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SUPERIOR COURT
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1 CYNTHIA L. RICE (State Bar No. 87630)
2 DOROTHY JOHNSON (State Bar No. 132849)
3 **California Rural Legal Assistance, Inc.**
4 631 Howard Street, Suite 300
5 San Francisco, CA 94105
6 Telephone: (415) 777-2752
7 Facsimile: (415) 543-2752
8 Attorneys for Petitioners/Plaintiffs MARIA MEDINA
9 and ANGELICA ARECHIGA

6 DEBORAH ESCOBDO (State Bar No. 89093)
7 JENNIFER R. RODRIGUEZ (State Bar No. 258925)
8 **Youth Law Center**
9 200 Pine Street, Suite 300
10 San Francisco, CA 94104
11 Telephone: (415) 543-3379
12 Facsimile: (415) 956-9022

10 Attorneys for Petitioners/Plaintiffs
11 Additional counsel listed on signature page

12 **IN THE SUPERIOR COURT OF CALIFORNIA**
13 **FOR THE CITY AND COUNTY OF SAN FRANCISCO**

14
15 LUIS ALEJO, MARIA MEDINA, ANGELICA
16 ARECHIGA, JOEL AVILA, FRENTE INDÍGENA
17 OAXAQUEÑO BINACIONAL, COMITÉ PRO
18 EDUCACIÓN, PARENTS FOR UNITY, CALIFORNIANS
19 TOGETHER,

Case No.:

09-509568

PETITION FOR WRIT OF
MANDATE

18 Petitioners/Plaintiffs,

19 v.

20 JACK O'CONNELL, in his official capacity as the State
21 Superintendent of Public Instruction; STATE BOARD OF
22 EDUCATION; SOPHIA ANGELIS, JAMES D.
23 ASCHWANDEN, RAE BELISLE, ALAN BERSIN, RUTH
24 BLOOM, YVONNE CHAN, GREGORY W. JONES,
25 DAVID P. LOPEZ, JORGE LOPEZ, THEODORE R.
MITCHELL, JOHNATHAN XAVIER WILLIAMS, in their
official capacities as members of the Board of Education;
CALIFORNIA DEPARTMENT OF EDUCATION, the
STATE OF CALIFORNIA and DOES 1 THROUGH 10,
inclusive,

Respondents/Defendants.

1 Petitioners/Plaintiffs allege that:

2 **I.**

3 **PRELIMINARY STATEMENT**

4 1. Petitioners/Plaintiffs (“Petitioners”) are taxpayers, parents, and community-based
5 organizations who bring this action to compel the Respondents/Defendants State
6 Superintendent of Public Instruction, the State Board of Education, the California Department
7 of Education and the State of California (“Respondents”) to fulfill their responsibility to
8 monitor and enforce state and federal statutory and regulatory provisions that address the unique
9 educational needs of some of California’s most vulnerable and academically “at risk” student
10 groups.

11 2. Respondents are under express constitutional, statutory and regulatory
12 obligations to provide equal educational opportunity to all students in California and to
13 administer state and federal funds allocated for specialized educational programs in a manner
14 that complies with the funding and contractual obligations imposed as a condition of that
15 funding. Since Respondents do not directly provide educational services, they meet these
16 obligations by providing funding to Local Educational Agencies (“LEAs”) which include both
17 school districts and County Offices of Education (“COEs”). As part of their obligation under
18 the California Constitution, as well as state and federal legal obligations and contractual
19 agreements, state educational agencies must monitor and oversee the use of those funds by
20 school districts and COEs to ensure that educational mandates are met and to ensure that
21 funding used for specialized education programs supplements, and does not supplant, general
22 funding.
23

24 3. Respondents established and implemented a monitoring process and developed
25 monitoring instruments for the purpose of reviewing the specialized educational programs of

1 schools, school districts and COEs. However, over the course of the last several years,
2 Respondents have reduced the number of monitoring staff, changed the criteria for identifying
3 the schools subject to onsite monitoring, reduced the number of school districts, COEs and
4 school sites monitored annually, increased the number of years between monitoring cycles, and
5 limited the number of program elements that are reviewed at any particular school district or
6 COE during a monitoring review. As a result, school districts and COEs can go eight years or
7 more without being monitored with respect to certain programs, irrespective of academic
8 achievement results or other indicators of school success.

9
10 4. On February 3, 2009, Respondent State Superintendent of Public Instruction Jack
11 O'Connell announced the immediate suspension, for at least one year, of all "non-mandated"
12 onsite Categorical Program Monitoring reviews. Despite statutory and regulatory mandates to
13 the contrary, Superintendent O'Connell included in his designation of "non-mandated" reviews,
14 monitoring scheduled for programs serving English Learner ("EL") or limited English
15 proficient ("LEP") students, Migrant, Neglected or Delinquent and Homeless children and
16 youth and other specialized educational programs designed to address the educational
17 deficiencies of millions of California children. Additionally, Petitioners are informed and
18 believe that since at least March 23, 2009, virtually all monitoring with respect to these
19 programs has ceased and California Department of Education staff has been re-assigned to other
20 activities.

21
22 5. The federal statutes and regulatory provisions that govern these programs provide
23 school districts and COEs with supplemental funding to ensure that each homeless child has
24 equal access to the same free, appropriate public education as provided to other youths and that
25 the barriers to enrollment and retention of homeless children are removed. They also provide

1 school districts and COEs with supplemental funding to address the unique needs of children
2 and youth who are in locally operated juvenile correctional facilities or are attending
3 community day programs for delinquent children and youth, and to provide assistance to
4 children and youth who are neglected or at-risk of dropping out of school. State and federal
5 statutory provisions create express requirements for specialized educational programs and
6 services to ensure that LEP students have equal access to educational opportunities, are properly
7 identified and are provided instruction that teaches them English and facilitates their ability to
8 learn the core academic curriculum. Other statutory provisions address the special needs of the
9 children of migrant farm workers, whose academic status is impacted by irregular school
10 attendance, chronic health defects, frequent educational disruption and language handicaps and
11 ensure that Migrant children have access to appropriate educational programs that address their
12 special needs stemming from their families' frequent moves as they follow the crops.

14 6. Millions of dollars in state and federal supplemental funds are distributed to
15 school districts and COEs throughout California under these specialized educational programs.
16 This funding is often referred to as categorical funding. Respondents are responsible for
17 ensuring that state and federal categorical funds are properly spent and that the students who are
18 the intended beneficiaries of this funding have access to the programs and services mandated by
19 law. The State Superintendent's unilateral and abrupt suspension of monitoring resulted in the
20 cancellation of onsite monitoring reviews which had already been scheduled for the 2008-2009
21 school year and will likely result in the continued suspension of reviews for at least half of the
22 2009-2010 school year in direct contravention of Respondents' express monitoring
23 responsibilities.

25 ///

1 7. Many of these programs are specifically designed to ensure the elimination of
2 educational barriers facing language minority, immigrants and other children of color. The
3 Respondents' decision to suspend monitoring of these particular program mandates disparately
4 affects those groups and offends California statutory and constitutional laws including the
5 fundamental right to education found in Article IX, §§ 1 and 5 of the California Constitution.

6 8. With respect to programs for Educationally Disadvantaged Youth, Cal. Educ.
7 Code §§ 54000, *et seq.*, Respondent State Board of Education has failed to fulfill its mandatory
8 duty to adopt regulations setting forth the standards and criteria to be used in the administration,
9 monitoring, evaluation, and dissemination of programs funded under those sections, unlawfully
10 delegating the decisions regarding monitoring and evaluation of those programs to Respondents
11 Superintendent O'Connell and the California Department of Education who have suspended
12 monitoring of those programs as well.
13

14 9. Petitioners seek a writ of mandate compelling Respondents to comply with their
15 mandatory duties to regularly and effectively monitor California schools to ensure that state and
16 federal funds are expended in a manner consistent with state and federal mandates, and that
17 educationally disadvantaged children receive access to the educational programs and services to
18 which they are constitutionally and statutorily entitled.
19

20 **II.**
21 **THE PARTIES**

22 10. Petitioner LUIS ALEJO is a taxpayer and resides in Santa Cruz County. Within
23 one year prior to the commencement of this action, LUIS ALEJO paid taxes, including property
24 taxes, to Santa Cruz County and the State of California. Approximately twenty-eight (28)
25 percent of all students enrolled in schools located in Santa Cruz County are identified as LEP.

1 The Pajaro Valley Unified School District has the highest concentration of LEP students in the
2 County, with forty-four (44) percent of its students identified as LEP. This district is designated
3 as the Migrant Region 11 Office and was allocated close to \$5 million in Migrant Education
4 funds during fiscal year 2007-08. Petitioners are informed and believe that nine of the twelve
5 school districts in Santa Cruz County were last subject to an onsite monitoring review of their
6 LEP and/or Migrant programs during the 2003-04 school year and that their next reviews would
7 not occur until 2010-2011, a full seven years after their last review.
8

9 11. Petitioner MARIA MEDINA is a taxpayer and resides in Fresno County. Within
10 one year prior to the commencement of this action, MARIA MEDINA paid taxes, including
11 property taxes, to Fresno County and the State of California. Petitioner MEDINA has been
12 actively involved in the local Migrant Parent Advisory Committee for Migrant Region IV in
13 Fresno County. Petitioner MEDINA has served as a member of the California State Migrant
14 Parent Advisory Committee ("MPAC"), and as the MPAC President. The MPAC addresses
15 issues of importance to migrant children enrolled in California public schools throughout the
16 state. The State of California estimates that there are over 300,000 migrant students attending
17 California schools during the regular school year and 178,000 attending summer/intersession
18 classes. Approximately \$115 million in migrant funding was allocated to Migrant programs
19 throughout the state in 2007-2008. Eighty-six (86) school sites, districts and Migrant Regions
20 providing services to California migrant children and youth were scheduled to undergo
21 monitoring reviews during 2008 – 2009. As a result of Respondents' suspension of onsite
22 reviews, Petitioners are informed and believe that all such monitoring reviews scheduled to take
23 place after February 3, 2009 have been suspended and will not take place as currently
24 scheduled.
25

1 12. Petitioner, JOEL AVILA is a taxpayer and resides in Monterey County. Within
2 one year prior to the commencement of this action, JOEL AVILA paid taxes to Monterey
3 County and the State of California. Petitioner Avila has been and is actively engaged in
4 supporting educational services for LEP children and Migrant children in Monterey County.
5 Two elementary school districts located within Monterey County, Alisal Union Elementary and
6 Chualar Union Elementary, were scheduled to undergo an onsite Categorical Program
7 Monitoring review of their LEP programs in 2008-09. Both school districts enroll high
8 percentages of LEP students. Approximately seventy (70) percent of all students enrolled in
9 the Alisal Union Elementary School District are identified as LEP. Respondents allocated
10 approximately \$476,000.00 in Title III English Learner funds to the Alisal School District for
11 fiscal year 2008-09. Approximately, eighty-two (82) percent of all students enrolled in the
12 Chualar Union Elementary School District are identified as LEP. Respondents allocated
13 approximately \$23,000.00 in Title III English Learner funds to the Chualar School District for
14 fiscal year 2008-09. The Migrant programs at each of these school districts were also scheduled
15 to be monitored during the onsite review that was cancelled. Migrant youth enrolled in both of
16 these school districts are to be served by Migrant Region 16, which was allocated
17 approximately \$11 million in Migrant Education funds during fiscal year 2007-08. As a result
18 of Respondents' suspension of onsite reviews, the 2008-09 LEP and Migrant onsite reviews for
19 these two school districts were cancelled, despite the fact that it had been five years since either
20 school district had undergone such a review.
21

22
23 13. Petitioner ANGELICA ARECHIGA is the parent of two children identified as
24 LEP students and is a resident of unincorporated North Shore, County of Riverside, California.
25 She is concerned about educational services for educationally disadvantaged children in her

1 community. Each of her children is enrolled in the Coachella Valley Unified School District
2 and attends the Saul Martinez Elementary School. Coachella Valley Unified School District
3 Migrant and LEP programs were last subject to an onsite monitoring review in 2006-07. If the
4 monitoring cycle is not extended as a result of the current suspension, this school district would
5 undergo another review in 2010-2011. Approximately sixty-one (61) percent of all students
6 enrolled in the Coachella Valley Unified School District are identified as LEP. Respondents
7 allocated approximately \$1,037,590.00 in Title III English Learner funds to the Coachella
8 Valley Unified School District for fiscal year 2008-09. Migrant youth enrolled in Coachella
9 Valley Unified School District schools are served by Migrant Region 7, which was allocated
10 approximately \$1.7 million in Migrant Education funds during fiscal year 2007-08.
11

12 14. Petitioner FRENTE INDÍGENA OAXAQUEÑO BINACIONAL (“FRENTE”) is
13 an unincorporated, non-profit, community-based coalition of organizations, communities and
14 individuals founded in 1991 in Los Angeles, California. Its members are primarily immigrants
15 of indigenous origin from specific regions in the Mexican State of Oaxaca, namely the Mixteca,
16 Zapoteca, and Triqui regions. The group’s objectives include the promotion of human, labor
17 and civil rights of these Oaxacan indigenous communities and members; and the maintenance
18 of the cultural, social and linguistic integrity of these same communities and members. Among
19 its members in California are parents of children enrolled in California public schools who are
20 identified as Migrant and/or LEP students who speak Spanish and/or an indigenous language.
21 Among FRENTE’s projects is a parent and membership training project that emphasizes the
22 civic participation of its members in local community affairs including active participation in
23 public schools. FRENTE offices are located in Fresno County, California. Some of FRENTE’s
24 members have paid taxes, including property taxes, within one year prior to the commencement
25

1 of this action to the State of California and to Fresno County. FRENTE brings suit on its own
2 behalf and that of its members.

3 15. Petitioner COMITÉ PRO EDUCACIÓN is an unincorporated, non-profit
4 community organization formed in 1998 by parents of LEP students, teachers, and concerned
5 community members living and working in the city of Pittsburg, Contra Costa County,
6 California. COMITÉ PRO EDUCACIÓN is dedicated to ensuring that all children have a right
7 to an equal education in a respectful and humane environment. It works to build community
8 awareness of the need to improve schools and to empower parents to play a more active role in
9 their children's education. School districts located within Contra Costa County were scheduled
10 to undergo monitoring reviews during the 2009-10 school year. Petitioners are informed and
11 believe that, as a result of Respondents' suspension of onsite reviews, all such monitoring
12 reviews scheduled to take place after February 3, 2009 have been suspended and will not take
13 place as currently scheduled. Approximately thirty (39) percent of all students enrolled in
14 Contra Costa County schools come from homes where English is not the first language and of
15 these, seventeen (17) percent are identified as LEP. Migrant youth enrolled in Contra Costa
16 County schools are served by Migrant Region 23, which was allocated over \$8 million in
17 Migrant Education funds during fiscal year 2007-08. LEAs in Contra Costa County were
18 allocated over \$457,000.00 in Part D, Neglected or Delinquent funding for fiscal year 2008-09
19 and approximately \$275,000.00 in Education for Homeless Children and Youth funding for
20 fiscal year 2008-09. Some of the members of COMITÉ PRO EDUCACIÓN have paid taxes,
21 including property taxes, within one year prior to the commencement of this action to the State
22 of California and to Contra Costa County. COMITÉ PRO EDUCACIÓN brings suit on its own
23 behalf and on behalf of its members.
24
25

1 16. Petitioner PARENTS FOR UNITY is a non-profit, community-based, grassroots
2 organization dedicated to improving the general welfare of low-income parents and, in
3 particular, immigrant families by promoting the academic success of their children. Many of its
4 members reside in Los Angeles County and some have paid taxes, including property taxes,
5 within one year prior to the commencement of this action to the State of California and to Los
6 Angeles County. PARENTS FOR UNITY strives to empower low-income, immigrant and
7 other minority parents with knowledge of their legal rights and of their children's right to equal
8 educational opportunities. The majority of its members are immigrant parents with children
9 who are identified as LEP and who are enrolled in the Los Angeles Unified School District and
10 other school districts located within Los Angeles County. PARENTS FOR UNITY is
11 concerned about the suspension of onsite monitoring reviews and how this action may impact
12 educational services available to LEP and other students and the rights of immigrant parents to
13 voice concerns about policies that impact their children. Migrant youth enrolled in Los Angeles
14 County schools are served by Migrant Region 10, which was allocated approximately \$5.7
15 million in Migrant Education funds during fiscal year 2007-08. LEAs in Los Angeles County
16 were allocated close to \$8 million in Part D, Neglected or Delinquent funds for fiscal year 2008-
17 09 and approximately \$1,065,000.00 in Education for Homeless Children and Youth funds for
18 fiscal year 2008-09. Prior to the suspension of onsite reviews, approximately sixty-eight (68)
19 school sites, school districts and COEs within Los Angeles County were scheduled to undergo a
20 monitoring review of their LEP, Migrant, Neglected or Delinquent and/or Homeless programs
21 during 2008-09. Petitioners are informed and believe that all such monitoring reviews
22 scheduled to take place after February 3, 2009 have been suspended and will not take place as
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1 currently scheduled. PARENTS FOR UNITY brings suit on its own behalf and that of its
2 members.

3 17. Petitioner CALIFORNIANS TOGETHER is a coalition comprised of
4 educational, civil rights, parent, and immigrant rights organizations that mobilizes to ensure
5 adequate programs, materials, resources, and teaching for the 2.7 million school children in
6 California whose home language is other than English. CALIFORNIANS TOGETHER is
7 committed to ensuring that all children have a quality education and that they are afforded the
8 skills, opportunities, and knowledge to fully participate economically, intellectually, politically,
9 and socially in a democratic society. Its members join together to be a continuing voice
10 statewide on behalf of language minority students in California public schools. They also seek
11 to ensure state and federal categorical funds are actually used to address the unique needs of
12 students who are intended to benefit from this funding. Its members work on multiple fronts
13 (local, regional, state) supporting teachers and parents to give testimony and speak about
14 policies affecting LEP students in the state public school system. CALIFORNIANS
15 TOGETHER member organizations include educators who teach in schools that were scheduled
16 to undergo an onsite monitoring review during the 2008-09 school year. Many of its members
17 reside in Los Angeles County, as well as other counties in California, and some have paid taxes,
18 including property taxes, within one year prior to the commencement of this action to Los
19 Angeles and other counties and to the State of California. CALIFORNIANS TOGETHER
20 brings suit on its own behalf and that of its members.

21
22
23 18. Respondent Jack O'Connell is the STATE SUPERINTENDENT OF PUBLIC
24 INSTRUCTION ("STATE SUPERINTENDENT") for the State of California and is a
25 Constitutional officer of the State of California charged with the supervision of all California

1 schools and school districts. Cal. Educ. Code § 33112. In such capacity, he is obligated to take
2 all necessary steps to ensure that school districts comply with state and federal legal
3 requirements concerning educational programs and services. He is also the Director of
4 Education in whom all executive and administrative functions of the CALIFORNIA
5 DEPARTMENT OF EDUCATION are vested, and is the Executive Officer for the STATE
6 BOARD OF EDUCATION. Cal. Educ. Code §§ 33111 and 33301-03. He is sued in his official
7 capacity.

8
9 19. Respondent STATE BOARD OF EDUCATION and its members, Sophia
10 Angelis, James D. Aschwanden, Rae Belisle, Alan Bersin, Ruth Bloom, Yvonne Chan, Gregory
11 W. Jones, David P. Lopez, Jorge Lopez, Theodore R. Mitchell and Johnathan Xavier Williams
12 (“STATE BOARD”) is an agency of the State of California charged with determining the
13 policies governing California schools and with adopting and promulgating rules and regulations
14 for the supervision and administration of all local school districts that are not inconsistent with
15 the laws of the State of California. The STATE BOARD must ensure that local school districts
16 comply with state and federal law requirements concerning educational services. Cal. Educ.
17 Code §§ 33030-33032. The STATE BOARD is also required to adopt regulations setting forth
18 the standards for monitoring, evaluating and, if necessary, terminating funds for programs for
19 Educationally Disadvantaged Youth. Cal. Educ. Code §§ 54000, *et seq.* The members of the
20 STATE BOARD are sued in their official capacities.

21
22 20. Respondent CALIFORNIA DEPARTMENT OF EDUCATION (“CDE”) is the
23 department of state government responsible for administering and enforcing laws related to
24 education. Cal. Educ. Code § 33308. CDE is charged with cooperating with federal and state
25

1 agencies in prescribing rules and regulations and instructions required by those agencies. Cal.
2 Educ. Code § 33316(b).

3 21. The STATE BOARD, the STATE SUPERINTENDENT, and the CDE are “State
4 Educational Agencies” within the meaning of the Elementary and Secondary Education Act, the
5 “No Child Left Behind Act”, 20 U.S.C. § 7801 (26)(E), and are charged with administering and
6 overseeing funds that are distributed to local educational agencies in a manner that is consistent
7 with the underlying purposes and specific provisions of these federal programs. 20 U.S.C. §§
8 6301, *et seq.*, 42 U.S.C. §§ 11431, *et seq.*

9 22. The STATE BOARD, the STATE SUPERINTENDENT, and the CDE are also
10 “State Educational Agencies” within the meaning of the Equal Educational Opportunities Act,
11 20 U.S.C. §§ 1703 and 1720(a), and have an obligation to supervise local school districts to
12 ensure compliance with the state and federal laws that address the language needs of
13 California’s LEP students. 20 U.S.C. § 1703(f).

14 23. Respondent STATE OF CALIFORNIA is a state government and “grantee”
15 within the meaning of 34 C.F.R. § 80.3 and receives federal grants from the U.S. Department of
16 Education to provide specialized education services to California children and youth consistent
17 with the provisions of federal law and the express conditions of grant agreements.
18

19 24. At all relevant times, Respondents, as well as the public schools under their
20 supervision, were the recipients of federal financial assistance. As a condition of securing that
21 assistance, Respondents represented to the federal government that they are in compliance with
22 Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulations.
23 The CDE and many school districts in the State of California receive funding from the U.S.
24 Department of Education.
25

1 25. Respondents Does 1 through 10 are sued herein under fictitious names, their true
2 names and capacities being unknown to petitioners. When said true names and capacities are
3 ascertained, Petitioners, after obtaining leave of Court if necessary, will amend this Petition by
4 inserting their true names and capacities here.

5 **III.**

6 **JURISDICTION AND VENUE**

7 26. Petitioners' claims arise under California law. This Court has jurisdiction under
8 California Code of Civil Procedure §§ 525 - 526 and 1085, and California Government Code §
9 11350.
10

11 27. Pursuant to California Code of Civil Procedure § 401(1), venue for this action
12 properly lies in the Superior Court of California in and for the County of San Francisco, where
13 the Attorney General maintains an office.

14 **IV.**

15 **STATUTORY FRAMEWORK**

16 28. Respondents each have explicit, ministerial duties to comply with the
17 constitutional and statutory duties imposed upon them by a myriad of state and federal laws.

18 **The California Constitution**

19 29. Under the California Constitution the right to education is fundamental and
20 Respondents are ultimately responsible for ensuring that all students, including LEP, Migrant,
21 Neglected or Delinquent and Homeless children and youth have access to equal educational
22 opportunities. Article IX, §§ 1 and 5 of the California Constitution. Implicit in these provisions
23 is Respondents' duty to provide appropriate oversight to ensure that school districts and COEs
24
25

1 are, in fact, providing equal educational opportunities to all children and youth enrolled in
2 California schools.

3 **Equal Educational Opportunity Act**

4 30. The Equal Educational Opportunities Act of 1974 ("EEOA") 20 U.S.C §§ 1701,
5 *et seq.*, requires that state and local educational agencies take appropriate action to ensure that
6 LEP students overcome language barriers that impede their equal participation in a regular
7 instructional program. 20 U.S.C. § 1703(f). To fulfill their obligation under the EEOA,
8 Respondents must establish minimum guidelines for the implementation of programs and
9 services that address the language needs of California's 1.5 million LEP students. They must
10 also supervise and monitor school districts and COEs to ensure that the State's LEP guidelines
11 are actually implemented so that language barriers facing California's LEP students can, in fact,
12 be overcome. Compliance with the requirements of the EEOA on the part of both state and
13 local educational agencies is not contingent upon the receipt of any federal funding or grants.

15 31. Respondent STATE OF CALIFORNIA established minimum criteria for the
16 implementation of programs to address the language needs of LEP students enrolled in
17 California schools. Program requirements are found in the provisions of the "English Language
18 Education for Immigrant Children Initiative." Cal. Educ. Code §§ 300, *et seq.* and 5 C.C.R. §§
19 11300, *et seq.*. Other state statutory provisions govern the following: 1) the process by which
20 LEP students are properly reclassified or redesignated as Fluent English Proficient, Cal. Educ.
21 Code § 313; 2) how LEP student are assessed and initially identified, Cal. Educ. Code § 62002;
22 3) the establishment of LEP parent advisory committees, Cal. Educ. Code § 62002.5; and, 4)
23 staffing qualifications for LEP programs, Cal. Educ. Code § 44253.1. School districts and
24 COEs must comply with these state statutory provisions enacted to ensure equal educational
25

1 opportunity for LEP students irrespective of whether or not these entities receive any state or
2 federal categorical funding. 5 C.C.R. § 4200. Respondents are expressly mandated to monitor
3 the provision of programs and services to LEP students by LEAs. Cal. Educ. Code § 52177.

4 When passing the “English Language Education for Immigrant Children Initiative” the voters of
5 California acknowledged that immigrant children have high drop out rates and low English
6 literacy skills. The initiative further confirmed that “[t]he government and the public schools of
7 California have a moral obligation and a constitutional duty to provide all of California's
8 children, regardless of their ethnicity or national origins, with the skills necessary to become
9 productive members of our society, and of these skills, literacy in the English language is
10 among the most important.” Cal. Educ. Code § 300.

12 **No Child Left Behind**

13 32. The No Child Left Behind Act (“NCLB”) 20 U.S.C. § 6301, *et seq.* was
14 signed into law in 2002. NCLB amended and reauthorized the Elementary and Secondary Act
15 (ESEA) of 1965, which is the largest federally funded education program and provides funding
16 to state educational agencies conditioned upon compliance with federal mandates regarding
17 academic standards, assessment and accountability. One of the underlying purposes of NCLB is
18 to meet “the educational needs of low-achieving children in our Nation’s highest-poverty
19 schools, limited English proficient children, migratory children, children with disabilities, Indian
20 children, neglected or delinquent children, and young children in need of reading assistance.” 20
21 U.S.C. § 6301(2). Consistent with this underlying purpose, state educational agencies may
22 apply for several formula-driven grants programs to receive supplemental funding to address the
23 specific needs of several of the student groups identified above.
24

25

1 33. Respondents are authorized to administer federally funded education programs
2 in California. Cal. Educ. Code § 12010. Respondent STATE OF CALIFORNIA applied for and
3 received funding under the ESEA and NCLB and agreed to comply with all of its provisions and
4 to observe all of its requirements. Cal. Educ. Code §§ 12030-12031. Respondents are
5 responsible for ensuring that federal funds distributed to LEAs are properly used and must
6 monitor all subgrant supported activities to assure compliance with all applicable federal
7 requirements and that performance goals are being achieved. Respondents' monitoring must
8 cover each program, function or activity. 34 C.F.R. § 80.40(a). The failure on the part of
9 Respondents to comply with any term of a grant received from the U.S. Department of
10 Education, whether stated in a federal statute or regulation, an assurance, in its state plan or
11 application, may result in the suspension or termination of the federal grant. 34 C.F.R. § 80.43.

13 34. The "Education of Migratory Children" program is one of several that
14 Respondents receive funding for under NCLB, Title I. Part C. 20 U.S.C. §§ 6391-6376. Several
15 of the stated purposes of this program are to: 1) support high quality educational programs for
16 migratory children and to help reduce the educational disruptions and other problems that result
17 from repeated moves; 2) ensure that migratory children are provided with appropriate
18 educational services that address their special needs; 3) help migratory children overcome
19 educational disruptions, cultural and language barriers, social isolation, health related problems,
20 and other factors that inhibit their ability to do well in school. 20 U.S.C. § 6391. Federal funds
21 for California's Migrant Education program are administered through 23 Migrant Regional
22 Offices serving students in 47 of the state's 58 counties. Respondents allocated close to \$115
23 million of federal Migrant Education funds to the 23 Migrant Regions during fiscal year 2007-
24 2008. In order to receive this funding, the State must provide assurances to the federal
25

1 government that the funds will be used for programs and projects by the State and local
2 educational agencies to identify and address the special educational needs of migratory children.
3 20 U.S.C. § 6396(a)(1). Title I, Part C funds granted to Respondents and allocated to LEAs for
4 migratory children must supplement and not supplant general funds or other categorical
5 resources at the school. 20 U.S.C. § 6396(a)(1)(B)(iii). In its Consolidated Application,
6 Respondents represented to the U.S. Department of Education that it would conduct onsite
7 compliance and fiscal reviews of this program.

8
9 35. Respondents also applied for and receive funding under NCLB, Title 1, Part D,
10 “Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent,
11 or At-Risk.” 20 U.S.C. §§ 6421-6472. Several of the underlying purposes of this program are
12 to: 1) improve educational services for youth in local and state institutions for neglected or
13 delinquent youth; 2) provide these youth with the services needed to make a successful transition
14 from institutionalization to further schooling or employment; and, 3) provide drop-outs, and
15 youth returning from correctional facilities or institutions for neglected or delinquent youth with
16 a support system to ensure their continued education. 20 U.S.C. § 6421. Petitioners are
17 informed and believe that Respondents allocated approximately \$25 million in federal Neglected
18 or Delinquent funds to 68 school districts and COEs in fiscal year 2008-2009. In its
19 Consolidated Application, Respondents represented to the U.S. Department of Education that it
20 would conduct onsite compliance reviews of this program.

21
22 36. Respondents also receive funding under NCLB, Title III, “English Language
23 Acquisition, Language Enhancement, and Academic Achievement Act.” 20 U.S.C. §§ 6801-
24 7014. Several of the underlying purposes of this program are to: 1) ensure that LEP children and
25 youth attain English proficiency; 2) assist all LEP students to achieve high levels in core

1 academic subjects; 3) develop high-quality language instructional educational programs; 4)
2 promote parental participation in language instructional programs; and, 5) hold state educational
3 agencies, LEAs and schools accountable for increases in English proficiency and core academic
4 content knowledge of LEP students. 20 U.S.C. § 6812. Title III sub-grants allocated to LEAs by
5 a state educational agency must be used to improve the education of LEP students, by assisting
6 them to learn English and to meet challenging state academic content and student academic
7 achievement standards. 20 U.S.C. § 6825. To be approved to receive Title III funds by a state
8 educational agency, a LEA must not be in violation of any state law, including state
9 constitutional laws, regarding the education of LEP students. 20 U.S.C. § 6826(d)(5). Title III
10 funds granted to Respondents and allocated to LEAs for LEP students must supplement and not
11 supplant general funds or other categorical resources at the school. 20 U.S.C. § 6825(g).

13 37. Respondents also receive funding under NCLB Title X, Part C, the “McKinney-
14 Vento Homeless Education Assistance Improvements Act of 2001.” 42 U.S.C. §§ 11431, *et*
15 *seq.*. The policies underlying this Act include the following: 1) each State educational agency
16 shall ensure that each child of a homeless individual and each homeless youth has equal access
17 to the same free, appropriate public education ... as provided to other children and youths; 2)
18 homelessness is not a sufficient reason to separate students from the mainstream school
19 environment; 3) homeless children and youths should have the same opportunity to meet the
20 same challenging State student academic achievement standards to which all students are held.
21 42 U.S.C. § 11431(1)-(4). Petitioners are informed and believe that approximately \$8 million in
22 Education for Homeless Children and Youth funding was allocated to school districts and COEs
23 in fiscal year 2008-2009. Pursuant to the McKinney-Vento Act, these funds must be used to
24 carry out the above-listed policies; to provide activities and services for homeless children that
25

1 allows appropriate enrollment, attendance, and success in school; to carry out a required State
2 plan; to develop and implement professional development programs for school staff to heighten
3 their awareness of and capacity to respond to problems facing homeless youth. 42 U.S.C. §
4 11432(d).

5 38. Respondents submitted a Consolidated Application to the U.S. Department of
6 Education, applicable to the current school year, requesting funding for several NCLB grant
7 programs. In this application, Respondents describe how the funding for each program would be
8 distributed to LEAs and how it would be administered by the STATE OF CALIFORNIA. In this
9 application to the federal government, pursuant to 20 U.S.C. § 7844(a), Respondents made an
10 assurance that each program would be administered in accordance with all applicable statutes,
11 regulations, program plans, and applications, and specifically stated that onsite monitoring would
12 be conducted.

13
14 **California Specialized Program and Monitoring Provisions**

15 39. With the largest number of Migrant students in the United States, the STATE
16 OF CALIFORNIA enacted its own statute to address the needs of migratory students. The
17 provisions of California's Migrant Education Act, Cal. Educ. Code §§ 54440, *et seq.*, are also
18 subject to Respondents' monitoring processes to ensure that its provisions are all properly
19 implemented. In enacting the Migrant Education Act, the California Legislature recognized and
20 identified the distinct educational challenges facing Migrant children: "The problems of children
21 of migratory agricultural parents and of migratory fisherman parents are of such magnitude and
22 severity that local school districts have been unable to solve them with the resources normally
23 available. It is, therefore, necessary for the state to aid local school districts through regional
24

1 coordinating offices, and the provision of special programs of educational and related services
2 for these children.” Cal. Educ. Code § 54440(b).

3 40. Respondent STATE OF CALIFORNIA has addressed its obligations to provide
4 services for LEP children, through a variety of statutory provisions and special funding provided
5 by the STATE OF CALIFORNIA, including the Educationally Disadvantaged Youth Act.
6 Included in those provisions is a mandate that Respondent STATE BOARD OF EDUCATION
7 adopt regulations establishing the standards and criteria to be used for monitoring LEAs that
8 receive funds for Educationally Disadvantaged Youth. Cal. Educ. Code § 54005.

9 41. California provides grants through its Economic Impact Aid (“EIA”) program to
10 school districts with significant concentrations of LEP students to be used to address the
11 language needs of these students and to support compensatory education programs meant to
12 improve academic outcomes for economically disadvantaged pupils. Cal. Educ. Code § 54020,
13 *et seq.*, see also, 5 C.C.R. §§ 4200, *et seq.* and 4400, *et seq.*. The Legislature expressly limits
14 the use of EIA funds for expenditures at school sites with LEP students or economically
15 disadvantaged pupils and requires that funds be used to supplement, not supplant existing
16 resources. Cal. Educ. Code § 54025. Respondent STATE SUPERINTENDENT is mandated by
17 state law to conduct onsite school and district compliance reviews of categorical programs,
18 including EIA programs. Cal. Educ. Code § 64001.

19 42. Respondents are also mandated by state law to ensure that all districts in which
20 pupils of limited-English proficiency are enrolled be reviewed through an onsite technical
21 assistance, monitoring, and enforcement process at least once every three years. Cal. Educ. Code
22 § 52177(d).

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1 IV.

2 FACTUAL ALLEGATIONS

3 43. The process by which Respondents carry out their responsibility to monitor LEAs
4 for compliance with federal and state categorical programmatic and fiscal requirements is
5 referred to as Categorical Program Monitoring ("CPM"). It is also through this process that
6 Respondents supervise and monitor instructional services and programs provided to LEP
7 students. Through the CPM process school districts and COEs are subject to onsite monitoring
8 reviews by CDE consultants through which selected categorical programs are reviewed to
9 determine if they are being implemented in accordance with applicable state and federal laws.

10
11 44. Pursuant to state law, the STATE SUPERINTENDENT established criteria for
12 determining site and district selection for CPM reviews that are based on the academic
13 achievement of students, as demonstrated by the state's Academic Performance Index and
14 evidence of district compliance with state and federal law. Cal. Educ. Code § 64001(b).

15 45. The STATE SUPERINTENDENT is charged with establishing the content of the
16 program review instruments that are utilized when conducting a CPM review. The CDE has
17 developed a program review instrument for each of the categorical programs monitored by a
18 CDE CPM review team. Each program review instrument lists the compliance items to be
19 reviewed and includes the underlying state or federal statutory or regulatory legal basis for each
20 item. Cal. Educ. Code § 64001(b).

21
22 46. The English Learner CPM review instrument lists twelve (12) separate
23 compliance items, with corresponding sub-paragraphs. Each of these compliance items is
24 supported by direct citation to applicable state and federal statutory and regulatory provisions.
25 Pursuant to this program review instrument, each English Learner CPM review is conducted to

1 ensure that a school site, school district or COE is in compliance with the explicit state and
2 federal legal requirements.

3 47. The Migrant Education CPM review instrument lists eight (8) separate
4 compliance items, with corresponding sub-paragraphs. Each of these compliance items is
5 supported by direct citation to applicable state and federal statutory and regulatory provisions.
6 Pursuant to this program review instrument, each Migrant Education CPM review is conducted
7 to ensure that a school district, COE or Migrant Regional Office is in compliance with the
8 explicit state and federal legal requirements.

9 48. The Neglected or Delinquent CPM review instrument lists ten (10) separate
10 compliance items, with corresponding sub-paragraphs. Each of these compliance items is
11 supported by direct citation to applicable federal statutory provisions. Pursuant to this program
12 review instrument, each Neglected or Delinquent CPM review is conducted to ensure that a
13 school district or COE is in compliance with the explicit federal legal requirements.

14 49. The Homeless Education CPM review instrument lists twelve (12) separate
15 compliance items, with corresponding sub-paragraphs. Each of these compliance items is
16 supported by direct citation to applicable federal statutory provisions. Pursuant to this program
17 review instrument, each Homeless Education CPM is conducted to ensure that a school site,
18 school district or COE is in compliance with the explicit federal legal requirements.

19 50. The CDE established a monitoring schedule for school districts, COEs and school
20 sites selected by CDE to undergo a CPM review during the 2008-09 school year. This schedule
21 lists the state and federal categorical programs that were to be reviewed at each school site,
22 school district or COE, the CDE consultants assigned to conduct the reviews, the CDE Team
23 Leader, and the entry and exit date for each review.
24
25

1 51. According to the CDE CPM schedule, approximately 214 school sites, school
2 districts and COEs, including the District and Regional offices of the Los Angeles Unified
3 School District ("LAUSD") were scheduled to undergo an English Learner CPM review
4 beginning in February through June of 2008-2009, but were cancelled pursuant to the STATE
5 SUPERINTENDENT'S directive. The school districts, COEs and LAUSD regional school sites
6 that would have been monitored to ensure that they were complying with state and federal law
7 addressing the educational needs of LEP students, but for the STATE SUPERINTENDENT'S
8 actions, enroll approximately 179,769 LEP students. LAUSD's District Office was also
9 scheduled for a LEP review and LAUSD enrolls approximately 240,000 LEP students.
10 Petitioners are informed and believe that Respondents allocated approximately \$39.7 million in
11 Title III English Language Acquisition funds to these school districts and COEs during fiscal
12 year 2008-09.

14 52. Petitioners are informed and believe and therefore allege that many other school
15 sites, including Saul Martinez Elementary School, have not been subjected to a CPM or related
16 on-site review related to LEP programs within the last eight years.

17 53. During this same calendar period, approximately 86 school sites, school districts
18 and COEs were scheduled to undergo a CPM review regarding Migrant Education programs
19 and services. These reviews were also cancelled pursuant to the STATE
20 SUPERINTENDENT'S directive. Had these Migrant Education CPM reviews been conducted,
21 nine (9) separate Migrant Regions, including Regions 1(Santa Clara), 2 (Butte), 3 (Merced), 5
22 (Kern), 9 (San Diego), 10 (Los Angeles), 16 (Monterey), 18 (Santa Barbara), and 20
23 (Semitropic School District) would have been reviewed. Approximately \$66 million in Migrant
24 Education funds were distributed to these nine Regions during fiscal year 2007-08. Petitioners
25

1 are informed and believe that the nine Migrant Regions that would have been reviewed to
2 ensure that Migrant students had access to appropriate programs to meet their unique needs but
3 for the STATE SUPERINTENDENT'S actions are responsible for serving approximately
4 135,497 eligible Migrant children and youth.

5 54. Petitioners are informed and believe and therefore allege that many other school
6 sites, including Saul Martinez Elementary School, have not been subjected to a CPM or related
7 on-site review related to Migrant programs within the last eight years.

8 55. According to the CDE CPM schedule, at least twenty-four (24) school sites,
9 school districts and COEs were scheduled to undergo a Neglected or Delinquent CPM review
10 beginning in February through June of 2008-2009, but were cancelled pursuant to the STATE
11 SUPERINTENDENT'S directive. Respondents allocated close to \$8.5 million in Neglected or
12 Delinquent funds to these school districts and COEs during fiscal year 2008-2009.

13 56. Fourteen (14) of the fifteen (15) school sites whose Neglected or Delinquent CPM
14 review was cancelled pursuant to the STATE SUPERINTENDENT'S directive, are designated
15 as juvenile court or county community schools. Cal. Educ. Code §§ 48645, *et seq.* and 1980, *et*
16 *seq.* Petitioners are informed and believe and therefore allege that most of these school sites
17 have been subject to very few CPM or related onsite reviews in the last ten years.

18 57. Petitioners are informed and believe that the Los Angeles County Office of
19 Education ("LACOE") runs the largest juvenile court school system in California.
20 Respondents have allocated approximately \$28 million in Neglected or Delinquent funds to
21 LACOE since 2004-05. Petitioners are informed and believe that during the last onsite review of
22 this program, which occurred in 2004-05; only one juvenile court school site was visited by CDE
23 staff. Respondents allocated close to \$7 million in Neglected or Delinquent funds to LACOE for
24
25

1 fiscal year 2008-09. Prior to the STATE SUPERINTENDENT'S directive, seven of its juvenile
2 court school sites would have been reviewed to ensure that the millions of dollars allocated to
3 LACOE to serve the special needs of juvenile justice youth were properly spent and that these
4 youth had access to appropriate programs and services.

5 58. According to the CDE CPM schedule, at least eleven (11) school sites, school
6 districts and COEs were scheduled to undergo a Homeless Education CPM review beginning in
7 February through June of 2009, but were cancelled pursuant to the STATE
8 SUPERINTENDENT'S directive. Respondents allocated approximately \$910,000.00 to these
9 school districts and COEs for the 2008-2009 fiscal year.

10 59. Petitioners are informed and believe that in addition to suspending all onsite
11 monitoring and CPM reviews Respondents have ceased all other monitoring activities regarding
12 services for LEP, Migratory, Neglected or Delinquent and Homeless children and youth, except
13 with respect to LEAs that were found out of compliance during prior monitoring reviews, and
14 that, in effect the STATE OF CALIFORNIA is currently undertaking no monitoring of LEAs
15 with regard to their compliance with state and federal laws regarding these programs.

16 60. Petitioners are informed and believe that over the course of the last six (6) years
17 Respondents have extended the time period for monitoring from three (3) to four (4) years, and
18 have monitored scheduled LEAs only for selected programs irrespective of whether the LEA is
19 receiving funds for other categorical programs. As a result, certain LEAs providing services to
20 LEP, Migrant, Neglected or Delinquent and/or Homeless children and youth, that underwent a
21 scheduled CPM, did not have their programs monitored with respect to these services.

22 61. Currently there are no state regulations in effect which set forth the standards and
23 criteria to be used in the administration, monitoring, evaluation, and dissemination of programs
24
25

1 for Educationally Disadvantaged Youth, including those related to services provided to LEP
2 children as required by Cal. Educ. Code § 54005.

3 **FIRST CAUSE OF ACTION**

4 **Writ of Mandate**

5 **Cal. Code Civ. Proc. § 1085**

6 62. Petitioners incorporate by reference paragraphs 1 through 61 as if fully set forth
7 here.

8 63. Respondent STATE OF CALIFORNIA has a clear and present ministerial duty to
9 provide for equal access to educational opportunity for all children in the State of California and
10 to monitor and ensure that state and local agencies responsible for the education of California
11 children are in compliance with state and federal statutory and regulatory requirements and the
12 underlying purposes and specific provisions of NCLB, English Language Education for
13 Immigrant Children Initiative, EEOA, and the Educationally Disadvantaged Youth Act and to
14 comply with the assurances made in connection with the application for and grant of federal
15 funding for these programs.
16

17 64. Respondent STATE BOARD has a clear and present ministerial duty to
18 determine the policies governing California schools and to adopt and promulgate rules and
19 regulations for the supervision and administration of all local school districts and the
20 administration and oversight of funds that are distributed to LEAs and to provide for the
21 monitoring and evaluation of those programs and ensure that they are in compliance with the
22 state and federal statutory and regulatory requirements and the underlying purposes and specific
23 provisions of NCLB, English Language Education for Immigrant Children Initiative, EEOA,
24
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1 and the Educationally Disadvantaged Youth Act, and to comply with the assurances made in
2 connection with the application for and grant of federal funding for these programs.

3 65. Respondent STATE SUPERINTENDENT is a Constitutional officer with a clear
4 and present ministerial duty to supervise all California schools and school districts. In such
5 capacity, he is obligated to take all necessary steps to ensure that school districts comply with
6 state and federal law requirements concerning educational services relating to LEP children and
7 the funding of programs such as NCLB and is charged with administering and overseeing funds
8 that are distributed to LEAs in a manner that is consistent with the underlying purposes and
9 specific provisions of NCLB, English Language Education for Immigrant Children Initiative,
10 EEOA, and the Educationally Disadvantaged Youth Act, and to comply with the assurances
11 made in connection with the application for and grant of federal funding for these programs.
12

13 66. Respondent CDE is the department of state government with a clear and present
14 ministerial duty to administer and enforce laws related to the education of LEP children and state
15 and school district compliance with all state and federal mandates with respect to funding
16 programs such as NCLB and is charged with administering and overseeing funds that are
17 distributed to LEAs in a manner that is consistent with the underlying purposes and specific
18 provisions of NCLB, English Language Education for Immigrant Children Initiative, EEOA, and
19 the Educationally Disadvantaged Youth Act, and to comply with the assurances made in
20 connection with the application for and grant of federal funding for these programs.
21

22 67. Respondent STATE OF CALIFORNIA has been granted funding pursuant to
23 Title I and Title III of NCLB to provide funding to LEAs. Respondents are mandated under state
24 law and the provisions of NCLB to distribute that funding to LEAs in a manner that is consistent
25

1 with the express provisions and purpose of NCLB and to monitor and evaluate the programs
2 implemented by LEAs using NCLB funds.

3 68. Respondents' actions limiting and suspending the monitoring of LEAs receiving
4 federal funds for LEP, Migrant, Neglected or Delinquent and Homeless children is in violation
5 of their ministerial duties to comply with the express requirement for monitoring included at 20
6 U.S.C. § 6396(a)(1)(B)(iii), 34 C.F.R. § 80.40, the general requirements for program oversight
7 and evaluation contained at 20 U.S.C. § 6394(c)(5) and the assurances made in connection with
8 the application for and grant of federal funding for these programs.

9
10 69. Respondents' actions limiting and suspending the monitoring of LEAs providing
11 services to LEP students is in violation of their ministerial duties to comply with the express
12 requirement for on-site monitoring every three (3) years included at Cal. Educ. Code § 52177.

13 70. Respondent STATE BOARD OF EDUCATION is in violation of its ministerial
14 duty to adopt regulations setting forth the standards and criteria to be used in the administration,
15 monitoring, evaluation, and dissemination of programs for Educational Disadvantaged Youth as
16 required by Cal. Educ. Code § 54005.

17 71. Respondents abused their discretion by establishing a monitoring program and
18 scheduling monitoring reviews in a manner which fails to ensure that all LEAs providing
19 services to LEP, Migrant, Neglected or Delinquent and Homeless children and youth are
20 monitored in an effective and timely manner that will ensure compliance with state and federal
21 oversight and monitoring requirements.

22
23 72. Respondents' actions suspending the monitoring of LEAs providing services to
24 LEP, Migrant, and Neglected or Delinquent and Homeless children and youth is in violation of
25 the express requirement discretion because they violate Title VI of the Civil Rights Act of 1964

1 (42 U.S.C. § 2000d) and its implementing regulations, because such an exclusion has an
2 unlawful disparate impact on the basis of national origin.

3 73. Petitioners have no administrative remedy available to them to resolve this
4 controversy.

5 74. Petitioners have no plain, speedy, or adequate remedy at law other than the relief
6 requested in this petition.

7 75. Petitioners' success in this action will result in the enforcement of important rights
8 affecting the public interest by conferring significant benefits on a large class of persons.
9 Petitioners seek enforcement of rights not only for themselves, but for taxpayers and students
10 enrolled in California public schools that seek access to or benefit from the programs and
11 services provided through California's public school system.
12

13 76. Furthermore, private enforcement of these rights is necessary as no other agency
14 has pursued these rights.

15 77. Petitioners take it upon themselves to enforce these rights for other individuals
16 seeking equal educational opportunity. Petitioners will not recover any money as a direct result
17 of the successful litigation of this matter. There is a financial burden incurred in pursuing this
18 action and it would be against the interests of justice to penalize Petitioners by forcing them to
19 pay attorneys fees. Therefore, attorneys fees only insofar as they are payable to the Youth Law
20 Center are appropriate pursuant to California Code of Civil Procedure §1021.5.
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1 would be difficult to ascertain; and money damages would not adequately compensate taxpayers
2 for unlawful governmental activity.

3 84. The acts and omissions as outlined in this Petition were committed by
4 Respondents, either personally or through the actions of their agents, acting pursuant to policies
5 set by Respondents.

6 **THIRD CAUSE OF ACTION**

7 **Declaratory Relief**

8 85. Petitioners incorporate by reference paragraphs 1 through 61 as if fully set forth
9 here.

10 86. An actual and existing controversy exists between the Petitioners and
11 Respondents because Petitioners contend and Respondents dispute that Respondents' actions as
12 described above violate Cal. Educ. Code §§ 64000, *et seq.*; Cal. Educ. Code § 52177; Cal. Educ.
13 Code § 54005, the "No Child Left Behind Act" (20 U.S.C. §§ 6301, *et seq.*), 34 Code of
14 Federal Regulations, section 80.40(a), the Equal Educational Opportunities Act of 1974 (20
15 U.S.C. §§ 1700, *et seq.*), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and its
16 implementing regulations, the California Constitution, Article IX, §§ 1 and 5; constitute an abuse
17 of discretion; and constitute an illegal expenditure of taxpayer funds.

18 87. Petitioners seek a judicial declaration that Respondents have violated these
19 constitutional, statutory, and regulatory provisions.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioners pray that this Court:

22 1. Issue a peremptory writ of mandate commanding that all Respondents, upon
23 service of the writ:
24
25

1 a. Reinstate and conduct onsite monitoring consistent with the 2008-2009
2 and 2009-2010 onsite monitoring schedules for LEAs scheduled to be monitored with respect to
3 programs for LEP/EL, Migrant, Neglected or Delinquent and/or Homeless children and youth,
4 and reschedule any on-site monitoring reviews that were cancelled and did not take place as a
5 result of the Respondents' suspension of on-site monitoring reviews;

6 b. Develop an onsite monitoring schedule effective 2009-2010 which will
7 ensure that all LEAs that enroll LEP students will have an onsite monitoring review at least once
8 every three (3) years;

9 c. Develop a monitoring plan, and provide adequate staff and resources to
10 ensure that all school sites providing services to LEP, Migrant, Neglected or Delinquent and/or
11 Homeless children and youth will be monitored in a timely and effective manner to ensure
12 compliance with state and federal program requirements; and that

13 d. Respondent STATE BOARD OF EDUCATION take the steps necessary
14 to adopt regulations setting forth the standards and criteria to be used in the administration,
15 monitoring, evaluation, and dissemination of programs for Educationally Disadvantaged Youth
16 in accordance with Cal. Educ. Code § 54005.

17 2. Issue a declaratory judgment that Respondents' actions complained of herein:
18

19 a. Violate Cal. Educ. Code §§ 64000, *et seq.*;

20 b. Violate Cal. Educ. Code § 52177;

21 c. Violate Cal. Educ. Code § 54005;

22 d. Violate the "No Child Left Behind Act" (20 U.S.C. §§ 6301, *et seq.*) and
23 34 Code of Federal Regulations § 80.40;

24 e. Violate the Equal Educational Opportunities Act of 1974 (20 U.S.C. §§
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1700, *et seq.*);

- f. Violate Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d and its implementing regulations);
- g. Violate Article IX, §§ 1 and 5 of the California Constitution; and
- h. Constitute an illegal expenditure of taxpayer funds.

3. Issue a preliminary injunction and a permanent injunction, enjoining the Respondents, and each of them, their agents, servants and employees, from failing to comply with state and federal mandates related to the monitoring of categorical programs and other specialized educational programs, and enjoining them from diverting funds for those programs previously allocated for monitoring and oversight to other uses.

4. Award Petitioners their costs of suit generally, and pursuant to Code Civ. Proc. § 1021.5;

5. Award reasonable attorneys' fees pursuant to Code Civ. Proc. § 1021.5 payable only to the Youth Law Center; and

6. Award such other relief as this Court may deem just and proper.

Dated: June 11, 2009


CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

By: 

Cynthia L. Rice
Attorneys for Petitioners/Plaintiffs MARIA MEDINA and ANGELICA ARECHIGA

Dated: June 11, 2009

YOUTH LAW CENTER

By: 

Deborah Escobedo
Attorneys for Petitioners/Plaintiffs

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VERIFICATION

I, Cynthia L. Rice, am attorney of record for Petitioners/Plaintiffs MARIA MEDINA and ANGELICA ARECHIGA. The Petitioners are absent from the City and County of San Francisco in which I have my office and where I am located today. I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge, except as to those matters that are alleged on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this verification is executed this 11th day of June, 2009, in San Francisco, California.



CYNTIA L. RICE

1 **COMPLETE LIST OF PETITIONERS' COUNSEL**

2
3 CYNTHIA L. RICE (State Bar No. 87630)
4 DOROTHY JOHNSON (State Bar No. 132849)

5 **California Rural Legal Assistance, Inc.**

6 631 Howard Street, Suite 300
7 San Francisco, California 94105
8 Telephone: (415) 777-2752
9 Facsimile: (415) 543-2752

10
11 JOANA BASULTO (SBN 249707)

12 **California Rural Legal Assistance, Inc.**

13 20 N. Sutter, Suite 203
14 Stockton, CA 95202
15 Telephone: (209) 946-0605
16 Facsimile: (209) 946-5730

17
18 MEGAN BEAMAN CARLSON, SBN 261539

19 **California Rural Legal Assistance, Inc.**

20 Migrant Farmworker Project
21 1460 6th Street, P.O. Box 35
22 Coachella, CA 92236
23 Telephone: 760-398-7261
24 Facsimile: 760-398-1050

25 Attorneys for Petitioners/Plaintiffs MARIA MEDINA and ANGELICA ARECHIGA

DEBORAH ESCOBEDO (State Bar No. 89093)

JENNIFER R. RODRIGUEZ (State Bar No. 258925)

Youth Law Center

200 Pine Street, Suite 300
San Francisco, California 94104
Telephone: (415) 543-3379
Facsimile: (415) 956-9022

Attorneys for Petitioners/Plaintiffs