

AVID® IMPLEMENTATION AGREEMENT

This AVID Implementation Agreement ("Agreement") for AVID membership, materials, and training is entered into by and between the AVID Center, a California non-profit corporation ("AVID Center") and the public school system named in Attachment A ("School System").

Article I. AVID Membership Benefits

1.1 AVID Mission and Purpose:

AVID's mission is to close the achievement gap by preparing all students for college readiness and success in a global society.

AVID Center is a non-profit corporation formed to strengthen and support the AVID community through: a focus on the implementation of the AVID Eleven Essentials to assure quality; national leadership in education; innovation through current research; and service to schools nationally and internationally with quality and depth.

In articulating AVID districtwide, School System develops and incorporates a multi-year plan to support, expand and maintain quality AVID programs at all levels—elementary, middle, high if applicable.

1.2 AVID Membership:

AVID members are School Systems who sign this Agreement and their school sites listed in Attachment A as implementing the AVID program. Annual membership runs concurrently with the Term of this Agreement. AVID membership is considered honorary and not statutory per non-profit law.

1.3 AVID Program and Materials:

Membership entitles School System to implement the AVID program only at the school sites listed in Attachment A and to use the licensed AVID trademarks, libraries and student materials for the School System's AVID program pursuant to the provisions of this Agreement.

1.4 AVID Center Support:

AVID Center agrees to provide support to School System through AVID Center's national and/or division offices. Support from AVID Center's national and/or divisional offices includes:

- training for the AVID site team(s) and AVID elective teacher(s) through Summer Institute,
- training for the District Director through the two-year AVID District Leadership Training (ADL) program,
- training the District Director in the ADL sessions, divisional/state meetings and at Summer Institute to review the quality of implementation at each AVID site through the Certification process,
- AVID Center technical assistance for the District Director,
- coordination with School System's District Director to collect, report, and analyze data from AVID schools,
- ongoing AVID program development through various divisional workshops,
- permission to use the AVID Trademarks in certain circumstances beyond the scope of the limited licensed uses described in Section 4.2 below,
- electronic newsletters and access, to the resources available through the password-protected MyAVID area of AVID Center's website,
- an AVID yearbook and ACCESS academic journals for School System and each school site listed in Attachment A, and
- assistance in disseminating information about the AVID program to potential new AVID middle school and high school sites within School System.

1.4a AVID Center Support for AVID Elementary:

AVID Center agrees to provide support to School System through the Elementary District Liaison and in conjunction with AVID Center national and/or divisional offices. AVID Elementary Support includes:

- training for the AVID Elementary District Liaison at AVID Summer Institute,
- AVID Elementary sites are trained through AVID Summer Institute and Elementary Training Days,
- coordination with School System's District Director or Elementary District Liaison to collect, report, and analyze data from AVID schools,
- AVID Center technical assistance for the Elementary District Liaison,
- permission to use the AVID Trademarks in certain circumstances beyond the scope of the limited licensed uses described in Section 4.2 below,
- an AVID yearbook and ACCESS academic journals for School System and each school site listed in Attachment A, and
- assistance in disseminating information about the AVID program to potential new AVID Elementary sites within School System.

1.5 AVID Reports:

AVID Center agrees to provide School System with reports on AVID program data collected in School System and internationally.

1.6 AVID Summer Institute:

Only a member School System and its listed AVID sites may attend Implementation strands at AVID Summer Institutes. Planning districts and sites may attend all other strands.

1.7 Licensing Benefits:

Membership includes a license to use the AVID Trademarks to promote School System's implementation of the AVID program, to use and implement the AVID Methodologies, and to copy the student activity sheets from the AVID Materials at the school sites listed as implementing in Attachment A for educational purposes relating to the AVID program, all pursuant to the provisions of this Agreement. Licensing runs concurrently with the Term of this Agreement.

1.8 Annual Membership/License Fee:

School System agrees to pay AVID Center an annual membership/license fee according to the pricing schedule set forth in Attachment A.

Article II. School System Responsibilities

2.1 AVID Methods:

School System agrees to implement the AVID program according to the program guidelines and teaching methodologies (collectively "AVID Methodologies") set forth in the AVID publications, guidebooks and program materials (collectively "AVID Materials") or otherwise established by AVID Center, as the same may be modified and/or updated by AVID from time to time at AVID's discretion. School System will implement the AVID Methodologies in the AVID elective class and in academic subject area classes. School System will not materially deviate from the AVID Methodologies without the prior written consent of AVID Center Executive Director.

2.1a Elementary Methodology:

AVID Elementary classrooms will embed the AVID Methodologies across the curriculum and school day. School System will not materially deviate from the AVID Methodologies without the prior written consent of AVID Center Executive Director.

2.2 Student Selection:

School System agrees to select students for the AVID program in accordance with the selection criteria established in the AVID Eleven Essentials, as the same may be modified and/or updated by AVID from time to time at AVID's sole discretion.

2.2a Elementary Student Selection:

AVID Elementary serves all students in the elementary school(s) listed on Attachment A and does not require a student selection process.

2.3 Qualified Staff:

School System agrees to maintain, at its expense, at least one AVID District Director. The District Director will enroll in and complete or have previously received the two year AVID District Leadership (ADL) training. School System also agrees to pay the ADL training, materials and support cost ("AVID District Professional Service Fee") set forth in Attachment A for its District Director(s). AVID District Director responsibilities are listed in Article III below. School System will ensure that its District Director(s) comply with all of the provisions of Article III below.

2.3a Districtwide Qualified Staff:

School System agrees to maintain, at its expense, at least one Elementary District Liaison. The Elementary District Liaison will receive training at an AVID Summer Institute. AVID Elementary District Liaison responsibilities are listed in Article III below and include providing elementary sites with on-site support, districtwide articulation and data collection as it relates to AVID Elementary.

2.4 Staff Training:

School System agrees to provide, at its expense, ongoing training for AVID school site coordinators and AVID site teams. School System agrees to conduct AVID staff development for AVID schools in the School System based on AVID's national model of providing site coordinator workshops and site team conferences. Agenda for staff development sessions will be based on school needs, on AVID's national model for coordinator workshops, on topics and agenda provided in the AVID District Leadership training materials, and on the content areas related to educational reform initiatives in public schools in School System's state.

In addition, School System agrees to ensure that each site in their initial year of implementing the AVID program and listed as "(new)" on Attachment A send a team of eight (8) members to an AVID Center sanctioned Summer Institute. AVID Center strongly recommends second year sites send teams of at least five (5) members and encourages schools to continue to send teams to its Summer Institute in subsequent years to maintain and enhance the quality of the AVID program at their sites. School System is also responsible for each of its AVID school sites' compliance with this Agreement.

2.4a Elementary Staff Training:

School System agrees to provide at its expense, ongoing training for all AVID Elementary administrators, classroom teachers and support staff through AVID Summer Institute Teams and/or Elementary Training Days. All elementary school sites listed as “(new)” in Attachment A will send a minimum of four (4) members to an AVID Center sanctioned Summer Institute. All new staff who implement the elementary program are required to attend two cycles of training. If School System utilizes the Elementary Training Days it will be required to schedule District Visitation Days.

2.5 Data Collection:

On at least an annual basis, according to the timeline established by AVID Center, School System shall collect the program data pertaining to student demographics, course enrollment, program characteristics and related outcomes specified by AVID Center and provide that data to AVID Center via their secure web portal. School System shall also submit such individual student academic and disciplinary data concerning AVID program participants as AVID Center may specify. AVID Center’s data collection process conforms to the privacy protections specified in the federal Family Educational Rights and Privacy Act (FERPA). AVID Center will maintain as confidential any personally identifiable student information or information that is privileged or confidential under federal or state law and that is conspicuously marked by School System as “privileged” or “confidential” before School System delivers to AVID Center. AVID Center will destroy all individual student data when it is no longer needed for program reporting purposes. School System reserves the right to withhold, revise, and/or edit certain confidential data such as student names, Social Security numbers and any other information the disclosure of which would violate FERPA. AVID Center agrees not to use any of the data collected under this Paragraph 2.5 in a manner that would violate, or cause School System to violate, any applicable provision of FERPA.

2.6 AVID Libraries:

School System agrees to purchase at least one (1) complete AVID Curriculum Library for each high school and middle school listed as “(new)” in Attachment A prior to each site’s initial implementation of AVID. AVID Curriculum Library prices are set forth in Attachment A. School System shall be entitled to use those AVID libraries only at one of the specific school sites listed in Attachment A for which the materials were originally purchased. AVID libraries are non-transferable. School System and its individual AVID school sites agree to ensure that each AVID classroom has adequate AVID curriculum materials. The use of the AVID Curriculum Libraries, which are part of the AVID Materials, will also be subject to the provisions of Article IV below.

2.6a AVID Elementary Site Curriculum Packages:

School System agrees to purchase at least one (1) complete AVID Elementary Site Curriculum Package for each elementary school, listed as “(new)” in Attachment A prior to each site’s initial implementation of AVID. AVID Curriculum Library prices are set forth in Attachment A. School System shall be entitled to use those AVID Elementary Site Curriculum Packages only at one of the specific school sites listed in Attachment A for which the materials were originally purchased. AVID Elementary Site Curriculum Packages are non-transferable. School System and its individual AVID school sites agree to ensure that each AVID classroom has adequate AVID curriculum materials. The use of the AVID Elementary Site Curriculum Packages, which are part of the AVID Materials, will also be subject to the provisions of Article IV below.

2.6b AVID Curriculum Shipment(s):

School System agrees to purchase at least one (1) complete AVID Elementary Site Curriculum Package for each elementary school, listed as “(new)” in Attachment A prior to each site’s initial implementation of AVID. AVID Curriculum Library prices are set forth in Attachment A. School System shall be entitled to use those AVID Elementary Site Curriculum Packages only at one of the specific school sites listed in Attachment A for which the materials were originally purchased. AVID Elementary Site Curriculum Packages are non-transferable. School System and its individual AVID school sites agree to ensure that each AVID classroom has adequate AVID curriculum materials. The use of the AVID Elementary Site Curriculum Packages, which are part of the AVID Materials, will also be subject to the provisions of Article IV below.

3.1 Role of the AVID District Director:

In order to disseminate the AVID program effectively and to build strong District AVID programs, AVID Center coordinates training and networking of district leaders known as AVID District Directors. The primary role of the AVID District Director is to coordinate support for AVID programs. These individuals accept responsibility for ensuring the implementation of AVID program components according to the AVID Methodologies and for facilitating the development of site conditions that ensure effective AVID program implementation. AVID District Directors attend four (4) sequential AVID District Leadership trainings (ADL) in various locations to be announced throughout a two-year period. Included in ADL Sessions 1-4 are site visits to AVID schools and curriculum which develop district and regional capacity to deepen existing programs, build new programs, and provide ongoing support and staff development to AVID programs and coordinators.

3.1a Role of the AVID Elementary District Liaison:

In order to implement quality grade level effectiveness and to build strong districtwide AVID programs, AVID Center coordinates training and networking of district leaders known as Elementary District Liaisons. The primary role of the Elementary District Liaison is to coordinate support, and provide articulation opportunities for AVID Elementary sites. These individuals accept responsibility for ensuring the implementation of AVID Elementary key components according to the AVID Elementary Quality Standards and for facilitating the development of districtwide and site conditions that ensure effective elementary program implementation. The Elementary District Liaisons attend the Elementary Implementation Strand at AVID Summer Institute with their teams and help develop the districtwide vision and plan for quality implementation. The Elementary District Liaison attends and supports ongoing professional development through Elementary Training Days and site visitations.

3.2 Time Allocation for the AVID District Director:

The ability of the District Director to plan and conduct AVID activities is impacted by what proportion of the Director's job responsibilities is designated for the AVID program. For school systems with five (5) or more AVID school sites, AVID Center recommends that a substantial portion of the District Director's time be allocated to AVID oversight. AVID Center recommends that full-time allocation or multiple District Directors be considered for rural districts with ten (10) or more AVID school sites, and for urban or suburban districts with twenty (20) or more AVID school sites.

3.2a Time Allocation for the AVID Elementary District Liaison:

The ability of the Elementary District Liaison to plan and conduct AVID activities is impacted by what proportion of the Elementary District Liaison's job responsibilities is designated for the AVID programs. For School Systems with five (5) or more AVID school sites, AVID Center recommends that a substantial portion of the Elementary District Liaison's time be allocated to AVID Elementary oversight.

3.3 Staff Development:

The District Director coordinates workshops for AVID coordinators, training for AVID tutors, site team conference(s) for AVID site teams, and site team participation in the AVID sanctioned Summer Institute(s).

3.3a Districtwide Staff Development:

The Elementary District Liaison coordinates districtwide articulation meetings (administrators, teachers, support staff), site support and participates in the AVID sanctioned Summer Institute(s) according to the elementary training cycle.

3.4 Technical Support to Sites:

The District Director periodically visits each AVID school site at minimum, once per academic quarter. A site visit includes AVID classroom observation and coaching of the AVID coordinator, observation of subject area teachers who have participated in AVID staff development, meeting with the AVID site team to facilitate progress towards goals identified in the Site Team Plan, and meeting with the principal to promote administrative support for and institutionalization of the AVID program.

3.4a Elementary Technical Support to Sites:

The Elementary District Liaison visits sites, observes classrooms, coaches administration, teachers and support staff to facilitate progress toward goals identified, and to promote districtwide institutionalization of the AVID Elementary Program and AVID Elementary Quality Standards. The Elementary District Liaison attends Elementary Training Days and provides ongoing professional development for all AVID Elementary sites.

3.5 Data Collection and Research:

The District Director and/or Elementary District Liaison coordinates the collection of data as requested by the national AVID Center, and uses resources within the School System or region, as available, in order to monitor progress and success of regional AVID programs.

3.6 Building a Structure of Support:

The District Director and/or Elementary District Liaison coordinates the establishment of an AVID District team or advisory group that is made up of top level district administration, site-level representation and representatives from local post-secondary institutions. The AVID District team or advisory group ensures the implementation and fidelity of the AVID system and collaborates on issues regarding student access to and success in rigorous college preparatory courses.

3.7 Outreach:

The District Director and/or Elementary District Liaison responds to inquiries from his or her community regarding AVID program dissemination by providing information sessions and program publicity.

3.8 Partnerships with Postsecondary Institutions:

The District Director works with college and university staff to coordinate student outreach, tutor employment, AVID summer bridge programs, and support for AVID students enrolling at the postsecondary institutions.

3.9 Special Events:

The District Director facilitates AVID events (e.g., AVID student writing contest, AVID student conference, AVID family conference).

3.9a Elementary Events:

The Elementary District Liaison facilitates AVID elementary events, end of year recognition events, transition events and district articulation meetings.

3.10 Partnership with AVID Center:

The District Director and/or Elementary District Liaison coordinates communication with AVID Center regarding contracts for consultant services, technical assistance for district or regional planning, and the AVID certification process. The District Director also maintains open communication and collaboration with AVID Center by mailing information about regional AVID program activities, by participating in AVID conferences, by networking via phone/ FAX/ e-mail, by contributing to the AVID international academic journal, etc.

3.11 AVID District Leadership Training:

Four (4) ADL Sessions are designed to prepare and support the AVID District Director. The four sessions are taken in sequential order over a two year period at various facilities throughout the country. Upon completion of all four (4) sessions, AVID District Directors become certified by AVID as District Directors and continue their training by attending ongoing national, divisional, or state AVID Center meetings.

3.11a AVID Elementary District Liaison Training:

The AVID Elementary District Liaison attends training through AVID Summer Institute Elementary Implementation strands and supports the ongoing professional development of each site during Elementary Training Days.

Article IV. Licenses and Proprietary Rights

4.1 Copyright License:

Subject to School System's performance of all the provisions of this Agreement, AVID Center hereby grants to School System during the Term a non-exclusive, non-transferable, license, without the right to sublicense, to use the AVID Materials and the AVID Methodologies solely to implement the AVID program at the specific school sites listed in Attachment A, and for no other purpose. School System and its individual school sites will not photocopy, reproduce or otherwise duplicate all or any part of the AVID Materials or AVID methodologies without AVID Center's prior written consent, except as required to implement the AVID program at the individual school sites listed on Attachment A or except as required to otherwise perform School System's obligations under this Agreement. School System and its individual school sites shall not modify or otherwise alter the AVID Materials or AVID Methodologies in any way, or create or distribute any derivative works of the AVID Methodologies or the AVID Materials in any way. School System also agrees not to use or adopt the AVID Methodologies or AVID Materials with respect to any educational or other program except solely to implement the AVID program under the provisions of this Agreement. School System will not permit any of the AVID Materials or AVID Methodologies to be used by anyone other than a specific school site for which such materials were originally licensed. In addition, School System and its individual school sites agree not to sell, sublicense, transfer, lease, give away, disclose, distribute or otherwise dispose of any of the AVID Materials or AVID Methodologies to any third person or entity at any time.

4.2 Trademark License:

Subject to School System's performance of all the provisions of this Agreement, AVID Center hereby grants to School System during the Term a non-exclusive, non-transferable, indivisible license, without the right to sublicense, to use the AVID® and AVID®™ trademarks (collectively "AVID Trademarks"), (a) only as they are incorporated in the AVID Materials, and (b) only on advertising flyers and written promotional materials created by School System or the individual school sites listed in Attachment A in order to promote and implement the AVID program at the specific school sites listed in Attachment A. School System agrees that it will use its best efforts to use the AVID Trademarks in a professional manner in order to preserve and enhance AVID Center's substantial goodwill associated with the AVID Trademarks. School System agrees that it or its individual school sites will not use any of the AVID Trademarks as a corporate or business entity name, as a fictitious business name or as a trade name, and will not use any name in such capacity that is confusingly similar to the AVID Trademarks. School System further acknowledges and agrees that it and its individual school sites cannot modify or otherwise alter any of the AVID Trademarks or use any other designs or logos in conjunction with its use of the AVID Trademarks. School System cannot use the AVID Trademarks for any educational or other program other than to implement the AVID program at the school sites listed in Attachment A consistent with the above license. School System and its individual school sites will always use the proprietary symbols ® or ™ immediately adjacent to the respective AVID Trademarks as noted above with respect to their use of the AVID Trademarks. If School System or its individual school sites desire to use or place the AVID Trademarks on any products, things or other merchandising items in order to promote the AVID program, it must first seek and obtain permission from AVID Center by completing AVID Center's Request to Use AVID Center Trademark Form and complying with any of AVID Center's conditions for approval. Any such additional uses of the AVID Trademarks approved by AVID Center shall also be subject to the terms of this license and the other provisions of this Article IV.

4.3 Rights Reserved:

Notwithstanding anything to the contrary in this Agreement, all rights not specifically granted in this Agreement to School System shall be reserved and remain always with AVID Center.

4.4 Property Rights:

The parties agree that except to the limited extent expressly set forth in Paragraphs 4.1 and 4.2 above, AVID Center shall solely own and have exclusive worldwide right, title and interest in and to the AVID Trademarks, AVID Materials and AVID Methodologies, to all modifications, enhancements and derivative works thereof, and to all United States and worldwide trademarks, service marks, trade names, trade dress, logos, copyrights, rights of authorship, moral rights, patents, know-how, trade secrets and all other intellectual and industrial property rights related thereto ("Intellectual Property Rights"). School System shall not challenge, contest or otherwise impair AVID Center's ownership of the AVID Trademarks, AVID Materials or AVID Methodologies, or any of AVID Center's applications or registrations thereof, or the validity or enforceability of AVID Center's Intellectual Property Rights related thereto. School System also agrees not to submit any applications or otherwise attempt to register for itself or others any of the AVID Trademarks, AVID Materials or AVID Methodologies.

4.5 Enforcement:

The parties agree that except to the limited extent expressly set forth in Paragraphs 4.1 and 4.2 above, AVID Center will be irreparably harmed and money damages would be inadequate compensation to AVID Center in the event School System breaches any material provision of Article IV. Accordingly, all of the provisions of this Agreement shall be specifically enforceable by injunctive and other relief against School System without the requirement to post a bond, in addition to any other remedies available to AVID Center, for School System's breach of any provision of this Agreement.

4.6 Proprietary Notices:

School System agrees not to remove, alter or otherwise render illegible any trademark, copyright or other proprietary right notices or other identifying marks from the AVID Materials or any permitted copies thereof.

4.7 Infringement:

School System agrees to notify AVID Center of any conduct or actions on the part of third parties of which it becomes aware that might be deemed an infringement or other violation of AVID Center's rights in the AVID Trademarks, AVID Materials or AVID Methodologies. In such event, AVID Center shall have the sole right to bring an action for infringement or other appropriate action with respect thereto. AVID Center shall exclusively control the prosecution and settlement of any such action. School System agrees to fully cooperate with AVID Center in any such action and provide AVID Center with all information and assistance reasonably requested by AVID Center.

4.8 Compliance with Laws:

School System agrees that the AVID Trademarks, AVID Materials and AVID Methodologies will be used in accordance with all applicable laws and regulations and in compliance with any regulatory or governmental agency that has jurisdiction over School System and its educational programs.

Article V. Quality Control Procedures

5.1 Quality Standards:

To ensure the successful implementation of the AVID program, School System agrees to comply with the quality standards described in the AVID Materials and in the AVID training sessions or otherwise established by AVID Center from time to time (collectively "AVID Quality Standards").

5.2 Annual Certification:

School System agrees to participate in AVID Center's annual program certification process whereby each AVID school site completes a self-study that is certified by School System's AVID District Director. AVID Center will train School System's AVID District Director in the certification process and will provide consultation and review. School System will forward the results of this annual certification to AVID Center in a timely fashion. AVID Center will make the final determination of each school site's certification status.

5.3 AVID Quality Assurances:

AVID Center has the right in its sole discretion to review School System's compliance with the AVID Quality Standards, including without limitation the annual certification process described above. The Certification process provides a two-year timeline to encourage program improvement, if necessary, in individual schools. If as part of the Annual Certification process or otherwise AVID Center suggests certain changes be made to School System's AVID program, School System agrees to implement such changes. As per Certification guidelines, AVID school sites that do not meet the AVID Quality Standards or do not implement AVID Center's suggested changes may be designated "affiliate" schools. AVID school sites and/or school districts which do not meet the AVID Quality Standards or do not implement AVID Center's suggested changes for multiple years may be asked to discontinue the AVID program at the end of a school year.

Article VI. Period of Agreement

6.1 Term:

The Term of this Agreement shall be as set forth in Attachment A unless earlier terminated as provided herein ("Term").

6.2 Cessation of AVID Program:

AVID Center requests that if School System determines that it will permanently cease using or implementing the AVID program in the School System at the end of the school year, the School System must notify AVID Center in writing by May 31 of that year. AVID Center retains the right to verify that any School System which conducted the AVID program in prior years but has indicated it is discontinuing or has discontinued the AVID program has: (a) ceased to offer the AVID elective class at the subject school site(s), (b) ceased any further use of the AVID Materials and AVID Methodologies, and (c) ceased any further use or display of the AVID Trademarks.

Article VII. Compensation

7.1 Payment Schedule:

School System agrees to pay AVID Center for membership/license fees, AVID Materials, training and other services according to the fee schedule detailed in Attachment A. AVID Center will invoice School System, and payments are due within 30 days from receipt of invoice.

Article VIII. Status of Parties

8.1 Independent Contractors:

AVID Center and School System are independent contractors and their relationship is that of a licensor and licensee. This Agreement is not intended to create a relationship of employment, agency, partnership, joint venture, or similar arrangement between the parties. Neither party shall have any power or authority to bind or commit the other party in any respect, contractually or otherwise. In no event shall either party, or any of its respective officers, agents, or employees, be considered the officers, agents, or employees of the other party.

Article IX. Authority

9.1 AVID Center Warranty:

AVID Center warrants that the person signing this Agreement is authorized per AVID Center bylaws to enter into this Agreement on behalf of the non-profit AVID Center and to bind AVID Center to perform all of its obligations under this Agreement. AVID Center warrants that it is a 501(c)(3) non-profit educational corporation and the developer and sole source distributor of the AVID program.

9.2 School System Warranty:

School System warrants that it has obtained all necessary approvals and taken all necessary steps to enter into this Agreement. The person signing on behalf of School System warrants that he or she has the authority to enter into this Agreement on behalf of School System and to bind School System to perform all of its obligations under this Agreement.

Article X. Termination

10.1 Termination for Cause:

Subject to the last sentence of this Paragraph 10.1, either party has the right to terminate this Agreement at any time if the other party is in material breach of any warranty, term, condition or covenant of this Agreement (including, but not limited to, School System being materially out of compliance with the intellectual property licenses and related provisions of this Agreement, or with the AVID Quality Standards) and (i) fails to cure that breach within thirty (30) days (or ten (10) days in the case of a breach involving the nonpayment of fees) of receiving notice from the non-breaching party which specifies such material breach and demands cure thereof, or (ii) fails to provide the non-breaching party assurance that the breach will be cured within a longer period of time which is acceptable to the non-breaching party. In the case of a breach by School System that is not cured as described above, AVID Center shall have the right to terminate School System's right to conduct all or part of the AVID program at one or more specific school sites, by giving written notice to School System of the sites and programs so terminated, without terminating this Agreement with respect to the other programs and school site(s) subject to this Agreement. Any termination under this Paragraph 10.1 will become effective automatically upon expiration of the cure period in the absence of a cure or mutually agreed-upon resolution. Notwithstanding the foregoing, any breach by School System of any of the provisions of Article IV shall be deemed non-curable and AVID Center shall have the right to immediately terminate this Agreement upon the breach by School System of its obligations under Article IV.

10.2 Other Terminations:

Notwithstanding Paragraph 10.1 above, either party may terminate this Agreement: (a) immediately upon the bankruptcy, dissolution, or insolvency of the other party, or (b) upon thirty (30) days prior written notice to the other party.

10.3 Cessation of Use:

Upon termination or expiration of this Agreement: (a) the licenses in Article IV shall automatically terminate and revert to AVID Center, (b) School System shall thereafter immediately discontinue the AVID program in all of its school sites, and cease using the AVID Materials, AVID Methodologies or the AVID Trademarks in any way, and (c) School System shall pay any unpaid balances to AVID Center and remain liable for its obligations or other actions that accrued or occurred prior to the termination date.

10.4 Cumulative Remedies:

All rights and remedies conferred herein shall be cumulative and in addition to all of the rights and remedies available to each party at law, equity or otherwise. In addition, Sections 4.3, 4.4, 4.5, 4.6, 7.1 and all of the provisions of Articles X and XI shall survive the termination or expiration of this Agreement.

Article XI. General Provisions

11.1 Governing Law and Venue:

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, then (i) if School System is the party initiating that action (e.g., as plaintiff), this Agreement shall be interpreted under California law, the action shall be submitted to the exclusive jurisdiction of the applicable court in San Diego, California, and venue for the action shall be San Diego, California; and (ii) if AVID is the party initiating the action (e.g., as plaintiff), this Agreement shall be interpreted under the law of the State in which School System is located, the action shall be submitted to the exclusive jurisdiction of the applicable court in the city and State where School System is located (set forth in § 3 of Attachment A), and venue for the action shall be that city and State.

11.2 Entire Agreement:

All Attachments to this Agreement are fully incorporated herein. This Agreement, including Attachments, constitutes the entire agreement between the parties regarding this subject matter hereof and supersedes all prior oral or written agreements or understandings regarding this subject matter. This Agreement can only be amended by a written document signed by both parties.

11.3 Limitation of Liability:

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR NOT, THAT ARE IN ANY WAY RELATED TO THIS AGREEMENT, THE BREACH THEREOF, THE USE OR THE INABILITY TO USE THE AVID PROGRAM, THE RESULTS GENERATED FROM THE USE OF THE AVID PROGRAM, LOSS OF GOODWILL OR PROFITS AND/OR FROM ANY OTHER CAUSE WHATSOEVER.

11.4 Severability:

If any provision of this Agreement is judicially determined to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect.

11.5 Attorney's Fees:

In the event a dispute arises regarding this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, in addition to other relief to which it is entitled.

11.6 Assignment:

School System acknowledges that the favorable terms of this Agreement were granted solely to School System, and that the substitution of any party by School System would destroy the intent of the parties. Accordingly, School System shall have no right to assign, delegate, transfer or otherwise encumber this Agreement or any portion thereof without AVID Center's prior written consent, which can be withheld in its sole discretion.

11.7 Notice:

All notices, requests or other communications under this Agreement shall be in writing, and shall be sent to the designated representatives of the parties at the addresses set forth below their signatures on this Agreement or in Attachment A, and shall be deemed to have been duly given on the date of service if sent by facsimile (provided a hard copy is sent in one of the manners specified herein), or on the day following service if sent by overnight air courier service with next day delivery and with written confirmation of delivery, or five (5) days after mailing if sent by first class, registered or certified mail, return receipt requested. Each party is required to notify the other party in the above manner of any change of address.

11.8 Counterparts:

This Agreement may be executed in several counterparts that together shall be originals and constitute one and the same instrument.

11.9 Waiver:

The failure of a party to enforce any of its rights hereunder or at law or in equity shall not be deemed a waiver or a continuing waiver of any of its rights or remedies against the other party, unless such waiver is in writing and signed by the party to be charged.

11.10 Facsimile and Electronic Signatures:

The parties hereto (i) each agree to permit the use, from time to time and where appropriate under the circumstances, of signatures sent via facsimile or electronically in a .pdf file or other digital format in order to expedite the transaction(s) contemplated by this Agreement; (ii) each intend to be bound by its respective signature sent by that party via facsimile or electronically in a .pdf file or other digital format; (iii) are each aware that the other, and the other's agents and employees, will rely on signature pages sent via facsimile or electronically in a .pdf file or other digital format; and (iv) each acknowledge such reliance and waive any defenses to the enforcement of this Agreement or of other documents effecting the transactions contemplated by this Agreement based on the signature page being a facsimile, .pdf copy or other digital format. The parties covenant to each other that each time they send a signature page via facsimile or electronically in a .pdf file or other digital format; they will in a timely manner send the other party the original signature page(s).

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates opposite their signatures, but such dates shall not alter the Term of this Agreement as specified in Attachment A

AVID Center,
a California Non-Profit Corporation 501(c)(3)

Ector County Independent School District
TX

Signature: AVID Center Authorized

Signature: Superintendent or Designee

Printed or Typed Name

Printed or Typed Name

Title

Title of Designee

Date

Date

AVID Center
9246 Lightwave Avenue, Suite 200
San Diego, CA 92123
Employer ID # 33-0522594