



# School Board Briefing/Proposed Action Report

**Informational** (no action required by Board)     **Action Report** (Board will be required to take action)

**DATE:** July 31, 2015  
**FROM:** Dr. Larry Nyland, Superintendent  
**LEAD STAFF:** Nazik Youssef, Assistant General Counsel, [nsyoussef@seattleschools.org](mailto:nsyoussef@seattleschools.org);  
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## I. TITLE

Authorization for Consent Decree and Settlement

**For Introduction:** August 19, 2015  
**For Action:** September 23<sup>9</sup>, 2015

## II. WHY BOARD ACTION IS NECESSARY

Board Policy No. 6220, Procurement, requires Board approval of all contracts and agreements in excess of \$250,000. The proposed consent decree would exceed that amount and requires Board approval.

## III. FISCAL IMPACT/REVENUE SOURCE

If authorized, the Consent Decree would require the District to hire an Accessibility Coordinator; create a website portal to provide information about accessibility to staff, students, and the public; conduct training for staff; audit its technology for accessibility and create and implement a corrective action plan; revise procurement practices; and maintain an accessible website through frequent testing and preventative measures. The Consent Decree, and required actions, would be in effect for 3.5 years.

The costs to implement the Consent Decree are estimated to be between \$665,400 to \$815,400, as detailed below:

- Accessibility Coordinator for 3.5 years: \$385,000
- Audit and corrective action plan: \$150,000 (in the event the Accessibility Coordinator has to retain assistance from a contractor for the audit)
- Web accessibility testing for 3.5 years: \$90,000
- Training of designated staff for 3.5 years: \$105,000
- Modify procurement practices: unknown
- Attorney's fees: \$80,412.81 (one-time)
- Monetary damages to Plaintiff: \$5,000 (one-time)

The revenue source for this motion is General Fund.

Expenditure:     One-time     Annual     Other Source

#### **IV. POLICY IMPLICATION**

Contracts over \$250,000 in value must be approved by the School Board, per Board Policy No. 6220, Procurement. A Consent Decree is a contract between the District and the Plaintiffs.

#### **V. RECOMMENDED MOTION**

I move that the School Board authorize the Superintendent to take all necessary actions to resolve all claims for damages brought by Plaintiffs in their lawsuit (United States District Western District of Washington Cause No. C14-1286RAJ ) by entering the Consent Decree in exchange for full and final resolution of the Plaintiffs' claims.

#### **VI. BOARD COMMITTEE RECOMMENDATION**

This motion was reviewed at the Executive Committee meeting on August 13, 2015. At that meeting, the Committee moved this item forward to the full Board with a recommendation for approval.

#### **VII. BACKGROUND INFORMATION**

Plaintiff is a blind parent of three students. She notified the District that its websites were not accessible to blind individuals in 2012. The District relayed that information to its website provider, Edline, which could not fully remedy the accessibility issues.

Parent Plaintiff filed suit against SPS, alleging that SPS's websites and a math program, ST Math, did not accommodate individuals with sensory disabilities and are not compatible with the use of assistive technologies. The National Federation for the Blind later joined as a co-Plaintiff. The District brought a third-party complaint against Edline, alleging that Edline breached the agreement by failing to provide an ADA compliant website.

This case is currently scheduled for trial in District Court in February 2016. In order to limit attorney's fees and costs, the parties have not yet conducted discovery and have limited motion practice, focusing their efforts on resolution. Based on all the relevant facts, it is the recommendation of the Acting General Counsel and the outside counsel defending the District, that this lawsuit should be settled through entering the Consent Decree, rather than allowing this case to proceed to trial.

The District is also in separate negotiations with Edline to recover damages due to Edline's breach of contract.

If the Superintendent is authorized to settle this case with respect to Plaintiffs, the Consent Decree would be entered with the Court, constituting full and final resolution of the Plaintiffs' claims against SPS. The Consent Decree would expire at the end of a three and a half year term if SPS complies with the terms.

#### **VIII. STATEMENT OF ISSUE**

Whether the Superintendent should be authorized to enter the Consent Decree.

## **IX. ALTERNATIVES**

If the Consent Decree is not approved, the District will move forward with litigation and trial preparation. To date, the parties have not conducted discovery and have limited motion practice. If the parties proceed to trial, defense fees and costs for discovery, motions, expert witnesses, and trial would substantially increase. Because this case involves shifting fees if the Plaintiffs prevail, the monetary risk also significantly increases as Plaintiffs' counsel incur more fees and costs. Lastly, there remains a likelihood that a similar consent decree could be ordered by the Court if Plaintiffs prevail.

## **X. RESEARCH AND DATA SOURCES / BENCHMARKS**

N/A

## **XI. TIMELINE FOR IMPLEMENTATION / COMMUNITY ENGAGEMENT**

Upon approval of this motion, the District will enter into the Consent Decree. The Consent Decree would constitute full and final resolution of the Plaintiffs' claims against SPS and would expire at the end of a three and a half year term if SPS complies with the terms.

## **XII. ATTACHMENTS**

- [Consent Decree](#) – (for approval)