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

BETTY PAZMIÑO, MARIA LUCIA ESCOTO,
CHRISTINA PADILLA, FRANCISCA
GARCIA, DENIS O'LEARY, MUJERES
UNIDAS Y ACTIVAS, COMITÉ PRO
EDUCACIÓN, EXCELLENCE AND JUSTICE
IN EDUCATION, PARENTS FOR UNITY,
FRENTE INDÍGENA OAXAQUEÑO
BINACIONAL, CALIFORNIA LATINO CIVIL
RIGHTS NETWORK, CALIFORNIANS
TOGETHER, and CALIFORNIA
ASSOCIATION FOR BILINGUAL
EDUCATION,

Petitioners/Plaintiffs

v.

CALIFORNIA BOARD OF EDUCATION;
REED HASTINGS, JOE NUNEZ, ROBERT J.
ABERNATHY, DON FISHER, NANCY
ICHINAGA, STEPHANIE H. LEE, SUZANNE
TACHENY, in their official capacities as
members of the Board of Education; JACK
O'CONNELL, in his official capacity as the State
Superintendent of Public Instruction;
CALIFORNIA DEPARTMENT OF
EDUCATION; and DOES 1 THROUGH 10,
inclusive,

Respondents/Defendants

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2003 MAR -5 PM 3:22

GOULD PARK - LI. CLERK

BY: M. MORRIS
DEPUTY CLERK

CPF -03-502554

Case No.

**PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

I.

PRELIMINARY STATEMENT

1. Plaintiffs/petitioners are taxpayers, parents, and community-based organizations (hereinafter referred to jointly as "petitioners") who bring this action to prevent the California Board of Education and its members; the California Department of Education ("CDE"); and the State Superintendent of Public Instruction (hereinafter referred to jointly as "respondents") from implementing certain regulations that have not been promulgated in the manner required by the California Administrative Procedures Act ("APA") and violate the educational and civil rights of children with limited English proficiency ("LEP"). Specifically, petitioners seek a writ of mandate, a declaration of rights and responsibilities of the parties, and injunctive relief to prevent respondents from applying regulations or eligibility criteria that exclude certain elementary school classrooms—in which many LEP students are enrolled—from eligibility for federal funding that is needed to help those students learn to read.

2. In 2002 the United States Congress passed the "No Child Left Behind Act" ("NCLB") (20 U.S.C. §§ 6301 et seq.), significant legislation which provides additional resources to public schools. One element of this legislation is the "Reading First" program which in California makes available as much as \$8,000 per teacher to provide training and supplementary materials to schools to address the educational needs of low-achieving children enrolled in low income neighborhoods, limited English proficient children, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance. The State of California is eligible for and has received funding under the "Reading First" program which it is obligated to distribute to districts who are eligible under the federal criteria.

3. In 2002, the State of California implemented very specific criteria that exclude certain schools and classrooms from eligibility for the funding. The excluded group of classrooms were established as "alternative programs" under other state and federal laws to provide the most educationally appropriate instructional setting for children who have limited English proficiency. California's decision to exclude this group of students from this important remedial program establishes a rule of general application that violates the Administrative Procedure Act ("APA") (Gov.

1 Code §§ 11340 et seq.) in several respects: (1) it was promulgated without notice and opportunity for
2 public comment and was not filed with the Office of Administrative Law; (2) it is inconsistent and
3 conflicts with its enabling statute, the "No Child Left Behind Act" (20 U.S.C. §§ 6301 et seq.); and
4 (3) it is inconsistent and conflicts with the English Language Education for Immigrant Children Act
5 (Educ. Code §§ 300 et seq.), the Equal Educational Opportunities Act of 1974 (20 U.S.C. §§ 1700 et
6 seq.) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and their implementing
7 regulations.

8 4. The exclusionary policy challenged by this action further offends California statutory
9 and constitutional laws that govern California schools, including, but not limited to, the anti-
10 discrimination provisions of California Government Code § 11135 and California Code of Regulations
11 § 98000 and the right to education found in Article IX, §§ 1 and 5 of the California Constitution. It
12 further constitutes an illegal expenditure of taxpayer funds.

13 5. Petitioners seek a writ of mandate, declaratory relief, and temporary and permanent
14 injunctions to prevent respondents from using rules and guidelines in administering the "Reading
15 First" program that have not been promulgated in the manner set forth by the APA and are violative
16 of the educational and civil rights of LEP students in alternative programs.

17 II.

18 THE PARTIES

19 A. Petitioners

20 6. Petitioner BETTY PAZMIÑO is a taxpayer. Within one year prior to the
21 commencement of this action, BETTY PAZMIÑO paid taxes to San Francisco County and the State
22 of California.

23 7. Petitioner MARIA LUCIA ESCOTO is the parent of children identified as limited
24 English proficient who are enrolled in the Calexico Unified School District. Her children are enrolled
25 in a school that is listed by the CDE as having met the eligibility requirements as defined by NCLB
26 for the "Reading First" program and participate in an alternative bilingual program. MARIA LUCIA
27 ESCOTO is a resident of Imperial County.

28 8. Petitioner CHRISTINA PADILLA is the parent of a child identified as limited English

1 proficient who is enrolled in the Vista Unified School District. Her child is enrolled in a school that
2 is listed by the CDE as having met the eligibility requirements as defined by NCLB for the "Reading
3 First" program and participates in an alternative bilingual program. CHRISTINA PADILLA is a
4 resident of San Diego County.

5 9. Petitioner FRANCISCA GARCIA is the parent of a child identified as limited English
6 proficient who is enrolled in the Escondido Union Elementary School District. Her child is enrolled
7 in a school that is listed by the CDE as having met the eligibility requirements as defined by NCLB
8 for the "Reading First" program and participates in an alternative bilingual program. FRANCISCA
9 GARCIA is a resident of San Diego County.

10 10. Petitioner DENIS O'LEARY is a taxpayer. Within one year prior to the commence-
11 ment of this action, DENIS O'LEARY paid taxes to Ventura County and the State of California.

12 11. Petitioner MUJERES UNIDAS Y ACTIVAS is an unincorporated, non-profit
13 community organization formed in 1990 by Spanish-speaking, immigrant, and refugee women who
14 come from all countries of Latin America. The vast majority of its members are parents of children
15 who are identified as limited English proficient and who are enrolled in schools in the San Francisco
16 Bay Area, including the San Francisco Unified School District, and who participate in alternative
17 programs offered pursuant to Education Code §§ 310 and 311. As an organization, it is concerned
18 with improving the academic status of immigrant children and it believes that immigrant parents
19 should have a meaningful voice in determining the educational programs made available to their
20 children. MUJERES UNIDAS Y ACTIVAS brings suit on its own behalf and on behalf of its
21 members. The CDE has identified 32 schools in San Francisco Unified that meet the poverty level
22 eligibility requirements under "Reading First." According to CDE data, 21.66 percent of children in
23 San Francisco are from families that live below the poverty line.

24 12. Petitioner COMITÉ PRO EDUCACIÓN is an unincorporated, non-profit community
25 organization formed in 1998 by parents of LEP students, teachers, and concerned community members
26 living and working in the city of Pittsburg, located in Contra Costa County. Its members are dedicated
27 to ensuring that all children have a right to an equal education in a respectful and humane
28 environment. They work to build community awareness of the need to improve their schools and to

1 empower parents to play a more active role in their children's education. Members of COMITÉ PRO
2 EDUCACIÓN have testified before the STATE BOARD on issues of concern to LEP students
3 enrolled in the Pittsburg Unified School District ("PUSD") and before state legislative bodies in
4 support of LEP-related legislation. They have also filed administrative complaints regarding PUSD's
5 failure to address the needs of its LEP student population and its failure to recognize the rights of
6 parents under the parental exception waiver provisions found at Education Code §§ 310 and 311. The
7 CDE has identified six schools in the Pittsburg Unified School District that meet the poverty level
8 eligibility requirements under "Reading First." According to CDE data, 19.01 percent of children in
9 Pittsburg are from families that live below the poverty line. Members of COMITÉ PRO
10 EDUCACIÓN have paid taxes within one year prior to the commencement of this action to the State
11 of California and to Contra Costa County.

12 13. Petitioner EXCELLENCE AND JUSTICE IN EDUCATION (EJE) is a non-profit,
13 community-based, grassroots organization formed by parents, students, and community leaders
14 committed to achieving excellence and justice in education for immigrant students. Its members have
15 paid taxes within one year prior to the commencement of this action to the State of California and to
16 San Diego County. To reach its mission, EJE facilitates the development of community leaders and
17 participates in collaborative projects with the public school system. EJE works for improving the
18 academic levels of immigrant students by promoting parent involvement in the school system. EJE
19 was founded in 1991 in the city of El Cajon, CA. For eleven years, it has engaged in activism for
20 equal educational opportunities for Latino students, and advocated for parent rights to have access to
21 quality bilingual education programs. During the last four years, EJE's members have concentrated
22 in particular on the rights of parents under the parental exception waiver provisions found at Education
23 Code §§ 310 and 311. The parents with whom EJE works have children enrolled in school districts
24 throughout San Diego County. The CDE has identified 95 schools in San Diego County that meet the
25 poverty level eligibility requirements under "Reading First." Almost 115,000 students in San Diego
26 County are identified as limited English proficient or "English Learners."

27 14. Petitioner PARENTS FOR UNITY is a non-profit, community-based, grassroots
28 organization dedicated to improving the general welfare of low-income parents and, in particular,

1 immigrant families by promoting the academic success of their children. Its members have paid taxes
2 within one year prior to the commencement of this action to the State of California and to Los Angeles
3 County. PARENTS FOR UNITY strives to empower low-income, immigrant and other minority
4 parents with knowledge of their legal rights and of their children's right to equal educational
5 opportunities. The vast majority of its members are immigrant parents with children who are
6 identified as limited English proficient and who are enrolled in the Los Angeles Unified School
7 District (LAUSD) and other school districts in Los Angeles County including the Pomona Unified
8 School District. Members of PARENTS FOR UNITY meet regularly to discuss the educational needs
9 of their children and they are concerned about policies of the STATE BOARD that may impact the
10 educational services available to their own children and LEP children in general and their rights as
11 parents to exercise the parental exception waiver provisions found at Education Code §§ 310 and 311.
12 The CDE has identified 250 schools in the LAUSD that meet the poverty level eligibility requirements
13 under "Reading First." According to CDE data, 36 percent of children in Los Angeles are from
14 families that live below the poverty line.

15 15. Petitioner FRENTE INDÍGENA OAXAQUEÑO BINACIONAL (FRENTE) is an
16 unincorporated, non-profit, community-based coalition of organizations, communities and individuals
17 founded in 1991 in Los Angeles. Its members are primarily immigrants of indigenous origin from
18 specific regions in the Mexican State of Oaxaca, namely the Mixteca, Zapoteca, and Triqui regions.
19 The group's objectives include the promotion of human, labor and civil rights of these Oaxacan
20 indigenous communities and members; and the maintenance of the cultural, social and linguistic
21 integrity of these same communities and members. Among its members in California are parents of
22 children enrolled in California public schools and identified as LEP because they speak Spanish and/or
23 an indigenous language. Among FRENTE projects is a parent and membership training project that
24 emphasizes the civic participation of its members in local community affairs including active
25 participation in public schools. FRENTE offices are located in Fresno. FRENTE brings suit on its
26 own behalf and that of its members.

27 16. Petitioner CALIFORNIA LATINO CIVIL RIGHTS NETWORK (CLCRN) is a
28 non-profit corporation with its principal place of business in California. The CLCRN is a state-wide

1 network of Latino service agencies, individuals, neighborhood associations, professional, religious,
2 and labor organizations organized to gather and disseminate information critical to the well being of
3 the Latino community, as well as to provide resources to organizations and individuals who are
4 working to promote the civil and human rights of Latinos in California. The CLCRN was formed in
5 response to anti-immigrant/Latino measures (such as the passage of Proposition 187) that have
6 surfaced in California. It seeks to work collaboratively to help empower the Latino community to
7 respond to these measures in a pro-active manner. There are members of organizations within the
8 CLCRN with children who are identified as limited English proficient and who are enrolled in school
9 districts in various counties in California. The CLCRN believes that the parents of LEP students
10 should have a meaningful voice in determining the educational programs made available to their
11 children. The CLCRN brings suit on its own behalf and that of its members.

12 17. Petitioner CALIFORNIANS TOGETHER is a coalition comprised of educational,
13 civil rights, parent, and immigrant rights organizations that mobilizes to ensure adequate programs,
14 materials, resources, and teaching for the 1.6 million school children in California whose home
15 language is other than English. CALIFORNIANS TOGETHER is committed to ensuring that all
16 children have a quality education and that they are afforded the skills, opportunities, and knowledge
17 to fully participate economically, intellectually, politically, and socially in a democratic society. Its
18 members join together to be a continuing voice statewide on behalf of language minority students in
19 California public schools. They also seek to ensure that all students in need of alternative programs
20 have access to them. Its members work on multiple fronts (local, regional, state) supporting teachers
21 and parents to give testimony and speak about policies affecting LEP students in the state public
22 school system. CALIFORNIANS TOGETHER members include educators who teach in schools in
23 eligible school attendance areas as defined by NCLB and who are assigned to classrooms that meet
24 the educational instruction and accountability requirements of NCLB and the "Reading First"
25 program. Many of these same members teach in or administer alternative programs duly established
26 pursuant to Education Code §§ 310 and 311. CALIFORNIANS TOGETHER brings suit on its own
27 behalf and that of its members.

28 18. Petitioner CALIFORNIA ASSOCIATION FOR BILINGUAL EDUCATION (CABE)

1 is a non-profit corporation with its principal place of business in California. Its membership is
2 comprised of over 5000 educators from throughout the State of California, including teachers,
3 administrators, para-professionals, and parents. The goal of CAFE is to promote and support
4 educational excellence for all children; however, CAFE has a special concern for children who are
5 LEP and who face language barriers to equal educational opportunities in California's schools. CAFE
6 members work to ensure that LEP students have access to effective and quality educational programs
7 in which LEP children can both achieve academically and acquire English language proficiency.
8 CAFE promotes education programs that embrace all students in order to provide all students the
9 opportunity to benefit from the language and cultural diversity created by this rich environment. Many
10 CAFE members are educators who teach in schools in eligible school attendance areas as defined by
11 NCLB and are assigned to classrooms that meet the educational instruction and accountability
12 requirements of NCLB and the "Reading First" program. Many of these same members teach in or
13 administer alternative programs duly established pursuant to Education Code §§ 310 and 311. CAFE
14 brings suit on its own behalf and that of its members.

15 **B. Respondents**

16 19. Respondent CALIFORNIA BOARD OF EDUCATION and its members, Reed
17 Hastings, Joe Nunez, Robert J. Abernathy, Don Fisher, Nancy Ichinaga, Stephanie H. Lee and Suzanne
18 Tacheny (referred to collectively as "STATE BOARD"), are charged with determining the policies
19 governing California schools and with adopting and promulgating rules and regulations for the
20 supervision and administration of all local school districts that are not inconsistent with the laws of
21 the State of California. Pursuant to California Education Code §§ 33030-33032, the State Board must
22 ensure that local school districts comply with state and federal law requirements concerning
23 educational services. The above-named defendant members of the STATE BOARD are sued in their
24 official capacities.

25 20. Respondent Jack O'Connell is the STATE SUPERINTENDENT OF PUBLIC
26 INSTRUCTION ("STATE SUPERINTENDENT") for the State of California and is a constitutional
27 officer charged with the supervision of all California schools and school districts. In such capacity,
28 he is obligated to take all necessary steps to ensure that school districts comply with state and federal

1 law requirements concerning educational services. Pursuant to California Education Code
2 §§ 33301-03, he is also Director of Education in whom all executive and administrative functions of
3 the CALIFORNIA DEPARTMENT OF EDUCATION are vested, and is the Executive Officer for
4 the STATE BOARD. He is sued in his official capacity.

5 21. Respondent CALIFORNIA DEPARTMENT OF EDUCATION ("CDE") is the
6 department of state government responsible for administering and enforcing laws related to education
7 pursuant to California Education Code § 33308.

8 22. The STATE BOARD, the SUPERINTENDENT, and the CDE are state agencies
9 pursuant to California Government Code § 11342(a) and are, therefore, subject to the requirements
10 of the APA. They are also State Educational Agencies within the definition of the Elementary and
11 Secondary Education Act and the "No Child Left Behind Act," pursuant to 20 U.S.C. § 7801 (26)(E),
12 and are charged with administering and overseeing funds that are distributed to local educational
13 agencies in a manner that is consistent with the underlying purposes and specific provisions of these
14 federal programs.

15 23. Respondents Does 1 through 10 are sued herein under fictitious names, their true names
16 and capacities being unknown to petitioners. When said true names and capacities are ascertained,
17 petitioners, after obtaining leave of Court if necessary, will amend this Petition and Complaint by
18 inserting their true names and capacities here.

19 III.

20 JURISDICTION AND VENUE

21 24. Petitioners' claims arise under California law. This Court has jurisdiction under
22 California Code of Civil Procedure §§ 525, 526, and 1085 and § 11350 of the California Government
23 Code.

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

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1 IV.

2 STATUTORY FRAMEWORK

3 A. Administrative Procedures Act

4 26. The California Administrative Procedures Act ("APA") (Gov. Code §§ 11340, et seq.)
5 prohibits state agencies from using, enforcing or attempting to enforce any regulation that is not
6 promulgated pursuant to the procedures specified in the APA. Gov. Code §11340.5(a). In addition,
7 every regulation must be within the scope of authority of the agency and consistent with applicable
8 law. Gov. Code §§ 11342.1, 11342.2, 11349.1, 11349(d).

9 27. The APA defines a regulation as any "rule, regulation, order, or standard of general
10 application or the amendment, supplement, or revision of any rule, regulation, order, or standard" that
11 is used by an agency to "implement, interpret, or make specific" the statutes enforced or administered
12 by the agency. Gov. Code § 11342(g).

13 28. The rulemaking procedures mandated by the APA require the agency to (1) provide
14 notice to the public of its proposed regulatory action (Gov. Code § 11346.4); (2) issue a complete text
15 of the proposed regulation with a statement of the reasons for it (Gov. Code § 11346.2); (3) give
16 interested parties an opportunity to comment on the proposed regulation (Gov. Code § 11346.8); (4)
17 respond in writing to public comments (Gov. Code § 11346.9); (5) forward a file of all materials on
18 which the agency relied in creating the proposed regulation for consistency of the law, clarity, and
19 necessity (Gov. Code § 11349.1, 11349.3); and (6) file the proposed regulation with the Secretary of
20 State (Gov. Code § 11343).

21 29. The APA establishes the right of "any interested party . . . [to] obtain a judicial
22 declaration as to the validity of any regulation by bringing an action for declaratory relief in the
23 superior court." Gov. Code § 11350; Code of Civ. Proc. § 1060 et seq.

24 B. No Child Left Behind Act

25 30. The "No Child Left Behind Act of 2001" was signed into law on January 8, 2002. It
26 amended and reauthorized the Elementary and Secondary Education Act (ESEA) of 1965. The ESEA
27 is the largest federally funded education program. One of the stated underlying purposes of the NCLB
28 is to meet "the educational needs of low-achieving children in our nation's highest poverty schools,

1 limited English proficient children, migratory children, children with disabilities, Indian children,
2 neglected or delinquent children, and young children in need of reading assistance.” 20 U.S.C. §
3 6301(2).

4 31. The NCLB explicitly prohibits the denial or exclusion of LEP students from
5 participation in programs funded under the Act on the basis of their limited English proficiency. “A
6 student shall not be admitted to, or excluded from, any federally assisted education program on the
7 basis of a surname or language minority status.” 20 U.S.C. § 6312(g)(5).

8 32. Under the NCLB, the parents of disadvantaged students are to play a significant role.
9 As one of its underlying purposes, the Act seeks to afford “parents substantial and meaningful
10 opportunities to participate in the education of their children.” 20 U.S.C. § 6301(12).

11 33. Under the NCLB, educational programs that are designed to address the language
12 needs of LEP students are referred to as “language instruction educational programs” and are
13 established for the purpose of “developing and attaining English proficiency, while meeting
14 challenging State academic content and student academic achievement standards. . . .” Bilingual
15 educational programs are explicitly referenced in the definition as these programs “may make
16 instructional use of both English and a child’s native language to enable the child to develop and attain
17 English proficiency. . . .” 20 U.S.C. § 7011(8).

18 34. Pursuant to the NCLB, a state educational agency must provide the least restrictive and
19 burdensome regulations for local educational agencies and individual schools participating in a
20 program assisted under this part. 20 U.S.C. § 6311(c)(7).

21 35. The “Student Reading Skills Improvement Grants” or “Reading First” is one of several
22 formula grant programs under the NCLB. 20 U.S.C. §§ 6361-6376. One of its several underlying
23 purposes is to provide assistance to state educational agencies and local educational agencies in
24 establishing reading programs for students in kindergarten through grade three (“K-3”) to ensure that
25 every student can read at grade level or above no later than the end of grade three. 20 U.S.C. §
26 6361(1).

27 36. Eligible school districts are those in states with the highest number or percentage of
28 K-3 students reading below grade level and those school districts which have the highest student

1 poverty rates. In order for states to receive funds, state educational agencies must apply for
2 participation in the "Reading First" program. In addition to developing a process by which to award
3 sub-grants, state educational agencies must: provide technical assistance to school districts to help
4 them identify instructional assessments, programs and materials; develop a statewide professional
5 development strategy; and develop strategies for evaluating "Reading First" implementation.

6 37. Local educational agencies that receive "Reading First" sub-grants must use the funds
7 for the following activities: selecting and administering reading assessments; selecting and
8 implementing a learning system of reading instruction that must include certain specified elements;
9 procuring and implementing instructional materials; providing professional development for K-3
10 teachers; collecting and summarizing data for the purpose of evaluating and improving the program;
11 reporting student data and promoting reading. 20 U.S.C. § 6362(c)(7).

12 38. The NCLB provides, "No local educational agency shall be required to provide services
13 under this part through a particular instruction method or in a particular instructional setting. . . ." 20
14 U.S.C. § 6321(b)(2). Children with limited English proficiency are specifically identified as one of
15 several select groups of students who should be served by programs funded under "Reading First."
16 20 U.S.C. § 6362(c)(7)(A)(ii)(II)(ff).

17 **C. English Language Education for Immigrant Children Initiative**

18 39. Under both state and federal law, school districts have an affirmative duty to provide
19 appropriate programs to address the language needs of LEP students and must ensure that these
20 students learn academic English and have equal access to the curriculum. In California, this dual
21 obligation is governed, to a large degree, by the provisions of the "English Language Education for
22 Immigrant Children Initiative." Educ. Code §§ 300 et seq. and 5 C.C.R. §§ 11300 et seq. The
23 provisions of California Education Code §§ 300 et seq. specifically provide that some LEP students
24 may be enrolled in instructional programs which are conducted in a language other than English.
25 Educ. Code §§ 310-311 and 5 C.C.R. § 11309. Under these provisions, LEP children may be enrolled
26 in classrooms, often referred to as "Proposition 227 waiver classrooms" or "alternative programs,"
27 where they are taught through alternative teaching methodologies such as "bilingual education
28 techniques or other generally recognized educational methodologies permitted by law." Educ. Code

1 § 310. LEP students are entitled to special services to address their language needs until it is
2 determined that they have demonstrated English language proficiency comparable to that of native
3 English speakers and have recouped any academic deficits incurred as a result of language barriers.
4 Educ. Code § 313, 5 C.C.R. §§ 11302 and 11303.

5 40. At its November 2002 meeting, the STATE BOARD announced that Spanish Language
6 Arts instructional materials had been approved and adopted and were appropriate for use in classrooms
7 with Proposition 227 waiver or alternative programs.

8 IV.

9 FACTUAL ALLEGATIONS

10 41. State respondents submitted an application to the United States Department of
11 Education for participation in the "Reading First" program and received approval of its application
12 on or about August 23, 2002. The application provided for, and the federal program requires, the
13 participation of LEP students. 21 U.S.C. § 6311(b)(3)(C)(ix)(III). The "California Reading First Plan"
14 reiterated the goal that every student will be able to read proficiently by the end of 3rd grade and
15 promised to focus support on those local education agencies with schools of greatest need. Pursuant
16 to this application, respondents will receive approximately \$133 million per year over the next six
17 years to distribute to schools and school districts that meet the eligibility requirements set forth in the
18 "Reading First" provisions of NCLB. These funds are to be used primarily to provide staff
19 development training to teachers who teach in eligible schools, with up to \$8000 to be distributed per
20 teacher. Respondents have identified some 1,685 schools in approximately 276 school districts that
21 meet the "Reading First" poverty eligibility requirements.

22 42. Petitioners are informed and believe that respondents developed and implemented
23 eligibility criteria for the "Reading First" program which, both on its face and as applied, excludes
24 schools and classrooms that are providing instruction under alternative programs using native
25 language instruction from eligibility for funds under the "Reading First" program. On or about
26 October 22, 2002, respondents posted information on CDE's website which explained eligibility
27 requirements in the form of a "Frequently Asked Questions-Set Two" document. The posting stated
28 that classrooms providing instruction using alternative programs, including native language

1 instruction, are not eligible for "Reading First" funds and, further, that the existence of such
2 classrooms in a school would, under some circumstances, disqualify the entire school site from
3 participating in the "Reading First" program. The policy was illustrated through use of a chart on the
4 website; the chart demonstrated that, in most circumstances, an entire school would be deemed
5 ineligible to apply for funding if it had a single classroom that was providing instruction through an
6 alternative program providing reading/language arts instruction in a child's native language. It further
7 provided that schools with up to ten classrooms in each grade level would be disqualified if they had
8 as few as two alternative bilingual classrooms.

9 43. As a result of this posting, a significant number of schools, otherwise eligible for
10 funding under NCLB and with large numbers of immigrant students, including, but not limited to,
11 schools located in the San Francisco Unified School District, Chula Vista Unified School District,
12 Calexico Unified School District, Alisal Union Elementary School District, Escondido Unified School
13 District, Oxnard Elementary School District and Ocean View School District did not apply for
14 funding.

15 44. There are no provisions in the NCLB nor in the California "Reading First" plan that
16 require or allow for schools or classrooms to be disqualified from receiving funding solely on the
17 ground that instruction is provided in a language other than English, or through an alternative program
18 or in a Proposition 227 waiver classroom.

19 45. Respondents have established two deadlines for its "Reading First" application process.
20 The first deadline on which school districts were to submit their applications was October 25, 2002.
21 During the first round of respondents' application process, "Reading First" applications from the
22 following school districts were approved for the receipt of funds: Oakland Unified School District,
23 West Contra Costa Unified School, Bakersfield City School District, Los Angeles Unified School
24 District, Montebello Unified School District, Paramount Unified School District, Pasadena Unified
25 School District, Gonzalez Unified School District, Coachella Valley Unified School District, North
26 Sacramento School District, Robla School District, Sacramento City Unified School District, and
27 Alum Rock Union Elementary School District. The applications of these school districts were subject
28 to respondents' exclusionary eligibility requirements, as described above. The deadline for the second

1 round of respondents' "Reading First" application process is March 7, 2003.

2 46. Respondents were informed that these eligibility requirements are inconsistent with the
3 federal requirements of inclusivity of LEP students. On or about February 4, 2003 a letter from
4 various individuals and organizations concerned about the rights of LEP children, including
5 petitioners, was delivered to the STATE BOARD and the STATE SUPERINTENDENT. This letter
6 advised respondents that the regulations had been improperly promulgated and implemented and were
7 inconsistent with the requirements of NCLB and other provisions of state and federal law.

8 47. On January 30, 2003, a group referred to by respondents as the "Reading and Literacy
9 Partnership Team," acting under the direction and control of respondent STATE BOARD, met and,
10 on information and belief, changed the requirements contained in the "Frequently Asked Questions-
11 Set Two." At this meeting, according to the revised criteria that now appear on the CDE website:
12 "the advisory group for implementation of California's Reading First Program, revised the guidance
13 offered to districts regarding eligibility of schools with Proposition 227 waiver classrooms." The
14 revised criteria state:

15 Any K-3 classroom in an eligible school may be part of an LEA's application
16 provided that the classroom is implementing the full state adopted reading program
17 in English (one hour/instructional day in kindergarten and 2.5 hours per instructional
18 day in grades 1-3). Beyond the instructional time for reading in English, the balance
19 of each instructional day in waiver classroom may in a pupil's primary language.

20 Through this policy respondents now require that schools that wish to receive "Reading First" funds
21 for their alternative waiver classrooms must abandon their Spanish Language Arts curriculum and
22 replace it with an English Language Arts program, resulting in the complete dismantling of alternative
23 classroom programs.

24 48. Alternative bilingual education programs, duly established pursuant to California
25 Education Code §§ 310-311, utilize a Spanish Language Arts curriculum that is aligned with state
26 academic and content standards and Spanish Language Arts instructional materials that have been duly
27 approved and adopted by the STATE BOARD. In order to comply with this new eligibility
28 requirement and, thus, be eligible for "Reading First" funds, schools with bilingual alternative
programs would have to purchase additional and costly English Language Arts materials for their
bilingual classrooms, which they otherwise would not have to purchase. Additionally, in order to

1 implement the required English Language Arts curriculum, school districts would have two choices.
2 They could abandon the Spanish Language Arts curriculum, or, if they wanted to maintain the 2.5
3 hours of Spanish Language Arts curriculum normally provided in a properly implemented bilingual
4 classroom as well as provide the newly imposed 2.5 hours of English Language Arts curriculum, they
5 would have to deny LEP children access to other core areas of the curriculum, such as Math, Science,
6 or Social Studies. Neither of these approaches would provide the children enrolled in these
7 classrooms with a pedagogically sound educational program designed to allow for the acquisition of
8 English and access to core curriculum.

9 49. Pursuant to California Education Code § 311(c), LEP students are assigned to
10 alternative programs in bilingual Proposition 227 waiver classrooms based on the informed belief of
11 the school principal and the educational staff that each student has special educational needs such that
12 "an alternative course of study would be better suited to the child's overall educational development."
13 Educ. Code § 311(c). As a result of respondents' new "Reading First" eligibility requirements,
14 schools are forced to either forego important supplemental funding or eliminate their alternative
15 programs and reassign children from Proposition 227 waiver classrooms to classrooms which will
16 provide instruction through a curriculum that is not in a child's best educational interest.

17 50. The California State Legislature established an NCLB advisory committee through
18 Assembly Bill 312. This advisory committee--the "No Child Left Behind Liaison Team"--is charged
19 by statute to advise the STATE SUPERINTENDENT and the STATE BOARD "on all appropriate
20 matters related to the implementation of the federal No Child Left Behind Act of 2001," and to make
21 recommendations that "are consistent with" NCLB and its implementing regulations "and that ensure
22 the timely compliance by all schools within California that are subject to the requirements set forth
23 in that act." Educ. Code § 52058.1(a). Its agendas, meeting times, membership and minutes are
24 posted on the CDE website.

25 51. The NCLB Liaison Team met on February 4, 2003, and discussed the implementation
26 of the "California Reading First Plan" and voted to recommend to the STATE BOARD that its
27 "Reading First" application be amended to clarify that all Proposition 227 bilingual waiver classrooms
28 are eligible for funding.

52. This and other recommendations of the NCLB Liaison Team were delivered personally to the STATE BOARD at its February 5, 2003, meeting by NCLB Liaison Team Chair, Dr. Chuck Weiss. The response of respondents to the recommendations and testimony was to state that the "eligibility requirements" had already been revised by the Reading and Literacy Partnership Team and that these revised eligibility requirements were already on the CDE website. Copies of the revised "Frequently Asked Questions-Set Two" document were provided to members of the public in attendance at the STATE BOARD meeting. The STATE BOARD, however, did not entertain any motion to formally approve those "revised guidelines," nor did it follow any of the APA-mandated procedures with respect to this regulation change.

FIRST CAUSE OF ACTION

Administrative Procedures Act

Cal. Gov. Code §§ 11340 et seq.

53. Petitioners incorporate by reference paragraphs 1 through 52 as if fully set forth here.

54. Respondents have issued and implemented "eligibility requirements" for receipt of "Reading First" program funds that preclude receipt of those funds by schools and school districts for their classrooms that enroll LEP students in alternative programs. These "eligibility requirements" are rules of general application applying to all school districts, charter schools, and county offices seeking to participate in the "Reading First" program, but have not been promulgated in accordance with the requirements of the APA.

55. Respondents may only use regulations promulgated in accordance with the APA. Gov. Code § 11340.5.

56. Respondents, at all times relevant to this action, had and continue to have the ability to promulgate regulations governing participation in the "Reading First" program in accordance with the requirements of the APA and with state statutes.

57. In issuing the "Reading First" eligibility requirements, respondents have violated the APA by failing to publish the proposed regulations, prepare a statement of reasons for the adoption of these regulations, and provide a minimum of forty-five days for the public to submit written comments and testify at a public hearing regarding the content of the proposed regulations prior to

1 implementation, as required by California Government Code §§ 11346.2-11346.5, 11346.8, and
2 11349.1.

3 58. Respondents further violated the APA by failing to respond in writing to public
4 comments; forward a file of all materials on which the agency relied in creating the proposed
5 regulation for consistency of the law, clarity, and necessity for review by the Office of Administrative
6 Law; and file the proposed regulation with the Secretary of State, as mandated by California
7 Government Code § 11343, 11346.9, 11349.1, and 11349.3.

8 59. A properly promulgated proposed regulation and comment period would have likely
9 resulted in respondents receiving comments from petitioners and other members of the general public
10 which would have allowed respondents to meet their policy goal and not exclude alternative programs.
11 Petitioners have a right to make such comments in an attempt to influence respondents' policy
12 decisions.

13 60. Respondents' regulation excluding alternative classrooms from "Reading First"
14 eligibility is in contravention of the APA (Gov. Code §§ 11342.1, 11342.2, 11349.1, 11349(d)) as it
15 is inconsistent and conflicts with the "No Child Left Behind Act" (20 U.S.C. §§ 6301 et seq.) by
16 contravening the NCLB's express provisions and underlying purposes that seek to assist LEP students
17 in developing and attaining English proficiency, achieving academically, and afford parents substantial
18 opportunities to participate in the education of their children.

19 61. Respondents' regulation excluding alternative classrooms from "Reading First"
20 eligibility is in contravention of the APA (Gov. Code §§ 11342.1, 11342.2, 11349.1, 11349(d)) as it
21 is inconsistent and conflicts with the English Language Education for Immigrant Children Initiative
22 (Ed. Code §§ 300 et seq.) by contravening that Act's provisions allowing LEP students to be enrolled
23 in instructional programs that are conducted in a language other than English, according to parental
24 choice and school approval.

25 62. Respondents' regulation excluding alternative classrooms from "Reading First"
26 eligibility is in contravention of the APA (Gov. Code §§ 11342.1, 11342.2, 11349.1, 11349(d)) as it
27 is inconsistent and conflicts with the Equal Educational Opportunities Act of 1974 (20 U.S.C. §§ 1700
28 et seq.) by denying LEP students in alternative programs the opportunity to overcome language

1 barriers that impede access to equal educational opportunities.

2 63. Respondents' regulation excluding alternative classrooms from "Reading First"
3 eligibility is in contravention of the APA (Gov. Code §§ 11342.1, 11342.2, 11349.1, 11349(d)) as it
4 is inconsistent and conflicts with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.)
5 because it has an unlawful disparate impact on the basis of national origin.

6 64. Respondents' regulation excluding alternative classrooms from "Reading First"
7 eligibility is in contravention of the APA (Gov. Code §§ 11342.1, 11342.2, 11349.1, 11349(d)) as it
8 is inconsistent and conflicts with California Government Code §§ 11135 et seq. because it has the
9 effect of excluding persons based on their ethnic group identification.

10 65. Respondents' regulation excluding alternative classrooms from "Reading First"
11 eligibility is in contravention of the APA (Gov. Code §§ 11342.1, 11342.2, 11349.1, 11349(d)) as it
12 is inconsistent and conflicts with California Constitution, Article IX, §§ 1 and 5, because such an
13 exclusion has the effect of denying students in those classrooms a basic and equal education.

14 66. In issuing the "Reading First" eligibility requirements, respondents acted outside the
15 scope of the authority conferred by the "No Child Left Behind Act" (20 U.S.C. §§ 6301 et seq.), in
16 violation of the APA. Gov. Code § 11342.1.

17 67. Petitioners and the general public will be irreparably harmed if respondents are
18 allowed to continue to implement or order the implementation of the use of "eligibility requirements"
19 in lieu of regulations promulgated in accordance with the APA.

20 68. The exclusion of LEP students in alternative programs from participation in the
21 "Reading First" program as a result of respondents' failure to promulgate regulations has already
22 caused petitioners severe hardship in that districts have been unable to apply for and/or obtain
23 additional funding that could increase the quality and effectiveness of the educational opportunities
24 for LEP children currently enrolled in these programs.

25 69. Such harm will continue to be visited upon schools that provide alternative programs
26 and LEP children who will be enrolled in alternative programs in the 2003-2004 academic year if
27 respondents are allowed to apply these unlawful "eligibility requirements" when considering funding
28 applications submitted for the March 7, 2003, funding cycle and subsequent funding cycles.

1 70. The harm to petitioners and the general public because of the implementation of the
2 eligibility requirements, not promulgated in accordance with the APA, cannot be later remedied by
3 damages. Therefore, petitioners have no plain, speedy, and adequate remedy at law.

4 71. Petitioners are entitled to injunctive relief against respondents in that they and the
5 general public have suffered and will continue to suffer irreparable injury due to respondents' unlawful
6 use of the eligibility requirements not promulgated in accordance with the APA.

7 72. An actual controversy exists between petitioners and respondents concerning their
8 rights, privileges, and obligations.

9 **SECOND CAUSE OF ACTION**

10 **Writ of Mandate—Abuse of Discretion**

11 **Cal. Code Civ. Proc. § 1085**

12 73. Petitioners incorporate by reference paragraphs 1 through 52 as if fully set forth here.

13 74. Petitioners are entitled to a writ of mandate under California Code of Civil Procedure
14 § 1085 in that respondents have a clear, present, and ministerial duty to use only regulations
15 promulgated in accordance with the APA to regulate participation in the "Reading First" programs
16 and to make "Reading First" eligibility determinations that are not in conflict with state and federal
17 laws.

18 75. Respondent STATE BOARD has a clear and present ministerial duty to determine the
19 policies governing California schools and to adopt and promulgate rules and regulations for the
20 supervision and administration of all local school districts and the administration and oversight of
21 funds that are distributed to local educational agencies that are not in violation of the APA. The
22 STATE BOARD further has a clear and present ministerial duty to make "Reading First" eligibility
23 determinations that are not inconsistent with state and federal laws concerning educational services
24 relating to LEP children and the underlying purposes and specific provisions of NCLB.

25 76. Respondent STATE BOARD further has a clear and present ministerial duty to develop
26 such regulations using procedures that are not in violation of the APA.

27 77. Respondent STATE SUPERINTENDENT is a constitutional officer with a clear and
28 present ministerial duty to supervise all California schools and school districts. In such capacity, he

1 is obligated to take all necessary steps to ensure that school districts comply with state and federal law
2 requirements concerning educational services relating to LEP children and the funding of programs
3 such as NCLB and is charged with administering and overseeing funds that are distributed to local
4 educational agencies in a manner that is consistent with the underlying purposes and specific
5 provisions of NCLB.

6 78. Respondent CDE is the department of state government with a clear and present
7 ministerial duty to administer and enforce law related to the education of LEP children and state and
8 school district compliance with all state and federal mandates with respect to funding programs such
9 as NCLB and is charged with administering and overseeing funds that are distributed to local
10 educational agencies in a manner that is consistent with the underlying purposes and specific
11 provisions of NCLB.

12 79. The State of California has been granted funding pursuant to the NCLB to provide
13 funding to schools for the "Reading First" program. Respondents are mandated under state law and
14 the provisions of NCLB to distribute that funding to local school district in a manner that is consistent
15 with the express provisions and purpose of NCLB.

16 80. By issuing, implementing, and applying eligibility requirements, as described in
17 paragraphs 41 through 52, that are inconsistent with state and federal laws protecting the educational
18 and civil rights of LEP students in alternative programs, as described in paragraphs 59 through 64,
19 respondents have abused their discretion and acted in an arbitrary and discriminatory manner in
20 violation of the APA.

21 81. Respondents' actions applying eligibility criteria that exclude alternative classrooms
22 from "Reading First" eligibility constitute an abuse of discretion because they violate the "No Child
23 Left Behind Act" (20 U.S.C. §§ 6301 et seq.) by contravening NCLB's express provisions and
24 underlying purposes that seek to assist LEP students in developing and attaining English proficiency,
25 achieving academically and afford parents substantial opportunities to participate in the education of
26 their children.

27 82. Respondents' actions applying eligibility criteria that exclude alternative classrooms
28 from "Reading First" eligibility constitute an abuse of discretion because they violate the English

1 Language Education for Immigrant Children Act (Ed. Code §§ 300 et seq.) by contravening that Act's
2 provisions allowing LEP students to be enrolled in instructional programs that are conducted in a
3 language other than English, according to parental choice and school approval.

4 83. Respondents' actions applying eligibility criteria that exclude alternative classrooms
5 from "Reading First" eligibility constitute an abuse of discretion because they violate the Equal
6 Educational Opportunities Act of 1974 (20 U.S.C. §§ 1700 et seq.) by denying LEP students in
7 alternative programs the opportunity to overcome language barriers that impede access to equal
8 educational opportunities.

9 84. Respondents' actions applying eligibility criteria that exclude alternative classrooms
10 from "Reading First" eligibility constitute an abuse of discretion because they violate Title VI of the
11 Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and its implementing regulations, because such
12 an exclusion has an unlawful disparate impact on the basis of national origin.

13 85. Respondents' actions applying eligibility criteria that exclude alternative classrooms
14 from "Reading First" eligibility constitute an abuse of discretion because they violate California
15 Government Code §§ 11135 et seq. because such an exclusion has the effect of excluding persons
16 based on their ethnic group identification.

17 86. Respondents' actions applying eligibility criteria that exclude alternative classrooms
18 from "Reading First" eligibility constitute an abuse of discretion because they violate California
19 Constitution, Article IX, §§ 1 and 5, because such an exclusion has the effect of denying students in
20 those classrooms a basic and equal education.

21 87. Petitioners have no administrative remedy available to them to resolve this controversy.

22 88. Petitioners have no plain, speedy, or adequate remedy at law other than the relief
23 requested in this petition.

24 89. As parents of students who will be excluded from participation in the "Reading First"
25 program as a result of the failure of respondents to comply with the law, petitioners have a beneficial
26 interest in the performance by respondents of their duties to promulgate regulations in accordance with
27 the requirements of state and federal laws.

28 90. Petitioners' success in this action will result in the enforcement of important rights

1 affecting the public interest by conferring significant benefits on a large class of persons. Petitioners
2 herein seek enforcement of rights not only for themselves, but for taxpayers and students enrolled in
3 California public schools who seek access to or benefit from the programs and services provided
4 through California's public school system.

5 91. Furthermore, private enforcement of these rights is necessary as no other agency has
6 pursued these rights, and the State of California is sanctioning the actions of the STATE BOARD, the
7 STATE SUPERINTENDENT and the CDE.

8 92. Petitioners take it upon themselves to enforce these rights for other individuals seeking
9 equal educational opportunity. Petitioners will not recover any money as a direct result of the
10 successful litigation of this matter. There is a financial burden incurred in pursuing this action and
11 it would be against the interests of justice to penalize petitioners by forcing them to pay attorneys fees.
12 Therefore, attorneys fees only insofar as they are payable to Multicultural Education, Training and
13 Advocacy, Inc., the Youth Law Center, the Public Interest Law Firm, and the Mexican American
14 Legal Defense and Educational Fund are appropriate pursuant to California Code of Civil Procedure
15 §1021.5.

16 THIRD CAUSE OF ACTION

17 Illegal Expenditure of Taxpayer Funds

18 (Petitioners Betty Pazmiño, Denis O'Leary v. Respondents)

19 93. Petitioners Betty Pazmiño and Denis O'Leary incorporate by reference paragraphs 1
20 through 52 as if fully set forth here.

21 94. Respondents, and each of them, through the actions of their agents, have expended tax
22 moneys and threaten to continue and will continue to expend tax moneys in an illegal manner in
23 violation of state law as outlined in this Petition and Complaint.

24 95. Respondents' regulations and actions applying eligibility criteria that exclude
25 alternative classrooms from "Reading First" eligibility constitute an illegal expenditure of taxpayer
26 funds because they violate the "No Child Left Behind Act" (20 U.S.C. §§ 6301 et seq.) by
27 contravening the NCLB's express provisions and underlying purposes that seek to assist LEP students
28 in developing and attaining English proficiency, academic achievement, and afford parents substantial

1 opportunities to participate in the education of their children.

2 96. Respondents' regulations and actions applying eligibility criteria that exclude
3 alternative classrooms from "Reading First" eligibility constitute an illegal expenditure of taxpayer
4 funds because they violate the English Language Education for Immigrant Children Initiative (Educ.
5 Code §§ 300 et seq.) by contravening that Act's provisions allowing LEP students to be enrolled in
6 instructional programs that are conducted in a language other than English, according to parental
7 choice and school approval.

8 97. Respondents' regulations and actions applying eligibility criteria that exclude
9 alternative classrooms from "Reading First" eligibility constitute an illegal expenditure of taxpayer
10 funds because they violate the Equal Educational Opportunities Act of 1974 (20 U.S.C. §§ 1700 et
11 seq.) by denying LEP students in alternative programs the opportunity to overcome language barriers
12 that impede access to equal educational opportunities.

13 98. Respondents' regulations and actions applying eligibility criteria that exclude
14 alternative classrooms from "Reading First" eligibility constitute an illegal expenditure of taxpayer
15 funds because they violate Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.)
16 because such an exclusion has an unlawful disparate impact on the basis of national origin.

17 99. Respondents' regulations and actions applying eligibility criteria that exclude
18 alternative classrooms from "Reading First" eligibility constitute an illegal expenditure of taxpayer
19 funds because they violate California Government Code §§ 11135 et seq. because such an exclusion
20 has the effect of excluding persons based on their ethnic group identification.

21 100. Respondents' regulations and actions applying eligibility criteria that exclude
22 alternative classrooms from "Reading First" eligibility constitute an illegal expenditure of taxpayer
23 funds because they violate California Constitution, Article IX, §§ 1 and 5, because such an exclusion
24 has the effect of denying students in those classrooms a basic and equal education.

25 101. Petitioners, Pazmiño and O'Leary, citizen residents of the United States and the State
26 of California, who have within one year prior to the commencement of this action, paid taxes to the
27 State of California, bring this action as taxpayers pursuant to California Code of Civil Procedure 526a.

28 102. Petitioners, Pazmiño and O'Leary, as citizens and taxpayers, have suffered and

1 continue to suffer irreparable injury and are without plain, speedy, and adequate remedy in the
2 ordinary course of the law to compel respondents to enforce and comply with the legal requirements
3 outlined in this Petition and Complaint, thereby rendering a Writ of Mandate appropriate, in that there
4 is no provision in law for a taxpayer to receive money damages for unlawful governmental conduct;
5 money damages would be difficult to ascertain; and money damages would not adequately compensate
6 taxpayers for unlawful governmental activity.

7 103. The acts and omissions as outlined in this Petition and Complaint were committed by
8 respondents, either personally or through the actions of their agents, acting pursuant to policies set by
9 respondents.

10 **FOURTH CAUSE OF ACTION**

11 **Declaratory Relief**

12 104. Petitioners incorporate by reference paragraphs 1 through 52 as if fully set forth here.

13 105. An actual and existing controversy exists between the petitioners and respondents
14 because petitioners contend and respondents dispute that respondents' actions as described above
15 violate the APA, the "No Child Left Behind Act" (20 U.S.C. §§ 6301 et seq.), the English Language
16 Education for Immigrant Children Initiative (Educ. Code §§ 300 et seq.), the Equal Educational
17 Opportunities Act of 1974 (20 U.S.C. §§ 1700 et seq.), Title VI of the Civil Rights Act of 1964 (42
18 U.S.C. §§ 2000d et seq.) and its implementing regulations, California Government Code § 11135 and
19 its accompanying regulations, and the California Constitution, Article IX, §§ 1 and 5; constitute an
20 abuse of discretion; and constitute an illegal expenditure of taxpayer funds.

21 106. Petitioners seek a judicial declaration that respondents have violated these
22 constitutional, statutory, and regulatory provisions.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, petitioners pray that this Court:

25 1. Issue a declaratory judgment that respondents' actions complained of herein:

26 A. Violate the Administrative Procedures Act (Gov. Code §§ 11340, et seq.);

27 B. Violate the "No Child Left Behind Act" (20 U.S.C. §§ 6301 et seq.);

28 C. Violate the English Language Education for Immigrant Children Initiative (Educ.

- 1 Code § 300 et seq.);
- 2 D. Violate the Equal Educational Opportunities Act of 1974 (20 U.S.C. §§ 1700 et seq.);
- 3 E. Violate Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq. and its
- 4 implementing regulations);
- 5 F. Violate California Government Code § 11135 and 22 C.C.R. § 98000;
- 6 G. Violate Article IX, §§ 1 and 5 of the California Constitution; and
- 7 H. Constitute an illegal expenditure of taxpayer funds.
- 8 2. Issue an alternative writ of mandate commanding that respondents, upon service of the writ:
- 9 A. cease implementing the current eligibility requirements excluding alternative
- 10 programs and/or Proposition 227 waiver classrooms from participation in the "Reading First"
- 11 program, and any other eligibility requirements of general application not mandated by NCLB, until
- 12 such time as they have complied with the notice and comment provisions of the APA regarding the
- 13 promulgation of regulations (*see* Gov. Code §§ 11343, 11346.2-11346.5, 11346.8, 11346.9, 11349.1
- 14 and 11349.3); and
- 15 B. remove all references to the eligibility requirements "Frequently Asked Questions -
- 16 Set Two," and any other eligibility requirements from their website;
- 17 C. remove all references to the eligibility requirements "Frequently Asked Questions -
- 18 Set Two" and any other eligibility requirements from their website; and
- 19 D. inform all school districts, which otherwise meet NCLB eligibility criteria, in
- 20 writing, and through posted notice on its website that the "Reading First" program requirements can
- 21 be met in a Proposition 227 waived classroom and that teachers in alternative classrooms can
- 22 participate in "Reading First" while using alternate formats in Spanish of the State-adopted Language
- 23 Arts textbooks; or
- 24 E. show cause, at a time and place and after such notice as specified by the Court
- 25 order, why they should not do so.
- 26 3. Issue a peremptory writ of mandate commanding that respondents, upon service of the writ:
- 27 A. cease implementing the current eligibility requirements excluding alternative programs
- 28 and/or Proposition 227 waiver classrooms from participation in the "Reading First" program, and any

1 other eligibility requirements of general application not mandated by NCLB, until such time as they
2 have complied with the provisions of the APA regarding the promulgation of regulations;

3 B. cease implementing any policy or criteria that denies "Reading First" funding
4 to schools or classrooms solely on the basis that the school has implemented an alternative program
5 and/or has Proposition 227 waiver classrooms or uses bilingual education other instructional methods
6 utilizing instruction in languages other than English;

7 C. remove all references to the eligibility requirements "Frequently Asked Questions -
8 Set Two" and any other eligibility requirements from their website; and

9 D. inform all school districts, which otherwise meet NCLB eligibility criteria, in
10 writing, and through posted notice on its website that the "Reading First" program requirements can
11 be met in a Proposition 227 waived classroom and that teachers in alternative classrooms can
12 participate in "Reading First" while using alternate formats in Spanish of the State-adopted Language
13 Arts textbooks.

14 4. Issue a temporary restraining order ordering respondents to:

15 A. cease implementing the current eligibility requirements excluding alternative programs
16 and/or Proposition 227 waiver classrooms from participation in the "Reading First" program, and any
17 other eligibility requirements of general application not mandated by NCLB, until such time as they
18 have complied with the notice and comment provisions of the APA regarding the promulgation of
19 regulations (*see* Gov. Code §§ 11343, 11346.2-11346.5, 11346.8, 11346.9, 11349.1 and 11349.3); and

20 B. remove all references to the eligibility requirements "Frequently Asked Questions - Set
21 Two," and any other eligibility requirements from their website;

22 C. remove all references to the eligibility requirements "Frequently Asked Questions -
23 Set Two," and any other eligibility requirements from their website; and

24 D. inform all school districts, which otherwise meet NCLB eligibility criteria, in
25 writing, and through posted notice on its website that the "Reading First" program requirements can
26 be met in a Proposition 227 waived classroom and that teachers in alternative classrooms can
27 participate in "Reading First" while using alternate formats in Spanish of the State-adopted Language
28 Arts textbooks.

1 5. Issue a preliminary injunction and permanent injunction ordering respondents to:

2 A. cease implementing the current eligibility requirements excluding alternative programs
3 and/or Proposition 227 waiver classrooms from participation in the "Reading First" program, and any
4 other eligibility requirements of general application not mandated by NCLB, until such time as they
5 have complied with the provisions of the APA regarding the promulgation of regulations;

6 B. cease implementing any policy or criteria that denies "Reading First" funding to
7 schools or classrooms solely on the basis that the school has implemented an alternative program
8 and/or has Proposition 227 waiver classrooms or uses bilingual education other instructional methods
9 utilizing instruction in languages other than English;

10 C. remove all references to the eligibility requirements "Frequently Asked Questions -
11 Set Two," and any other eligibility requirements from their website; and

12 D. inform all school districts, which otherwise meet NCLB eligibility criteria, in
13 writing, and through posted notice on its website that the "Reading First" program requirements can
14 be met in a Proposition 227 waived classroom and that teachers in alternative classrooms can
15 participate in "Reading First" while using alternate formats in Spanish of the State-adopted Language
16 Arts textbooks.


17 6. Award petitioners their costs of suit and reasonable attorneys' fees, payable only to
18 Multicultural Education, Training and Advocacy, Inc., Youth Law Center, Public Interest Law Firm,
19 and the Mexican American Legal Defense and Educational Fund.

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

21 Dated: March 5, 2003

Respectfully submitted,

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VERIFICATION

I, Cynthia L. Rice, am attorney of record for Petitioner/Plaintiff Lucia Escoto. The petitioner is 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 5th day of March, 2003, in San Francisco, California.


CYNTHIA L. RICE

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(Continued, next page)

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