



Memorandum of Understanding
Between
San Bernardino County Superintendent of Schools
and
San Bernardino County

This Memorandum of Understanding made and entered into on this 7th day of December 2021, by and between San Bernardino County, hereinafter referred to as "**PARTNER**" and the San Bernardino County Superintendent of Schools, hereinafter referred to as "**SUPERINTENDENT**."

The purpose of this Memorandum of Understanding (MOU) is to clearly establish roles, responsibilities, and expectations, between the **SUPERINTENDENT** and the **PARTNER**, in expanding the PreK perpetual licenses for the San Bernardino County Early Literacy Transmedia Project for the Footsteps2Brilliance Enterprise App, School Edition, Bilingual Version, Summer Climb, Clever Kids University: Pre-Reader, and Clever Kids University: I Can Read ("Programs") to all kindergarten through 3rd grade students, and teachers, administrators, organizations, and families that serve such students in San Bernardino County. The expansion would include providing 117,175 additional licenses for kindergarten through 3rd grade students.

NOW, THEREFORE, in consideration of the above, the **SUPERINTENDENT** and **PARTNER** mutually agree as follows:

1. Background

- a. This MOU is to create a partnership between the **PARTNER** and **SUPERINTENDENT** that will benefit the PreK through 3rd grade student population in San Bernardino County by providing access to the Programs. The goal will be to increase early literacy using the Programs early literacy platform.
- b. Collaboration between the **PARTNER** and **SUPERINTENDENT** will provide a cohesive effort to reach the student and community population throughout San Bernardino County to provide access to educational resources and content that will promote early literacy.
- c. "Appendix A" (attached) outlines key data points of the Programs that align the goals and monitoring of progress on a monthly and yearly basis.

2. Term

- a. This MOU shall become effective December 7, 2021 and shall continue until December 6, 2024 for the initial term. The initial term will be three (3) years with an option to extend for an additional two (2) years based on Footstep2Brilliance, hereinafter referred to as **VENDOR**, providing sufficient metrics and criteria of performance that justifies the effectiveness of the Programs. The final approval to continue services for the additional two years will be the joint decision of the **PARTNER** and **SUPERINTENDENT** through an amendment to this MOU approved by

authorized individuals for both parties.

3. Funding

- a. **SUPERINTENDENT** and **PARTNER** agree to the following fee schedule:
- i. The initial term of this MOU is a three (3) year agreement with an upfront payment in the amount of \$3,455,565.00, which will be paid by the **SUPERINTENDENT** to the **VENDOR**. The **PARTNER** agrees to reimburse the **SUPERINTENDENT** in the amount of \$1,727,782.50 for one half of the upfront payment made by **SUPERINTENDENT** to **VENDOR**.
 - ii. If the metrics and criteria of performance justify the effectiveness of the Programs and this MOU is amended to include the two (2) year option (for a total of five (5) years for this MOU), then the **SUPERINTENDENT** agrees to pay to **VENDOR**, a remaining balance of \$2,166,416.00 for the remaining two (2) years. The **PARTNER** agrees to reimburse the **SUPERINTENDENT** in the amount of \$1,083,208.00 for one half of the addition two (2) year option.
 - iii. The total cost for the five (5) year agreement (assuming the two (2) year option is exercised) is \$5,621,981.00.
 - iv. The **SUPERINTENDENT** and **PARTNER** agree to split the cost associated with these Programs as outlined above.
 - v. The **SUPERINTENDENT** understands that the payments from **PARTNER** may include an amount from the American Rescue Plan Act (ARPA) Local Fiscal Recovery Fund (CFDA Number, 21.027) and agrees to comply with any and all ARPA Recovery Fund requirements as well as all applicable laws, regulations, and rules pertaining to expenditures and reimbursements described in this MOU.

4. Accounting and Auditing

- a. The **SUPERINTENDENT** shall retain documentation of all uses of the funds reimbursed by **PARTNER**, including but are not limited to, invoices and/or sales receipts in a manner consistent with the 2 CFR Part 200 (Uniform Guidance).
- b. The **SUPERINTENDENT** shall implement robust internal controls and effective monitoring to ensure compliance with the 2 CFR 200 Subpart E regarding Cost Principles for all uses of the funds reimbursed by **PARTNER**.
- c. The **SUPERINTENDENT** shall generate a report (Report) of actual expenditures on both of the accrual and cash basis accounting. The Report shall be submitted along with an invoice for reimbursement in the format as prescribed by **PARTNER**. Upon review/approval by **PARTNER**, **PARTNER** shall reimburse **SUPERINTENDENT** within 30 days of the completion of the **PARTNER** review.
- d. The **SUPERINTENDENT** shall cooperate in having an audit completed by **PARTNER** at **PARTNER**'s option and expense. Any other audit required in connection with these Programs will be completed by the **SUPERINTENDENT** at its own expense.
- e. The **SUPERINTENDENT** shall repay to **PARTNER** any reimbursement for ARPA funding that is determined by subsequent audit to be unallowable under the ARPA within the time period required by the ARPA, but no later than one hundred twenty (120) days of **SUPERINTENDENT**'s receiving notice of audit findings, which time shall include an opportunity for the **SUPERINTENDENT** to respond to and/or resolve the findings. Should the findings not be otherwise resolved and the **SUPERINTENDENT** fail to reimburse moneys due **PARTNER** within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both parties or required

by the ARPA, **PARTNER** reserves the right to withhold future payments due to the **SUPERINTENDENT** from any source under **PARTNER**'s control.

5. Indemnification

- a. **SUPERINTENDENT** agrees to indemnify, defend (with counsel approved by **PARTNER**) and hold harmless the **PARTNER** and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages and/or liability resulting from the **SUPERINTENDENT'S** negligent acts or omissions which arise from the **SUPERINTENDENT'S** performance of its obligations under this MOU.
- b. **PARTNER** agrees to indemnify, defend (with counsel approved by **SUPERINTENDENT**) and hold harmless the **SUPERINTENDENT** and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages and/or liability resulting from the **PARTNER'S** negligent acts or omission which arise from the **PARTNER'S** performance of its obligations under this MOU.
- c. In the event the **PARTNER** and/or the **SUPERINTENDENT** is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the MOU, the **PARTNER** and/or **SUPERINTENDENT** shall indemnify the other to the extent of its comparative fault. Furthermore, if the **PARTNER** or **SUPERINTENDENT** attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the **PARTNER** and **SUPERINTENDENT** agree that any alleged negligence of the employee shall not be construed against the employer of that employee.
- d. **SUPERINTENDENT** and **PARTNER** agree to notify the other party of any claims, administrative actions, or civil actions determined to be within the scope of this MOU within ten (10) calendar days of such determination. **SUPERINTENDENT** and **PARTNER** further agree to cooperate in the defense of any such actions. Nothing in this MOU shall establish a standard of care for or create any legal right for any person not a party to this MOU.

6. Insurance

The **SUPERINTENDENT** agrees to provide insurance set forth in accordance with the requirements herein. If the **SUPERINTENDENT** uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the **SUPERINTENDENT** agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the **SUPERINTENDENT** shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the **SUPERINTENDENT** and all risks to such persons under this contract.

If **SUPERINTENDENT** has no employees, it may certify or warrant to the **PARTNER** that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the **PARTNER'S** Director of Risk Management.

With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation

insurance.

- b. Commercial/General Liability Insurance – The **SUPERINTENDENT** shall carry General Liability Insurance covering all operations performed by or on behalf of the **SUPERINTENDENT** providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
- a. Premises operations and mobile equipment.
 - b. Products and completed operations.
 - c. Broad form property damage (including completed operations).
 - d. Explosion, collapse and underground hazards.
 - e. Personal injury.
 - f. Contractual liability.
 - g. \$2,000,000 general aggregate limit.

- c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the **SUPERINTENDENT** is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the **SUPERINTENDENT** owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

e. Additional Insured

All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the **PARTNER** and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the **PARTNER** to vicarious liability but shall allow coverage for the **PARTNER** to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

f. Waiver of Subrogation Rights

The **SUPERINTENDENT** shall require the carriers of required coverages to waive all rights of subrogation against the **PARTNER**, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the **SUPERINTENDENT** and **SUPERINTENDENT’S** employees or agents from waiving the right of subrogation prior to a loss or claim. The **SUPERINTENDENT** hereby waives all rights of subrogation against the **PARTNER**.

g. Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the **PARTNER**.

h. Severability of Interests

The **SUPERINTENDENT** agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between the **SUPERINTENDENT** and the **PARTNER** or between the **PARTNER** and any other insured or additional insured under the policy.

i. Proof of Coverage

The **SUPERINTENDENT** shall furnish Certificates of Insurance to the **PARTNER** Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and **SUPERINTENDENT** shall maintain such insurance from the time **SUPERINTENDENT** commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the **SUPERINTENDENT** shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

j. Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

k. Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

l. Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the **PARTNER** has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the **PARTNER** will be promptly reimbursed by the **SUPERINTENDENT** or **PARTNER** payments to the **SUPERINTENDENT** will be reduced to pay for **PARTNER** purchased insurance.

m. Insurance Review

Insurance requirements are subject to periodic review by the **PARTNER**. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the **PARTNER**. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the **PARTNER**, inflation, or any other item reasonably related to the **PARTNER'S** risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. **SUPERINTENDENT** agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the **PARTNER** to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the **PARTNER**.

7. General Agreement Terms and Conditions

- a. Without the prior written consent of the other party, this MOU is not assignable by **SUPERINTENDENT** or **PARTNER** either in whole or in part.
- b. If a legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification of Insurance requirements.
- c. This MOU shall be governed by and construed according to the laws of the State of California.
- d. The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.
- e. The **SUPERINTENDENT** and the **PARTNER** each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the **SUPERINTENDENT** for services rendered and expenses reasonably incurred prior to the effective date of termination.

8. Entire Agreement and Agreement Execution

- a. This MOU, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this MOU not expressly set forth herein are of no force or effect. This MOU is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this MOU and signs the same of its own free will.
- b. This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same MOU. The parties shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed MOU upon request.

IN WITNESS WHEREOF, SUPERINTENDENT and **PARTNER** have executed this Agreement as of the day and year last written below.

**SAN BERNARDINO COUNTY
SUPERINTENDENT OF SCHOOLS**

Richard DeNava, Assistant Superintendent,
Business Services, San Bernardino
County Superintendent of Schools

Date: _____

SAN BERNARDINO COUNTY

Curt Hagman, Chairman

Date: _____

“Appendix A”



San Bernardino County Superintendent of Schools

Ted Alejandre, County Superintendent

San Bernardino County Early Literacy Transmedia Project F2B Contract Data Narrative

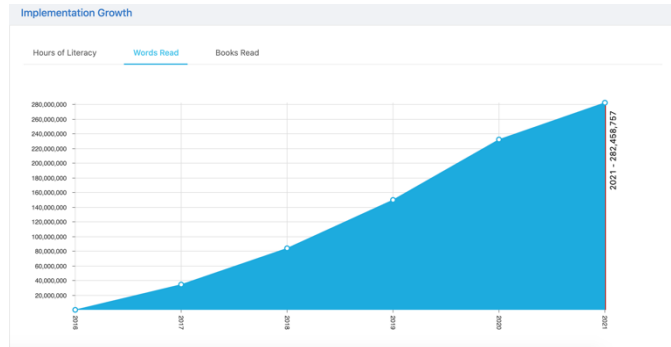
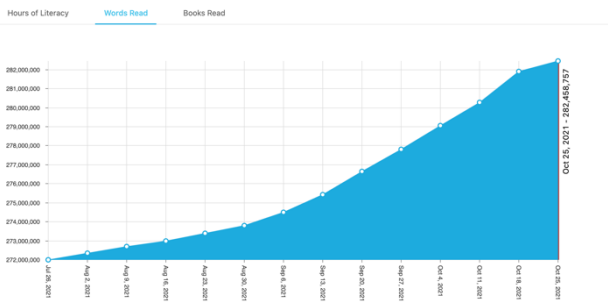
The following data points will be used to monitor progress towards the identified Early Literacy Transmedia Project success indicators as they relate to the contracted partnership with Footsteps2Brilliance. Data points have continuity across all three phases of the SBCSS F2B contracted services.

Data Point #1: Progressive Data Aligned to F2B Contract Phase 1

- **Goal:** Increase [access](#) to early literacy [experiences](#) for children [ages 0-5](#) using the F2B mobile early literacy platform.
- **Measurement:** F2B program data for the [number of words](#) read by children
- **Progress Monitoring:** A [quarterly](#) F2B data report will be developed to identify progress and determine next steps
- **Reporting:** See below for sample of F2B data reports for [words read / exposure](#)

Monthly

Annual

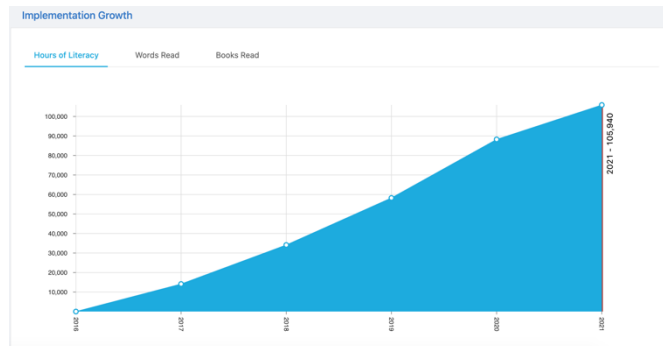
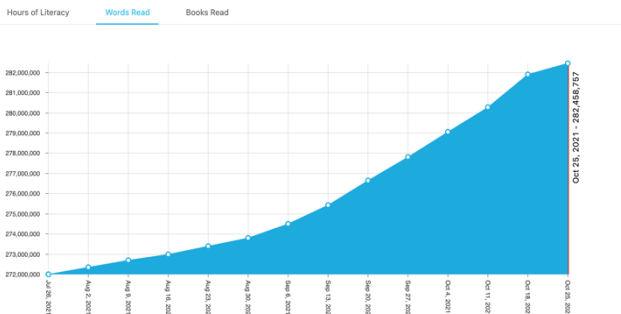


Data Point #2: Progressive Data Aligned to F2B Contract Phase 2

- **Goal:** Increase [engagement](#) in early literacy [experiences](#) for children [ages 0-5](#) using the F2B mobile early literacy platform.
- **Measurement:** F2B program data for the [number of minutes](#) read by children
- **Progress Monitoring:** A [quarterly](#) F2B data report will be developed to identify progress and determine next steps
- **Reporting:** See below for sample of F2B data reports for [minutes / hours engaged in reading activities](#)

Monthly

Annual

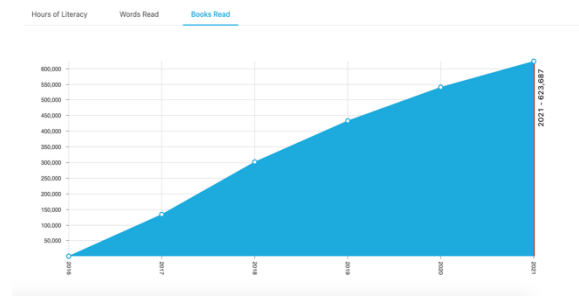
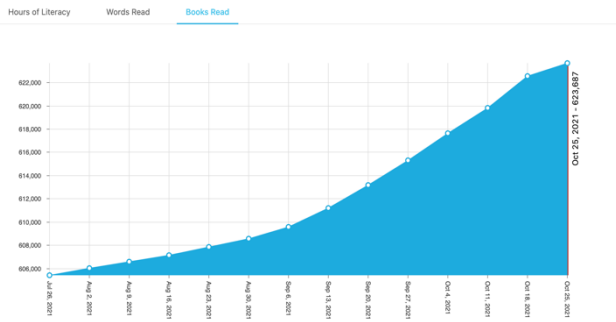


Data Point #3: Progressive Data Aligned to F2B Contract Phase 3

- **Goal:** Increase [achievement](#) in early literacy [experiences](#) for children [ages 0-8](#) using the F2B mobile early literacy platform.
- **Measurement:** F2B program data for the [number of books](#) read by children
- **Progress Monitoring:** A [quarterly](#) F2B data report will be developed to identify progress and determine next steps
- **Reporting:** See below for sample of F2B data reports for [books read / exposure](#)

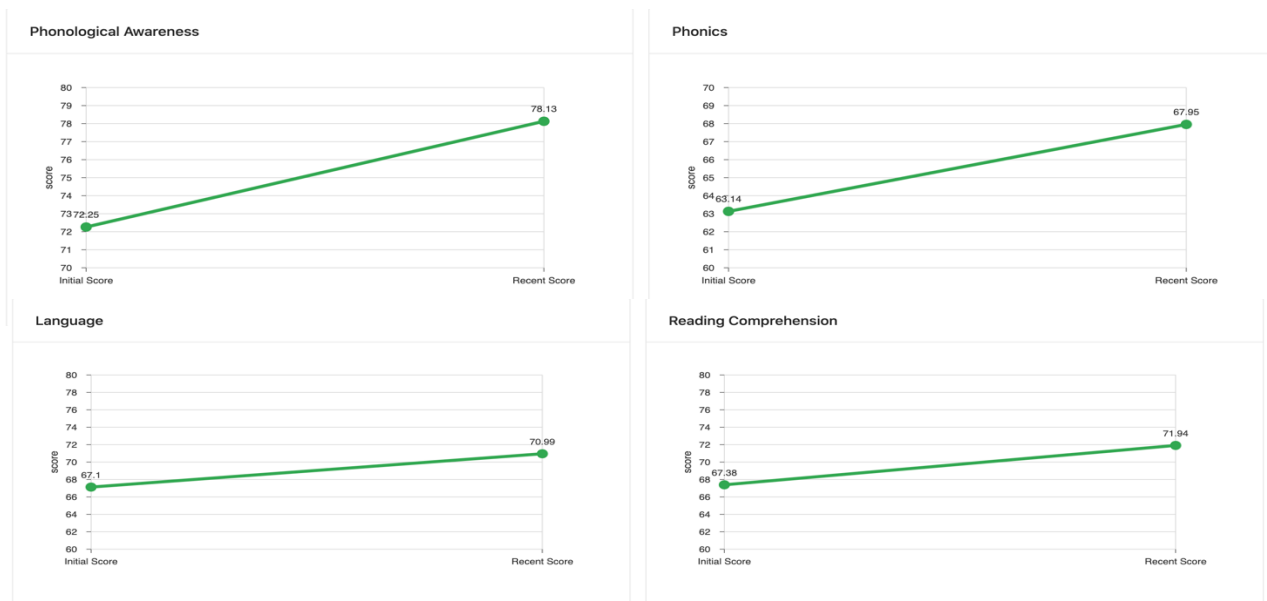
Monthly

Annual



Data Point #4: Formative Early Literacy F2B Data

- **Goal:** Increase [development](#) in early literacy [skills](#) for children [ages 0-8](#) using the F2B mobile early literacy platform.
- **Measurement:** F2B program data for the [foundational early literacy skills](#)
- **Progress Monitoring:** A [bi-annual](#) F2B data report will be developed to identify progress and determine next steps
- **Reporting:** See below for sample of F2B data reports for [foundational early literacy skills](#)



Data Point #5: Summative Literacy Proficiency Data

- **Goal:** Increase [achievement](#) in early literacy [proficiency](#) for children [by 3rd grade](#) as a result of using the F2B mobile early literacy platform.
- **Measurement:** CA Dashboard [3rd grade ELA CAASPP](#) assessment and [English Learner Progress](#) on the ELPAC assessment

- **Progress Monitoring:** An [annual](#) outcome data report will be developed to identify progress and determine next steps
- **Reporting:** See below for sample of outcome data reports for [ELA CAASPP proficiency](#)
ELA CAASPP **English Learner ELPAC**

