

ORIGINAL

1 DEBORAH ESCOBEDO (State Bar No. 89093)
2 MARY T. HERNANDEZ (State Bar No. 136942)
3 **Multicultural Education, Training
and Advocacy, Inc. (META)**
4 785 Market Street, Suite 420
5 San Francisco, California 94103
6 Telephone: (415) 546-6382
7 Facsimile: (415) 546-6363

8 Attorneys for Petitioners/Plaintiffs
9 ADDITIONAL COUNSEL LISTED ON SIGNATURE PAGE

10
11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE CITY AND COUNTY OF SAN FRANCISCO**

13 BETTY PAZMIÑO, MARIA LUCIA ESCOTO,
14 CHRISTINA PADILLA, FRANCISCA
15 GARCIA, DENIS O'LEARY, MUJERES
16 UNIDAS Y ACTIVAS, COMITÉ PRO
17 EDUCACIÓN, EXCELLENCE AND JUSTICE
18 IN EDUCATION, PARENTS FOR UNITY,
19 FRENTE INDÍGENA OAXAQUEÑO
20 BINACIONAL, CALIFORNIA LATINO CIVIL
21 RIGHTS NETWORK, CALIFORNIANS
22 TOGETHER, and CALIFORNIA
23 ASSOCIATION FOR BILINGUAL
24 EDUCATION,

25
26 Petitioners/Plaintiffs

27
28 CALIFORNIA BOARD OF EDUCATION;
29 REED HASTINGS, JOE NUNEZ, ROBERT J.
30 ABERNATHY, DON FISHER, NANCY
31 ICHINAGA, STEPHANIE H. LEE, SUZANNE
32 TACHENY, in their official capacities as
33 members of the Board of Education; JACK
34 O'CONNELL, in his official capacity as the State
35 Superintendent of Public Instruction;
36 CALIFORNIA DEPARTMENT OF
37 EDUCATION; and DOES 1 THROUGH 10,
38 inclusive,

39 Respondents/Defendants

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT
2003 MAR -6 PM 12:39
GORDON PARK-LI, CLERK
BY: Arthur Mo
DEPUTY CLERK

Case No. *CPF-03-502554*

**ALTERNATIVE WRIT OF
MANDATE**

DATE:
TIME:
DEPT:

1 To RESPONDENTS/DEFENDANTS, CALIFORNIA BOARD OF EDUCATION; REED
2 HASTINGS, JOE NUNEZ, ROBERT J. ABERNATHY, DON FISHER, NANCY ICHINAGA,
3 STEPHANIE H. LEE, SUZANNE TACHENY, in their official capacities as members of the Board
4 of Education; JACK O'CONNELL, in his official capacity as the State Superintendent of Public
5 Instruction and the CALIFORNIA DEPARTMENT OF EDUCATION

6 WHEREAS it is alleged by the verified petition on file in this action that Respondents/Defendants
7 have acted in excess of their power and authority and abused their discretion by establishing and
8 applying a policy of general application with respect to the eligibility for certain federal funds; and that
9 such policy constitutes a regulation, but was not promulgated in accordance with the notice, hearing
10 and filing requirements of the California Administrative Procedure Act; and is inconsistent with
11 certain provisions of state and federal law, and the California constitution;

12 WHEREAS it appears that the Petitioners/Plaintiffs are beneficially interested in this proceeding;
13 and

14 WHEREAS it appears from the verified petition that Petitioners/Plaintiffs have no plain, speedy,
15 and adequate remedy at law and that an alternative writ of mandate should issue.

16 NOW THEREFORE, you are commanded to, immediately upon receipt of this writ, to:

17 A. Cease implementing or applying the current eligibility requirements excluding alternative
18 programs and/or Proposition 227 waiver classrooms from participation in the "Reading First"
19 program, and any other eligibility requirements of general application not mandated by the No Child
20 Left Behind Act (NCLB) 20 U.S.C. §§ 6301, et seq., until such time as you have complied with the
21 notice, filing and comment provisions of the California Administrative Procedure Act (APA)
22 regarding the promulgation of regulations (*see* Gov. Code §§ 11343, 11346.2-11346.5, 11346.8,
23 11346.9, 11349.1 and 11349.3); and

24 B. Cease making any efforts to publish, by Internet or any other means, or to rely upon any
25 reference to the eligibility requirements contained in "Frequently Asked Questions - Set Two," or any
26 other eligibility requirements from your website which restrict, in any manner, alternative programs
27 and/or Proposition 227 waiver classrooms from participation in the "Reading First" program, and any
28 other eligibility requirements of general application not mandated by NCLB, with respect to individual

1 applications for "Reading First" funding until such time as you have complied with the provisions of
2 the APA regarding the promulgation of regulations;

3 C. Remove all references to the eligibility requirements "Frequently Asked Questions- Set
4 Two," and any other eligibility requirements from your website;

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

10 **Or in the Alternative**

11 To appear before this Court in the courtroom of Department 302, on 3/26, 2003,
12 located at 400 McAllister St., San Francisco, California, at 9:30 a.m. then and there to show cause why
13 a peremptory writ of mandate should not issues compelling you to do so.

14 **IT IS FURTHER ORDERED** that a copy of the complaint, together with a copy of this
15 ALTERNATIVE WRIT OF MANDATE, accompanying declarations and points and authorities must
16 be filed and served on Respondents/Defendants, not later than _____ m. on 3/6, 2003.

17 The written return, if any, or opposition to the writ must be filed and served on Petitioners/Plaintiffs
18 no later than _____ m. on 3/19, 2003, by fax or hand delivery, if by mail, or no later than _____ m. on

19 ~~_____ m. on _____, 2003, if hand-delivered.~~ Any reply papers must be filed and served on
20 Respondents/Defendants no later than _____ m. on 3/24, 2003, by fax or hand delivery, if by mail, and no later
21 than _____ m. on _____, 2003, if hand-delivered.

22 Witness the Honorable _____

23 Attest my hand and the seal of this court this _____, 2003

24 _____
25 Clerk of the Superior Court

26 By _____
27 Deputy Clerk

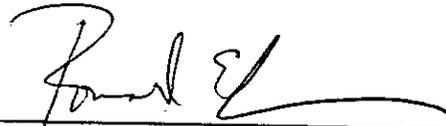
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ORDER

Let the forgoing writ issue.

Dated: 3/6/03



Judge of the Superior Court
CAP 03 502554

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COMPLETE LIST OF PETITIONERS' COUNSEL

DEBORAH ESCOBEDO (State Bar No. 89093)
MARY T. HERNANDEZ (State Bar No. 136942)
**Multicultural Education, Training
and Advocacy, Inc. (META)**
785 Market Street, Suite 420
San Francisco, California 94103
Telephone: (415) 546-6382
Facsimile: (415) 546-6363

JACK DANIEL (State Bar No. 133498)
California Rural Legal Assistance, Inc.
2115 Kern Street, Suite 370
Fresno, California 93721
Telephone: (559) 441-8721
Facsimile: (559) 441-8443
Attorney for Petitioner Maria Lucia Escoto

CYNTHIA L. RICE (State Bar No. 87630)
California Rural Legal Assistance, Inc.
631 Howard Street, Suite 300
San Francisco, California 94105
Telephone: (415) 777-2752
Facsimile: (415) 543-2752
Attorney for Petitioner Maria Lucia Escoto

ERIC MCKINLEY (State Bar No. 33525)
California Rural Legal Assistance, Inc.
449 Broadway
El Centro, California 92243
Telephone: (760) 353-0220
Facsimile: (760) 353-6914
Attorney for Petitioner Maria Lucia Escoto

KIRK AH TYE (State Bar No. 75661)
California Rural Legal Assistance, Inc.
324 E. Carrillo Street, Suite B
Santa Barbara, California 93101
Telephone: (805) 963-5981
Facsimile: (805) 963-5984
Attorney for Petitioner Maria Lucia Escoto

ALICE BUSSIÈRE (State Bar No. 114680)
SUSAN L. BURRELL (State Bar No. 74204)
MARIA F. RAMTU (State Bar No. 146497)
CAROLE B. SHAUFFER (State Bar No. 100226)
Youth Law Center
417 Montgomery Street, Suite 900
San Francisco, California 94104
Telephone: (415) 543-3379
Facsimile: (415) 956-9022

(Continued, next page)

1 THOMAS A. SAENZ (State Bar No. 159430)
HECTOR O. VILLAGRA (State Bar No. 177586)
2 **Mexican American Legal Defense and Educational Fund**
634 South Spring Street, 11th Floor
3 Los Angeles, California 90014
Telephone: (213) 629-2512
4 Facsimile: (213) 629-0266

5 KYRA KAZANTZIS (State Bar No. 154612)
JAMES ZAHRADKA (State Bar No. 196822)
6 **Public Interest Law Firm**
Law Foundation of Silicon Valley
7 111 West St. John Street, Suite 315
San Jose, California 95113
8 Telephone: (408) 280-2401
Facsimile: (408) 293-0106
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