuffner</u>, who served as Trustee for over 25 years. <u>Trustee Dawson</u> spoke of <u>Trustee Kuffner's</u> service to the community and said it was a value to know him.

<u>Trustee Carolyn Swanson</u> thanked families for not sending their children to school when they are sick or exhibiting symptoms; reminded the public that they can contact the Board via email, noting the Board is open to communications from families and staff.

<u>Trustee Brian Swanson</u> visited the Pacific Grove High School stadium and said it was spectacular; also noted the deer and geese issues at Pacific Grove Middle School field.

<u>Trustee Paff</u> noted his son is going off to college, thanking all the teachers and staff that supported his son.

# C. Superintendent Report

<u>Superintendent Porras</u> noted <u>Forest Grove Elementary School Principal Buck Roggeman</u> who is taking his daughter to college; updated the Board on a meeting with community contact Diversity Atlas, spoke about unconscious bias and said Monterey County Office of Education did a great training on this topic years ago and the District is looking into training; congratulated the Pacific Grove Choir who represented the District well and did a great job; finally noted <u>Trustee Kuffner</u>, saying he was always passionate about what he did and looked after the District.

# D. PGUSD Staff Comments (Non Agenda Items)

<u>Pacific Grove Adult School Principal Barbara Martinez</u> spoke about Hispanic Heritage month events at the Adult School; spoke about fall class schedule; welcomed the Robert Down Elementary School kindergarteners.

<u>Pacific Grove Adult Education Program Coordinator Eric Saavedra</u> announced fall registration, noting there is still room in classes, including parent engagement classes.

<u>Pacific Grove Middle School Principal Sean Roach</u> spoke about Hispanic Heritage month activities to celebrate; noted 16 504 meetings held, to support 504 students and help reintegration back into school is essential to success.

<u>Director of Curriculum and Special Projects Ani Silva</u> spoke about social emotional learning trainings, how to support students and the very positive and important component of learning.

# V. INDIVIDUALS DESIRING TO ADDRESS THE BOARD

<u>Beth Shammas</u> thanked <u>Trustee Harvey Kuffner</u>, noting he was so dedicated and leaves a nice legacy. <u>Shammas</u> spoke about diversity, noting she likes the idea of speakers such as <u>Ben Jealous</u>, who attended Robert Down Elementary School and is a civil rights leader. <u>Shammas</u> spoke about Hispanic Heritage month asked why the District does not honor Cesar Chavez on his day.

# VI. <u>CONSENT AGENDA</u>

- A. Minutes of September 2, 2021 Board Meeting
- B. Certificated Assignment Order #4
- C. Classified Assignment Order #4
- D. Acceptance of Donations
- E. Out of County or Overnight Activities
- F. Quarterly Report on Williams Uniform Complaints
- G. Contract with Chartwell Nonpublic School
- H. Contract for Services with MaryLee Sunseri at Pacific Grove Adult School

# MOTION <u>Dawson/Rivera</u> to approve consent agenda as presented. Public comment: none Motion CARRIED 5-0

# VII. <u>ACTION/DISCUSSION ITEM A</u>

#### A. District Update on Response to COVID-19

<u>Superintendent Porras</u> provided an update on case numbers; noted Pacific Grove is lower on the state prioritization list for testing supplies; home tests are available through <u>District Nurse</u> <u>Katrina Powley</u> for emergency needs; the California Health Department has made changes that will impact the District flow chart, to be updated soon; employees are required to be vaccinated or provide weekly testing results, thus far, 74% of employees have responded to the requirement, only 5 of respondents are unvaccinated and will take weekly tests as required.

Administration asked the Board to take action, requiring that volunteers must be vaccinated, and not given a testing option. The Board provided direction to Administration to proceed with this process.

# No action taken.

#### **Public comment:**

Beth Shammas asked if this was emergency action, and noted protocol.

<u>Pacific Grove Unified School District Personnel Specialist Angela Lippert</u> asked if the District would be accepting weekly testing from volunteers.

<u>Director of Curriculum and Special Projects Ani Silva</u> addressed Paper program for grades 6-12.

#### VIII. <u>PUBLIC HEARING I/ACTION/DISCUSSION ITEM B</u>

#### I. Public Hearing Regarding Composition of Trustee Areas Prior to Drawing of Maps

Open Public Hearing 7:25 p.m. Close Public Hearing 8:00 p.m.

<u>Dr. Jeff Tilton of National Demographics Corporation</u> and <u>Jonathan Berry-Smith of Lozano</u> <u>Smith</u> presented information and answered questions by the Board and public.

#### **Public comment:**

<u>Anastazia</u> advised consultants regarding the opportunity for restrictive covenants, spoke about the ownership of properties, encouraged the Board to look at restrictive covenants.

<u>Elliott Hazen</u> asked if there would be a requirement to have one area per trustee and asked about balance.

<u>Beth Shammas</u> noted the unique community of second homes, coastal zone, and noted they are not residents and asked how that would be handled, asked if the District could change at a later date and move to at-large if needed, recommended a committee.

B. <u>Consideration and Adoption of Resolution No. 1078: Identify the Criteria the Demographer</u> <u>Will Consider When Developing Trustee-Area Boundaries</u>

The Board discussed this item, with input from <u>Jonathan Berry-Smith of Lozano Smith</u> who noted this resolution allows the Board transparency to let the public know what criteria the Board weighed more heavily.

The Board preferred to hear more from the public.

#### No action taken.

# IX. <u>PUBLIC HEARING II/ACTION/DISCUSSION ITEM C</u>

II. <u>Public Hearing of Resolution No. 1077 Regarding Sufficiency of Instructional Materials for</u> <u>Fiscal Year 2021-22</u>

Open Public Hearing 8:23 p.m. Close Public Hearing 8:26 p.m.

#### **Public comment:**

<u>Robert Down Elementary School Teacher Erica Chavez</u> asked for elementary inclusive social studies curriculum.

C. <u>Approval of Resolution No. 1077 Regarding Sufficiency of Instructional Materials for Fiscal</u> <u>Year 2021-22</u>

MOTION <u>Dawson/Rivera</u> to adopt Resolution No. 1077 regarding sufficiency of instructional materials for fiscal year 2021-22. Public comment: none Motion CARRIED 5 – 0

# X. <u>PUBLIC HEARING III/ ACTION/DICUSSION ITEM D</u>

III. Public Hearing of Pacific Grove Teachers Association Sunshine List for 2021-22

Open Public Hearing 8:27 p.m. Close Public Hearing 8:28 p.m.

D. Approval of Pacific Grove Teachers Association Sunshine List for 2021-22

MOTION <u>Brian Swanson/Dawson</u> to approval the Pacific Grove Teachers Association Sunshine List for 2021-22. Public comment: none Motion CARRIED by roll call vote 5 – 0

# XI. <u>PUBLIC HEARING IV/ ACTION/DICUSSION ITEM E</u>

IV. <u>Public Hearing of the Pacific Grove Unified School District/Pacific Grove Teachers</u> Association Negotiations Sunshine Topics for 2021-22

Open Public Hearing 8:29 p.m. Close Public Hearing 8:30 p.m.

E. <u>Approval of the Pacific Grove Unified School District/Pacific Grove Teachers Association</u> <u>Negotiations Sunshine Topics for 2021-22</u>

MOTION <u>Rivera/Brian Swanson</u> to approve the Pacific Grove Unified School District/Pacific Grove Teachers Association Negotiations Sunshine Topics for 2021-22. Public comment: none Motion CARRIED by roll call vote 5 – 0

# XII. ACTION/DISCUSSION

F. Spanish Language Elementary Program

<u>Director of Curriculum and Special Projects Ani Silva, Natalie Montgomery, Elliot Hazen</u> presented information to and answered questions by the Board.

#### **Public comment:**

<u>Beth Shammas</u> expressed concerns over what would be taken away by adding something in, noting there is only so much time in a school day and asked the Board to consider how to balance it, and asked what the teachers think of this.

<u>Pacific Grove Middle School Principal Sean Roach</u> noted it is important for students, and noted it's possible to remove antiquated classes as needed.

<u>Heloisa Junqueira</u> said it was important for the high school to accept college level credits to substitute for Spanish or French, noted scholarships for the program.

Robin spoke in strong support for elementary and middle school levels.

V. Anthony spoke about how to fit this program in, and spoke of the benefit to give the students to change lives and the community.

Molly Daniels spoke in support of this program.

Luciana Morgan spoke in support of this program.

# MOTION <u>Paff/Dawson</u> to accept the recommendation, approve the Spanish Language Elementary program. Motion CARRIED 5 - 0

## G. California School Board Association Policy Review

<u>California School Board Association representative Greg Francis</u> presented information to the Board. The Board discussed this item.

MOTION <u>Dawson/Rivera</u> to accept the policy review. Public comment: none Motion CARRIED 5 – 0 H. <u>Updates to Board Policy and Exhibit 5144 Student Discipline and Policy and Regulation</u> 5144.1 Suspension and Expulsion/Due Process

The Board reviewed edits recommended by a Trustee, approved and declined edits.

MOTION <u>Dawson/Rivera</u> to approve Policy 5144. Public comment: none Motion CARRIED 5 – 0

MOTION <u>Dawson/Rivera</u> to approve Exhibit 5144. Public comment: none Motion CARRIED 5 – 0

MOTION <u>Dawson/Rivera</u> to approve Policy 5144.1. Public comment: none Motion CARRIED 5 – 0

MOTION <u>Rivera/Carolyn Swanson</u> to approve Regulation 5144.1. Public comment: none Motion CARRIED 5 – 0

MOTION <u>Paff/Brian Swanson</u> to extend the meeting to 11:00 p.m. Public comment: none Motion CARRIED 5 – 0

I. <u>Substitute Teacher Pay Rate</u>

MOTION <u>Brian Swanson/Rivera</u> to approve the substitute teacher pay rate. Public comment: none Motion CARRIED 5 – 0

J. New Maintenance Vehicle - Purchase Order to Downtown Ford for one Transit T-150 Van

MOTION <u>Dawson/Rivera</u> to approve the New Maintenance Vehicle - Purchase Order to Downtown Ford for one Transit T-150 Van. Public comment: none Motion CARRIED 5 – 0

K. Contract for Services with Maverick Networks for District Wide 8x8 Phone System

<u>Director of Facilities and Transportation Matt Kelly</u> presented information and answered questions along with <u>Todd Barnes of Maverick Networks</u>.

#### **Public comment:**

<u>JH</u> expressed concerns over data privacy and how the company assures data privacy. <u>Mr. Barnes</u> noted no data is being recorded, there are no primary data concerns.

MOTION <u>Dawson/Rivera</u> to approve the Contract for Services with Maverick Networks for District Wide 8x8 Phone System. Motion CARRIED 5 – 0 L. Board Calendar/Future Meetings

# **Public comment:**

<u>Beth Shammas</u> noted the Board will need more meetings considering the many future agenda items.

# MOTION <u>Brian Swanson/Dawson</u> to approve the Board meeting calendar. Motion CARRIED 5 - 0

# XIII. INFORMATION/DISCUSSION

A. <u>Review of Solar Power Solutions</u>

<u>Director of Facilities and Transportation Matt Kelly</u> presented information and answered questions along with <u>Emily Douglas of ENGIE Solar</u>.

The Board directed Administration to move forward.

# B. Future Agenda Items

- Added March 4, 2021: A Board member requested a study about making ethnic studies a graduation requirement
  - The Board directed Administration to remove this item as the District awaits direction from the California Department of Education.
- Added June 3, 2021: A Board member requested information about eco-friendly tools, products and supplies
  - The Board directed Administration to remove this item. <u>Director Matt</u> <u>Kelly</u> will provide the Board a report, not an agenda item. This report will be made available to the public on the District website.
- Added June 17, 2021: A Board member requested parent orientation to the Board meetings
  - Board President and Superintendent Porras will work on this item.
- Added August 19, 2021: A Board member requested curriculum/training on critical thinking skills and how to navigate social media and the internet for students
  - The Board directed Administration to remove this item. This request will be considered during the Pacific Grove High School Master Course Schedule development process.
- Added September 2, 2021: A Board member requested efforts to improve Board relationships
  - This item will be included during the Special Board meeting on Saturday, September 25, 2021.

The Board reviewed the draft agenda for the Special Board meeting on Saturday, September 25, 2021.

# XIV. <u>ADJOURNED</u>

11:00 p.m. Approved and submitted:

Dr. Ralph Gómez Porras Secretary to the Board

# PACIFIC GROVE UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION Minutes of Special Meeting of September 25, 2021 – District Office/Virtual

# I. <u>OPENED BUSINESS</u>

- A. Called to Order
- B. Roll Call

President: Clerk: Trustees Present: Trustee Paff Trustee Brian Swanson Trustee Dawson Trustee Rivera Trustee Carolyn Swanson Superintendent Porras Mandi Ackerman

9:01 a.m.

Administration Present: Board Recorder:

C. Adopted Agenda

#### MOTION <u>Rivera/Dawson</u> to adopt agenda as presented. Public comment: none Motion CARRIED 5 – 0

D. <u>Pledge of Allegiance</u>

Led By: Trustee Paff

# II. <u>INFORMATION/DISCUSSION</u>

A. Board Study Session

<u>Lozano Smith Attorney Sarah Kaatz</u> facilitated the Special Board meeting, presented information, asked questions of the Board. The Board discussed the following:

- Role of Board
- Communications by the Board: Internal and External
- Board Norms related to communications
- Responding to Public Comment
- Next steps

• Communications- correspondence, protocols, goals, public comment options on agendas

• Future Agenda Item: Board will receive sample agenda formats to consider a potential change in current meeting protocols

• Future Agenda Item: Norms for Media Relations/General Correspondence/Public Comment

• The administration will investigate what other school districts are doing regarding Board/Community forum and communication

#### **Public comment:**

<u>Ms. Kim</u> spoke several times throughout the meeting regarding effective, transparent communication; recommended FourSquare as an effective tool for the District to consider; noted she is the current Chair of SELPA; noted the Board does a good job recognizing the current stakeholders (parents and students); said communication is key; quick tools; and suggested independent mediators are available within the community.

<u>Valerie Anthony</u> spoke about Facebook, noting it can be used responsibly; noted times are changing and technology is changing; said the Board meetings are public; noted Trustee Carolyn Swanson's personal Facebook page is valuable, a lot of followers; suggested a survey of how families receive information would be important; spoke of a recent Board meeting regarding equity and equality and noted that not everyone is on the same page.

<u>Jennifer McNary</u> spoke about receiving many District communications, noting a previous message regarding the California Voting Rights Act and said the email does not explain the content well and was not clear.

# III. ADJOURNED

12:15 p.m.

Approved and submitted:

Dr. Ralph Gómez Porras Secretary to the Board Student Learning and Achievement
 Health and Safety of Students and Schools
 Credibility and Communication
 Fiscal Solvency, Accountability and Integrity

☑ Consent
 ☑ Action/Discussion
 ☑ Information/Discussion
 ☑ Public Hearing

**SUBJECT:** Certificated Assignment Order #5

**DATE:** October 7, 2021

**PERSON(S) RESPONSIBLE:** Billie Mankey, Director II, Human Resources

# **RECOMMENDATION:**

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The District Administration recommends the Board review and approve the Certificated Assignment Order **#5** 

# **BACKGROUND:**

Under Board Policies #4200 and #4211, the Human Resource Office is directed by the Superintendent and the Board of Education to employ the most highly qualified person available for each position. Recruitment and selection procedures include dissemination of vacancy announcements to newspapers, trade journals, the internet through the Pacific Grove Unified School District website, Monterey County Office of Education website and other recruitment websites in California. The recommendation to hire a selected candidate is made after weighing the information obtained by the complete application package, the interview process, and confidential reference checks. No inquiry is made with regard to the age, sex, race, color, religion, national origin, disability or sexual orientation.

# **INFORMATION:**

Persons listed in the Certificated Assignment Order are being recommended to the Board of Education for employment in the District. No individual is recommended to the Board of Education for employment prior to receipt of the criminal background summary.

# **FISCAL IMPACT:**

Funding has been approved and allocated for these items.

# PACIFIC GROVE UNIFIED SCHOOL DISTRICT CERTIFICATED PERSONNEL ASSIGNMENT ORDER NO. 5 October 7, 2021

# **<u>NEW HIRE</u>**:

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James Ehret, PGHS Counselor, full-time, 1.0 FTE, Column IV, Step 2 + MA, effective December 1, 2021 (replaces transferee Michelle Cadigan)

# **TEMPORARY RE-HIRE:**

Kim Shurtz, District GATE Coordinator, \$5,000 stipend to be paid \$2,500 in December and \$2,500 in May, (Chapman Grant Funded)

2021-2022 PG	MS Stipends			
<b>Employee</b>	<u>Assignment</u>	<u>Stipend</u>	Funding	Stipend Amount
Barbara Priest	Instrumental Music Coach		General Fund	\$2,949.00
Jared Masar	Vocal Music Coach		General Fund	\$1,179.00
Audrey Kitayama	Athletic Director		General Fund	\$3,054.00
Michelle Boulware	Musical Advisor		General Fund	\$2,949.00
Sean Boulware	Musical Advisor Assistant		ASB	\$1,298.00
Matt Davis	6 Girls' Volleyball Coach		GF - Athletics	\$1,243.00
Ali Lyon	7 Girls' Volleyball Coach		GF - Athletics	\$1,156.00
Kristy Chettle	8 Girls 'Volleyball Coach		GF - Athletics	\$1,336.00
Matt Davis (split)	6/7/8 Boys' VolleyballCoach	1/2	GF - Athletics	\$621.50
Nancy Da Silva (split)	6/7/8 Boys' Volleyball Coach	1/2	GF - Athletics	\$621.50
Renan Romero	6/7/8 Girls 'Soccer Coach		GF - Athletics	\$1,156.00
Michael Mock	6/7/8 Boys' Soccer Coach		GF - Athletics	\$1,156.00
Ryan Travaille	Cross Country Coach		GF - Athletics	\$1,243.00
Mary Ann Fort	Department Chair/English 19 sections	\$20 per section/\$300 annual	General Fund	\$680.00

PACIFIC GROVE UNIFIED SCHOOL DISTRICT CERTIFICATED PERSONNEL ASSIGNMENT ORDER NO. 5 October 7, 2021				
			-	Page 3 of 3
Susan Gaul	Department Chair/History 18 sections	\$20 per section/\$300 annual	General Fund	\$660.00
Ivy Kong	Department Chair/Math 19 sections	\$20 per section/\$300 annual	General Fund	\$680.00
Chip Dorey	Department Chair/P.E. (11 sections) and Electives (not paid)	\$20 per section/\$300 annual	General Fund	\$520.00
Lisa McBride	Department Chair/Science 18 sections	\$20 per section/\$300 annual	General Fund	\$660.00
Amy Tulley	Department Chair/SPED 18 sections	\$20 per section/\$300 annual	Restricted - Special Ed	\$660.00
Moira Mahr	GATE		Chapman Grant	\$51.30/hr.
Barbara Priest	GATE		Chapman Grant	\$51.30/hr.
Kathy Wheeler	Lunch Club- Creative Club, 1 hr./day, ending 5/27/21		Restricted Donations	\$16.52/hr.

# **TEMPORARY NEW HIRE:**

Kristen Lukefahr, PGHS, English Teacher (Eng. 1,2, &3), Temporary, Full-time, Column IV, Step 3 + MA effective September 28, 2021 through May 31, 2022 only (replaces Larry Haggquist LOA)

Alexandra Cleveland, PGAS, Swim Instructor, 3 hrs./week, 12-month work calendar, Adult School Salary Schedule, Column A, Step 1, effective September 21, 2021

# **TEMPORARY CHANGE OF ASSIGNMENT:**

Kim Shurtz, from PGHS Social Science (World Geography and US History) to PGMS TOSA (Teacher on Special Assignment), Temporary, 1.0 FTE, Column VI, Step 17 + MA, effective date dependent upon successful recruitment for a qualified temporary replacement through May 31, 2022 (ESSER III Funded)

# SALARY SCHEDULE COLUMN ADVANCEMENT based on receipt and posting of official transcripts:

Margo Samuels, column advance from IV to V, effective October 1, 2021

# SUBSTITUTES:

Mary Riedel, Elementary Principal Substitute, Step A, effective September 14, 2021 through September 20, 2021

Page 1 of 3

Student Learning and Achievement
 Health and Safety of Students and Schools
 Credibility and Communication
 Fiscal Solvency, Accountability and Integrity

☑Consent
 ☑Action/Discussion
 ☑Information/Discussion
 ☑Public Hearing

**SUBJECT:** Classified Assignment Order #5

**DATE:** October 7, 2021

**PERSON(S) RESPONSIBLE:** Billie Mankey, Director II, Human Resources

# **RECOMMENDATION:**

The District Administration recommends the Board review and approve the Classified Assignment Order **#5** 

# **BACKGROUND:**

Under Board Policies #4200 and #4211, the Human Resource Office is directed by the Superintendent and the Board of Education to employ the most highly qualified person available for each position. Recruitment and selection procedures include dissemination of vacancy announcements to newspapers, trade journals, the internet through the Pacific Grove Unified School District website, Monterey County Office of Education website and other recruitment websites in California. The recommendation to hire a selected candidate is made after weighing the information obtained by the complete application package, the interview process, and confidential reference checks. No inquiry is made with regard to the age, sex, race, color, religion, national origin, disability or sexual orientation.

# **INFORMATION:**

Persons listed in the Classified Assignment Order are being recommended to the Board of Education for employment in the District. No individual is recommended to the Board of Education for employment prior to receipt of the criminal background summary.

# **FISCAL IMPACT:**

Funding has been approved and allocated for these items.

PGUSD

# PACIFIC GROVE UNIFIED SCHOOL DISTRICT CLASSIFIED PERSONNEL ASSIGNMENT ORDER NO. 5 October 7, 2021

# **NEW HIRE**:

Page 2 of 3

Phyllis Lewis, D.O., Clerk III (Accounts Payable), 8 hrs./day (of which 2 hours are funded through Measure D)/12-month work calendar, Range 39, Step F, effective August 16, 2021 (replaces Marie Faille)

# **<u>REHIRE</u>**:

Natalie Montgomery, 2021-22 Elementary Afterschool Enrichment Coordinator, \$3,000 stipend per session, not to exceed 4 sessions for a maximum of \$12,000 (funded through enrollment fees)

# **INCREASE/DECREASE IN ASSIGNMENT:**

Greg Ellis, MOT&G, reduces Utility Worker position by 1 hr./day, 12-month work calendar, Range 37, Step G replaced with Service Mechanic 1 hr./day, 12-month work calendar, Range 45, Step F, effective July 1, 2021 (partial replacement for Joel Drucker)

# **POSITION RECLASSIFICATION:**

Grayson Fong, Computer Lab Instructional Technician II, Range 33, Step F reclassifies to Information Technology Technician, Range 35, Step F, due to a dramatic change in and alignment of job duties at the secondary level, effective October 1, 2021

□Student Learning and Achievement
 □Health and Safety of Students and Schools
 □Credibility and Communication
 ⊠Fiscal Solvency, Accountability and Integrity

☑ Consent
 ☑ Action/Discussion
 ☑ Information/Discussion
 ☑ Public Hearing

SUBJECT: Acceptance of Donations

**DATE:** October 7, 2021

PERSON(S) RESPONSIBLE: Song Chin-Bendib, Assistant Superintendent for Business Services

#### **RECOMMENDATION:**

The Administration recommends that the Board approve acceptance of donations referenced below.

#### **INFORMATION:**

During the past month the following donations were received:

<b>Forest Grove</b>	Elementary	School
PG Pride		

Robert H. Down Elementary School Robert Down PTA PG Pride

# Pacific Grove Middle School PG Pride

Pacific Grove High School PG Pride PG STEAM, Inc. \$375 (October grants/U.S. Open))

\$750 (garden planter project)\$2,525 (September grants/U.S. Open)

\$1,710 (August grants/U.S. Open)

\$7,000 (October grants/U.S. Open) \$3,717 (Robotics Advisor stipend)

Pacific Grove Community High School None

Pacific Grove Adult School /Lighthouse Preschool & Preschool Plus Co-op None

Pacific Grove Unified School District None Student Learning and Achievement
 Health and Safety of Students and Schools
 Credibility and Communication
 Fiscal Solvency, Accountability and Integrity

☑ Consent
 ☑ Action/Discussion
 ☑ Information/Discussion
 ☑ Public Hearing

SUBJECT: Out of County or Overnight Activities

DATE: October 7, 2021

PERSON(S) RESPONSIBLE: Song Chin-Bendib, Assistant Superintendent for Business Services

#### **RECOMMENDATION:**

The Administration recommends that the Board approve or receive the request as presented.

# **BACKGROUND:**

Board Policy 6153 requires prior approval of all school sponsored trips. Out of County/State or overnight trips require Board approval. Other trips may be approved by the Superintendent or designee.

# **INFORMATION:**

The attached list identifies an overnight/Out of County/State trip(s) being proposed by a school site at this time.

# FISCAL IMPACT:

The request has an identified cost and associated source of funds. The activities expose the District to increased liability with a resulting potential for financial impact.

# PACIFIC GROVE UNIFIED SCHOOL DISTRICT

# OUT-OF-COUNTY OR OVERNIGHT ACTIVITIES

DATE DESTINATION	STUDENTS/CLASS <u>ACTIVITY</u>	TRANSPORTATION	<u>COST</u>	FUNDING SOURCE
October 9, 2021 San Mateo High School San Mateo, CA	PGHS Choir Choral Workshop	Auto	\$25.00	Advisor
October 29, 2021 Bellarmine Prep School San Jose, CA	PGHS Robotics Team Robotics Competition	Auto	\$700	Donation/ASB Robotics
November 1, 2021 Multiple venues, see description San Francisco, CA	PGHS Photo Class Urban photography & exhibition	Auto	\$350	CTEIG
November 12-14, 2021 Matilda Torres High School Madera, CA	PGHS Robotics Team MadTown Throwdown Robotics	Auto Competition	\$5,000	Donation/ASB Robotics
February 17-19, 2022 Fresno College Fresno, CA	PGHS Choir All State Honor Choir	Auto	\$200	Students/parents
April 14-18, 2022 Carnegie Hall New York, NY	PGHS Choir Concert Performance	Air	\$88,000	Donation/ASB Choir/fundraising

Date of Activity_10/09/2021	Day of Activity Saturday	ار می می از این از ا میروند این از
San Mateo High School C	ity San Mateo	_County_San Mateo
School PG High School Class or Club Ch	noir	Grade Level/s 9-12
School Departure Time 7	AM	
Pickup Time from Place of Activity 5	PM	
Name of Employee Accompanying Students <u>M</u> Number of Adults <u>1</u>	ichelle Boulware Number of Students_4	
Description of Activity/Educational Objective Choral workshop with a college professor		
List All Stops San Mateo High School		
Means of Transportation: Auto* * Board Regulation 3541.1 Requirements will	be complied with when using	g private Autos <u>Mb</u> (Teacher initials)
**If using District vans, driver names must be	listed:	
Cost of Activity \$_25 + Cost of T	ransportation \$_0	= Total \$ 25.00
Fund/s to be charged for all activity expenses (	x) Students ( ) Club ( ) P	G Pride ( ) Other
Account Code: None - no funds will be used from the	Chorus ASB account (item turne	d in 9/27 informed MB - late)
Requested by: Michelle Boulware Employee Signature (accompanying stude		Date_ <u>09/27/2021</u>
Administration Approval/Principal Lito M. Gare	ia	Date09/28/2021
********	*******	************
Transportation 1	Department/District Off	ice Use
( ) School Bus ( ) Charter ( ) Available Cost Estimate \$		ate Received
Approved by Transportation Supervisor:		Date
Approved by Assistant Superintendent; song chi	inbendib	Date_09/28/2021
Date of Board Approval <u>10/07/2021</u>		
Does form need board approval Yes PGUSD Regu	ular Meeting of October 7, 2021	25

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Date of Activity 10/29/2021	Day of Activity_Frid	ay, Saturday, and Sunday through 10/31
Location of Activity	City San Jose	County Santa Clara
School PG High SchoolClass or Club	Robotics	Grade Level/s 9-12
School Departure Time <u>12:15 (est)</u>	PM	
Pickup Time from Place of Activity Sunday ev	rening PM	
Name of Employee Accompanying Students Number of Adults <u>3</u>		
Description of Activity/Educational Objectiv Compete in robotics competition with our 2021 robot,	<i>7</i> e	
List All Stops Bellarmine Prep - driving back and for	rth to San Jose each day	· · · · · · · · · · · · · · · · · · ·
Means of Transportation: Auto* * Board Regulation 3541.1 Requirements wi		ising private Autos <u>sar</u> (Teacher initials)
**If using District vans, driver names must b	be listed:	
Cost of Activity \$_700 + Cost of	f Transportation \$_0	= Total \$_700.00
Fund/s to be charged for all activity expense	s ( $_{x}$ ) Students ( $_{x}$ ) Club (	) PG Pride ( ) Other
Account Code: Registration to be paid by PG Stea	m/Team expenses to be paid b	y ASB Account #801
Requested by: <u>Sally A Richmond</u> Employee Signature (accompanying st		Date_ <u>09/04/2021</u> ted Name
Administration Approval/Principal	aria	Date09/09/2021
***************************************	******	******
Transportation	n Department/District	Office Use
( ) School Bus ( ) Charter ( ) Availab Cost Estimate \$		Date Received
Approved by Transportation Supervisor:		Date
Approved by Assistant Superintendent: 5019	chinbendib	Date_09/09/2021
Date of Board Approval <u>10/07/2021</u>		
Does form need board approval Yes PGUSD R	eqular Meeting of October 7. 2021	26

Date of Activity 11/01/2021	Day of Activity	Monday
San Francisco	City San Francisco	County San Francisco
School PG High SchoolClass or Clu	b Photo 2/ AP Photo	Grade Level/s 11-12
School Departure Time 9:15	АМ	
Pickup Time from Place of Activity <u>6:00</u>	PM	
Name of Employee Accompanying Student	s Celia Lara	
Number of Adults 3	Number of Stu	dents_13
Description of Activity/Educational Object Urban Landscape and street photography project. V visit Pier 24 gallery to view the current photography List All Stops Ferry Building, Pier 24 Gallery, Emb	Vill take photos for their projec exhibition and discuss	
Means of Transportation: Auto* * Board Regulation 3541.1 Requirements v **If using District vans, driver names must		en using private Autos <u>CL</u> ( <i>Teacher initials</i> )
Cost of Activity \$_0+ Cost of		= Total \$ 350.00
Fund/s to be charged for all activity expens		
Account Code: 01-6387-0-3800-1000-5200-00-00		
Requested by: Celia Lara Employee Signature (accompanying s	/ Celia Lara	Date <u>09/28/2021</u>
Administration Approval/Principal		Date09/28/2021
*****		*********
Transportatio	on Department/Distri	ict Office Use
( ) School Bus ( ) Charter ( ) Availa Cost Estimate \$		Date Received
Approved by Transportation Supervisor:		Date
Approved by Assistant Superintendent: 50/1	g chinbendib	Date 09/28/2021
Date of Board Approval		
Does form need board approval Yes		

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Date of Activity 11/12/2021	Day of Activity Frid	lay - Sunday (overnight	stay)
Location of Activity	City Madera	County Madera	
School PG High School Class or Club	BreakerBots Robotics	Grade	Level/s <u>9-12</u>
School Departure Time <u>1:00</u>	РМ		
Pickup Time from Place of Activity 6:00	PM		
Name of Employee Accompanying Students Number of Adults <u>2</u>			
Description of Activity/Educational Objectiv Compete in the MadTown Throwdown robotics compe	7e		
List All Stops Hampton Inn & Suites for Friday and	Saturday night and Matilda Tor	res High School Madera	· · · · · · · · · · · · · · · · · · ·
Means of Transportation: <sup>Auto*</sup> * Board Regulation 3541.1 Requirements wi	ill be complied with when	using private Autos	sar (Teacher initials)
**If using District vans, driver names must h	pe listed:		
Cost of Activity \$_4844.75 + Cost of	f Transportation \$ <u>155.25</u>	= Total \$	5,000.00
Fund/s to be charged for all activity expense	s ( ) Students ( <sub>x</sub> ) Club (	) PG Pride ( ) Oth	ner
Account Code: Wells Fargo ASB Account - Roboti	cs #801		
Requested by: <u>Sally A. Richmond</u> Employee Signature (accompanying str	/ Sally Richmond udent activity) Priv	nted Name	Date 09/27/2021
Administration Approval/Principal	arcia		_Date09/28/2021
********	********************************	**************************************	******
Transportation	n Department/District	Office Use	
( ) School Bus ( ) Charter ( ) Availah Cost Estimate \$		Date Received	
Approved by Transportation Supervisor:			_Date
Approved by Assistant Superintendent: <u>5019</u>	chinbendinb		Date09/28/2021
Date of Board Approval <u>10/07/2021</u>			
Does form need board approval Yes PGUSD R	egular Meeting of October 7, 2021		28

Date of Activity 02/17/2022	Day of Activity Thu	rsday through Saturday	
Fresno College	City Fresno	County_Fresno	
School PG High School Class or Club	Choir	Grade Level/s 9-12	
School Departure Time 7	AM		
Pickup Time from Place of Activity 4	PM		
Name of Employee Accompanying Students		· · · · · · · · · · · · · · · · · · ·	
Number of Adults 1	Number of Stude	nts_4	
Description of Activity/Educational Objective Participation in All State Honor Choir with a college p		·	
List All Stops Fresno College and Hotel TBD			
Means of Transportation: Auto* * Board Regulation 3541.1 Requirements with	ill be complied with when u	nsing private Autos <u>Mb</u> (Teacher initials)	
**If using District vans, driver names must l	be listed:		
Cost of Activity \$_200 + Cost of	f Transportation \$_0	= Total \$_200.00	
Fund/s to be charged for all activity expense	s ( $_{X}$ ) Students ( $_{X}$ ) Club (	) PG Pride ( ) Other	tere-stratta
Account Code: None - expenses to be covered by	the students/parents		
Requested by: Michelle Boulware Employee Signature (accompanying sta	/ Michelle Boulware Ident activity) Prin	Date_09/27/2021	
Administration Approval/Principal	arila	Date09/28/2021	
· · · · · · · · · · · · · · · · · · ·	******	*******	**
Transportatio	n Department/District	Office Use	
( ) School Bus ( ) Charter ( ) Availal Cost Estimate \$		Date Received	
Approved by Transportation Supervisor:		Date	
Approved by Assistant Superintendent: <u>soug</u>	chinbendib	Date_09/28/2021	
Date of Board Approval <u>10/07/2021</u>			
Does form need board approval Yes	egular Meeting of October 7, 2021	29	

Date of Activity 04/14/2022	Day of Activity Thursday-Monday						
Location of Activity	City_New York	County_New York					
School PG High SchoolClass or Club	Choir	Grade Level/s 9-12					
School Departure Time 7	AM						
Pickup Time from Place of Activity 9	PM						
Name of Employee Accompanying Students       Michelle Boulware         Number of Adults       5         Number of Students       40							
Description of Activity/Educational Objectiv Sing at Carnegie Hall. Trip was postposed because	ve						
List All Stops Multiple. Will have itinerary closer to trip.							
Means of Transportation: <sup>Air</sup> * Board Regulation 3541.1 Requirements wi	ill be complied with when t	ising private Autos <u>Mb</u> (Teacher initials)					
**If using District vans, driver names must l	oe listed:						
Cost of Activity \$_48,000.00 + Cost of	f Transportation \$_40,000.0	D = Total \$ 88,000.00					
Fund/s to be charged for all activity expense	es ( <sub>x</sub> ) Students ( <sub>x</sub> ) Club (	) PG Pride ( <sub>x</sub> ) Other <u>Fundraising</u>					
Account Code: Wells Fargo ASB Account - Choir a	#801 - money was raised in 201	9 - 2020 (estimated cost for 2022)					
Requested by: Michelle Boulware Employee Signature (accompanying stu	/ <u>Michelle Boulware</u> udent activity) Prin	Date_09/27/2021					
Administration Approval/Principal_ <i>Lito M. C</i>	Garcia	Date09/28/2021					
******	*****	***************************************					
<b>Transportation Department/District Office Use</b>							
( ) School Bus ( ) Charter ( ) Availal Cost Estimate \$		Date Received					
Approved by Transportation Supervisor:		Date					
Approved by Assistant Superintendent: <u>sour</u>	chinbendib	Date_09/28/2021					
Date of Board Approval <u>10/07/2021</u>							
Does form need board approval Yes PGUSD R	Regular Meeting of October 7, 2021	30					

□Student Learning and Achievement
 □Health and Safety of Students and Schools
 □Credibility and Communication
 ⊠Fiscal Solvency, Accountability and Integrity

☑ Consent
 ☑ Action/Discussion
 ☑ Information/Discussion
 ☑ Public Hearing

SUBJECT: Warrant Schedule 635

DATE: October 7, 2021

PERSON(S) RESPONSIBLE: Song Chin-Bendib, Assistant Superintendent for Business Services

#### **RECOMMENDATION:**

As Assistant Superintendent for Business Services, I certify that I have reviewed the attached warrants for consistency with the District's budget, and purchasing and accounting practices and therefore, recommend Board approval.

#### **BACKGROUND:**

The attached listing of warrants identifies payments made by the District during the noted time period from August 1, 2021 through August 30, 2021.

# **INFORMATION:**

Prior to the issuance of the warrants, District procedures have been followed to ensure the appropriateness of the item purchased, the correctness of the amount to be paid, and that funds were available within the appropriate budget. All necessary site, department, and district authorizations have been obtained.

Please note a full copy of the warrants are available by request.

# PACIFIC GROVE UNIFIED SCHOOL DISTRICT

# WARRANT SCHEDULE NO. 635

#### AUGUST 2021

# WARRANTS - PAYROLL

Certificate	d Regular	08/05/21	\$	-
	Regular	08/10/21	\$	85.23
	Regular	08/13/21	\$	-
	Regular	08/31/21	\$	1,748,975.10
Total Certificated			\$	1,749,060.33
Other	Regular	08/05/21	\$	-
	Regular	08/10/21	\$	2,349.54
	Regular	08/13/21	\$	-
	Regular	08/31/21	\$	691,543.41
	<u>Total Other</u>		\$	693,892.95
Classified	Regular	08/05/21	\$	-
	Regular	08/10/21	\$	-
	Regular	08/13/21	\$	-
	Regular	08/31/21	\$	2,255.42
	Total Classified		\$	2,255.42
	TOTAL PAYROLL			2,445,208.70

# WARRANTS - ACCOUNTS PAYABLE

Checks	V-Card Payment		
12631565-12631580	n/a	08/03/21	\$ 19,585.19
12632407-12632472	04600000087-04600000089	08/12/21	\$ 899,771.33
12629544-12629565	04600000090-04600000097	08/19/21	\$ 63,740.37
12634943-: 12630794	04600000098-04600000102	08/30/21	\$ 169,823.10

# TOTAL ACCOUNTS PAYABLE\$ 1,152,919.99

Student Learning and Achievement
 Health and Safety of Students and Schools
 Credibility and Communication
 Fiscal Solvency, Accountability and Integrity

☑ Consent
 ☑ Action/Discussion
 ☑ Information/Discussion
 ☑ Public Hearing

SUBJECT: University Agreements

**DATE:** October 7, 2021

PERSON(S) RESPONSIBLE: Billie Mankey, Director II, Human Resources

#### **RECOMMENDATION:**

The District Administration recommends the Board review and approve the Memorandum of Understanding with Monterey Peninsula College for placing student teachers, and the amendment from our California State University, Monterey Bay partner on mentor teacher pay.

#### **BACKGROUND:**

Student teaching and field experience is an important part of the College and University teacher education program. School district support of master teacher/student teacher programs is necessary to providing a valuable education for promotion of successful teacher candidates.

#### **INFORMATION:**

MPC is requesting the support of the Pacific Grove Unified School District by approval of the attached MOU student teacher placement with fully credentialed district teachers.

Attached for CSUMB is an amendment to the original partnership. Originally CSUMB would pay mentor teachers directly. This amendment changes that process whereby CSUMB will pay the district \$125 for each mentor in the Spring and in the Fall and the district will then pay our employees. This is in response to Assembly Bill (AB) 5 regarding Independent Contractors in California where cooperating teachers and induction mentors no longer meet the definition of Independent Contractor.

#### FISCAL IMPACT:

None.



# AMENDMENT TO UNIVERSITY-AGENCY AGREEMENT FOR PLACEMENT OF STUDENTS

This AMENDMENT, hereinafter called "Amendment", to the University-Agency Agreement for Placement of Students between the Trustees of the California State University on behalf of California State University, Monterey Bay, hereinafter referred to as "CSUMB", and <u>Pacific Grove Unified School Distin</u>fereinafter referred to as "Agency", shall be effective as of the last day signed below.

This Amendment modifies and adds to the previous University-Agency Agreement for Placement of Students as follows:

# 1. Definitions

- Mentor A Mentor is a cooperating teacher, induction mentor, or field supervisor at the Agency who mentors a CSUMB College of Education Candidate during a given College semester.
- Candidate A student at CSUMB's College of Education.

# 2. Compensation for Mentors

- For each semester in which at least one Candidate was placed with a Mentor, CSUMB shall make payment to the Agency after the end of that semester.
- Payment Terms: Payment of \$125 to a Mentor per each Candidate whom they mentor, per Semester (Fall / Spring). The total sum per each Candidate working under a Mentor shall not exceed \$125 per semester. For each Mentor who does not interact with the Candidate for the full amount of scheduled meeting days per semester, a proration of the \$125 will be applied, determined by CSUMB.
- Agency shall ensure that each Mentor identified by CSUMB to receive payment will receive compensation in the payment terms discussed above and in accordance with the invoice file sent along with the payment.
- This amendment and all additions herein shall only apply to CSUMB Candidates placed by CSUMB's College of Education, under the direction of a Mentor as defined above.

All other provisions, terms and conditions of the University-Agency Agreement for Placement of Students remain in full effect. IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed.

California State University, Monterey Bay Trustees of the California State University

Contractor

BY (AUTHORIZED SIGNAT

BY (AUTHORIZED SIGNATURE)

Dr. Cathi Draper Rodriguez PRINT NAME

<u>Chair, Dept. of Education and Leadership</u> TITLE

tou I. Human Resporte

PGUSD

Regular Meeting of October 7, 2021



# AMENDMENT TO UNIVERSITY-AGENCY AGREEMENT FOR PLACEMENT OF STUDENTS

DATE

ADDRESS

DATE

BY (AUTHORIZED SIGNATURE)

<u>Dr. Edward Jadallah</u> PRINT NAME

Dean, College of Education

DATE

Stephen W. Mackey Associate Vice President, Finance California State University, Monterey Bay 100 Campus Ctr, Mountain Hall Suite B Seaside, CA 93955-8001 smackey@csumb.edu DATE

# **Memorandum of Understanding**

Pacific Grove Unified School District (PGUSD) And Monterey Peninsula College

Partner name: Pacific Grove Unified School District (PGUSD) Partner Representative: Billie Mankey Position: Director II Human Resources Address: 435 Hillcrest Avenue, Pacific Grove, CA 93950 Telephone: 831-646-6553 Email: bmankey@pgusd.org

Partner name: Monterey Peninsula College (MPC) Partner Representative: Jaye Luke Position: Director of Teacher Pathway Program Address: 980 Fremont St. Telephone: 404-576-8783 Email: jluke@mpc.edu

PGUSD shall provide learning experiences for MPC lab students that may include observation and other activities involved in teaching in schools. MPC students shall be under the direct supervision and instruction of a district employee.

PGUSD may, for good cause, refuse to accept any lab student of MPC, and may request that a previously accepted student be terminated from observation and activities.

"Lab student" as used herein and elsewhere in this agreement means observation and active participation in the duties and functions of classroom teaching under the direct supervision and instruction of employees of the PGUSD and those employees shall hold valid credentials.

A lab student may begin when the proper paperwork is complete and given to the proper authorities; this includes but is not limited to a documented negative TB test and Department of Justice (DOJ) live scan testing for background clearance with no disqualifying incidents. The lab student is responsible for the cost of the TB test and DOJ live scan.

MPC agrees to defend, indemnify, and hold harmless PGUSD from and against any and all liability, loss, expense, attorney fees or claims for injury, death, or damages arising from or as a result of being negligent or intentional acts or omissions of MPC in the performance of this agreement

PGUSD agrees to defend, indemnify, and hold harmless MPC from and against any and all liability, loss, expense, attorney fees or claims for injury, death, or damages arising from or as a result of being negligent or intentional acts or omissions of PGUSD the performance of this agreement

PGUSD may terminate this agreement at any time and for any reason by giving written notice to MPC of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. MPC may terminate this agreement at any time and for any reason by giving written notice to PGUSD of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date thereof, at least there of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date thereof, at least thirty (30) days before the effective date of such termination.

The term of this Agreement shall be for a three-year term from the date of signature ("Initial Term"). This agreement can be extended by mutual consent of both parties in the form of an amendment to agreement.

Monterey Peninsula College

Signature

date

date

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Student Learning and Achievement
 Health and Safety of Students and Schools
 Credibility and Communication
 Fiscal Solvency, Accountability and Integrity

☑ Consent
 ☑ Action/Discussion
 ☑ Information/Discussion
 ☑ Public Hearing

SUBJECT: Contract for Services with Beem Video and Photography at Pacific Grove Middle School

DATE: October 7, 2021

PERSON(S) RESPONSIBLE: Sean Roach, Pacific Grove Middle School Principal

#### **RECOMMENDATION:**

The District Administration recommends the Board review and approve the contract for services with Beem Video and Photography at Pacific Grove Middle School to record, edit, and provide a media link for the Butterfly Music Concert Video to PGMS families and staff.

#### **BACKGROUND:**

Beem Video and Photography currently has a contract to provide services for Pacific Grove Middle School to video tape the musical for a second year. Due to COVID19, the Butterfly Bazaar is cancelled; therefore, the Butterfly Music Concert provided by Pacific Grove Middle School Music students are not able to perform in person.

#### **INFORMATION:**

Beem Video and Photography will come out with cameras, set them up, and record the students playing. They will edit the video and compile it into a feature-length concert and will create a link for it to be viewed online.

#### FISCAL IMPACT:

The contract time is October 8, 2021- November 30, 2021. The total contract for the middle school is not to exceed \$750.00 and is paid by the Music Donation Account. Due to COVID19, this is a new cost.

## PACIFIC GROVE UNIFIED SCHOOL DISTRICT **435 Hillcrest Avenue** Pacific Grove, CA 93950 **CONTRACT FOR SERVICES**

This contract is an agreement between the Pacific Grove Unified School District and Beem Video and Photography

for services rendered as specified below.

1. **Scope of Service:** 

2.

- To provide: Setting up, recording, editing, and media link preparation for the Butterfly Concert Video.
- **Evaluation and/or expected outcome(s)**(continue on attached page if needed):

Beem Video and Photography will come out with cameras, set them up, and record the students playing. They will edit the video and compile it into a feature-length concert and will create a link for Pacific Grove Middle School families, students, and staff to view the video online.

3. Length of the Contract:

Service is to be provided on the following date(s): October 8, 2021 through November 30, 2021

#### 4. **Financial Consideration:**

Consultant to be paid at the rate of: \$750 (\$ per hr/day/other) Not to exceed \$750 For a month(hours/days/other) School Funding Source: Music Donation Account Account Code: 01-9005-0-1110-1000-4300-00-005-1432-0720

Consultant (Please print) Beem Video and Photography

Address 8	836 2nd Street Pacific Grove, CA 93950 Phone:805-801-9054	
	Date 9/15/2021	
Email Cli	ick or tap here to enter text.	
	District Employee Independent Consultant	
Signed	Date	
	Date Site/Program Administrator (Check appropriate box below)	
	tracted work was assigned using District's normal employment recruitment process.	
Con	ontracted work was not assigned using District's normal employment recruitment pro	ocess.
	Attached Criteria Page (REQUIRED) identifies reason.	
Signed	Date	
<i>c</i> <u> </u>	Director of Human Resources	
Signed	Date	
	Assistant Superintendent	
ALL SIG	NATURES MUST BE OBTAINED BEFORE SERVICES ARE PROVIDED.	
*Independe	ent Consultant must sign and submit a W-9 to District prior to providing service.	

BOARD APPROVAL DATE Click or tap to enter a date.

Revised 3/2021

## **Contract for Services Criteria**

### District/Site Administrator – Please circle criteria that apply and sign below.

- (1) □There is a specifically <u>documented cost savings</u> relative to using district employment. (The documentation requirements are specified and must be attached).
- (2) The contract is for new school district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.
- (3) ⊠The services contracted are <u>not available within the district, cannot be performed satisfactorily by school</u> <u>district employees</u>, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the school district.
- (4) □The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as <u>"service agreements,"</u> shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.
- (5) □The policy, administrative, or legal goals and purposes of the district cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary school district hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.
- (6) □The nature of the work is such that the criteria for emergency appointments apply. <u>"Emergency appointment"</u> means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the district. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.
- (7)  $\Box$  The contractor will provide equipment, materials, facilities, or support services that <u>could not feasibly be</u> provided by the school district in the location where the services are to be performed.
- (8)  $\Box$  The services are of such an urgent, temporary, or occasional nature that the <u>delay</u> incumbent in their implementation <u>under the district's regular or ordinary hiring process would frustrate their very purpose.</u>

District/Site Administrator

Date

Ref: Contract for Services Criteria

Student Learning and Achievement
 Health and Safety of Students and Schools
 Credibility and Communication
 Fiscal Solvency, Accountability and Integrity

☑ Consent
 ☑ Action/Discussion
 ☑ Information/Discussion
 ☑ Public Hearing

SUBJECT: Contract for Services with Best Instrument Repair

DATE: October 7, 2021

PERSON(S) RESPONSIBLE: Lito M. Garcia, Principal, Pacific Grove High School

#### **RECOMMENDATION:**

The District Administration recommends the Board review and approve the contract for services with Best Instrument Repair for musical instrument sanitization services for the Pacific Grove High School music department for the 2021-2022 school year.

#### **BACKGROUND:**

Best Instrument Repair provides musical instrument repair and sanitization for the Pacific Grove High School music department. This is a process that the District does not have the resources or equipment to perform.

#### **INFORMATION:**

Instrument Repair will sanitize instruments for the 2021-2022 school year.

#### FISCAL IMPACT:

\$3005 to be paid by ESSER funds.

## PACIFIC GROVE UNIFIED SCHOOL DISTRICT **435 Hillcrest Avenue** Pacific Grove, CA 93950 **CONTRACT FOR SERVICES**

This contract is an agreement between the Pacific Grove Unified School District and Best Instrument Repair for

services rendered as specified below.

- 1. Scope of Service: To provide : Sanitization for musical instruments for PGHS music dept
- **Evaluation and/or expected outcome(s)**(continue on attached page if needed): Sanitize musical 2. instruments for the Pacific Grove High School music department for the 2021-2022 school year.
- Length of the Contract: 3. Service is to be provided on the following date(s): 2021-2022 school year
- 4. **Financial Consideration:** Consultant to be paid at the rate of: \$3005 21-22 school year School Funding Source: ESSER funds Account Code: 01-3212-0-1110-1000-5800-00-006-0000-1050

Consultant (Please print) Best Instrument Repair

Address 564 14<sup>th</sup> St, Oakland, CA 94612 Phone:51-832-0581

Signed \_\_\_\_\_ Date Click or tap to enter a date.

District Employee XIndependent Consultant

Signed \_\_\_\_\_ Date \_\_\_\_\_ Site/Program Administrator (Check appropriate box below)

Contracted work was assigned using District's normal employment recruitment process.

X Contracted work was not assigned using District's normal employment recruitment process. Attached Criteria Page (REQUIRED) identifies reason.

Signed		Date	
<u> </u>	Director of Human Resources		

Signed

\_\_\_\_\_ Date\_\_\_\_\_ Assistant Superintendent

## ALL SIGNATURES MUST BE OBTAINED BEFORE SERVICES ARE PROVIDED.

\*Independent Consultant must sign and submit a W-9 to District prior to providing service.

BOARD APPROVAL DATE Click or tap to enter a date.

## **Contract for Services Criteria**

## District/Site Administrator – Please circle criteria that apply and sign below.

- (1)  $\Box$  There is a specifically <u>documented cost savings</u> relative to using district employment. (The documentation requirements are specified and must be attached).
- (2)  $\Box$  The contract is for new school district functions and the <u>Legislature has specifically mandated or</u> <u>authorized</u> the performance of the work by independent contractors.
- (3) XThe services contracted are <u>not available within the district</u>, <u>cannot be performed satisfactorily by school</u> <u>district employees</u>, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the school district.
- (4) □The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as <u>"service agreements,"</u> shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.
- (5) □The policy, administrative, or legal goals and purposes of the district cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary school district hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.
- (6) □The nature of the work is such that the criteria for emergency appointments apply. <u>"Emergency appointment"</u> means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the district. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.
- (7)  $\Box$  The contractor will provide equipment, materials, facilities, or support services that <u>could not feasibly be</u> provided by the school district in the location where the services are to be performed.
- (8)  $\Box$  The services are of such an urgent, temporary, or occasional nature that the <u>delay</u> incumbent in their implementation <u>under the district's regular or ordinary hiring process would frustrate their very purpose.</u>

District/Site Administrator

Date

Ref: Contract for Services Criteria

□ Student Learning and Achievement
 ⊠ Health and Safety of Students and Schools
 □ Credibility and Communication
 □ Fiscal Solvency, Accountability and Integrity

☑ Consent
 ☑ Action/Discussion
 ☑ Information/Discussion
 ☑ Public Hearing

**SUBJECT:** Contract for Services with ImPact Applications, Inc.

DATE: October 7, 2021

PERSON(S) RESPONSIBLE: Lito M. Garcia, Principal Pacific Grove High School

#### **RECOMMENDATION:**

The District Administration recommends the Board review and approve the contract for services with ImPact Applications, Inc.

#### **BACKGROUND:**

ImPact Applications, Inc., provides concussion management through an online service for schools.

#### **INFORMATION:**

This service is important for the sports program since it provides a baseline for concussion protocol as well as providing post-injury assessments for the future health of our athletes.

#### FISCAL IMPACT:

There is no fiscal impact to the district. The subscription to the service is paid through our Wells Fargo Athletics Department Fund account. Funding comes from gate receipts generated by Football and Volleyball games.

#### IMPACT APPLICATIONS, INC.<sup>™</sup> SERVICES AGREEMENT

Important - Read Carefully. Notice to User:

This Services Agreement ("Agreement") is a legal document between you or your organization ("Customer") and ImPACT Applications, Inc. ("ImPACT Applications"). It is important that you read this document before using the Products (as such term is defined herein) and updates and upgrades thereto and any accompanying documentation, including, without limitation printed materials, 'online' files, or electronic documentation. The terms and conditions of this Agreement shall govern and control the use of any and all of the Products.

By checking the box next to "I have read and accept the Services Agreement" below, or by installing, or otherwise using the Products, you agree to be bound by the terms of this Agreement including, without limitation, the warranty disclaimers, limitation of liability, data usage, and termination provisions below, whether or not you decide to purchase the Products. You agree this Agreement is enforceable like any written agreement negotiated and signed by you or your organization. If you do not agree with the terms and conditions of this Agreement, you should not use the Products and you shall have no right to install, use or otherwise benefit from the Products. By entering into this Agreement, you hereby represent and warrant to ImPACT Applications and its affiliates that you are a duly authorized representative of your organization and that by checking the box next to "I have read and accept the Services Agreement" below you are acting within your authority and creating a legally binding agreement between you or your organization and ImPACT Applications.

By checking the box next to "I have read and accept the Services Agreement" below you certify that either (A) your organization is a medical provider, institution of education, sports team or similar organization or (B) you are a licensed healthcare provider in your state, country, province, or territory and you are permitted to use the Products under applicable rules, regulations, and laws. You acknowledge and agree only such organizations and licensed healthcare providers are permitted to license and use the Products and that any license to the Products is expressly conditioned upon you or your organization maintaining such status throughout the term of the Agreement as further described below.

**1. DEFINITIONS**. As used in this Agreement, the following terms shall have the respective meanings assigned to them below:

"Configurations" means standard set-up and activation services for the Product.

"Customer Materials" means all materials and content, such as logos and Customer's standard operating procedures, if any, provided to ImPACT Applications by Customer for incorporation into the Product.

"Customer Promotional Materials" means the promotional materials related to the Product that are created or developed by Customer.

"Customer Site" means a web site owned or controlled by Customer through which Customer and Test Takers access the Product.

"Documentation" means user documentation for the Product available at ImPACT Applications' web Site or sent to the Customer in print, as such documentation may be amended by ImPACT Applications from time to time.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, each as amended.

"ImPACT Applications Promotional Materials" means the promotional materials related to the Product that are created or developed by ImPACT Applications.

"ImPACT Applications Site" means one or more web sites owned or controlled by ImPACT Applications or an affiliate of ImPACT Applications through which Customer or Test Takers may obtain access to the Product.

"Person" or "person" means any corporation, partnership, limited liability company, joint venture, other entity, or natural person.

"Product" means the ImPACT Applications products and services available from time-to-time on or through the ImPACT Applications Site, as such Products are described in greater detail in the Documentation, together with any Updates thereto. "Product Infrastructure" means the hardware, software, and other equipment that ImPACT Applications uses in connection with its hosting of the Product for Customer hereunder.

"Terms of Use" means the terms and conditions of use for the Product, including ImPACT Applications' Privacy Policy and Terms of Use accessible at www.impacttest.com, which terms and conditions of use shall be accessible to users of the Product through a login or other access screen, as such terms and conditions of use are amended by ImPACT Applications from time to time.

"Territory" means the country in which Customer is located and the Products are available and approved for use.

#### IMPACT APPLICATIONS, INC.<sup>™</sup> SERVICES AGREEMENT

"Test Takers" means people other than Customer who are allowed by Customer to access the Product via the ImPACT Applications Site or a Customer Site.

"Trademark and Logo Usage Guidelines" means the quality levels and guidelines that ImPACT Applications maintains in connection with the ImPACT Applications Marks (as identified on Schedule B hereto).

"Update" means any update, upgrade, or new release for the Product that ImPACT Applications may make available to Customer from time to time hereunder.

#### 2. PRODUCT ACCESS; RESTRICTIONS; RESALE PROVISIONS; EXTENSION OF AGREEMENT TO SUBSEQUENT PRODUCTS

2.1 Limited License. Subject to Customer's compliance with the terms and conditions of this Agreement, ImPACT Applications hereby grants to Customer, during the Term, a non-exclusive, non-transferable (except as expressly permitted hereunder), license: (a) to access the Product, to use the Product in the Territory, and to authorize Test Takers to access and use the Product, via the ImPACT Applications Site or a Customer Site; (b) to use the ImPACT Applications Marks, including any goodwill therein, in the Territory and solely for use upon or in connection with the Product and for the purpose of promoting, advertising, or marketing the Product at the Trademark and Logo Usage Guidelines specified in this Section 2: and (c) to use the ImPACT Applications Promotional Materials, in the Territory and solely for the purpose of promoting, advertising, or marketing the Product in accordance with the Trademark and Logo Usage Guidelines specified in this Section 2. Customer acknowledges and agrees that unless a particular Product is available in the official language of the Territory other than English, the Product will be provided in English language only and that support for the Product will be provided in English language only during ImPACT Applications' Normal Business Hours unless otherwise agreed to by the parties in writing. 2.2 Terms of Use. All access to and use of the Product, Documentation, ImPACT Applications Marks, and ImPACT Applications Promotional Materials by Customer and Test Takers, as the case may be, shall be in accordance with the Terms of Use. Prior to using or being provided access to the Product, each Test Taker shall first have assented to the Terms of Use in some reasonable and verifiable manner as approved by ImPACT Applications. Customer shall not take any action that would mask, delete, or otherwise alter the Terms of Use or any other disclaimers or notices that ImPACT Applications may include in the Product from time to time. Customer agrees to (i) promptly notify ImPACT Applications should Customer become aware that any Test Taker has violated or is violating the Terms of Use; and (ii) reasonably cooperate with ImPACT Applications in any actions that ImPACT Applications may elect to take with respect to any Test Taker who violates the Terms of Use, including, without limitation, terminating such Test Taker's access to the Product. Prior to using or being provided access to the Product, each Test Taker shall have either assented to the Terms of Use or, if applicable, provided Customer the consent required under the Children's Online Privacy Protection Act of 1998, as amended ("COPPA"). Customer shall not take any action that would mask, delete, or otherwise alter the Terms of Use or any other disclaimers or notices that ImPACT Applications may include in the Product from time to time. Customer shall be and remain primarily liable for any breach of the Terms of Use or failure to secure the required COPPA consent from a Test Taker prior to using the Product. 2.3 Configurations. ImPACT Applications shall prepare and incorporate Configurations in order to enable access to the Product. ImPACT Applications and its licensors own and shall continue to own all right, title, and interest in and to the Product and such Configurations after any Configurations are incorporated therein; provided however that Customer or its licensors shall own and continue to own all right, title, and interest in and to the Customer Materials. Customer hereby grants to ImPACT Applications a royalty-free license to prepare the Configurations and to incorporate said Configurations into the

Product as permitted hereunder.

<u>2.4 Proprietary Notices</u>. Customer shall not remove any trademark, copyright, or patent notices, any proprietary or restricted rights notices, or any other proprietary notices or disclaimers that appear in the Product, any of the Documentation, or ImPACT Applications Promotional Materials. Unless otherwise agreed to in writing by ImPACT Applications, Customer shall state on its website, on all Products, and on or in all Promotional Materials and otherwise that, as applicable: (i) the ImPACT Applications Marks are "licensed from ImPACT APPLICATIONS, INC."; (ii) the Products are "licensed from ImPACT APPLICATIONS, INC."; and (iii) the Products are subject to copyright.

2.5 Conditions of Use, ImPACT Applications Marks. In order to carry out the rights granted in Section 2 hereto, Customer is authorized to: (i) use the IMPACT Applications Marks in such style, appearance, and manner as ImPACT Applications shall, in its sole discretion, specify or approve in writing and solely on or in connection with the Product or Promotional Materials and in strict accordance with all of the applicable Trademark and Logo Usage Guidelines; and (ii) create or develop Customer Promotional Materials; provided, however, that Promotional Materials may only be used in connection with the Product pursuant to this Agreement. ImPACT Applications shall retain all right, title, and interest in and to (including copyrights and trademarks) the ImPACT Applications Marks and ImPACT Applications Promotional Materials, and Customer grants to ImPACT Applications all right, title, and interest in and to any Customer Promotional Materials related to the Product. Customer is expressly prohibited from modifying the ImPACT Applications Marks or ImPACT Applications Promotional Materials unless expressly agreed to in writing and such modifications are expressly approved in writing by ImPACT Applications. Customer will not use the ImPACT Applications Marks in conjunction or association with any other trademark, trade name, or logo, or

place the ImPACT Applications Marks in close proximity to any other name, mark, or logo other than the name, trademarks, and related designs of Customer without the express prior written approval of ImPACT Applications, provided that such placement is carefully done so as to avoid any potential for confusion as to the source of the Product or Promotional Materials and to clearly distinguish the Product or Promotional Materials as originating from ImPACT Applications. Customer will comply as soon as reasonably practicable (but in any event within twenty (20) days) with all reasonable instructions furnished by ImPACT Applications from time-to-time with respect to the style, appearance, and manner of use of the ImPACT Applications Marks on the Product or Promotional Materials, including instructions to revise the style, appearance, or manner of use as ImPACT Applications may specify from time to time. Whenever the ImPACT Applications Marks are used on or in connection with the Product or Promotional Materials, Customer shall use the trademark symbol "<sup>™</sup>" or the registration symbol "<sup>®</sup>", as appropriate. Customer shall display all other notices on or in connection with the Product or Promotional Materials, including on ImPACT Applications is authorized to list Customer in or on ImPACT Applications Promotional Materials, including on ImPACT Applications' Web site, as a licensed provider of services employing the Product. An ImPACT Applications Mark usage guide is attached to this Agreement at Schedule B.

<u>2.6 Other License Restrictions.</u> Customer shall not make any representations, warranties, conditions, or guarantees with regard to the Product that are inconsistent with or in addition to those made by ImPACT Applications to Customer hereunder. In addition, except as expressly authorized herein, Customer shall not authorize Test Taker to: (i) copy or modify the Product for any purpose; (ii) reverse engineer, decompile, modify, translate, disassemble, or discover the source code for all or any portion of the Product; or (iii) distribute, disclose, market, rent, lease, or otherwise transfer the Product or Documentation to any other person, except as set forth in Section 2.1 hereto. All Test Takers must be located within the Territory.

<u>2.7 Reservation of Rights.</u> Except for the licenses and rights expressly granted under this Agreement, no licenses or rights are granted by either party to the other party hereunder, by implication, estoppel, or otherwise. All such other licenses and rights are reserved unto ImPACT Applications or Customer, as applicable. ImPACT Applications expressly reserves the right, in its sole discretion and in the Territory and throughout the world, to: (i) sell or license the Product directly to any third party; (ii) use the ImPACT Applications Marks for the purpose of promoting, advertising, or marketing the Product; and (iii) grant promotional, advertising, and/or marketing rights to other persons.

2.8 Product Representations. Customer shall make no, and shall indemnify ImPACT Applications for and against any and all claims arising out of, representations or warranties concerning quality, performance, or other characteristics of the Products other than those which are consistent in all respects with, and do not expand the scope of, the representations and warranties made by ImPACT Applications for such Products. Customer may not write or otherwise create any additional Product Documentation or authorize the creation thereof without ImPACT Applications' express prior written consent. The only Product Documentation that Customer is authorized to sell or distribute is official ImPACT Applications Product Documentation produced by ImPACT Applications. Customer agrees that its obligation to indemnify ImPACT Applications for and against any and all claims arising out of any warranty that is inconsistent with or additional to the warranties contained in this Agreement shall not be affected, reduced, or impaired by the fact that Customer is required by local mandatory law to provide such inconsistent or additional warranty.

<u>2.9 Ownership of Customer Data.</u> The ImPACT Applications system will aggregate and generate data relating to Test Takers that will relate to medical information such as age, height, weight, prior injuries, and test results from using the Product and such other information as ImPACT Applications may determine from time-to-time would be useful in improving the performance of the Product (the "Customer Data"). Customer is the sole exclusive owner of the Customer Data. ImPACT Applications shall be permitted to use aggregated, de-identified Customer Data, for internal and external evaluation purposes provided that such information does not identify an individual and there is no reasonable basis to believe that the information can be used to identify an individual. Any use of Customer Data by ImPACT Applications shall comply with all applicable rules, laws, and regulations regarding data protection and privacy.

<u>2.10 Government Approvals.</u> Customer shall, at its expense, obtain all registrations, licenses, and permits required to perform its obligations, pay all taxes and fees due in connection therewith, and provide ImPACT Applications with such documentation as ImPACT Applications may request to confirm Customer's compliance with this Section 2.10 and agrees that it shall not engage in any course of conduct that, in ImPACT Applications' reasonable belief, would cause ImPACT Applications to be in violation of the laws of any jurisdiction.

<u>2.11 Material Breach.</u> Any breach of any of the provisions of this Section 2 by Customer shall be deemed a material breach of this Agreement.

2.12 Applicability of Agreement to All ImPACT Applications Products and Pricing Changes. Customer acknowledges ImPACT Applications may offer additional Products during the term of this Agreement (each a "Subsequent Product" and collectively, the "Subsequent Products"). Customer and ImPACT Applications acknowledge and agree Subsequent Products may be licensed by Customer, subject to all terms and conditions of this Agreement, without a formal written modification of this Agreement or the execution of a separate contract on the condition that Subsequent Products and pricing terms are

described in a writing by ImPACT Applications and acknowledged by Customer. Such a writing and acknowledgement may include email exchanges, an online ordering system or portal, or any other means that is mutually acceptable by the parties without any need to reference this Agreement or any amendment thereto. Performance subsequent to any acknowledgement or writing as stated herein shall constitute acceptance. ImPACT Applications may also amend Schedule A consistent with the terms of this Agreement without a written modification of this Agreement, provided that any modifications to Schedule A are provided to Customer in a manner consistent with this section. Upon communication to customer of revisions to Schedule A, said revisions shall merge into and fully become part of this Agreement without need for a separate acceptance or novation.

#### **3. PRODUCT INFRASTRUCTURE**

<u>3.1 Obligations of ImPACT Applications.</u> Subject to Customer's compliance with the terms and conditions of this Agreement, ImPACT Applications shall be responsible for providing and maintaining the Product Infrastructure. The Product Infrastructure is subject to modification by ImPACT Applications from time to time for purposes such as adding new functionality, maximizing operating efficiency, and upgrading hardware and software. Customer understands and acknowledges such modifications may require changes to Customer's Internet access and telecommunications infrastructure to maintain Customer's desired level of performance. ImPACT Applications will provide industry standard web hosting and connectivity and use reasonable efforts to provide Customer 99.99% up time operation; provided, however, Customer acknowledges and agrees that downtime may occur for systems maintenance, including without limitation diagnostics, upgrades, and operations reconfiguration and that unscheduled downtime may occur as a result of forces beyond the immediate control of ImPACT Applications including, but not limited to, hardware failures, electrical outages, or failures or outages caused by Customer's network or internet service provider.

<u>3.2 Obligations of Customer; Internet Access and Telecommunications Services.</u> Except for the Product Infrastructure, which will be provided by ImPACT Applications, Customer shall be responsible for obtaining and maintaining all hardware, software, equipment, and other items required in connection with Customer's access to and use of the Product as contemplated hereunder, including, without limitation, all hardware, software, equipment, and other items required to develop and maintain the Customer Site functionality necessary to facilitate access to the Product. Customer at its expense shall be responsible for obtaining Internet access and/or telecommunications services, or upgrading Customer's existing Internet access or telecommunications services, to allow access to the Product by Such providers or interruptions in the service provided by such providers.

#### 4. TEST ACCESSIBILITY; SERVICE; REPORTS; USER'S GUIDE; UPDATES

<u>4.1 Test Accessibility; Service.</u> A description of how to access the Products, ImPACT Applications technical support, and report generation is set forth on Schedule A.

<u>4.2 Updates.</u> ImPACT Applications shall provide all Updates to Customer as they are released generally by ImPACT Applications to all of its customers. Any and all Updates offered by ImPACT Applications to its customers during the term shall be provided to Customer free of charge.

#### 5. FEES AND PAYMENTS; TAXES; LATE PAYMENTS

5.1 Product Fees - License. In consideration of the license rights and services provided by ImPACT Applications hereunder, Customer will pay ImPACT Applications the applicable Product Fees within thirty (30) calendar days of receipt of an invoice. Current fees for the Products are set forth on <u>Schedule A</u> (the "Product Fees"). All Product Fees shall be paid in United States Dollars. ImPACT Applications shall electronically invoice Customer for all Product Fees due hereunder and it is Customer's sole responsibility to update ImPACT Applications regarding any changes in Customer's electronic contact information. All Product Fees due to ImPACT Applications shall be paid by Customer in full without right of set-off or deduction. In the event all amounts due to ImPACT Applications are not paid when due, ImPACT Applications shall have the right, in its sole and absolute discretion, to suspend Customer's access to the Product until payment is remitted, subject to ImPACT Applications' compliance with all applicable federal, state, and local rules, laws, and regulations regarding data protection, data retention, and data privacy of Customer Data, including but not limited to HIPAA. Failure to pay Product Fees as set forth above shall constitute a material breach of this Agreement and shall subject Customer to termination of this Agreement in accordance with Section 8.

5.2 Product Fees. The Product Fees shall apply only to Products and not to any other goods or services ImPACT Applications may offer, including without limitation separate modules, professional services, or third party products offered by ImPACT Applications from time to time, all of which ImPACT Applications may, in its sole discretion, separately offer and price. ImPACT Applications may offer special promotions or discounts on Products from time to time and as a result, may amend

pricing of the promotional or discounted Products upon thirty (30) days prior written notice to Customer.

<u>5.3 Fee Increases</u>. ImPACT Applications may, upon sixty (60) days prior written notice to Customer, increase the Product Fees charged to Customer hereunder.

<u>5.4 Taxes</u>. To the extent applicable, Customer shall be responsible for paying all sales, use, value-added, and other similar taxes in connection with the Product and services provided hereunder, except for taxes assessed, levied, or imposed based upon ImPACT Applications' property or income. ImPACT Applications may elect to include said taxes, duties, and charges as separately itemized charges in its invoices to Customer hereunder.

5.5 Late Payments. If any amounts due to ImPACT Applications hereunder are not paid when due, ImPACT Applications shall have the right, in its sole and absolute discretion, to: (i) immediately terminate this Agreement by delivering written notice thereof to Customer; (ii) immediately suspend Customer's access to the Product, including the ability to access the Product to view and download previous test results; and (iii) charge Customer interest on such late payment, which shall accrue interest from the first day following the due date until paid in full at the lesser of one and one-half percent (1 1/2%) per month or the maximum rate permitted by law.

#### 6. WARRANTIES AND LIMITATIONS OF LIABILITY

6.1 Warranty. ImPACT Applications warrants that Product will operate in substantial conformance with the Documentation. Customer must notify ImPACT Applications in writing, within ten (10) days following the date on which Customer is first given access to the Product, of any failure of Product to operate in substantial conformance with the Documentation. Customer must also notify ImPACT Applications in writing, within ten (10) days following the date of performance of any services by ImPACT Applications hereunder, of any failure by ImPACT Applications to perform said services in a professional manner and in accordance with the terms and conditions of this Agreement. ImPACT Applications' sole obligation and Customer's sole remedy with respect to any failure of the Product to substantially conform to the specifications therefor, or of any failure of ImPACT Applications to perform services hereunder in a professional manner and in accordance with the terms and conditions of this Agreement, is for ImPACT Applications to use commercially reasonable efforts to remedy any such failure as soon as is reasonably practicable, and if such failure is not remedied in a reasonable time, for Customer to terminate this Agreement upon written notice to ImPACT Applications. <u>6.2 Warranty</u>

Disclaimer. EXCEPT AS SET FORTH IN SECTION 6.1, IMPACT APPLICATIONS DISCLAIMS ANY AND ALL WARRANTIES RELATING TO THE PRODUCT, THE PRODUCT INFRASTRUCTURE, OR ANY OTHER MATTER COVERED BY THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IMPACT APPLICATIONS DOES NOT WARRANT THAT THE PRODUCT OR THE PRODUCT INFRASTRUCTURE WILL OPERATE WITHOUT INTERRUPTION OR DELAY AND/OR BE ERROR FREE, OR THAT ALL FAILURES OF THE PRODUCT TO CONFORM TO THE DOCUMENTATION CAN OR WILL BE CORRECTED. THE PRODUCT AND THE PRODUCT INFRASTRUCTURE ARE WARRANTED ONLY TO CUSTOMER, AND CUSTOMER SHALL NOT EXTEND ANY WARRANTIES OR MAKE ANY REPRESENTATIONS FOR OR ON BEHALF OF IMPACT APPLICATIONS OR IMPACT APPLICATIONS' LICENSORS TO ANY OTHER PERSONS

<u>6.3 Limitations of Liability.</u> IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOST PROFITS OR BUSINESS, LOSS OF GOODWILL, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, CLAIMS RELATED TO DIAGNOSTIC ACCURACY AND/OR MEDICAL MALPRACTICE), REGARDLESS OF WHETHER SUCH DAMAGES ARISE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE AND REGARDLESS OF WHETHER SUCH PARTY IS ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. EXCEPTING INSTANCES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND THE SPECIFIC OBLIGATIONS OF IMPACT APPLICATIONS UNDER SECTION 6.1, THE AGGREGATE LIABILITY OF IMPACT APPLICATIONS FOR ANY AND ALL CLAIMS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER SHALL NOT EXCEED THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH ANY SUCH CLAIM FIRST ARISES.

<u>6.4 Consumer Protection Laws.</u> THE PRODUCT IS A BUSINESS PRODUCT, THE APPLICATION OF WHICH IS COMMERCIAL, RATHER THAN CONSUMER-ORIENTED, IN NATURE, REGARDLESS OF THE NATURE OR USE BY ANY PERSON OR ENTITY. IN EXECUTING THIS AGREEMENT, THE PARTIES RECOGNIZE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THAT CONSUMER PROTECTION LAWS IN ANY APPLICABLE TERRITORY SHALL NOT APPLY.

#### 7. INFRINGEMENT INDEMNIFICATION

<u>7.1 Indemnification</u> by ImPACT Applications. ImPACT Applications hereby agrees to indemnify and hold harmless Customer from and against all damages, settlement amounts, costs, and expenses (including reasonable attorney's fees) that Customer may be required to pay to third parties to the extent such damages, settlement amounts, costs, and expenses are attributable to claims that the Product infringes or misappropriates a U.S. patent, copyright, trademark, trade secret, or other intellectual property rights of a third party, except such claims due to: (i) a breach by Customer of any provision of this

#### IMPACT APPLICATIONS, INC.<sup>™</sup> SERVICES AGREEMENT

Agreement; (ii) any Customer Materials; or (iii) use of the Product in combination with any software, hardware, or other equipment not provided by ImPACT Applications where the infringement or misappropriation would not have occurred but for such combination. Notwithstanding anything stated herein to the contrary, in no event shall ImPACT Applications be required to indemnify Customer in an amount or amounts, in the aggregate, in excess of the fees and payments ImPACT Applications has received hereunder.

<u>7.2 Additional Obligation of ImPACT Applications.</u> In the event Customer is enjoined or otherwise prohibited, or in ImPACT Applications' opinion is reasonably likely to be enjoined or otherwise prohibited, from using the Product as a result of any claim for which ImPACT Applications is required to indemnify Customer under Section 7.1 above, ImPACT Applications, at its own expense and option, shall, in addition to fulfilling its obligations described in Section 7.1, promptly: (i) procure for Customer the right to continue using the Product; (ii) modify the Product so that it becomes non-infringing without materially altering its capacity or performance; (iii) replace the Product with a product that is reasonably equivalent in capacity and performance but is non-infringing; or, if none of the foregoing remedies is available to ImPACT Applications on commercially reasonable terms; (iv) require Customer to cease using the Product and repay to Customer any prepaid fees and other amounts paid by Customer to ImPACT Applications hereunder.

<u>7.3 Exclusive Remedy.</u> Sections 7.1 and 7.2 state the entire obligation of ImPACT Applications and the exclusive remedy of Customer with respect to any actual or threatened claim that the Product, or use thereof by Customer or any Test Taker, infringes or misappropriates the patent, copyright, trademark, trade secret, or other intellectual property rights of any person.

#### 8. TERM AND TERMINATION

8.1 Term. The initial term of this Agreement (the "Initial Term") shall be one year from the Effective Date. This Agreement, and any amendments to Schedule A as set forth in Section 2.12, shall automatically renew for additional identical one-year periods (each a "Renewal Term" and the Initial Term and any Renewal Term(s) are collectively referred to as the "Term") under the then-current fee schedule for the Products and services, a copy of which will be provided to Customer upon request, unless Customer, at least thirty (30) business days prior to the end of the applicable term, provides ImPACT Applications with notice that this Agreement will expire at the end of the applicable term. As of the Effective Date any and all prior agreements related to the licensing of the Products between Customer and ImPACT Applications shall be terminated. 8.2 Termination. Subject to Section 5 of this Agreement, either party shall have the right to immediately terminate this Agreement by delivering written notice thereof to the other party if the other party fails to perform or comply with any material term or condition of this Agreement and does not cure such failure within thirty (30) days following its receipt of written notice thereof from the other party. Additionally, Customer may terminate this Agreement at any time with or without cause upon providing ImPACT Applications at least ninety (90) days prior written notice pursuant to Section 9.9. If, as a result of a change in law or regulation or a judicial or administrative interpretation, the performance by either party hereto of any provision of this Agreement should jeopardize the licensure of Customer, its participation in Medicare, Medicaid, Blue Cross, or other reimbursement or payment programs, its exemption from taxation under Internal Revenue Code Section 501(c)(3) or its full accreditation by the Joint Commission, or if it should constitute a violation of any statute, regulation, or ordinance, Customer may request that this Agreement be renegotiated to eliminate the jeopardy and, if agreement is not then reached, terminate this Agreement.

8.3 Effect of Termination. Upon the earlier of the expiration or termination of this Agreement, or due to Customer's insolvency or bankruptcy: (i) all license rights of Customer under this Agreement shall automatically and immediately cease; (ii) Customer shall immediately cease all uses of the Product; (iii) Customer shall immediately delete all computer programs and files of ImPACT Applications from its computer systems and return to ImPACT Applications or destroy all Documentation, Training Materials, and/or Promotional Materials in its possession or control and shall certify in writing within ten (10) days from the date of such termination or expiration that such deletions, returns, or destructions have taken place; (iv) Customer shall immediately cease any and all use of the ImPACT Applications Marks and the Promotional Materials, including removing the ImPACT Applications Marks and the Promotional Materials from any website Customer operates; and (v) Customer shall return or destroy all Promotional Materials within thirty (30) days following termination or expiration, and shall certify having done so in writing. Customer shall no longer have any right or ability to market or license any of the Products, or to provide support related to the Products or offer training related to the Products. Customer agrees upon the effective date of such termination to pay all sums due to ImPACT Applications, return all proprietary information to ImPACT Applications. The following shall survive the expiration or sooner termination of this Agreement: the provisions of Sections 6 (Warranties and Limitations of Liability), 7 (Infringement Indemnification), 8 (Term and Termination), and 9 (General); any payment obligations of the parties hereunder accruing prior to the date of such expiration or termination; and any other provisions herein expressly surviving such expiration or termination or necessary to interpret the respective rights and obligations of the parties hereunder.

#### 9. GENERAL

<u>9.1 Independent Contractors.</u> In making and performing this Agreement, the parties are acting and shall act as independent contractors. Neither party is, nor will be deemed to be, an agent, legal representative, joint venturer, franchisee, or partner of the other party for any purpose.

<u>9.2 Force Majeure.</u> In the event either party is unable to perform its obligations under the terms of this Agreement (other than the obligation to pay amounts due and owing hereunder) because of acts of God, strikes, equipment, or transmission failure or other causes reasonably beyond its control, such party shall not be liable to the other party for any damages resulting from such failure to perform or otherwise from such causes.

<u>9.3 Governing Law.</u> This Agreement and its subject matter shall be governed in accordance with the laws of the State of Delaware without regard to the choice of law or conflict of laws principles contained therein. All controversies arising hereunder shall be brought in a court of competent subject matter jurisdiction located in the State of Delaware. The parties hereby consent to the exclusive jurisdiction of any court having competent subject matter jurisdiction located in the State of Delaware. The parties specifically exclude application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement. In any suit or proceeding between the parties relating to this Agreement, the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys and other professionals incurred in connection with the suit or proceeding, including costs, fees, and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.

<u>9.4 Public Statements.</u> Either party may disclose the existence of this Agreement, but shall not represent to any third party any positions, statements, intentions, terms of this Agreement, or other actions on behalf of the other. ImPACT Applications is authorized to use Customer's name, trademark, or service marks or issue press releases and similar public statement regarding this Agreement and Customer's use of the Product.

<u>9.5 Confidentiality.</u> The parties (each, a "Recipient") agree to use all information concerning the other party (each, a "Discloser") and the Discloser's respective subsidiaries and affiliates furnished by or on behalf of the Discloser hereunder (collectively, the "Confidential Information") solely for the purpose of the transactions contemplated hereby. The Confidential Information will be kept confidential by the Recipient and its agents unless such Confidential Information: (i) is required to be disclosed by law; (ii) is disclosed pursuant to the Discloser's prior written consent; or (iii) otherwise becomes non-confidential as described below. Upon termination of this Agreement, the Recipient will return all Confidential Information which: (i) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient, generally known or available to the public; (ii) is known by the Recipient at the time of receiving such information as evidenced by its records created prior to the date of this Agreement and is not accompanied by a duty of confidentiality; (iii) is hereafter furnished to the Recipient by a third party, as a matter of right and without restriction on disclosure; (iv) is independently developed by the Recipient without any breach of this Agreement and without use of or reference to the Confidential Information; or (v) is the subject of a written permission to disclose provided by the Discloser.

<u>9.6 THIS SECTION 9.6 APPLIES ONLY TO CUSTOMERS IN THE UNITED STATES. Privacy Adherence.</u> In addition to the requirements of Section 2.2, the parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standard") promulgated in accordance with HIPAA. ImPACT Applications understands that Customer is a "covered entity" as defined by HIPAA. In the course of carrying out its obligations in accordance with this Agreement, ImPACT Applications will have access to individually identifiable health information of Customer patients, thereby creating a Business Associate relationship between Customer and ImPACT Applications. In compliance with HIPAA, Customer has requested ImPACT Applications, and ImPACT Applications has agreed, to abide by the terms and conditions of this Section 9.6 governing the use of Protected Health Information ("PHI"). Unless otherwise defined in this Section 9.6, capitalized terms shall have the meaning established by 45 CFR §§ 160.103 and 164.501. ImPACT Applications may use or disclose PHI in accordance with this Section 9.6 provided such use or disclosure by Customer would not violate the Privacy Standard. ImPACT Applications shall comply with the requirements of the Privacy Standard related to PHI. Specifically, ImPACT Applications shall:

i. Not use or further disclose PHI other than as permitted or required by this Section 9.6 or as required by law (as such term is defined by the Privacy Standard);

ii. Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Section 9.6; iii. Report to Customer any use or disclosure of the PHI not provided for by this Section 9.6 of which ImPACT Applications becomes aware;

iv. Mitigate, to the extent practicable, any harmful effect that is known to ImPACT Applications of a use or disclosure of PHI not permitted by this Section 9.6;

v. Make PHI available in accordance with 45 CFR § 164.524;

vi. Make available for amendment and incorporate any amendments to PHI in accordance with 45 CFR § 164.526; vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528; viii. Make ImPACT Applications' internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received on behalf of, Customer available to the United States Secretary of Health and Human Services for purposes of determining Customer's compliance with the Privacy Rule.

Upon expiration of this Agreement ImPACT Applications shall either return to Customer (at Customer's sole expense) or destroy all PHI received from, or created or received on behalf of Customer (including all copies thereof) in ImPACT Applications' possession or under ImPACT Applications' control; or if return or destruction is not feasible, extend protections of this Section 9.6 to the PHI and limit further uses and disclosures to those purposes that make return or destruction infeasible.

<u>9.7 Third Party Beneficiaries.</u> Test Takers are not and will not be deemed to be third party beneficiaries of this Agreement, or to have any contractual relationship with ImPACT Applications by reason of this Agreement. Customer hereby agrees to indemnify and hold harmless ImPACT Applications from any and all damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) suffered or incurred by ImPACT Applications or its affiliates in connection with any claims brought by Test Takers against ImPACT Applications or its affiliates that arise from or in connection with the Product or any other matter covered by this Agreement.

<u>9.8 Insurance.</u> ImPACT Applications shall maintain for the term of this Agreement general liability insurance with a combined single limit of at least One Million Dollars (US\$1,000,000.00) for any claim arising out of a single occurrence. <u>9.9 No Medical Advice.</u> The Product and the results obtained from use of the Product do not constitute medical advice. Customer and all End Users should use the data received as a result of using the Product to consult with qualified medical personnel. The Product is only one component of a concussion management treatment protocol and must be used in combination with the advice of qualified medical personnel.

9.10 Miscellaneous. Customer may not assign any of its rights or privileges, or delegate any of its duties or obligations hereunder, in whole or in part, by operation of law or otherwise, to any third party without the prior written consent of ImPACT Applications. Customer's merger or consolidation with another entity or health care system shall not be considered an assignment requiring the prior written consent of ImPACT Applications provided that the surviving entity assumes all of Customer's obligations hereunder without qualification or condition. This Agreement shall be freely assignable by ImPACT Applications upon thirty (30) days prior written notice to Customer. Any attempted assignment or delegation of this Agreement or any duties or obligations hereunder in violation of the foregoing limitations shall be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. All notices required to be in writing shall be delivered by hand, sent by recognized overnight courier (such as Federal Express or UPS), electronic mail, or mailed by certified or registered mail, return receipt requested, postage pre-paid, addressed to the parties set forth herein. This Agreement, including all schedules attached hereto, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior understandings and agreements between the parties, whether written or oral, regarding the subject matter hereof. Except as expressly provided herein, this Agreement may not be amended, supplemented, or otherwise modified except by an instrument in writing signed by both parties. Any of the provisions of this Agreement which are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions hereof or affecting the validity or unenforceability of any of the terms of this Agreement in any other jurisdiction. A waiver by either party of a breach or violation of any provision of this Agreement will not constitute or be construed as a waiver of any subsequent breach or violation of that provision or as a waiver of any breach or violation of any other provision of this Agreement. The headings contained in this Agreement are for convenience only and shall not affect meaning or interpretation of this Agreement. This Agreement shall become binding when any one or more counterparts hereof, individually or taken together, shall bear the original or facsimile signature of each of the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be an original as against any party whose signature appears thereon, but all of which together shall constitute but one in the same instrument.

#### Schedule A

<u>General Service Description</u> The test is reachable over the internet from any industry standard browser <u>Customer Configuration and Installation</u> Please see https://www.impacttestonline.com/htmlcc/Files/sports/qrg\_enus.pdf <u>Availability and Maintenance</u>

ImPACT Applications will use commercially reasonable efforts to make the Product available for Customer use with four (4) hours reserved for maintenance downtimes per week. These maintenance windows may require additional time. Customer

designated system administrators are notified via email 24 hours in advance of any scheduled down time. Automated encrypted back-ups are performed on all Customer data.

#### Service Delivery

ImPACT Applications provides support on-line via e-mail only during Normal Business Hours, 7:00 a.m. CST to 7:00 p.m. CST, Monday through Friday, excluding legal holidays. ImPACT Applications provides technical support only to the Customer. It is Customer's sole responsibility to provide support to Test Takers.

#### Documentation

The computer requirements for ImPACT: https://www.impacttestonline.com/htmlcc/Files/sports/qrg\_enus.pdf <u>Clinical Reports</u>

Reports are available for Customer's authorized personnel to generate and use in managing the Customer's Test Takers. Additional support functions allow for follow up testing and individual results retrieval by Customer's authorized personnel.

#### Schedule B

#### Trademark and Logo Usage Guidelines

Manual for print and web related materials.

Effective January 08, 2021

For more information on the application

of the ImPACT Applications brand, please contact the

ImPACT Applications marketing department at <u>marketing@impacttest.com</u>.

#### **Trademark Usage Guidelines**

These Trademark Usage Guidelines (the "Guidelines") set forth the rules for using or referring to the trademarks and service marks owned by ImPACT Applications, Inc. ("ImPACT Applications") for any/all uses in all mediums. It is imperative that these specifications are followed wherever and whenever the organization and its partners utilize the ImPACT Applications name and identity.

For the purposes of these Guidelines, "ImPACT Applications Trademark(s)" shall include all registered or unregistered trademarks and service marks (such as words, names, symbols, devices, slogans, logos, or combination of these) owned by ImPACT Applications including, but not limited to, the trademarks and service marks listed on the ImPACT Applications Trademark List as set forth below.

ImPACT Applications considers its trademarks and service marks to be among its most valuable intellectual property assets. As such, ImPACT Applications intends to take all appropriate measures to preserve the strength of and retain its exclusive rights to use its marks. United States and international trademark and copyright laws protect many of these trademarks and service marks.

#### Trademark List:

ImPACT® ImPACT Pediatric® ImPACT® Quick Test ImPACT Toolkit™ ImPACT Passport® Cognitive Impairment Screener™

#### Usage Rules for Printed or Typed Materials

Proper Use of Trademark Symbol

The trademark symbol "™" or "®" should be used with the mark the first time that it appears in any copy.

#### **Proper Capitalization of Letters**

The form of the text should always appear as follows "ImPACT Applications" with the initial letter "I" capitalized, a lower case "m" and the letters "PACT" capitalized with no spaces in between.

#### Usage Rules for ImPACT Applications Logos

The Usage Guidelines for ImPACT Applications logos are located at <u>https://impacttest.box.com/v/Customer-Usage-Style-Guide</u> the content of which may be updated from time to time in ImPACT Applications' sole and absolute discretion.

#### SCHEDULE A

#### School District/ Large Organization Pricing

ImPACT® and/or ImPACT Pediatric® Baseline Tests (minimum aggregate purchase of 300 with a minimum of either 50 ImPACT® or 50 ImPACT Pediatric® Baseline Tests):

300 - 4,999	\$2.75 each
5,000 - 9,999	\$2.25 each
10,000+	\$1.75 each

Post Injury Tests (minimum aggregate purchase of 50 with a minimum of either 25 ImPACT® or 25 ImPACT Pediatric® Post Injury Tests):

50 – 499	\$12.00 each
500+	\$10.20 each

#### Additional Individual ImPACT® or ImPACT Pediatric® Tests

Baseline Tests:	\$15.30 each (minimum purchase of 10)
Post Injury Tests:	\$33.00 each (minimum purchase of 5)

#### ImPACT® QuickTest

QuickTest: An annual subscription for unlimited testing \$149.00

Customer will have access to unlimited use of the QuickTest testing for the entirety of the one-year subscription period; provided, however, Customer understands and agrees: i) this is an introductory price offering; ii) pricing is not subject to the Renewal Term provisions in Section 8 of this Agreement; and iii) prices may increase without the need for a formalized amendment to this Schedule A of the Agreement following the completion of the Initial Term or any subsequent Renewal Term.

#### **General Service Description**

The test is reachable over the internet from any industry standard browser. ImPACT Pediatric and ImPACT Quick Test are available as part of the ImPACT Toolkit app available from the Apple App Store at <a href="http://appstore.com/impacttoolkit">http://appstore.com/impacttoolkit</a>.

#### **Customer Configuration and Installation**

Please see https://www.impacttestonline.com/htmlcc/Files/sports/grg\_enus.pdf.

#### **Availability and Maintenance**

ImPACT Applications will use commercially reasonable efforts to make the Product available for Customer use with four (4) hours reserved for maintenance downtimes per week. These maintenance windows may require additional time. Customer designated system administrators are notified via email 24 hours in advance of any scheduled down time.

Automated encrypted back-ups are performed on all Customer data.

Version 1.0 (2021 – School District/ Large Organization)

#### Service Delivery

ImPACT Applications provides support on-line via e-mail only during Normal Business Hours, 7:00 a.m. CST to 7:00 p.m. CST, Monday through Friday, excluding legal holidays. ImPACT Applications provides technical support only to the Customer. It is Customer's sole responsibility to provide support to Test Takers.

#### Documentation

The computer requirements for ImPACT:

https://www.impacttestonline.com/htmlcc/Files/sports/grg\_enus.pdf

Device requirements for ImPACT Pediatric and ImPACT Quick Test:

ImPACT Pediatric and ImPACT Quick Test are currently available for use with an Apple® iPad tablet device that is running iOS Version 8 or higher. This test battery is not standardized for use with the Apple iPad mini due to screen size limitations.

#### **Clinical Reports**

Reports are available for Customer's authorized personnel to generate and use in managing the Customer's Test Takers. Additional support functions allow for follow up testing and individual results retrieval by Customer's authorized personnel.

#### SCHEDULE A

#### **Description and Pricing**

#### **School Packages:**

School Package 1:	200 Baseline Tests,	10 Post Injury Tests	\$ 444
School Package 2:	400 Baseline Tests,	10 Post Injury Tests	\$ 668
School Package 3:	600 Baseline Tests,	25 Post Injury Tests	\$ 892
School Package 4:	1,000 Baseline Tests,	25 Post Injury Tests.	\$1,325

#### Additional Individual Tests:

Baseline Tests:	\$2.40 each (50 Minimum)
Post Injury Tests:	\$12.00 each (10 Minimum)

#### ImPACT® QuickTest

QuickTest: An annual subscription for unlimited testing \$149.00

Customer will have access to unlimited use of the QuickTest testing for the entirety of the one-year subscription period; provided, however, Customer understands and agrees: i) this is an introductory price offering; ii) pricing is not subject to the Renewal Term provisions in Section 8 of this Agreement; and iii) prices may increase without the need for a formalized amendment to this Schedule A of the Agreement following the completion of the Initial Term or any subsequent Renewal Term.

#### **General Service Description**

The test is reachable over the internet from any industry standard browser. ImPACT Pediatric and ImPACT Quick Test are available as part of the ImPACT Toolkit app available from the Apple App Store at <a href="http://appstore.com/impacttoolkit">http://appstore.com/impacttoolkit</a>.

#### **Customer Configuration and Installation**

Please see https://www.impacttestonline.com/htmlcc/Files/sports/grg\_enus.pdf.

#### Availability and Maintenance

ImPACT Applications will use commercially reasonable efforts to make the Product available for Customer use with four (4) hours reserved for maintenance downtimes per week. These maintenance windows may require additional time. Customer designated system administrators are notified via email 24 hours in advance of any scheduled down time. Automated encrypted back-ups are performed on all Customer data.

#### Service Delivery

ImPACT Applications provides support on-line via e-mail only during Normal Business Hours, 7:00 a.m. CST to 7:00 p.m. CST, Monday through Friday, excluding legal holidays. ImPACT Applications provides technical support only to the Customer. It is Customer's sole responsibility to provide support to Test Takers.

Version 1.0 (2021 - Schools/Teams)

Schedule A

#### **Documentation**

The computer requirements for ImPACT:

https://www.impacttestonline.com/htmlcc/Files/sports/grg\_enus.pdf

Device requirements for ImPACT Pediatric and ImPACT Quick Test:

ImPACT Pediatric and ImPACT Quick Test are currently available for use with an Apple® iPad tablet device that is running iOS Version 8 or higher. This test battery is not standardized for use with the Apple iPad mini due to screen size limitations.

#### **Clinical Reports**

Reports are available for Customer's authorized personnel to generate and use in managing the Customer's Test Takers. Additional support functions allow for follow up testing and individual results retrieval by Customer's authorized personnel.

#### IMPACT APPLICATIONS, INC. SERVICES AGREEMENT (School District)

having its principal place of business at the address listed below. This Agreement is made subject to and incorporates by reference the Terms of Use. If there is a conflict between this Agreement and the Terms of Use, this Agreement will govern.

#### BACKGROUND

A. ImPACT Applications has the right to license or sell the Products (defined below) through ImPACT Applications' website and various third-party distributors (the "*ImPACT Applications Site*").

B. Customer desires to obtain access to one or more of the ImPACT Applications' Products on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the covenants, representations, and warranties contained herein, and intending to be legally bound hereby, ImPACT Applications and Customer agree as follows:

#### 1. DEFINITIONS

As used in this Agreement, the following terms shall have the respective meanings assigned to them below:

"*Configurations*" means standard set-up and activation services for the Product.

"*Customer Materials*" means all materials and content, such as logos and Customer's standard operating procedures, if any, provided to ImPACT Applications by Customer for incorporation into the Product.

"*Customer Promotional Materials*" means the promotional materials related to the Product that are created or developed by Customer.

"*Customer Site*" means a web site owned or controlled by Customer through which Customer and Test Takers access the Product.

"Documentation" means user documentation for the Product

Version 2.0 (2021 - School District)

available at ImPACT Applications' web site or sent to the Customer in print, as such documentation may be amended by ImPACT Applications from time to time.

"*HIPAA*" means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, each as amended.

"*ImPACT Applications Promotional Materials*" means the promotional materials related to the Product that are created or developed by ImPACT Applications.

"ImPACT Applications Site" means one or more web sites owned or controlled by ImPACT Applications or an affiliate of ImPACT Applications through which Customer or Test Takers may obtain access to the Product.

"*Person*" or "*person*" means any corporation, partnership, limited liability company, joint venture, other entity, or natural person.

"*Product*" means the ImPACT Applications products and services available from time-to-time on or through the ImPACT Applications Site, as such Products are described in greater detail in the Documentation, together with any Updates thereto.

"*Product Infrastructure*" means the hardware, software, and other equipment that ImPACT Applications uses in connection with its hosting of the Product for Customer hereunder.

"*Terms of Use*" means the terms and conditions of use for the Product, including ImPACT Applications' Privacy Policy and Terms of Use accessible at www.impacttest.com, which terms and conditions of use shall be accessible to users of the Product through a login or other access screen, as such terms and conditions of use are amended by ImPACT Applications from time to time.

"Territory" means the United States.

"*Test Taker*" means people other than Customer who are allowed by Customer or a Customer sublicensee to access the Product via the ImPACT Applications Site or a Customer Site.

"*Trademark and Logo Usage Guidelines*" means the quality levels and guidelines that ImPACT Applications maintains in connection with the ImPACT Applications Marks (as identified on <u>Schedule B</u> hereto).

"*Update*" means any update, upgrade, or new release for the Product that ImPACT Applications may make available to Customer from time to time hereunder.

#### 2. PRODUCT ACCESS; RESTRICTIONS; EXTENSION OF AGREEMENT TO SUBSEQUENT PRODUCTS

2.1 Limited License. Subject to Customer's compliance with the terms and conditions of this Agreement, ImPACT Applications hereby grants to Customer, during the Term, a non-exclusive, non-transferable (except as expressly permitted hereunder), license: (a) to access the Product, to use the Product in the Territory, and to authorize Test Takers to access and use the Product, via the ImPACT Applications Site or a Customer Site; (b) to use the ImPACT Applications Marks, including any goodwill therein, in the Territory and solely for use upon or in connection with the Product and for the purpose of promoting, advertising, or marketing the Product at the Trademark and Logo Usage Guidelines specified in this Section 2; and (c) to use the ImPACT Applications Promotional Materials, in the Territory and solely for the purpose of promoting, advertising, or marketing the Product in accordance with the Trademark and Logo Usage Guidelines specified in this Section 2.

2.2 <u>Sublicenses</u>. Customer may grant sublicenses to any of its constituent schools, any scholastic sports team, or club that consists of Test Takers. Any sublicenses granted by Customer under the terms of this Agreement shall be subject to the same terms and conditions set forth in this Agreement, and Customer shall obtain written assurances from each sublicensee that such sublicensee agrees to be bound by the terms and conditions set forth in this Agreement. No sublicensee shall be authorized to grant any further sublicenses. ImPACT Applications reserves the right to terminate any sublicense upon cause shown and reasonable notice to Customer.

2.3 Terms of Use. All access to and use of the Product, Documentation, ImPACT Applications Marks, and ImPACT Applications Promotional Materials by Customer and Test Takers, as the case may be, shall be in accordance with the Terms of Use. Prior to using or being provided access to the Product, each Test Taker shall first have assented to the Terms of Use in some reasonable and verifiable manner as approved by ImPACT Applications. Customer shall not take any action that would mask, delete, or otherwise alter the Terms of Use or any other disclaimers or notices that ImPACT Applications may include in the Product from time to time. Customer agrees to (i) promptly notify ImPACT Applications should Customer become aware that any Test Taker has violated or is violating the Terms of Use; and (ii) reasonably cooperate with ImPACT Applications in any actions that ImPACT Applications may elect to take with respect to any Test Taker who violates the Terms of Use, including, without limitation, terminating such Test Taker's access to the Product. Prior to using or being provided access to the Product, each Test Taker shall have either assented to the

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Terms of Use or, if applicable, provided Customer the consent required under the Children's Online Privacy Protection Act of 1998, as amended ("*COPPA*"). Customer shall not take any action that would mask, delete, or otherwise alter the Terms of Use or any other disclaimers or notices that ImPACT Applications may include in the Product from time to time. Customer shall be and remain primarily liable for any breach of the Terms of Use or failure to secure the required COPPA consent from a Test Taker prior to using the Product.

2.4 <u>Configurations</u>. ImPACT Applications shall prepare and incorporate Configurations in order to enable access to the Product. ImPACT Applications and its licensors own and shall continue to own all right, title, and interest in and to the Product and such Configurations after any Configurations are incorporated therein; provided, however, that Customer or its licensors shall own and continue to own all right, title, and interest in and to the Customer Materials. Customer hereby grants to ImPACT Applications a royalty-free license to prepare the Configurations and to incorporate said Configurations into the Product as permitted hereunder.

2.5 <u>Proprietary Notices</u>. Customer shall not remove any trademark, copyright, or patent notices, any proprietary or restricted rights notices, or any other proprietary notices or disclaimers that appear in the Product, any of the Documentation, or ImPACT Applications Promotional Materials. Unless otherwise agreed to in writing by ImPACT Applications, Customer shall state, if applicable, on its website, on all Products, and on or in all Promotional Materials and otherwise that, as applicable: (i) the ImPACT Applications Marks are "licensed from ImPACT Applications, Inc."; (ii) the Products are "licensed from ImPACT Applications, Inc."; and (iii) the Products are subject to copyright.

2.6 Conditions of Use -- ImPACT Applications Marks. In order to carry out the rights granted in Section 2 hereto. Customer is authorized to: (i) use the ImPACT Applications Marks in such style, appearance, and manner as ImPACT Applications shall, in its sole discretion, specify or approve in writing and solely on or in connection with the Product or Promotional Materials and in strict accordance with all of the applicable Trademark and Logo Usage Guidelines; and (ii) create or develop Customer Promotional Materials; provided, however, that Promotional Materials may only be used in connection with the Product pursuant to this Agreement. ImPACT Applications shall retain all right, title, and interest in and to (including copyrights and trademarks) the ImPACT Applications Marks and ImPACT Applications Promotional Materials, and Customer grants to ImPACT Applications all right, title, and interest in and to any Customer Promotional Materials related to the Product.

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Customer is expressly prohibited from modifying the ImPACT Applications Marks or ImPACT Applications Promotional Materials unless expressly agreed to in writing and such modifications are expressly approved in writing by ImPACT Applications. Customer will not use the ImPACT Applications Marks in conjunction or association with any other trademark, trade name, or logo, or place the ImPACT Applications Marks in close proximity to any other name, mark, or logo other than the name, trademarks, and related designs of Customer without the express prior written approval of ImPACT Applications, provided that such placement is carefully done so as to avoid any potential for confusion as to the source of the Product or Promotional Materials and to clearly distinguish the Product or Promotional Materials as originating from ImPACT Applications. Customer will comply as soon as reasonably practicable (but in any event within twenty (20) days) with all reasonable instructions furnished by ImPACT Applications from time-to-time with respect to the style, appearance, and manner of use of the ImPACT Applications Marks on the Product or Promotional Materials, including instructions to revise the style, appearance, or manner of use as ImPACT Applications may specify from time to time. Whenever the ImPACT Applications Marks are used on or in connection with the Product or Promotional Materials, Customer shall use the trademark symbol "TM" or the registration symbol "®", as appropriate. Customer shall display all other notices on or in connection with the Product or Promotional Materials and otherwise, as are or may be required by any applicable laws and regulations, ImPACT Applications is authorized to list Customer in or on ImPACT Applications Promotional Materials, including on ImPACT Applications' web site, as a licensed provider of services employing the Product. An ImPACT Applications Mark usage quide is attached to this Agreement at Schedule B.

2.7 <u>Other License Restrictions</u>. Customer shall not make any representations, warranties, conditions, or guarantees with regard to the Product that are inconsistent with or in addition to those made by ImPACT Applications to Customer hereunder. In addition, except as expressly authorized herein, Customer shall not authorize Test Taker to: (i) copy or modify the Product for any purpose; (ii) reverse engineer, decompile, modify, translate, disassemble, or discover the source code for all or any portion of the Product; or (iii) distribute, disclose, market, rent, lease, or otherwise transfer the Product or Documentation to any other person, except as set forth in Section 2.1 hereto.

2.8 <u>Reservation of Rights</u>. Except for the licenses and rights expressly granted under this Agreement, no licenses or rights are granted by either party to the other party hereunder, by implication, estoppel, or otherwise. All such other licenses and rights are reserved unto ImPACT Applications or Customer, as applicable. ImPACT Applications expressly reserves the right, in its sole discretion and in the Territory

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and throughout the world, to: (i) sell or license the Product directly to any third party; (ii) use the ImPACT Applications Marks for the purpose of promoting, advertising, or marketing the Product; and (iii) grant promotional, advertising, and/or marketing rights to other persons.

Promotional Activities. Customer shall have the 2.9 right to create and distribute Customer Promotional Materials for the Products resold pursuant to this Agreement. Customer may create Customer Promotional Materials and, subject to the Terms of Use, modify ImPACT Applications Promotional Materials; provided, however, such ImPACT Applications Promotional Materials may only be used in connection with Products resold pursuant to this Agreement. ImPACT Applications shall retain all right, title, and interest in and to (including copyrights and trademarks) the ImPACT Applications Promotional Materials. Customer shall be responsible for any modifications to the ImPACT Applications Promotional Materials. Customer will provide ImPACT Applications with a copy of any Promotional Materials created or developed pursuant to this Section 2.9 for ImPACT Applications' approval prior to use or distribution. ImPACT Applications agrees to provide Customer with written notice of approval or rejection of such materials within ten (10) calendar days of ImPACT Applications' receipt of such materials. Customer agrees that such promotional or advertisement activities shall comply with the Terms of Use. Customer grants ImPACT Applications all right, title, and interest in and to any modifications to the ImPACT Applications Promotional Materials.

2.10 Product Representations. Customer shall make no, and shall indemnify ImPACT Applications for and against any and all claims arising out of, representations or warranties concerning quality, performance, or other characteristics of the Products other than those which are consistent in all respects with, and do not expand the scope of, the representations and warranties made by ImPACT Applications for such Products. Customer may not write or otherwise create any additional Product Documentation or authorize the creation thereof without ImPACT Applications' express prior written consent. The only Product Documentation that Customer is authorized to sell or distribute is official ImPACT Applications Product Documentation produced by ImPACT Applications. Customer agrees that its obligation to indemnify ImPACT Applications for and against any and all claims arising out of any warranty that is inconsistent with or additional to the warranties contained in this Agreement shall not be affected, reduced, or impaired by the fact that Customer is required by local mandatory law to provide such inconsistent or additional warranty.

2.11 Ownership of Customer Data. The ImPACT Applications system will aggregate and generate data relating to Test Takers that will relate to medical information such as age, height, weight, prior injuries, and test results from using the Product and such other information as ImPACT Applications may determine from time-to-time would be useful in improving the performance of the Product (the "Customer Data"). Customer is the sole exclusive owner of the Customer Data. ImPACT Applications shall be permitted to use aggregated, de-identified Customer Data, for internal and external evaluation purposes, provided that such information does not identify an individual or the Customer and, there is no reasonable basis to believe that the information can be used to identify an individual or the Customer. Any use of Customer Data by ImPACT Applications shall comply with all applicable U.S. rules, laws, and regulations regarding data protection and privacy.

2.12 <u>Government Approvals.</u> Customer shall, at its expense, obtain all registrations, licenses, and permits required to perform its obligations under this Agreement, pay all taxes and fees due in connection therewith, and provide ImPACT Applications with such documentation as ImPACT Applications may request to confirm Customer's compliance with this Section 2.12 and agrees that it shall not engage in any course of conduct that, in ImPACT Applications to be in violation of the laws of any jurisdiction.

2.13 <u>Material Breach</u>. Any breach of any of the provisions of this Section 2 by Customer shall be deemed a material breach of this Agreement.

2.14 Applicability of Agreement to All ImPACT Applications Products and Pricing Changes. Customer acknowledges ImPACT Applications may offer additional Products during the Term of this Agreement (each a "Subsequent Product" and collectively, the "Subsequent ImPACT Applications Products"). Customer and acknowledge and agree Subsequent Products may be licensed by Customer, subject to all terms and conditions of this Agreement, without a formal written modification of this Agreement or the execution of a separate contract on the condition that Subsequent Products and pricing terms are described in a writing by ImPACT Applications and acknowledged by Customer. Such a writing and acknowledgement may include email exchanges, an online ordering system or portal, or any other means that is mutually acceptable by the parties without any need to reference this Agreement or any amendment thereto. Performance subsequent to any acknowledgement or writing as stated herein shall constitute acceptance. ImPACT Applications may also amend Schedule A consistent with the terms of this Agreement without a written modification of this Agreement, provided that any modifications to Schedule A are provided to

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Customer in a manner consistent with this section. Upon communication to customer of revisions to <u>Schedule A</u>, said revisions shall merge into and fully become part of this Agreement without need for a separate acceptance or novation.

#### 3. PRODUCT INFRASTRUCTURE

3.1 Obligations of ImPACT Applications. Subject to Customer's compliance with the terms and conditions of this Agreement, ImPACT Applications shall be responsible for providing and maintaining the Product Infrastructure. The Product Infrastructure is subject to modification by ImPACT Applications from time to time for purposes such as adding new functionality, maximizing operating efficiency, and upgrading hardware and software. Customer understands and acknowledges such modifications may require changes to Customer's internet access and telecommunications infrastructure to maintain Customer's desired level of performance. ImPACT Applications will provide industry standard web hosting and connectivity and use reasonable efforts to provide Customer 99,99% up time operation; provided, however, Customer acknowledges and agrees that downtime may occur for systems maintenance, including without limitation diagnostics, upgrades, and operations reconfiguration and that unscheduled downtime may occur as a result of forces beyond the immediate control of ImPACT Applications including, but not limited to, hardware failures, electrical outages, or failures or outages caused by Customer's network or internet service provider.

3.2 Obligations of Customer; Internet Access and Telecommunications Services. Except for the Product Infrastructure, which will be provided by ImPACT Applications, Customer shall be responsible for obtaining and maintaining all hardware, software, equipment, and other items required in connection with Customer's access to and use of the Product as contemplated hereunder, including, without limitation, all hardware, software, equipment, and other items required to develop and maintain the Customer Site functionality necessary to facilitate access to the Product. Customer at its expense shall be responsible for obtaining internet access and/or telecommunications services, or upgrading Customer's existing internet access or telecommunications services, to allow access to the Product by Customer and Test Takers. ImPACT Applications shall not be responsible for interruptions in Customer's use of the Product caused by such providers or interruptions in the service provided by such providers.

#### 4. TEST ACCESSIBILITY; SERVICE; REPORTS; USER'S GUIDE; UPDATES

4.1 <u>Test Accessibility; Service</u>. A description of how to access the Products, ImPACT Applications technical support, and report generation is set forth on <u>Schedule A</u>.

4.2 <u>Updates</u>. ImPACT Applications shall provide all Updates to Customer as they are released generally by ImPACT Applications to all of its customers. Any and all Updates offered by ImPACT Applications to its customers during the Term shall be provided to Customer free of charge.

#### 5. FEES AND PAYMENTS; TAXES; LATE PAYMENTS

5.1 Product Fees - License. In consideration of the license rights and services provided by ImPACT Applications hereunder in accordance with this Agreement, Customer will pay ImPACT Applications the applicable Product Fees within thirty (30) calendar days of receipt of an invoice. Current fees for the Products are set forth on Schedule A (the "Product Fees"), Customer shall be responsible for collecting Product Fees from any sublicensees and shall remit the same to ImPACT Applications according to the terms set forth in this Section 5. ImPACT Applications shall electronically invoice Customer for all Product Fees due hereunder, and it is Customer's sole responsibility to update ImPACT Applications regarding any changes in Customer's electronic contact information. All undisputed Product Fees due to ImPACT Applications shall be paid by Customer in full without right of set-off or deduction. Customer will notify ImPACT Applications of any disputed Product Fees within five (5) calendar days of receipt of the applicable invoice. Thereafter, the parties will promptly coordinate, exercise good faith efforts to resolve the disputed amount, and arrange for the expeditious payment of any Product Fees owed as part of such resolution, if any. In the event all amounts due to ImPACT Applications are not paid when due, ImPACT Applications shall have the right, in its sole and absolute discretion, to suspend Customer's access to the Product until payment is remitted, subject to ImPACT Applications' compliance with all applicable U.S. federal, state, and local rules, laws, and regulations regarding data protection, data retention, and data privacy of Customer Data, including but not limited to HIPAA. Failure to pay undisputed Product Fees as set forth above shall constitute a material breach of this Agreement and shall subject Customer to termination of this Agreement in accordance with Section 8.

5.2 <u>Product Fees.</u> The Product Fees shall apply only to Products and not to any other goods or services ImPACT Applications may offer, including without limitation, separate modules, professional services, or third-party products

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offered by ImPACT Applications from time to time, all of which ImPACT Applications may, in its sole discretion, separately offer and price. ImPACT Applications may offer special promotions or discounts on Products from time to time and as a result, may amend pricing of the promotional or discounted Products upon thirty (30) days prior written notice to Customer.

5.3 <u>Fee Increases</u>. ImPACT Applications may, upon sixty (60) days prior written notice to Customer, increase the Product Fees charged to Customer hereunder.

5.4 <u>Taxes</u>. To the extent applicable, Customer shall be responsible for paying all sales, use, value-added, and other similar taxes in connection with the Product and services provided hereunder, except for taxes assessed, levied, or imposed based upon ImPACT Applications' property or income. ImPACT Applications may elect to include said taxes, duties, and charges as separately itemized charges in its invoices to Customer hereunder.

5.5 <u>Late Payments</u>. If any amounts due to ImPACT Applications hereunder are not paid when due in accordance with Section 5.1, ImPACT Applications shall have the right, in its sole and absolute discretion, to: (i) immediately suspend Customer's and any of its sublicensees' access to the Product, including the ability to access the Product to view and download previous test results; and (ii) charge Customer interest on such late payment, which shall accrue interest from the first day following the due date until paid in full at the lesser of one and one-half percent (1 1/2%) per month or the maximum rate permitted by law.

# 6. WARRANTIES AND LIMITATIONS OF LIABILITY

6.1 Warranty. ImPACT Applications warrants that Product will operate in substantial conformance with the Documentation, Customer must notify ImPACT Applications in writing, within ten (10) days following the date on which Customer is first given access to the Product, of any failure of Product to operate in substantial conformance with the Documentation. Customer must also notify ImPACT Applications in writing, within ten (10) days following the date of performance of any services by ImPACT Applications hereunder, of any failure by ImPACT Applications to perform said services in a professional manner and in accordance with the terms and conditions of this Agreement. ImPACT Applications' sole obligation and Customer's sole remedy with respect to any failure of the Product to substantially conform to the specifications therefor, or of any failure of ImPACT Applications to perform services hereunder in a professional manner and in accordance with the terms and

conditions of this Agreement, is for ImPACT Applications to use commercially reasonable efforts to remedy any such failure as soon as is reasonably practicable, and if such failure is not remedied in a reasonable time, for Customer to terminate this Agreement upon written notice to ImPACT Applications. ImPACT Applications represents and warrants that it is not a Sanctioned Person or Entity. For purposes of this Agreement, the term **"Sanctioned Person or Entity"** means a person or entity that has been excluded by the Office of the Inspector General of the Department of Health and Human Services from participation in Medicare, Medicaid, or any state health care program (defined at 42 CFR § 1001.2) pursuant to 42 CFR Part 1001. ImPACT Applications shall notify Customer within ten (10) days after it receives notice that it is a Sanctioned Person or Entity.

6.2 Warranty Disclaimer. EXCEPT AS SET FORTH IN SECTION 6.1, IMPACT APPLICATIONS DISCLAIMS ANY AND ALL WARRANTIES RELATING TO THE PRODUCT, THE PRODUCT INFRASTRUCTURE, OR ANY OTHER MATTER COVERED BY THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR IMPACT APPLICATIONS DOES NOT PURPOSE. WARRANT THAT THE PRODUCT OR THE PRODUCT **INFRASTRUCTURE** WILL OPERATE WITHOUT INTERRUPTION OR DELAY AND/OR BE ERROR FREE, OR THAT ALL FAILURES OF THE PRODUCT TO CONFORM TO THE DOCUMENTATION CAN OR WILL BE CORRECTED. THE PRODUCT AND THE PRODUCT INFRASTRUCTURE ARE WARRANTED ONLY TO CUSTOMER AND CUSTOMER'S AUTHORIZED SUBLICENSEES, AND CUSTOMER AND CUSTOMER'S AUTHORIZED SUBLICENSEES SHALL NOT EXTEND ANY WARRANTIES OR MAKE ANY REPRESENTATIONS FOR OR ON BEHALF OF IMPACT APPLICATIONS OR IMPACT APPLICATIONS' LICENSORS TO ANY OTHER PERSONS.

Limitations of Liability. IN NO EVENT SHALL 6.3 EITHER PARTY BE LIABLE FOR LOST PROFITS OR BUSINESS, LOSS OF GOODWILL, LOSS OF DATA. INTERRUPTION OF BUSINESS, OR FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, CLAIMS RELATED DIAGNOSTIC ACCURACY AND/OR MEDICAL TO MALPRACTICE), REGARDLESS OF WHETHER SUCH DAMAGES ARISE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY IS ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. EXCEPTING INSTANCES OF GROSS NEGLIGENCE OR MISCONDUCT WILLFUL AND THE SPECIFIC OBLIGATIONS OF IMPACT APPLICATIONS UNDER SECTION 6.1, THE AGGREGATE LIABILITY OF IMPACT

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APPLICATIONS FOR ANY AND ALL CLAIMS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER SHALL NOT EXCEED THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH ANY SUCH CLAIM FIRST ARISES. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

6.4 <u>Consumer Protection Laws</u>. THE PRODUCT IS A BUSINESS PRODUCT, THE APPLICATION OF WHICH IS COMMERCIAL, RATHER THAN CONSUMER-ORIENTED, IN NATURE, REGARDLESS OF THE NATURE OF ANY SUBLICENSES OR USE BY ANY PERSON OR ENTITY. IN EXECUTING THIS AGREEMENT, THE PARTIES RECOGNIZE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THAT CONSUMER PROTECTION LAWS IN ANY APPLICABLE TERRITORY SHALL NOT APPLY.

#### 7. INFRINGEMENT INDEMNIFICATION

Indemnification by ImPACT Applications. 7.1 ImPACT Applications hereby agrees to indemnify and hold harmless Customer from and against all damages, settlement amounts, costs, and expenses (including reasonable attorneys' fees) that Customer may be required to pay to third parties to the extent such damages. settlement amounts, costs, and expenses are attributable to claims that the Product infringes or misappropriates a U.S. patent, copyright, trademark, trade secret, or other intellectual property rights of a third party, except such claims due to: (i) a breach by Customer of any provision of this Agreement; (ii) any Customer Materials; or (iii) use of the Product in combination with any software, hardware, or other equipment not provided by ImPACT Applications where the infringement or misappropriation would not have occurred but for such combination. Notwithstanding anything stated herein to the contrary, in no event shall ImPACT Applications be required to indemnify Customer in an amount or amounts, in the aggregate, in excess of the fees and payments ImPACT Applications has received hereunder.

7.2 <u>Additional Obligation of ImPACT Applications</u>. In the event Customer is enjoined or otherwise prohibited, or in ImPACT Applications' opinion is reasonably likely to be enjoined or otherwise prohibited, from using the Product as a result of any claim for which ImPACT Applications is required to indemnify Customer under Section 7.1 above, ImPACT Applications, at its own expense and option, shall,

in addition to fulfilling its obligations described in Section 7.1, promptly: (i) procure for Customer the right to continue using the Product; (ii) modify the Product so that it becomes noninfringing without materially altering its capacity or performance; (iii) replace the Product with a product that is reasonably equivalent in capacity and performance but is non-infringing; or, if none of the foregoing remedies is available to ImPACT Applications on commercially reasonable terms; (iv) require Customer to cease using the Product and repay to Customer any prepaid fees and other amounts paid by Customer to ImPACT Applications hereunder.

7.3 <u>Exclusive Remedy</u>. Sections 7.1 and 7.2 state the entire obligation of ImPACT Applications and the exclusive remedy of Customer with respect to any actual or threatened claim that the Product, or use thereof by Customer or any Test Taker, infringes or misappropriates the patent, copyright, trademark, trade secret, or other intellectual property rights of any person.

#### 8. TERM AND TERMINATION

8.1 Term. The initial term of this Agreement (the "Initial Term") shall be one year from the Effective Date. This Agreement, and any amendments to Schedule A as set forth in Section 2.15, shall automatically renew for additional identical one-year periods (each a "Renewal Term" and the Initial Term and any Renewal Term(s) are collectively referred to as the "Term") under the then-current fee schedule for the Products and services, a copy of which will be provided to Customer upon request, unless Customer, at least thirty (30) business days prior to the end of the applicable Term, provides ImPACT Applications with notice that this Agreement will expire at the end of the applicable Term. As of the Effective Date any and all prior agreements related to the licensing of the Products between Customer and ImPACT Applications shall be terminated.

8.2 Termination. Subject to Section 5 of this Agreement, either party shall have the right to immediately terminate this Agreement by delivering written notice thereof to the other party if the other party fails to perform or comply with any material term or condition of this Agreement and does not cure such failure within thirty (30) days following its receipt of written notice thereof from the other party. Additionally, Customer may terminate this Agreement at any time with or without cause upon providing ImPACT Applications at least ninety (90) days prior written notice pursuant to Section 9.10. If, as a result of a change in law or regulation or a judicial or administrative interpretation, the performance by either party hereto of any provision of this Agreement should jeopardize the licensure of Customer, its participation in Medicare, Medicaid, Blue Cross, or other

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reimbursement or payment programs, its exemption from taxation under Internal Revenue Code Section 501(c)(3) or its full accreditation by the Joint Commission, or if it should constitute a violation of any statute, regulation, or ordinance, Customer may request that this Agreement be renegotiated to eliminate the jeopardy and, if agreement is not then reached, terminate this Agreement.

Effect of Termination. Upon the earlier of the 8.3 expiration or termination of this Agreement, or due to Customer's insolvency or bankruptcy: (i) all license rights of Customer under this Agreement shall automatically and immediately cease; (ii) Customer shall immediately cease all uses of the Product; (iii) Customer shall immediately delete all computer programs and files of ImPACT Applications from its computer systems and return to ImPACT Applications or destroy all Documentation, Training Materials, and/or Promotional Materials in its possession or control and shall certify in writing within ten (10) days from the date of such termination or expiration that such deletions, returns, or destructions have taken place; (iv) Customer shall immediately cease any and all use of the ImPACT Applications Marks and the Promotional Materials, including removing the ImPACT Applications Marks and the Promotional Materials from any website Customer operates; and (v) Customer shall return or destroy all Promotional Materials within thirty (30) days following termination or expiration, and shall certify having done so in writing. Customer shall no longer have any right or ability to market or license any of the Products, or to provide support related to the Products or offer training related to the Products. Customer agrees upon the effective date of such termination to pay all undisputed sums due to ImPACT Applications, promptly cooperate with ImPACT Applications to resolve any disputed sums per Section 5.1, return all proprietary information to ImPACT Applications, and provide ImPACT Applications with all outstanding reports, including lists of prospects, lists of sublicensees of Product, copies and/or originals of sublicensee acknowledgments, agreements and details of any agreements or arrangements under which support has been subscribed for by licensees of Product for a period beyond the effective date of termination, and agrees to assign such agreements or arrangements to ImPACT Applications or to a third-party company designated by ImPACT Applications. The following shall survive the expiration or sooner termination of this Agreement: the provisions of Sections 6 (Warranties and Limitations of Liability), 7 (Infringement Indemnification), 8 (Term and Termination), and 9 (General); any payment obligations of the parties hereunder accruing prior to the date of such expiration or termination; and any other provisions herein expressly surviving such expiration or termination or necessary to interpret the respective rights and obligations of the parties hereunder.

#### 9. GENERAL

9.1 <u>Independent Contractors</u>. In making and performing this Agreement, the parties are acting and shall act as independent contractors. Neither party is, nor will be deemed to be, an agent, legal representative, joint venturer, franchisee, or partner of the other party for any purpose.

9.2 <u>Force Majeure</u>. In the event either party is unable to perform its obligations under the terms of this Agreement (other than the obligation to pay amounts due and owing hereunder) because of acts of God, strikes, equipment, or transmission failure or other causes reasonably beyond its control, such party shall not be liable to the other party for any damages resulting from such failure to perform or otherwise from such causes.

9.3 Governing Law. This Agreement and its subject matter shall be governed in accordance with the laws of the State of Delaware without regard to the choice of law or conflict of laws principles contained therein. All controversies arising hereunder shall be brought in a court of competent subject matter jurisdiction located in the State of Delaware. The parties hereby consent to the exclusive jurisdiction of any court having competent subject matter jurisdiction located in the State of Delaware and hereby agree to waive any claim or defense of inconvenient forum or governmental immunity. The parties specifically exclude application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement. In any suit or proceeding between the parties relating to this Agreement, the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys and other professionals incurred in connection with the suit or proceeding, including costs, fees, and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.

9.4 <u>Public Statements</u>. Either party may disclose the existence of this Agreement, but shall not represent to any third party any positions, statements, intentions, terms of this Agreement, or other actions on behalf of the other. ImPACT Applications is authorized to use Customer's name, trademark, or service marks or issue press releases and similar public statement regarding this Agreement and Customer's use of the Product.

9.5 <u>Confidentiality</u>. The parties (each, a "*Recipient*") agree to use all information concerning the other party (each, a "*Discloser*") and the Discloser's respective subsidiaries and affiliates furnished by or on behalf of the Discloser hereunder (collectively, the "*Confidential Information*") solely for the purpose of the transactions contemplated

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hereby. The Confidential Information will be kept confidential by the Recipient and its agents unless such Confidential Information: (i) is required to be disclosed by law; (ii) is disclosed pursuant to the Discloser's prior written consent; or (iii) otherwise becomes non-confidential as described below. Upon termination of this Agreement, the Recipient will return all Confidential Information as may be requested by the Discloser. The term "Confidential Information" shall not be deemed to include information which: (i) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient, generally known or available to the public; (ii) is known by the Recipient at the time of receiving such information as evidenced by its records created prior to the date of this Agreement and is not accompanied by a duty of confidentiality; (iii) is hereafter furnished to the Recipient by a third party, as a matter of right and without restriction on disclosure; (iv) is independently developed by the Recipient without any breach of this Agreement and without use of or reference to the Confidential Information; or (v) is the subject of a written permission to disclose provided by the Discloser.

9.6 Privacy Adherence. The parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standard") promulgated in accordance with HIPAA. ImPACT Applications understands that Customer is a "covered entity" as defined by HIPAA. In the course of carrying out its obligations in accordance with this Agreement, ImPACT Applications will have access to individually identifiable health information of Customer patients, thereby creating a Business Associate relationship between Customer and ImPACT Applications. In compliance with HIPAA, Customer has requested ImPACT Applications, and ImPACT Applications has agreed, to abide by the terms and conditions of this Section 9.6 governing the use of Protected Health Information ("PHI"). Unless otherwise defined in this Section 9.6, capitalized terms shall have the meaning established by 45 CFR §§ 160.103 and 164.501. ImPACT Applications may use or disclose PHI in accordance with this Section 9.6, provided such use or disclosure by Customer would not violate the Privacy Standard, ImPACT Applications shall comply with the requirements of the Privacy Standard related to PHI. Specifically, ImPACT Applications shall:

i. Not use or further disclose PHI other than as permitted or required by this Section 9.6 or as required by law (as such term is defined by the Privacy Standard);

ii. Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Section 9.6;

iii. Report to Customer any use or disclosure of

the PHI not provided for by this Section 9.6 of which ImPACT Applications becomes aware;

iv. Mitigate, to the extent practicable, any harmful effect that is known to ImPACT Applications of a use or disclosure of PHI not permitted by this Section 9.6;

v. Make PHI available in accordance with 45 CFR § 164.524;

vi. Make available for amendment and incorporate any amendments to PHI in accordance with 45 CFR § 164.526;

vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

viii. Make ImPACT Applications' internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received on behalf of, Customer available to the United States Secretary of Health and Human Services for purposes of determining Customer's compliance with the Privacy Rule.

Upon expiration of this Agreement ImPACT Applications shall either retain, or following Customer's or an authorized Data Owner's written request destroy all PHI received from, or created or received on behalf of Customer (including all copies thereof) in ImPACT Applications' possession or under ImPACT Applications' control, subject to ImPACT Applications' internal backup data retention policies and except as required under applicable law, regulation, court order, subpoena, or similar legal process; or if destruction is not feasible, extend protections of this Section 9.6 to the retained data and limit further uses and disclosures to those purposes that make return or destruction infeasible. For purposes of this Agreement, "Data Owner" means an individual or legal entity that holds ownership rights with respect to a given set of Customer Data, or that is otherwise legally permitted to view and request the deletion or modification of such Customer Data.

9.7 <u>Third Party Beneficiaries</u>. Test Takers are not and will not be deemed to be third-party beneficiaries of this Agreement, or to have any contractual relationship with ImPACT Applications by reason of this Agreement. Customer hereby agrees to indemnify and hold harmless ImPACT Applications from any and all damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) suffered or incurred by ImPACT Applications or its affiliates in connection with any claims brought by Test Takers against ImPACT Applications or its affiliates that arise from or in connection with the Product or any other matter covered by this Agreement.

9.8 <u>Insurance</u>. ImPACT Applications shall maintain for the Term of this Agreement general liability insurance with a combined single limit of at least One Million Dollars (US\$1,000,000.00) for any claim arising out of a single occurrence.

9.9 <u>No Medical Advice</u>. The Product and the results obtained from use of the Product do not constitute medical advice. Customer and all Test Takers should use the data received as a result of using the Product to consult with qualified medical personnel. The Product is only one component of a concussion management treatment protocol and must be used in combination with the advice of qualified medical personnel.

Miscellaneous. Customer may not assign any of 9.10 its rights or privileges, or delegate any of its duties or obligations hereunder, in whole or in part, by operation of law or otherwise, to any third party without the prior written consent of ImPACT Applications. Customer's merger or consolidation with another entity or health care system shall not be considered an assignment requiring the prior written consent of ImPACT Applications, provided that the surviving entity assumes all of Customer's obligations hereunder without qualification or condition. This Agreement shall be freely assignable by ImPACT Applications upon thirty (30) days prior written notice to Customer. Any attempted assignment or delegation of this Agreement or any duties or obligations hereunder in violation of the foregoing limitations shall be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. All notices required to be in writing shall be delivered by hand, sent by recognized overnight courier (such as Federal Express or UPS), electronic mail, or mailed by certified or registered mail, return receipt requested, postage pre-paid, addressed to the parties set forth herein. This Agreement, including all schedules attached hereto, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior understandings and agreements between the parties, whether written or oral, regarding the subject matter hereof. Except as expressly provided herein, this Agreement may not be amended, supplemented, or otherwise modified except by an instrument in writing signed by both parties. Any of the provisions of this Agreement which are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions hereof or affecting the validity or unenforceability of any of the terms of this Agreement in any other jurisdiction. A waiver by either party of a breach or violation of any provision of this Agreement will not constitute or be construed as a waiver of any subsequent breach or violation of that provision or as a waiver of any breach or violation of any other provision of

Version 2.0 (2021 - School District)

this Agreement. The headings contained in this Agreement are for convenience only and shall not affect meaning or interpretation of this Agreement. This Agreement shall become binding when any one or more counterparts hereof, individually or taken together, shall bear the original or facsimile signature of each of the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be an original as against any party whose signature appears thereon, but all of which together shall constitute but one in the same instrument.

\* \*

\*

IN WITNESS WHEREOF, the undersigned have duly executed this Services Agreement as of the date first set forth above.

#### IMPACT APPLICATIONS, INC.

Sign:\_\_\_\_

Signatory Name: Jim Gyurke Signatory Title: Chief Executive Officer

CUSTOMER:\_\_\_\_\_

 Sign:

 Signatory Name:

 Signatory Title:

 Email:

 Address:

Version 2.0 (2021 - Schoot District)

#### SCHEDULE A

#### School District Pricing

ImPACT® and/or ImPACT Pediatric® Baseline Tests (minimum aggregate purchase of 300 with a minimum of either 50 ImPACT® or 50 ImPACT Pediatric® Baseline Tests):

300 - 4,999	<b>\$2.75 eac</b> h
5,000 9,999	\$2.25 each
10,000+	\$1.75 each

Post Injury Tests (minimum aggregate purchase of 50 with a minimum of either 25 ImPACT® or 25 ImPACT Pediatric® Post Injury Tests):

50 – 499	\$12.00 each
500+	\$10.20 each

#### Additional Individual ImPACT® or ImPACT Pediatric® Tests

Baseline Tests:	\$15.30 each (minimum purchase of 10)
Post Injury Tests:	\$33.00 each (minimum purchase of 5)

#### ImPACT® QuickTest

QuickTest: An annual subscription for unlimited testing \$149.00

Customer will have access to unlimited use of the QuickTest testing for the entirety of the one-year subscription period; provided, however, Customer understands and agrees: i) this is an introductory price offering; ii) pricing is not subject to the Renewal Term provisions in Section 8 of this Agreement; and iii) prices may increase without the need for a formalized amendment to this Schedule A of the Agreement following the completion of the Initial Term or any subsequent Renewal Term.

#### General Service Description

The test is reachable over the internet from any industry standard browser. ImPACT Pediatric and ImPACT Quick Test are available as part of the ImPACT Toolkit app available from the Apple App Store at <a href="http://appstore.com/impacttoolkit">http://appstore.com/impacttoolkit</a>.

#### **Customer Configuration and Installation**

Please see https://www.impacttestonline.com/htmlcc/Files/sports/grg\_enus.pdf.

#### Availability and Maintenance

ImPACT Applications will use commercially reasonable efforts to make the Product available for Customer use with four (4) hours reserved for maintenance downtimes per week. These maintenance windows may require additional time. Customer designated system administrators are notified via email 24 hours in advance of any scheduled down time. Automated encrypted back-ups are performed on all Customer data.

#### Service Delivery

Version 1.0 (2021 – School District)

Schedule A

ImPACT Applications provides support on-line via e-mail only during Normal Business Hours, 7:00 a.m. CST to 7:00 p.m. CST, Monday through Friday, excluding legal holidays. ImPACT Applications provides technical support only to the Customer. It is Customer's sole responsibility to provide support to Test Takers.

#### **Documentation**

The computer requirements for ImPACT:

https://www.impacttestonline.com/htmlcc/Files/sports/grg\_enus.pdf

Device requirements for ImPACT Pediatric and ImPACT Quick Test:

ImPACT Pediatric and ImPACT Quick Test are currently available for use with an Apple® iPad tablet device that is running iOS Version 8 or higher. This test battery is not standardized for use with the Apple iPad mini due to screen size limitations.

#### **Clinical Reports**

Reports are available for Customer's authorized personnel to generate and use in managing the Customer's Test Takers. Additional support functions allow for follow up testing and individual results retrieval by Customer's authorized personnel.

#### SCHEDULE B

#### Trademark and Logo Usage Guidelines

Manual for print and web related materials. Effective January 08, 2021

For more information on the application of the ImPACT Applications brand, please contact the ImPACT Applications marketing department at marketing@impacttest.com.

#### Trademark Usage Guidelines

These Trademark Usage Guidelines (the "Guidelines") set forth the rules for using or referring to the trademarks and service marks owned by ImPACT Applications, Inc. ("ImPACT Applications") for any/all uses in all mediums. It is imperative that these specifications are followed wherever and whenever the organization and its partners utilize the ImPACT Applications name and identity.

For the purposes of these Guidelines, "ImPACT Applications Trademark(s)" shall include all registered or unregistered trademarks and service marks (such as words, names, symbols, devices, slogans, logos, or combination of these) owned by ImPACT Applications including, but not limited to, the trademarks and service marks listed on the ImPACT Applications Trademark List as set forth below.

ImPACT Applications considers its trademarks and service marks to be among its most valuable intellectual property assets. As such, ImPACT Applications intends to take all appropriate measures to preserve the strength of and retain its exclusive rights to use its marks. United States and international trademark and copyright laws protect many of these trademarks and service marks.

Trademark List:	ImPACT®
	ImPACT Pediatric®
	ImPACT® Quick Test
	ImPACT Toolkit™
	ImPACT Passport®
	Cognitive Impairment Screener™

#### **Usage Rules for Printed or Typed Materials**

#### Proper Use of Trademark Symbol

The trademark symbol "TM" or "®" should be used with the mark the first time that it appears in any copy.

#### **Proper Capitalization of Letters**

The form of the text should always appear as follows "ImPACT Applications" with the initial letter "I" capitalized, a lower case "m" and the letters "PACT" capitalized with no spaces in between.

#### **Usage Rules for ImPACT Applications Logos**

The Usage Guidelines for ImPACT Applications logos are located at <u>https://impacttest.box.com/v/Customer-Usage-Style-Guide</u> the content of which may be updated from time to time in ImPACT Applications' sole and absolute discretion.

Effective 01-08-2021

Schedule B

□Student Learning and Achievement
 ⊠Health and Safety of Students and Schools
 □Credibility and Communication
 □Fiscal Solvency, Accountability and Integrity

□Consent ⊠Action/Discussion □Information/Discussion □Public Hearing

SUBJECT: District Update on Response to COVID-19

DATE: October 7, 2021

PERSON(S) RESPONSIBLE: Ralph Gómez Porras, Superintendent

### **RECOMMENDATION:**

The District Administration recommends the Board receive information regarding District response to COVID-19, and provide direction to Administration.

#### **INFORMATION:**

The District Administration will update the Board, staff and community on current District response and protocols to COVID-19.

Student Learning and Achievement
 Health and Safety of Students and Schools
 Credibility and Communication
 Fiscal Solvency, Accountability and Integrity

□Consent ⊠Action/Discussion □Information/Discussion □Public Hearing

SUBJECT: Resolution No. 1079 Proclaiming "Week of the School Administrator"

DATE: October 7, 2021

PERSON(S) RESPONSIBLE: Billie Mankey, Director II, Human Resources

#### **RECOMMENDATION:**

The Administration recommends that the Board review and adopt Resolution No. 1079, acknowledging Education Code 44015.1 and proclaiming the second full week in October as "Week of the School Administrator" this year being observed October 10-16, 2021.

#### **BACKGROUND:**

The term, "school administrator" is a broad term used to define many education leadership posts, which include superintendents, assistant superintendents, principals, assistant principals, special education and adult education leaders, curriculum and assessment leaders, school business officials, classified educational leaders. School administrators who began their careers as teachers and those from other fields have demonstrated dedication in their efforts to effectively lead public education and improve student achievement.

#### **INFORMATION:**

In observance of the importance of educational leadership, CA Education Code 44015.1 proclaims October 10-16, 2021 as "Week of the School Administrator."

## FISCAL IMPACT:

None

## Pacific Grove Unified School District Board of Education

## **Resolution 1079**

## "WEEK OF THE SCHOOL ADMINISTRATOR"

**WHEREAS**, leadership matters for California's public education system and the more than 6.7 million students it serves; and

WHEREAS, school administrators are lifelong learners who believe in the value of quality public education; and providing quality service for student success is paramount for the profession; and the future of California's public education system depends upon the quality of its leadership; and

WHEREAS, school leaders depend on a network of support from school communities – teachers, parents, students, businesses, community members, Board trustees, District and county staff and resources – to promote ongoing student achievement and school success; and

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Board of Pacific Grove Unified School District that Resolution 1079 be adopted to observe October 10-16, 2021 as the "WEEK OF THE SCHOOL ADMINISTRATOR" to commend all school leaders for the contributions they make to successful student achievement.

## Passed and Adopted on October 7, 2021

 John Paff, President
 Brian Swanson, Clerk

 Carolyn Swanson, Board member
 Image: Cristy Dawson, Board Member

 Dr. Frank Rivera, Board Member
 Dr. Ralph Gómez Porras, Superintendent

Student Learning and Achievement
 Health and Safety of Students and Schools
 Credibility and Communication
 Fiscal Solvency, Accountability and Integrity

□Consent ⊠Action/Discussion □Information/Discussion □Public Hearing

SUBJECT: Declaration of Need for Qualified Educators

DATE: October 7, 2021

PERSON(S) RESPONSIBLE: Billie Mankey, Director II, Human Resources

#### **RECOMMENDATION:**

The Administration recommends the Board review and adopt the Declaration of Need for Fully Qualified Educators to be filed with the Commission on Teacher Credentialing for the 2021-2022 school year.

#### **BACKGROUND:**

Because of the difficulty on occasion in finding a fully credentialed individual to fill a particular need, school districts may employ a credentialed teacher on an emergency basis to teach in an area for which that teacher is not yet fully credentialed. Each school district that may need to employ individuals on emergency permits must have a Declaration of Need on file with the Commission on Teacher Credentialing before the Commission will issue any emergency permits for service in a district. The Commission recommends that the Declaration be on file at the beginning of the school year to cover potential vacancies that may be difficult to fill during the year. The Declaration of Need must be approved by the Board of Education before being submitted to the Commission.

#### **INFORMATION:**

Pacific Grove Unified School District may need to provide a substitute, temporary or probationary teacher to replace a teacher on leave of absence or unanticipated absence or to fill a position for which that individual may not yet be fully credentialed.

There may on occasion be a need for a teacher to take a part-time assignment needed to meet student enrollment. Part-time positions are sometimes difficult to fill with fully qualified educators but may serve as an excellent opportunity for a beginning teacher completing a credentialing program. The Human Resource Department advertises extensively for long-term substitutes, temporary teachers and probationary teachers with the proper credentials to fill these positions.

The recruitment process consists of providing vacancy announcements and advertisements in nearby district offices, county offices of education, State, UC and private university placement offices, as well as professional publications, our District web page, and Edjoin.org an internet service. Because of the difficulty in finding a properly credentialed person to fill a particular position at a certain time even after extensive recruiting, the District may hire a person who is working toward the required credential and who qualifies for an internship credential, emergency, or short-term staff permit in that particular field of study.

FISCAL IMPACT: None



State of California Commission on Teacher Credentialing Certification Division 1900 Capitol Avenue Sacramento, CA 95811-4213

## DECLARATION OF NEED FOR FULLY QUALIFIED EDUCATORS

Original Declaration of Need for year:

Revised Declaration of Need for	year:
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## FOR SERVICE IN A SCHOOL DISTRICT OR DISTRICT/COUNTY AUTHORIZED CHARTER SCHOOL

Name of District or Charter:\_\_\_\_\_\_ District CDS Code:\_\_\_\_\_\_

Name of County:	County CDS Code:

By submitting this annual declaration, the district is certifying the following:

- A diligent search, as defined below, to recruit a fully prepared teacher for the assignment(s) was made •
- If a suitable fully prepared teacher is not available to the school district, the district will make a reasonable effort • to recruit based on the priority stated below

The governing board/body of the school district or charter school specified above adopted a declaration at a regularly scheduled public meeting held on / / certifying that there is an insufficient number of certificated persons who meet the district's specified employment criteria for the position(s) listed on the attached form. The attached form was part of the agenda, and the declaration did NOT appear as part of a consent calendar.

## **Enclose a copy of the board agenda item**

With my signature below, I verify that the item was acted upon favorably by the board. The declaration shall remain in force until June 30, \_\_\_\_\_.

Submitted by (Superintendent, Board Secretary, or Designee):

Name	Signature	Title
Fax Number	Telephone Number	Date
	Mailing Address	
	EMail Address	
OR SERVICE IN A COUNTY OFFI GENCY	CE OF EDUCATION, STATE AGENCY, CHARTE	R SCHOOL OR NONPUBLIC SCHOOL
lame of County		_ County CDS Code
lame of State Agency		
Name of NPS/NPA		_ County of Location
CL-500 6/2021	Page 1 of 4	
PGUSD	Regular Meeting of October 7, 2021	75

The Superintendent of the County Office of Education or the Director of the State Agency or the Director of the NPS/NPA specified above adopted a declaration on \_\_\_\_/\_\_\_, at least 72 hours following his or her public announcement that such a declaration would be made, certifying that there is an insufficient number of certificated persons who meet the county's, agency's or school's specified employment criteria for the position(s) listed on the attached form.

The declaration shall remain in force until June 30, \_\_\_\_\_\_.

#### **Enclose a copy of the public announcement**

Submitted by Superintendent, Director, or Designee:

Name	Signature	Title		
Fax Number	Telephone Number	Date		
	Mailing Address			
	EMail Address			

This declaration must be on file with the Commission on Teacher Credentialing before any emergency permits will be issued for service with the employing agency

#### AREAS OF ANTICIPATED NEED FOR FULLY QUALIFIED EDUCATORS

Based on the previous year's actual needs and projections of enrollment, please indicate the number of emergency permits the employing agency estimates it will need in each of the identified areas during the valid period of this Declaration of Need for Fully Qualified Educators. This declaration shall be valid only for the type(s) and subjects(s) identified below.

This declaration must be revised by the employing agency when the total number of emergency permits applied for exceeds the estimate by ten percent. Board approval is required for a revision.

Type of Emergency Permit	Estimated Number Needed
CLAD/English Learner Authorization (applicant already holds teaching credential)	
Bilingual Authorization (applicant already holds teaching credential)	
List target language(s) for bilingual authorization:	
Resource Specialist	
Teacher Librarian Services	

#### LIMITED ASSIGNMENT PERMITS

Limited Assignment Permits may only be issued to applicants holding a valid California teaching credential based on a baccalaureate degree and a professional preparation program including student teaching.

Based on the previous year's actual needs and projections of enrollment, please indicate the number of Limited Assignment Permits the employing agency estimates it will need in the following areas. Additionally, for the Single Subject Limited Assignment Permits estimated, please include the authorization(s) which will be requested:

TYPE OF LIMITED ASSIGNMENT PERMIT	ESTIMATED NUMBER NEEDED
Multiple Subject	
Single Subject	
Special Education	
TOTAL	

AUTHORIZATION(S) FOR SINGLE SUBJECT LIMITED ASSIGNMENT PERMITS (A separate page may be used if needed)	ESTIMATED NUMBER NEEDED

PGUSD

#### **EFFORTS TO RECRUIT CERTIFIED PERSONNEL**

The employing agency declares that it has implemented in policy and practices a process for conducting a diligent search that includes, but is not limited to, distributing job announcements, contacting college and university placement centers, advertising in local newspapers, exploring incentives included in the Teaching as a Priority Block Grant (refer to <u>www.cde.ca.gov</u> for details), participating in state and regional recruitment centers and participating in job fairs in California.

If a suitable fully prepared teacher is not available to the school district, the district made reasonable efforts to recruit an individual for the assignment, in the following order:

- A candidate who qualifies and agrees to participate in an approved internship program in the region of the school district
- An individual who is scheduled to complete initial preparation requirements within six months

## EFFORTS TO CERTIFY, ASSIGN, AND DEVELOP FULLY QUALIFIED PERSONNEL

Has your agency established a District Intern program?	Yes	No	
If no, explain			
Does your agency participate in a Commission-approved college or university internship program?	Yes	No	
If yes, how many interns do you expect to have this year?			
If yes, list each college or university with which you participate in an in-	ternship prog	ram.	
If no, explain why you do not participate in an internship program.			

□ Student Learning and Achievement
 ⊠ Health and Safety of Students and Schools
 □ Credibility and Communication
 □ Fiscal Solvency, Accountability and Integrity

□Consent ☑Action/Discussion □Information/Discussion □Public Hearing

SUBJECT: Shed Refurbishment Project at Robert Down Elementary School

DATE: October 7, 2021

PERSON(S) RESPONSIBLE: Sean Keller, Robert Down Elementary School Principal

#### **RECOMMENDATION:**

The District Administration recommends the Board review and approve the proposal for Marlar Construction to lift an old physical education storage shed to determine what work and materials are needed to refurbish flooring and side walls.

#### **BACKGROUND:**

The Robert Down PTA purchased a new shed for the physical education department so their old shed is in need of refurbishing, especially the floor as gophers have dug up under the deteriorated wood. The shed was never placed on a proper foundation and sits on the dirt/grass on the field. A representative from Marlar Construction has looked at the shed and determined that it needs to be lifted in order to determine the scope of the project.

## **INFORMATION:**

Marlar Construction has submitted a proposal to lift the shed using their company's equipment to determine what is needed in materials and help provide a cost estimate to replace flooring and any possible side walls. The old existing shed, once refurbished will be used for recess and lunch equipment storage.

## FISCAL IMPACT:

There is no fiscal impact to the district. Marlar Construction is donating their time and equipment. Once the final scope of the project is determined, it will be paid for by donated funds.



Gopher hole in floor



Deteriorating wood



Old RHD PE Shed

## **ROBERT H. DOWN ELEMENTARY SCHOOL**

485 Pine Ave. Pacific Grove, CA 93950 https://robertdown.pgusd.org Phone (831) 646-6540 FAX (831) 648-8414

September 27, 2021

**To:** PGUSD Assistant Superintendent, Song Chin-Bendib and PGUSD Maintenance Director, Matt Kelly

RE: Robert H. Down Elementary Site Improvement Proposal - Old PE Shed Upgrade

Robert H. Down Elementary has an agreement with James Marlar, an RHD parent, to utilize his construction company's equipment to lift and fix the old PE shed's foundation and walls on October 9, 2021. He will have one of his workers on site and RHD employee Roberto Dixon will let them in to the gate off Junipero that morning at 9:30 A.M.. The shed was originally placed on the ground without any kind of foundation

This will be a preliminary lift of the shed to determine what is needed for materials and cost of fixing the shed.

EST. 1891

school

Marlar Construction's contact is (831) 402-6889 if there are any questions.

Yours in Education,

BLO

Sean Keller Robert H. Down Elementary Principal <u>skeller@pgusd.org</u> (831) 275-0083 Google Voice

ELEMEN

Student Learning and Achievement
 Health and Safety of Students and Schools
 Credibility and Communication
 Fiscal Solvency, Accountability and Integrity

□Consent ☑Action/Discussion □Information/Discussion □Public Hearing

**SUBJECT:** Board Calendar/Future Meetings

DATE: October 7, 2021

PERSON(S) RESPONSIBLE: Ralph Gómez Porras, Superintendent

#### **RECOMMENDATION:**

The Administration recommends that the Board review and possibly modify the schedule of meeting dates on the attached calendar and determine, given information from the Administration, whether additional Board dates or modifications need to be established.

## **BACKGROUND:**

The Board has approved Bylaw 9320, which states that regular Board meetings be held on the first and third Thursday of each month, from August through June. At the annual organizational meeting held in December, Trustees approve the meeting calendar as presented. The calendar is reviewed at each Board meeting.

## **INFORMATION:**

Changes to the Board meeting dates must be approved by a majority vote of the Trustees.

## Board Meeting Calendar August – December 2021

Aug. 19	Regular Board Meeting	District Office/Virtual					
C	✓ Student Enrollment Update						
	✓ Back to School Night Dates						
	✓ Property Tax Report						
	✓ Quarterly Measure D Project Updates						
	✓ Quarterly District Safety Update*						
Sept. 2	Regular Board Meeting	District Office/Virtual					
	✓ Unaudited Actual Report						
	✓ Local Control Accountability Plan Review						
Sept. 16	Regular Board Meeting	District Office/Virtual					
_	✓ Williams Uniform Complaint Report						
	✓ Foreign Language Program						
	✓ Resolution Regarding Sufficiency of Instructiona	al Materials					
Sont 25	Special Board Meeting	District Office/Virtual					
Sept. 25 *Saturday	✓ Board Goals – Review/Revise						
Saturday	✓ Strategic Plan – Review/Revise						
Oct. 7	Regular Board Meeting	District Office/Virtual					
	✓ Bus Ridership						
	✓ Week of the School Administrator						
Oct. 21	Regular Board Meeting	District Office/Virtual					
	✓ Quarterly District Safety Update*						
Oct. 28	Regular Board Meeting	District Office/Virtual					
	✓ PGHS Course Bulletin Information/Discussion						
	✓ Budget Revision #1 on 2021-22 working budget	(preliminary First Interim)					
Nov. 18	Regular Board Meeting	District Office/Virtual					
	✓ Intent Form Due (to serve as Board President or	Vice President)					
	✓ Review of Special Education Contracts						
	✓ Quarterly Measure D Project Updates						
Dec. 16	Organizational Meeting	District Office/Virtual					
	✓ Election of 2021-22 Board President and Clerk						
	✓ Budget Revision #2						
	✓ First Interim Report						
	✓ PGHS Course Bulletin Action/Discussion						
	✓ Williams Uniform Complaint Report						
	✓ Employee Recognition						
	✓ Review of Legal Services Costs						
	✓ Solicitation of Funds Report						

\*Quarterly District Safety Update

## Board Meeting Calendar January-June 2022

	Regular Board Meeting	District Office/Virtual				
Thursday	✓ Report on Governor's Budget Proposal					
Jan. 20	✓ Preliminary Enrollment Projection for 2022-23					
	✓ Property Tax Update					
	✓ School Accountability Report Cards					
Thursday	Regular Board Meeting	District Office/Virtual				
Feb. 10	✓ Budget Development Calendar					
	✓ Possible Personnel Action Presented as Information					
	<ul> <li>Preliminary Review of Site Master Schedules</li> </ul>					
	✓ Possible Personnel Action (RIF)					
	✓ Quarterly Facilities Project Updates*					
Thursday	Regular Board Meeting	District Office/Virtual				
Mar. 3	✓ Second Interim Report					
	✓ Budget Revision #3					
	✓ Open House Schedules Reviewed					
	✓ TRAN Resolution					
Thursday	Regular Board Meeting	District Office/Virtual				
Mar. 17	<ul> <li>Budget Projections and Assumptions</li> </ul>					
	✓ Williams/Valenzuela Uniform Complaint Report					
Thursday	Regular Board Meeting	District Office/Virtual				
Apr. 7	✓ Review of Strategic Plan and LCAP (as needed)					
	✓ Approve 2022-23 Aug Dec. Board Meeting Calend	dar				
	✓ Quarterly District Safety Update					
Thursday	Regular Board Meeting	District Office/Virtual				
April 21	✓ Review of Site Master Schedules					
	✓ Review of Strategic Plan and LCAP (as needed)					
	✓ California Day of the Teacher					
	✓ Week of the CSEA Employee					
	✓ Begin Superintendent Evaluation					
Thursday	Regular Board Meeting	District Office/Virtual				
May 5	✓ Continue Superintendent Evaluation					
Thursday	Regular Board Meeting	District Office/Virtual				
May 19	✓ Complete Superintendent's Evaluation					
	✓ Review Governor's Revised Budget					
	✓ Suspensions/Expulsions Annual Report					
Thursday	Regular Board Meeting	District Office/Virtual				
June 2	✓ 2022-23 Budget Public Hearing					
	✓ LCAP Public Hearing					
	✓ Retiree Recognition					
Thursday	Regular Board Meeting	District Office				
June 16	✓ 2022-23 Budget Public Adoption					
	✓ LCAP and Local Indicators Adoption					
1	✓ Approval of Contracts and Purchase Orders for 2022	2-23				
		6 65				
	<ul> <li>Review of Legal Services Costs</li> <li>Solicitation of Funds Report</li> </ul>					

\*Quarterly District Safety Update and Quarterly Facilities Projects Update as needed

□ Student Learning and Achievement
 ⊠ Health and Safety of Students and Schools
 □ Credibility and Communication
 ⊠ Fiscal Solvency, Accountability and Integrity

□Consent □Action/Discussion □Information/Discussion □Public Hearing

## **SUBJECT:** Review of Bus Ridership

DATE: October 7, 2021

PERSON(S) RESPONSIBLE:Song Chin-Bendib, Assistant Superintendent for Business Services

## **<u>RECOMMENDATION</u>**:

The District Administration recommends that the Board review the bus ridership information compared with prior years.

## BACKGROUND:

The District has provided bus transportation to and from school for several years. When ridership began falling in 2006-07 and 2007-08, the District reduced bus fees in order to attract more riders. Bus ridership peaked in 2015-16 and has since been declining to 121 in 2021-22.

While most families pay a fee per student, families that qualify for the Free-and-Reduced-Meal program also qualify for free transportation. The District is currently running bus routes that provide transportation for both Regular and Special Education students.

## **INFORMATION**:

Due to the Covid 19 pandemic, the District obviously stopped providing transportation. Since then, the District has been providing home-to-school routes to the beach track, Pebble beach, and Del Monte Park areas. Transportation is servicing the same number of routes as before but in the afternoon, only two buses are doing the routes instead of three.

Additionally, there are two Special Education drivers providing transportation for K-12 and transition students.

As of September, 2021, the District provides Regular Education transportation for 121 riders, down from 236 (or lower by 49%) in 2018-19, a regular year before the pandemic hit when schools started distance learning in March 2020.

Of the 121 riders in the current year, 45 riders (37%) are riding free due to meeting the household income rules allowed under the Free-and-Reduced-Meal program.

The cost of the Transportation program is budgeted to be \$308,284 in 2021-22. The revenue that pays for the program comes from three sources:

1) The state Home-to-School Transportation revenue provides \$105,091 (34%) which is now part of the fixed Local Control Funding Formula (LCFF) money. Pacific Grove USD gets a fixed \$2,505,456 annually.

2) For prior years, Transportation fees collected from riders averaged around \$15,000. We have received \$6,130 since the beginning of school and will budget \$12,000 (4%) for fiscal year 2021-22.

3) The General Fund Contribution provides \$191,193 (62%).

For comparison purposes, below are the transportation fees charged at Pacific Grove Unified School District, Carmel Unified School District, and Monterey Peninsula Unified School District.

	1 <sup>st</sup> Rider	2 <sup>nd</sup> Rider	3 <sup>rd</sup> Rider (or more)
1) PGUSD	\$100	\$ 50 (\$150)	Free (\$150)
2) CUSD	\$200	\$200 (\$400)	\$100 (\$500)
3) MPUSD	\$200	\$160 (\$360)	\$120 (\$480)

## FISCAL IMPACT:

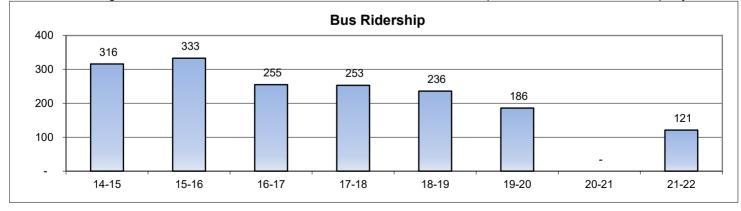
This report is informational only.

## **Bus Ridership**

	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22
	actual	actual						
Forest Grove								
Del Monte Park	33	45	6	52	57	51	Covid 19	27
Pebble Beach	64	61	73	37	25	17		10
Beach Track	25	20	18	4	7	13		5
Total Forest Grov	122	126	97	93	89	81	-	42
Robert Down								
Del Monte Park	1	3	1	2	2	1		1
Pebble Beach	9	6	3	1	3	3		1
Beach Track	52	58	41	51	47	28		24
Total Robert Dow	62	67	45	54	52	32	-	26
Middle School	. –				10			. –
Del Monte Park	17	22	37	22	19	17		15
Pebble Beach	33	38	13	24	21	12		4
Beach Track	30	25	27	33	32	17		9
Total Middle Scho	80	85	77	79	72	46	-	28
High School	_							
Del Monte Park	3	6	9	2	2	6		1
Pebble Beach	16	12	5	8	9	10		10
Beach Track	33	37	22	17	12	11		14
Total High Schoo	52	55	36	27	23	27	-	25
Total Ridership								
Del Monte Park	54	76	53	78	80	75		44
Pebble Beach	122	117	94	70	58	42		25
Beach Track	140	140	108	105	98	69		52
Total District	316	333	255	253	236	186	-	121
Change	(23)	17	(78)	(2)	(17)	(50)		121
Percent Change	-6.8%	5.4%	-23.4%	-0.8%	-6.7%	-21.2%		-34.9%
Free Riders	130	128	98	84	76	70		45
<b>Punch Pass riders</b>					19	9		13
percent of total	41%	38%	38%	33%	40%	42%		48%

1 The District offers free transportation to families that qualify for the Free or Reduced Meals program.

2 The District charges an annual fee of \$100 for the first rider and \$150 for two or more riders. We also offer a per semester charge of \$80 for the first rider and \$120 for two or more riders. This provides revenue of \$15,000 per year.



☑ Student Learning and Achievement
□ Health and Safety of Students and Schools
□ Credibility and Communication
□ Fiscal Solvency, Accountability and Integrity

□Consent □Action/Discussion ⊠Information/Discussion □Public Hearing

SUBJECT: Pacific Grove High School Teacher on Special Assignment Update

DATE: October 7, 2021

PERSON(S) RESPONSIBLE: Ani Silva, Director of Curriculum and Instruction

#### **RECOMMENDATION:**

The District Administration recommends the Board hear a brief report from Dr. Larry Haggquist regarding the Teacher on Special Assignment (TOSA) position at Pacific Grove High School.

## **BACKGROUND:**

The TOSA position is a new position at PGHS that was created to support intervention programs and assist with learning gap mitigation.

#### **INFORMATION:**

During his first month in the TOSA position, Dr. Haggquist has put together two reports that provide background information on the TOSA role, outline a path forward, and present initial findings regarding intervention programs and learning gaps at PGHS. The purpose of this presentation is to inform the Board about the nature of the TOSA position and to illustrate the value of the work that Dr. Haggquist has been doing to support some of the high school's most vulnerable students.

FISCAL IMPACT: None

# Fall 1 TOSA Report 2021-22



Pacific Grove High School

## Purpose of the TOSA Position

Under the supervision of the Director of Curriculum and Special Projects and in Coordination with the school site principal, the TOSA is **responsible for district intervention programs and learning gap mitigation**.

# TOSA Strategic Plan

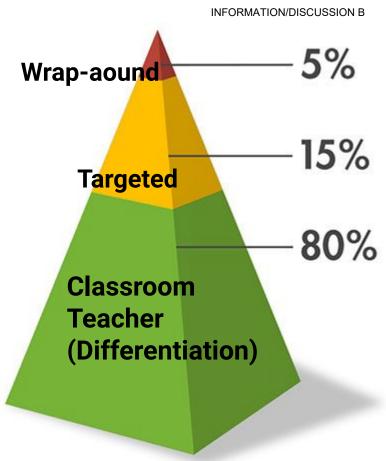
- Looking into the Legislation and Assurances
- Devising a system
- Envisioning workflow

# Legislation & Assurances

- CARES Act, CRRSA, American Rescue Plan, and AB 86
- Academic Learning Supports are the #1 Priority
- Accountability and Progress monitoring is critical

## Devising a System OUR GOAL:

## 80%, 15%, 5%



INFORMATION/DISCUSSION B

## Students Receiving Tier 2 Interventions

## 52 Students in 5 Classes



\* 25/52 need support, so 4% currently have Tier 2 support

## Some Positives

• 27 of 52 (52%) Tier 2 Students successfully avoided the August D&F list.

- 6 of 15 Students at Math Tutoring were on the D&F list
- New data management system has been helpful in providing the information necessary to identify needs

## TOSA Workflow

# The utility player role Lots of transitions to negotiate

- Tech
- Staffing
- Building systems
- Supporting instruction and building a culture of sharing best practices is a goal

## Equity, Learning Loss & Student Outcomes Report 2021–22

- Identifying gaps as a first step to mitigating gaps
- Looking at outcomes
- Teacher survey

## Equity, Learning Loss, & Student Outcomes Report Research Questions

- 1. Do outcomes at PGHS reflect patterns of inequity?
- 2. Early indicators of learning loss?
- 3. Are teachers seeing learning loss?
- 4. What are the perceptions and recommendations?

## RQ1: Patterns of Inequity

56.3% of D&F List students fall into traditionally marginalized categories:

- Racially or ethnically marginalized
- EL or RFEP
- Low income
- 504 or IEP

RQ2&3: Early Indicators of Learning Loss and Teacher Perceptions Teacher Perceptions<sup>INFORMATION/DISCUSSION B</sup>

- 68% have seen a drop
- Lower than normal student skill set is the primary reason for the drop
- Surprise finding: the D&F numbers are not abnormally high

## **Quantitative Data**

- 30% earning a D or F in first 5 weeks
- Local data reflects statewide patterns

## RQ4: Recommendations

Teacher Suggestions INFORMATION/DISCUSSION B

- Slow down, reduce load, and be patient
- Re-teach former skills
- Differentiate instruction (PD)
- Explicitly teach study skills
- Have consistent behavioral expectations

## My Recommendations

- Add support for SEL (counseling and therapy)
- Bolster support for EL and RFEP population
- Monitor inflow, outflow Tier 2 numbers using student outcomes

INFORMATION/DISCUSSION B

## Questions?

# TOSA STRATEGIC PLAN

This plan provides a background, rational, and job outline for the TOSA program in PGUSD

FALL 2021

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1

## Strategic Plan for Teachers on Special Assignment in Pacific Grove Unified School District

The following strategic plan offers a background, rational, and outline for the TOSA positions recently added in PGUSD. The plan provides a review of funding sources and legislation related to the TOSA position, offers a rationale for the new program, and outlines job tasks for new appointees.

## Learning Loss Mitigation Funds (LLMF)

To provide relief from the devastating impact of the 2019 Coronavirus (COVID -19) pandemic Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March of 2020. As the largest rescue package in U.S. History, this legislation allocated over 2 trillion dollars of federal funds, 150 billion of which went to state and local governments. Thirty billion of the state funds was set aside for educational institutions. Of these funds California received approximately 1.6 billion dollars in the form of Governor's Emergency Education Relief (GEER) funds to help stabilize school districts ("Federal COVID-19-Related Funding to California, *Federal COVID-19-Related Funding* (2020). This money combined with money from the state general fund (GF) and Coronavirus Relief (CR) funds comprises an approximately 5 billion-dollar appropriation for learning loss mitigation and pupil academic achievement ("California Department of Education," 2021; see Table 1).

## Table 1

Learning Loss Mitigation Funding (LLMF	Learning	Loss	Mitigation	Funding	(LLMF)
--	----------	------	------------	---------	--------

Fund	Amount	
GEER	\$355,227,000	
CR	\$4,439,844,000	
GF	\$539,926,000	
LLMF (Total)	\$5,334,997,000	

2

Of the California State LLMF total, Pacific Grove Unified School District has been

allocated \$974,700 in learning loss mitigation funds. The allocations per area of funding along

with the deadlines for expenditure are listed below (see Table 2).

## Table 2

Learning Loss Mitigation Funding (LLMF) in Pacific Grove Unified

Fund	Amount	Spending Deadline
GEER	\$110,403	September 30 <sup>th</sup> , 2022
CR	\$704,412	May 31 <sup>st</sup> , 2021
GF	\$159,885	June 30 <sup>th</sup> , 2021
PGUSD LLMF	\$974,700	
(Total)		

## Uses of LLM(F)unds for Reporting Purposes

School districts have limited discretion over how LLMF funds can be spent, as spending must occur in accordance with the general assurances set forth by the legislation. Four general assurances are stipulated for use of LLMF by school districts, with a more extensive list of assurances available as needed (see Appendix, Exhibit 1). According the California Department of Education (2021), the assurances are:

- 1. Addressing learning loss or accelerating progress to close learning gaps through the implementation, expansion, or enhancement of learning supports that begin before the start of the school year and the continuation of intensive instruction and supports into the school year.
- 2. Extending the instructional school year by making adjustments to the academic calendar, increasing the number of instructional minutes provided during each week or school day, or taking any other action that increases the amount of instructional time or services provided to pupils based on their learning needs.
- 3. Providing additional academic services for pupils, such as diagnostic assessments of pupil learning needs, intensive instruction for addressing gaps in core academic skills, additional instructional materials or supports, or devices or connectivity for the provision of in-classroom and distance learning.

4. Providing integrated pupil supports to address other barriers to learning, such as the provision of health, counseling, or mental health services, professional development opportunities to help teachers and parents support pupils in distance-learning contexts, access to school breakfast and lunch programs, or programs to address pupil trauma and social-emotional learning.

#### **ESSER I Funding**

In addition to the LLMF, the CARES Act provided 13.5 billion in funding to state education agencies (SEAs) for the purpose of distributing funds to school districts (Local Education Agencies, or LEAs) in proportion to their Title I allotment under the Every Student Succeeds Act (ESSA). These funds are known as Elementary and Secondary School Emergency Relief (ESSER) I funds. California's allotment of ESSER I funds was \$1,647,306,127. Of this amount Pacific Grove Unified received \$105,393. Similar to the LLMF, the ESSER I funds can be used in multiple ways to assist with Coronavirus relief efforts. For a detailed list of ESSER I fund uses see Appendix, Exhibit 2. The funds are available through September 30<sup>th</sup>, 2022.

## **ESSER II Funding**

Subsequent to the passing of the CARES Act in March of 2020, Congress passed the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act in December of 2020. This legislation added \$54.3 billion of supplemental funding to the original ESSER apportionment (National Conference of State Legislatures, 2021). This funding is called ESSER II funding. California's allocation of ESSER II funds is \$6,709,633,866. Pacific Grove has received \$55,947 and is due to receive \$503,525 for a total of \$559,472.

## **ESSER III Funding**

Three months after Congress passed the CRRSA Act, it passed The American Rescue Plan Act in March of 2021. This legislation added \$122.7 billion more in ESSER funding (National Conference of State Legislatures, 2021). California received \$15,079,696,097 in ESSER III funds. Pacific Grove Unified School District has an ESSER III allocation of \$1,253, 054.

## **AB 86 Funding**

In addition to the federal legislation outlined above, the California Legislature added \$6.6 billion in COVID-19 Relief funding to schools under Assembly Bill 86, which was signed by the governor in March of 2021. Estimated allocations were made available on March 19<sup>th</sup>, 2021. The money from AB 86 will come to schools in the form of In-Person Instruction (IPI) Grants and Expanded Learning Opportunity (ELO) Grants. The state estimates that Pacific Grove Unified will receive \$1,919,943 from these two grants combined (see Table 3). Funds are to be received by August 2021.

Table 3

In-Person Instruction and Expanded Learning Opportunities Grant Estimates

California State Grant	Amount to PGUSD	Important Dates
In-Person Instruction (IPI)	\$617,433	Plan Due: June 1 <sup>st</sup> , 2021
		Expenditure Deadline:
		September 30 <sup>th</sup> , 2024
		Report Due: December 1 <sup>st</sup> ,
		2024
		(personal communication, e-
		mail, August 10 <sup>th</sup> , 2021)
Expanded Learning	\$1,302,510	Plan Due: June 1 <sup>st</sup> , 2021
Opportunities (ELO)	(revised on 8/16/21 to:	Reporting Due: Updated to
	\$1,304,446)	include actual expenditures
		December 1 <sup>st</sup> , 2022 (personal
		communication, slide
		presentation, August 8 <sup>th</sup> ,
		2021)
Total Combined	\$1,921,879	

## **Uses of IPI Funds for Reporting Purposes**

IPI funds were to be used during the 2020-21 school year and were provided by the state to support districts during the shift from distance learning to in-person instruction. Recently, a new expenditure deadline was set for September 30<sup>th</sup>, 2024. Funds are to be used to fulfill a variety of needs, including: COVID-19 testing, purchasing PPE equipment, ventilation and school site upgrades, staffing, and social and mental health support. Certification of compliance was completed by June 1, 2021.

## **Uses of ELO Funds for Reporting Purposes**

Districts receiving ELO funds approved and adopted an ELO Grant Plan at a public

meeting prior to June 1, 2021 and submitted the plan to the CDE within 5 days of its adoption.

The plan is to reflect attentiveness to the following seven supplemental support strategies:

- 1. Extending instructional learning time
- 2. Accelerating progress to close learning gaps through implementation, expansion, or enhancement of learning supports
- 3. Integrating student supports to address other barriers to learning
- 4. Creating community learning hubs
- 5. Building supports for credit deficient students
- 6. Providing additional academic services
- 7. Providing training for staff

It is not essential that a district address all seven strategies. District needs in this regard

will be determined by stakeholder input and strategic planning. There is significant overlap

between ESSER funds uses and ELO fund uses. For accountability purposes, LEAs will have to

provide a description of how "ELO Grant funds are being coordinated with Elementary and

Secondary Schools Emergency Relief II funds" (Personal Communication, August 10<sup>th</sup>, 2021).

Otherwise, funding from different sources can be used for similar purposes.

# **Review of Coronavirus Relief Funding in PGUSD**

Over the past 18 months, legislative efforts at the federal and state level have resulted in significant measures being taken to support school districts in their attempts to curb the negative impact of the Coronavirus pandemic on students and families. In Pacific Grove, a total of approximately \$4,812,562 of funding has been designated for this cause. Some of the funding has already made its way into the district budget and has been put to use, and some will be received at later dates.

# Table 4Pandemic Relief Funding in PGUSD

Funding Type	Legislation	Date of Legislation	Amount to PGUSD
LLMF	CARES Act	March, 2020	\$974,700
ESSER I	CARES Act	March, 2020	\$105,393
	*ESSA	December, 2015	
	*ESEA	April, 1965	
ESSER II	CRRSA Act	December, 2020	\$559,472 (\$55,947
			received)
ESSER III	American Rescue Plan	March, 2021	\$1,253,054
	Act		
IPI Grant	AB 86	March, 2021	\$617,433
ELO Grant	AB 86	March 2021	\$1,304,446
Total			\$4,814,498

\* denotes associated legislation

It will be important for the district to create systems of accountability for the expenditure of these funds as each funding stream outlines its own objectives. Although the types of possible uses for the pandemic relief funds are multifold, there is much overlap in the language of each piece of legislation. A qualitative coding analysis of the expenditure requirements associated with LLMF, ESSER. IPI, and ELO funding yielded 6 categories for expenditure of COVID relief funding (see Table 5). These categories are:

1. Academic Learning Supports

- 2. Safety and Infrastructure
- 3. Social Emotional and Health Services (including nutrition)
- 4. Professional Development
- 5. Direct Support to Site Principals
- 6. Jobs

# Table 5

Category Academic Learning Supports Social Emotional and	<ul> <li>Sub-Categories</li> <li>Credit recovery</li> <li>Expanding school year (summer learning, afterschool, early childhood ed)</li> <li>Childcare</li> <li>Materials and devices</li> <li>Learning hubs</li> <li>Targeted intervention and gap mitigation</li> <li>Mental health support and counseling</li> </ul>	Frequency 21 9
Health Services (including nutrition)	<ul><li>Nutrition</li></ul>	,
Safety and Infrastructure	<ul><li>Safety PD</li><li>Safety supplies</li></ul>	6
Professional Development	<ul> <li>Distance learning</li> <li>Safety</li> <li>Strategic intervention</li> </ul>	6
Jobs	<ul><li>Employee pay</li><li>Job protection</li></ul>	4
Direct support to site principals	-	3

# Accountability and Progress Monitoring

Darling-Hammond et al. (2016) explained that the Every Student Succeeds (ESSA) legislation gave states and districts "new flexibility" with regard to implementing systems of accountability. Under the ESSA, states, and, by association, districts can "establish goals and determine school interventions based on their own contexts rather than adhering to a one-sizefits-all nationwide metric" (p.2). In California accountability is built around 10 educational priorities dictated by the California Department of Education (CDE). Eight of these priorities are managed at the district level, and priorities 9 and 10 are managed by the county office of

education. These priorities are:

- 1. Basic Services and Conditions at Schools
- 2. Implementation of State Academic Standards
- 3. Parental Involvement and Family Engagement
- 4. Student Achievement
- 5. Student Engagement
- 6. School Climate
- 7. Access to a Broad Course of Study
- 8. Outcomes in a Broad Course of Study
- 9. \* Coordination of Services for Expelled Students
- 10. \* Coordination of Services for Foster Youth
- \* Denotes County Office Priorities

The state has developed metrics to help assess the extent to which school districts (LEAs) are addressing the 8 priorities. The metrics currently in use include: chronic absenteeism, graduation rate, suspension rate, and academic measures (in English language arts/literacy and math, and eventually science). These metrics combined with local measures in the form of qualitative and/or Likert scale data provide each LEA with helpful information about the current state of schools within a district in relation to prior years (see Table 6).

Table 6

California's 8 State Priorities and Associated Metrics

Priority	Metric	Qualitative or Quantitative	Local or State		
<ol> <li>Basic Services &amp; Conditions at Schools</li> </ol>	<ul> <li># of Students without access to textbooks and instructional material</li> <li>% of misassignments and vacancies</li> <li># of instances when facilities do not meet "good repair"</li> </ul>	Qualitative	Local		

2.	Implementation of	Annual Report on the	Qualitative	Local
	State Academic	implementation of	(narrative or	
	Standards	academic standards in	Likert scale	
_		all content areas		
3.	Parental Involvement	Annual report on (1)	Qualitative	Local
	& Family	seeking input from	(narrative or	
	Engagement	parents/guardians in	Likert scale	
		decision-making, and		
		(2) promoting parental		
		participation in		
		programs		
4.	Student Achievement	• State assessments		State
		grades 3-8 and		
		grade 11		
		• English learner		
		progress		
5.	Student Engagement	Graduation rate		State
		Chronic		
		absenteeism		
6.	School Climate	• Local climate	Quantitative and	State and Local
		survey (such as	Qualitative	
		California Healthy		
		Kids Survey) every		
		other year		
		Disaggregate data		
		and report on		
		revisions, decisions,		
		or actions		
7.	Access to a Broad	Annual report on extent	Qualitative	Local
	Course of Study	to which students have		
		access to and are		
		enrolled in a broad		
		course of study		
8.	Outcomes in a Broad	College and Career		State
	Course of Study	Data		

Research on the efficacy of California's dashboard system yields mixed results, but there is agreement that it is an improvement from the "Adequate Yearly Progress" model in place under prior No Child Left Behind (NCLB) legislation (Darling Hammond, et.al., 2016, Izant Gonzalez, 2021, Polikoff, et.al. 2018). Although the new system supports a "multiple measures of assessment" approach to accountability and allows for "local measures of accountability," the

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measures in place are limited and school administrators are often confused about how results are derived. For this reason, creating internal systems of accountability while keeping the state priorities in mind would be helpful in managing data collection, intervention, and accountability at the school site level (Rouda, 2018).

#### The Role of the Teacher on Special Assignment (TOSA)

During fall of 2021 PGUSD moved to implement a TOSA position at four school sites to handle Intervention and Learning Gap Mitigation. Given the variety needs that have arisen in the wake of the Coronavirus pandemic and the robust funding earmarked for this cause, creating a well-defined role for the position and reporting mechanisms to monitor outcomes will be essential. The specifics of the TOSA role will vary at each of the four sites in the district, as each site already has intervention programs in place to identify targeted learners and to provide them with support. The TOSA will work with these existing programs to provide a deeper level of progress monitoring and to assist with communication and parent involvement. Additionally, the TOSA will assist in providing professional development to help their sites strengthen the multitiered systems of support (MTSS) that utilize a "whole child" approach to pedagogy. It will be essential that the TOSA work with site principals to identify metrics for success by which they will build evaluation systems and measure efficacy. Reporting should occur at semiannual intervals and should use a mixed methods approach that combines quantitative data with narrative explanations. Reports should be given to multiple levels of stakeholders to reinforce State Priority #2 (see Table 6 above). The majority of the work done by the TOSAs will address State Priority #5 (See Table 6 above) as well as AB 86 and ESSER funding obligations.

# The Role of the TOSA at PGHS

An outline for the TOSA position at PGHS was created through collaboration with site

principal Lito Garcia, the director of curriculum and instruction Ani Silva, and recently hired

TOSA Larry Haggquist. To create the outline, the team utilized a Response to Intervention (RTI)

approach by aligning job tasks with RTI tiered intervention strategies (see Appendix, Exhibit 3).

Tier 1 and 2 intervention programs were identified and necessary support tasks agreed upon. (see

Table 7

<b>RTI Tier Description</b>	PGHS Program	TOSA Task
<u>Tier 1</u> High quality classroom instruction, screening, and group interventions	<ul> <li>General Education Classroom</li> <li>Freshmen Academy</li> <li>AVID</li> <li>Career Center</li> </ul>	• Professional Development Differentiated instruction and research-based strategies for support
<u>Tier 2</u> Targeted Interventions	<ul> <li>Fundamentals of Success (FOS)</li> <li>Independent Productive Study (IPS)</li> <li>Math Support</li> <li>Math Tutoring</li> </ul>	<ul> <li>Student observations</li> <li>Teacher collaboration</li> <li>Data analysis</li> <li>Student progress monitoring (academic, attendance, and credit recovery)</li> </ul>

TOSA Related Programs and Tasks

The TOSA will utilize MAPS results, grades, attendance, and PAPER in addition to student

observations, teacher feedback, and counseling referrals as data sources for progress monitoring.

Findings will be shared with support teachers to assist with instructional efforts, so that

necessary adjustments can be made. The TOSA will meet regularly with the following teams:

- Student Achievement: Admin, Counselors and TOSA
- Site Leadership: Admin Department Chairs, TOSA
- PAPER: Admin, TOSA, Director of instruction, PAPER representatives
- MAPS: Admin, English and Math teachers, TOSA
- PGUSD TOSA: Site Admin, C and I Director, TOSAs from each site

#### **TOSA Outcomes Monitoring**

The TOSA will be responsible for working with teachers and counseling staff to monitor quantitative metrics that address Priorities 5 and 8 of California's *Eight State Priorities*. These metrics are Graduation Rate, Chronic Absenteeism, and College and Career Preparedness. At the state level, the indicators for College and Career Preparedness include the following:

- CTE Pathway completion
- Grade 11 SBAC in English and Math
- AP Exams
- IB Exams (not applicable in PGUSD)
- College Credit Courses (Dual Enrollment)
- A-G Completion
- State Seal of Biliteracy
- Military Science/Leadership (ROTC not available in PGUSD)

Most of the above data is available on the school website as part of the School and

Community profile. This data is updated annually by the counseling department by late July when all necessary scores have become available. The TOSA's work will aim at improving outcomes in all of the above areas, especially for students who may become marginalized for lack of proactive support. This work will help strengthen outcomes available on the state accountability dashboard while also providing a more nuanced understanding of the factors that underly the quantitative metrics.

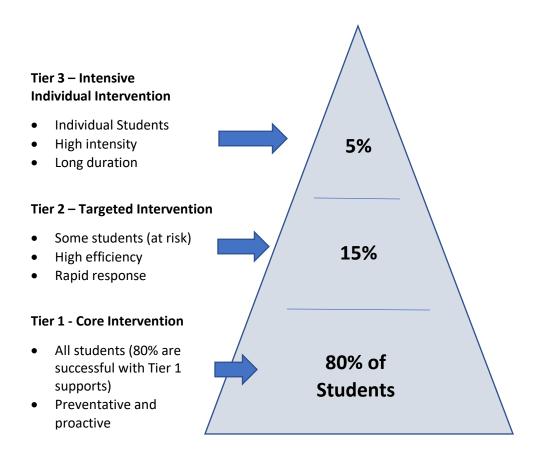
# **TOSA Instructional Support**

The ESSA legislation directs school districts and its educators to utilize "evidence-based" interventions with students (Eppley et al., 2018; Hale et al., 2017). The legislation delineates four levels of evidence for these interventions: strong evidence, moderate evidence, promising evidence, and demonstrating a rationale. Such evidence-based intervention strategies should be present at all levels of intervention, Tiers 1-3 (Arden, 2019). All teacher credentialing programs are required to familiarize teachers these evidence-based strategies, strategies such as: use of

cooperative learning groups, Cornell notetaking, or use of consistent low-threat assessments; however, research indicates that despite having familiarity with such strategies, teachers often do not do not use them to promote wide range of pupil attainment (Holloway, 2000). One essential role of the TOSA will be to work with teachers to identify a list of schoolwide instructional strategies, or Tier 1 interventions, that are positively impacting student outcomes. The TOSA should work with site administration to maintain a threshold of 80% or more of student interventions taking place within the general education classroom, as typical Response to Intervention (RTI) models recommend (see Figure 1).

# Figure 1

RTI Stratification



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One thing to consider when attempting to achieve an 80% or more success level for Tier 1 intervention is the grading practices of the school. In order to achieve more reliable data, standardization of grading practices needs to occur (Creswell & Creswell, 2005; McMillan & Schumacher, 2010).

Interventions at the Tier 2 level are similar to those at Tier 1, however they are more targeted, involve smaller groups of students, and student progress is monitored more frequently. It is suggested that monitoring occur at least 8 times a year, or once a month during the academic calendar (*Best Practice for RTI: Monitor Progress of Tier 2 Students*; Gersten et al., 2009). The Tier 2 programs at PGHS are: Fundamentals of Success (FOS), Independent Productive Study (IPS), Math Support, and Math Tutoring. The TOSA will be responsible for assisting with monthly progress monitoring of all students enrolled in these programs.

Tier 3 Interventions at PGHS are housed within the special education program. Students in this program receive wrap around services that are tailored to their individual needs and address academic, behavior, and social-emotional domains. Tier 3 is NOT part of the TOSA's case load.

### **TOSA Reports to Assist with Progress Monitoring**

The TOSA will run the following reports on a systematic basis and will use the reports to support Tier 2 intervention efforts:

- D-F lists (every two weeks)
- Attendance (every two weeks)
- Map Scores in English (3 times a year)
- Map Scores in Math (3 times a year)
- PAPER (TBD)
- Community Service (Monthly)

These reports are to be supplemented by qualitative data gleaned from interviews and classroom observations. The Quantitative and Qualitative data combined will provided a more rounded

picture of student needs, which will assist in informing instruction at the Tier 2 level. The TOSA will work with the intervention counselor to gather similar profile data for students currently receiving only Tier 1 support, who may need Tier 2 support.

A Sample Monthly	Calendar for the TOSA
------------------	-----------------------

Monday	Tuesday	Wednesday	Thursday	Friday
<ul> <li>Reports/Data Analysis</li> <li>Staff Mtg.</li> </ul>	<ul> <li>IM 1 (P1)</li> <li>AVID (P4)</li> <li>Classroom Observations</li> </ul>	<ul> <li>IM 2 (P1)</li> <li>Math Tutoring (3pm, E2)</li> </ul>	<ul> <li>IM 3 (P1)</li> <li>IPS (P 4)</li> <li>Math Tutoring (3pm, E2)</li> </ul>	<ul> <li>FOS (P3)</li> <li>Classroom Observations</li> </ul>
Reports/Data Analysis Department Chairs Mtg.	<ul> <li>IM 1 (P1)</li> <li>AVID (P4)</li> <li>Classroom Observations</li> </ul>	<ul> <li>IM 2 (P1)</li> <li>Math Tutoring (3pm, E2)</li> </ul>	<ul> <li>IM3 (P1)</li> <li>IPS (P 4)</li> <li>Math Tutoring (3pm, E2)</li> </ul>	<ul> <li>FOS (P3)</li> <li>Classroom Observations</li> </ul>
<ul><li>Reports/Data</li><li>PAPER Mtg.</li></ul>	<ul> <li>IM 1 (P1)</li> <li>AVID (P4)</li> <li>Classroom Observations</li> </ul>	<ul> <li>IM 2 (P1)</li> <li>Math Tutoring (3pm, E2)</li> </ul>	<ul> <li>IM3 (P1)</li> <li>IPS (P 4)</li> <li>Math Tutoring (3pm, E2)</li> </ul>	<ul> <li>FOS (P3)</li> <li>Classroom Observations</li> </ul>
<ul> <li>Reports/Data</li> <li>PGUSD TOSA Mtg.</li> </ul>	<ul> <li>IM 1 (P1)</li> <li>AVID (P4)</li> <li>Classroom Observations</li> </ul>	<ul> <li>IM 2 (P1)</li> <li>Math Tutoring (3pm, E2)</li> </ul>	<ul> <li>IM3 (P1)</li> <li>IPS (P 4)</li> <li>Math Tutoring (3pm, E2)</li> </ul>	<ul> <li>FOS (P3)</li> <li>Classroom Observations</li> </ul>

**Note:** Although AVID is not a Tier 2 support class, the TOSA will help with progress monitoring and small group instruction as needed. The above schedule provides a sample structure for district TOSAs to use as a model. Each site TOSA will have to identify the existing Tier 2 programs that they will need to support.

# Recommendations

The TOSA Program is built upon a response to intervention (RTI) structure. With the

TOSA program in place, PGHS will have a comprehensive academic intervention program to

help with learning loss and gap mitigation. The California Department of Education recommends

that schools develop Multiple-tiered systems of support that also include tiered behavior intervention systems. Adding staffing and support for student social-emotional needs and behavior could be a beneficial use of the funds outlined above.

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# Appendix

Exhibit 1: Learning Loss Mitigation Funding Assurances Link LLMF Assurances Exhibit 2: ESSER I Funds Uses ESSER I USES Exhibit 3: Link to RTI Tiered Intervention Strategies RTI Explained

A report by PGHS

TOSA Lawrecne

Haggquist

# EQUITY, LEARNING LOSS, & STUDENT OUTCOMES

Fall 2021

PGUSD

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#### Equity, Learning Loss, and Student Outcomes at PGHS

#### Fall 2021

For decades equity work in schools involved efforts to create opportunities for all students by improving educational inputs and processes. While these efforts did produce positive outcomes by increasing academic performance overall, the most marginalized and underprivileged students were still being left behind and achievement gaps have persisted (Berne & Stiefel, 1999; Edley & Kimney, 2018). More recently, efforts to promote educational equity have taken a stronger position on student outcomes. Closing achievement gaps has become a priority at every level. Much of the research on student outcomes, including research supported by the California Department of Education (CDE), has pointed to inequities that have left four demographic groups consistently behind the curve of academic performance. These groups are: 1. The racially or culturally disadvantaged (specifically African-American, Native-American, and Hispanic), 2. The English learner (EL) population, 3. Students from low income families, and 4. Students with disabilities.

Despite an abundance of research indicating that these groups have been historically and systematically marginalized, there are success stories. There are outlier public schools like Baldwin Academy and Central Union High School that have been recognized for their success in implementing programs that have closed achievement gaps while at the same time improving academic performance for all students (*Closing the Achievement Gap: Achieving Success for All Students*). But for schools to become outliers in the way that Baldwin, Central Union, and many others have, transformational reform needs to take place. Intervention efforts must be intentional, must have teacher buy-in— or as Fullan (2011) states, must "motivate the masses"— , and must have success indicators that are measurable.

INFORMATION/DISCUSSION B

This report aims to provide an analysis of data necessary to determine the next steps in a transformational change process that will result in more equitable student outcomes at Pacific Grove High School. Two data sets were examined: student outcomes data and staff perceptual data. The student outcomes data used was the PGHS D&F list taken at the end of August 2021. For purposes of the analysis, placement on the D&F list operationally defined academic underperformance, as students on this least could soon be at risk for not graduating or not meeting college and career readiness requirements. The D&F list was cross-referenced with demographic data reflecting the categories of historic marginalization mentioned above: 1. Racially or culturally disadvantaged, 2. EL, 3. Low income, and 4. Students with disabilities. The results were compared with larger trend data taken from the CDE and other sources (Edley & Kimney, 2018; Reardon et al., 2018). The research questions providing impetus for the analysis were:

- Does the student outcomes data at PGHS reflect the same patterns of inequity apparent in larger trend data seen at the state and national level?
- Are there any early indicators that learning loss due to COVID is occurring?
- What are the common teacher perceptions regarding the issue of learning loss?
- What are the common teacher perceptions regarding the issue of achievement gaps?

# Part 1: Student Outcomes

172 students appeared on the D&F list during the first five weeks of school. This means that 30% of the student population (577 students) were earning a D or an F in at least one class. Because PGHS recently changed data management systems, no comparison was made with prior year data. However, the numbers alone suggest that learning loss may be occurring.

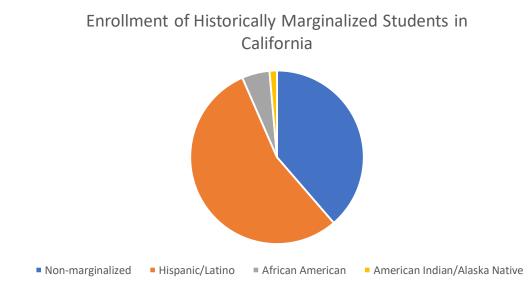
# **Racially or Culturally Disadvantaged Students at PGHS**

Of the 172 students on the list, 59 (34%) were from racially or culturally disadvantaged groups. 48 were Hispanic, 9 were African American, and 2 were Native American. The 2018-19 SARC indicated that these three subgroups together comprised 24% of the student population. The data reveals that there are 10% more racially or culturally disadvantaged students on the D&F list than would be expected if the race and culture were not a factor.

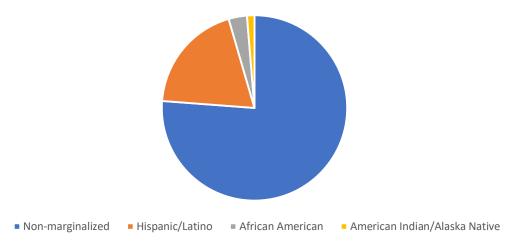
# **Racially or Culturally Disadvantaged Students in California**

The racially or ethnically disadvantaged subgroups comprise 60.5% of the student population in California. Hispanic or Latino is the largest of the subgroups at 55%. The African American subgroup is 5% of the total population. The American Indian or Alaska Native subgroup is .5%. (see Figure 1)

# Figure 1 Historically Marginalized Students in California



# Figure 2 Historically Marginalized Students at PGHS



Enrollment of Historically Marginalized Students at PGHS

The population of race or ethnically marginalized students at PGHS is considerably smaller than the state average. However, the smaller numbers may indicate a greater need for programs and support for these students (Reardon et al., 2018).

# EL Students at PGHS

There were 8 English Learner (EL) students (4.6%) and 25 re-designated Fluent English Proficient students (14.5%) (RFEP) on the D&F list at PGHS during the first 5 weeks of school. Together approximately 20% of the D&F students are facing some degree of language barrier.

# EL Students in California

In California approximately 17.7% of students are EL and 8.6% are classified as RFEP. Reardon et al. (2018) noted that in more affluent districts, districts similar to PGUSD, the EL population suffer from larger outcomes gaps, which indicates that these students may be even more vulnerable in such settings. Considering that most of the EL and RFEP population are not currently receiving Tier 2 support, PGHS may want prioritize this population of students when designing support programs and interventions.

#### Low-income Students at PGHS

30 students (17.4%) on the August 2021 D&F lists were from low income families. These 30 comprise approximately half of the total enrollment of low-income students (63 students) at PGHS. Of the low-income D&F list students, a significant majority (22 of 30) were also part of another marginalized group. Students in more than one category of marginalization and who were not receiving any Tier 2 support were identified as among the most vulnerable students in the school.

# Low-income students in California

Statewide, 58.9% of students qualify for free and reduced lunch. The free and reduced lunch program list has been used widely as a metric for the low-income designation. The percentage of low-income students at PGHS (11%) are significantly lower than the statewide average. Research on the relationship between socioeconomic status (SES) and student outcomes is overwhelmingly conclusive in supporting a strong positive correlation between wealth and student academic performance (Berne & Stiefel, 1999; Edley & Kimney, 2018; Reardon et al., 2018). Studies often point to disparities income as the fundamental cause of disparities in student outcomes.

# **Students with Disabilities**

32 students (18.5%) on the August D&F list at PGHS had IEP, which means they are part of the SPED program and are receiving wrap-around services. 12 students (7%) have accommodations through 504 plans. Because individually tailored, "wrap around," services have

been provided for these students, they are NOT considered as in need of Tier 2 support unless they qualify for some other reason. For this reason, a comparison with statewide data for this group of students was not needed for this study.

#### **Part II Teacher Perceptions**

After examining the student outcomes data described above, the researcher conducted a survey of teachers in order to gather perceptual data on the topic. While the numbers indicate that a learning loss is occurring at PGHS and that outcomes gaps are already mirroring what is happing at the state level, the reasons why remain to be explored. Using staff input to investigate reasons why problems with equity and student outcomes are persisting and seeking input on how to best remedy these problems will be critical to the long-term success of this transformational change effort. Fullan (2011) explained that executing meaningful change in schools requires change agents to "motivate the masses." With this goal in mind, the researcher asked staff to answer 4 questions on the topic of learning loss. The questions were:

- In your opinion, have student outcomes in your class revealed a significant drop in comparison to prior years?
- 2. If you answered yes to the above question, what would you say are the factors that have most significantly contributed to the drop.
- 3. Are you seeing an increase in the number of D's and F's in your class?
- 4. What are some suggestions you have to help address the issue of student learning loss (aka the Covid slide) at PGHS?

The survey closed on Friday, September 10<sup>th</sup>. There were 34 respondents, which is 100% of the current teaching staff (with the exception of substitutes). The results were as follows:

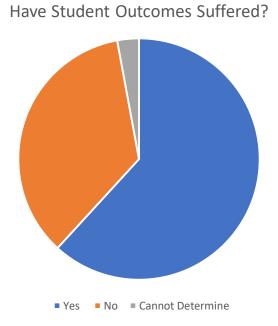
# **Staff Perceptions: Question 1**

In your opinion, have student outcomes in your class revealed a significant drop in comparison to prior years?

21 teachers (61.8% of the respondents) have seen a drop-in student outcomes. 12 respondents (35.3%) felt there was no apparent drop. The remaining 1 respondent did not have prior year experience at PGHS and, therefore, was not able to comment (see Figure 3).

# Figure 3

# Teacher Perceptions about Student Outcomes



# **Staff Perceptions: Question 2**

If you answered yes to the above question, what would you say are the factors that have most significantly contributed to the drop?

Respondents were given an option to respond by selecting from three categories, or by offering their own response under the category of "other." The categories were designed in

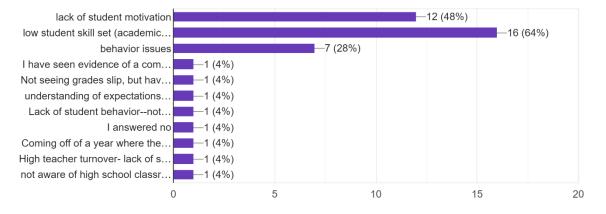
attempt to ascertain staff perceptual data regarding whether causes of the COVID slide stem from social/emotional, academic, ore behavior causes. Responses indicate that teachers believe that academic deficiencies were the primary cause of lower student outcomes. Student motivation ranked second, and behavior issues ranked third as possible causes of the lower outcomes (see Figure 4).

# Figure 4

### Teacher Perceptions about the Cause of Lower Student Outcomes

If you answered yes to the above question, what would you say are the factors that have most significantly contributed to the drop.

25 responses



# **Staff Perceptions: Question 3**

Are you seeing an increase in the number of D's and F's in your class?

Responses to Question 3 appeared to reveal a discrepancy between the perceptual data and the outcomes data outlined in Part 1 above. A majority of teachers 44.1% felt that the number of D's and F's in August did not represent an increase from prior years. 13 respondents (38.2) felt that it was too soon to tell whether an increase might occur. And 6 respondents (17.6%) felt that there was an increase. Because there was no prior year data for comparison, it

INFORMATION/DISCUSSION B

would be impossible to tell whether a discrepancy indeed exists. However, counseling and administrative staff agree that the D and F numbers seem high.

### **Staff Perceptions: Question 4**

What are some suggestions you have to help address the issue of student learning loss (aka the COVID slide) at PGHS?

This question was designed to serve as a starting point for a discussion on how to address the problems of inequitable outcomes and learning loss at PGHS. Including the teachers in the design and implementation of the transformational change will be essential, for the teachers are the key players who will be doing the critical work necessary to achieve success. Teacher responses were coded. Each response represented a data segment, and the segments were analyzed to determine overlap and apparent themes. As themes emerged through recursive analysis, a frequency table was developed. Themes with the highest frequency represent popular opinions among the staff. Several data segments did not address the question directly and were therefore excluded from the analysis. The findings were as follows:

The most common perception emerging from the analysis is that teachers feel that it is imperative to slow down, reduce the learning load for students, and be patient. Re-teaching former skills was also a popular response. Next, teachers felt that the use of differentiation strategies or professional development on the topic of differentiation was important. Setting clear schoolwide behavioral expectations also surfaced as a significant theme, as did providing explicit instruction on the topic of study skills (see Table 1).

#### Table 1

Teacher Suggestions on Possible Strategies to Address Learning Gaps and Learning Loss

Strategy	Frequency
Slow down, reduce the load, and be patient	8
Re-teach former skills	7
Differentiation	6
Explicit instruction on study skills	3
Consistent behavioral expectations	3

These suggestions can be used as a starting point for discussion about how to use a team approach and a clear strategic plan to accomplish the long-term goal of mitigating learning loss and closing achievement gaps at PGHS. As data from MAP testing and other valuable instruments like PAPER.co becomes available new insights will be gained and the team can continue to discuss, design, and implement new approaches to intervention.

### Recommendations

The data used for this study is preliminary and the findings may not be reinforced if quarter grades show a significant change or if staff perceptions change. As mentioned above, outcomes data from MAP testing and Paper.co will offer further insight into the issues of learning gaps and learning loss at PGHS. Given the current findings, however, the following recommendations are suggested for PGHS:

 Add support for social/emotional counseling and therapy services. Currently, only students with disabilities who qualify for psychological services can take advantage of services offered by Monterey County Behavioral Health. The intervention counselor at the high school does provide counseling support for many students in the at-risk population; however, the need for social/emotional support and psychological therapy has

INFORMATION/DISCUSSION B

increased significantly since the onset of the pandemic. Additionally, the intervention counselor is not a licensed therapist and cannot provide professional therapy services.

- 2. Bolster support for the EL and RFEP population. Research indicates that this population is particularly vulnerable in schools like PGHS where income disparities and language barriers are more pronounced. There is a total of 33 EL and RFEP students on the current D&F list. 4 EL students on the list are not currently enrolled in the English Language Development class. Combined with the 25 RFEP students on the list, there are 29 students with language barrier vulnerabilities receiving no intervention support.
- 3. Increase the numbers of students receiving Tier 2 support. Currently, there are a total of 52 students enrolled in 5 Tier 2 support classes (Fundamentals of Success, Independent Productive Study, IM 1 Support, IM 2 Support, and IM 3 Support) at PGHS. Of these students 25 appeared on the D&F list. This indicates that 27 of the Tier 2 students are either showing signs of growth or are misplaced in a Tier 2 program. A discussion with the Independent Productive Study (IPS) teacher and the counselors revealed that IPS is operating more as a study hall for advanced students who have a free period than a Tier 2 intervention class. This would explain why there are high numbers of students in the class who are earning straight A's. This means that of the Tier 2 intervention models suggest that 15% of students receive Tier 2 support (see TOSA Strategic Plan). Additionally, the LCAP indicates that PGHS has an intervention English class to support sophomores, however, this class is not currently on the schedule.
- 4. *Consider staff professional development in Differentiation Strategies or Social Emotional Support.* Feedback on the staff survey indicated that the topic of differentiation strategies

emerged as a common theme in the qualitative coding analysis. Utilizing teacher input in crafting selecting PD topics will help increase buy-in. It is recommended that the site conduct a follow-up survey to inquire about staff recommendations specific to the topic of professional development.

These recommendations are preliminary pending further investigation and analysis.

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 Health and Safety of Students and Schools
 Credibility and Communication
 Fiscal Solvency, Accountability and Integrity

□Consent □Action/Discussion □Information/Discussion □Public Hearing

SUBJECT: Review of District Enrollment and Attendance Since the Start of School

**DATE:** October 7, 2021

**PERSON RESPONSIBLE**: Song Chin-Bendib, Assistant Superintendent for Business Services Matthew Binder, Director Education Technology

# **<u>RECOMMENDATION</u>**:

The District Administration recommends that the Board review information regarding student enrollment and attendance since the start of school year 2021-22.

# BACKGROUND:

The Business Office has been presenting student enrollment several times during the school year. The last report was represented to the Board on August 19, 2021. At that time, the enrollment was at 1,805.

However, attendance was not part of the enrollment presentation.

# **INFORMATION**:

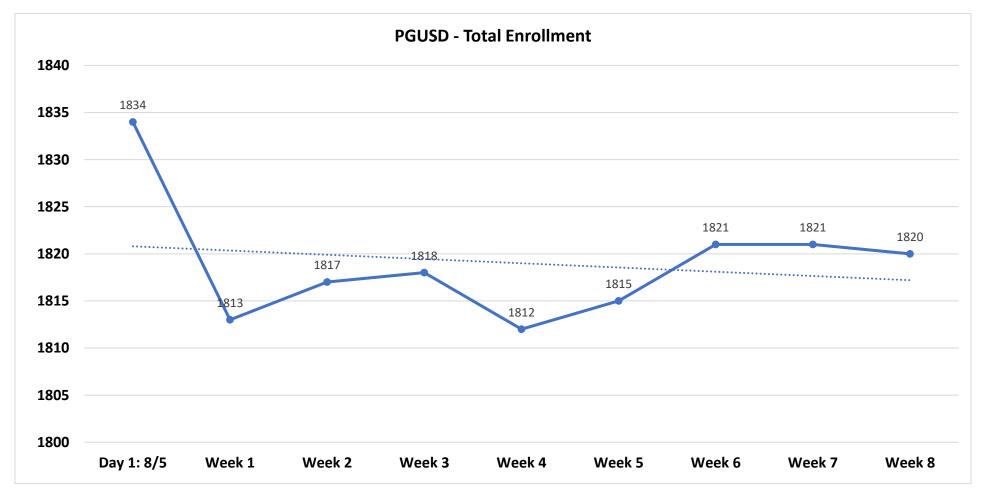
Staff will present current attendance trends since the start of the school year on:

- Percentage of absences due to modified covid quarantine
- Attendance every week by school site
- Pattern related to covid 19

# FISCAL IMPACT:

Changes in attendance have no significant impact on revenues because the District receives its funding primarily from local property taxes.

Enrollment Totals	Day 1	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8
	5-Aug	11-Aug	18-Aug	25-Aug	1-Sep	8-Sep	15-Sep	22-Sep	29-Sep
Community High	13	13	14	14	13	13	14	14	14
Forest Grove	403	405	407	408	408	408	410	410	410
Pacific Grove High	589	580	580	579	576	575	575	575	575
Pacific Grove Middle	408	390	393	392	391	393	393	392	391
Robert Down	421	425	423	425	424	426	429	430	430
Total Enrollment	1834	1813	1817	1818	1812	1815	1821	1821	1820



% Present per Week	Day 1	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8
	5-Aug	11-Aug	18-Aug	25-Aug	1-Sep	8-Sep	15-Sep	22-Sep	29-Sep
Community High	92.31	73.85	68.12	51.43	68.12	73.08	60.29	60	64.29
Forest Grove Elementary	98.01	96.29	90.5	89.84	92.25	90.13	91.58	89.75	88.63
Pacific Grove High	96.1	96.91	98.41	97.38	97.85	95.87	95.54	96.49	97.29
Pacific Grove Middle	95.1	95.78	95.1	94.54	95.55	96.43	96.23	96.23	95.2
Robert Down Elementary	96.91	95.23	91.47	89.77	93.36	92.99	93.3	91.15	92.6

#### SCHEDULE A

#### **Description and Pricing**

#### **School Packages:**

School Package 1:	200 Baseline Tests,	10 Post Injury Tests	\$ 444
School Package 2:	400 Baseline Tests,	10 Post Injury Tests	\$ 668
School Package 3:	600 Baseline Tests,	25 Post Injury Tests	\$ 892
School Package 4:	1,000 Baseline Tests,	25 Post Injury Tests.	\$1,325

#### Additional Individual Tests:

Baseline Tests:	\$2.40 each (50 Minimum)
Post Injury Tests:	\$12.00 each (10 Minimum)

#### ImPACT® QuickTest

QuickTest: An annual subscription for unlimited testing \$149.00

Customer will have access to unlimited use of the QuickTest testing for the entirety of the one-year subscription period; provided, however, Customer understands and agrees: i) this is an introductory price offering; ii) pricing is not subject to the Renewal Term provisions in Section 8 of this Agreement; and iii) prices may increase without the need for a formalized amendment to this Schedule A of the Agreement following the completion of the Initial Term or any subsequent Renewal Term.

#### **General Service Description**

The test is reachable over the internet from any industry standard browser. ImPACT Pediatric and ImPACT Quick Test are available as part of the ImPACT Toolkit app available from the Apple App Store at <a href="http://appstore.com/impacttoolkit">http://appstore.com/impacttoolkit</a>.

#### **Customer Configuration and Installation**

Please see https://www.impacttestonline.com/htmlcc/Files/sports/grg\_enus.pdf.

#### Availability and Maintenance

ImPACT Applications will use commercially reasonable efforts to make the Product available for Customer use with four (4) hours reserved for maintenance downtimes per week. These maintenance windows may require additional time. Customer designated system administrators are notified via email 24 hours in advance of any scheduled down time. Automated encrypted back-ups are performed on all Customer data.

#### Service Delivery

ImPACT Applications provides support on-line via e-mail only during Normal Business Hours, 7:00 a.m. CST to 7:00 p.m. CST, Monday through Friday, excluding legal holidays. ImPACT Applications provides technical support only to the Customer. It is Customer's sole responsibility to provide support to Test Takers.

Version 1.0 (2021 - Schools/Teams)

Schedule A

#### **Documentation**

The computer requirements for ImPACT:

https://www.impacttestonline.com/htmlcc/Files/sports/grg\_enus.pdf

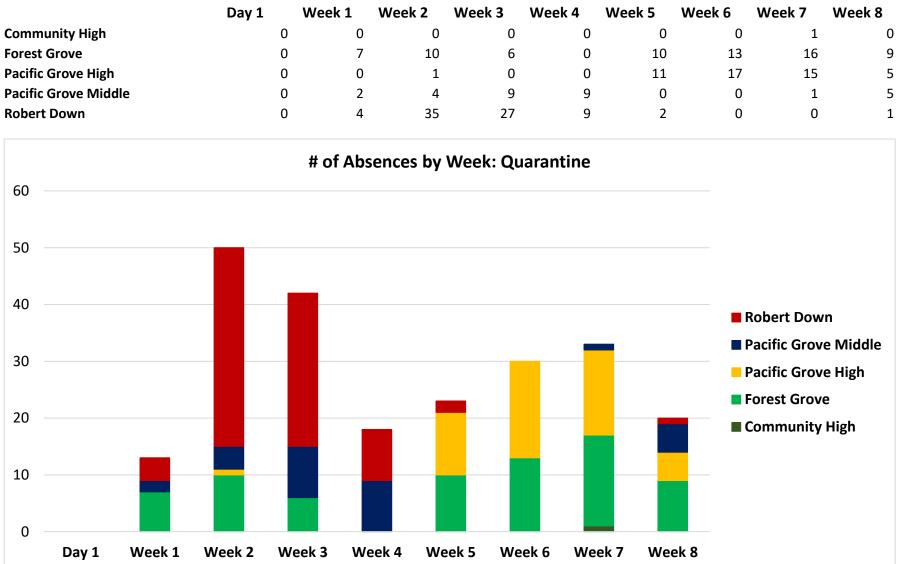
Device requirements for ImPACT Pediatric and ImPACT Quick Test:

ImPACT Pediatric and ImPACT Quick Test are currently available for use with an Apple® iPad tablet device that is running iOS Version 8 or higher. This test battery is not standardized for use with the Apple iPad mini due to screen size limitations.

#### **Clinical Reports**

Reports are available for Customer's authorized personnel to generate and use in managing the Customer's Test Takers. Additional support functions allow for follow up testing and individual results retrieval by Customer's authorized personnel.





Student Learning and Achievement
 Health and Safety of Students and Schools
 Credibility and Communication
 Fiscal Solvency, Accountability and Integrity

□Consent □Action/Discussion □Information/Discussion □Public Hearing

SUBJECT: Future Agenda Items

DATE: October 7, 2021

PERSON(S) RESPONSIBLE: Ralph Gómez Porras, Superintendent

#### **RECOMMENDATION:**

The Administration recommends that the Board review the list of future agenda items and direct Administration to add items to the list and/or schedule items for a particular agenda.

#### **BACKGROUND:**

Board Bylaw 9322 states in part that "Any member of the public or any Board member may request that a matter within the jurisdiction of the Board be placed on the agenda of a regular meeting. The request [from a member of the public] must be .... submitted to the Superintendent or designee with supporting documents and information ..."

#### **INFORMATION:**

Board members have the opportunity at the end of Open Session in a Regular Board meeting to request that items be added to the list for a future meeting. Depending upon the timeliness of the item, it may also be assigned a particular meeting date.

The following is a list of future agenda items as of the October 7, 2021 Regular Board Meeting:

- Added February 4, 2021: Return of affordable housing at a later date when more information becomes available (Fall 2021)
- Added June 17, 2021: A Board member requested a review of what the District learned from COVID (October 21, 2021)
- Added June 17, 2021: A Board member requested parent orientation to the Board meetings (currently working with CSBA to arrange for this, as of September 26, 2021)
- Added August 19, 2021: A Board member requested a review of discrimination policies and training for staff and students
- Added September 2, 2021: A Board member requested Board orientation
- Added September 2, 2021: A Board member requested staff recommendation on equity plan by November 18 Board meeting
- Added September 25, 2021: The Board will receive sample agenda formats to consider a potential change in current meeting protocols
- Added September 25, 2021: Media Relations/General Correspondence/Public Comment