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16 **SUPERIOR COURT OF CALIFORNIA**

17 **FOR THE CITY AND COUNTY OF SAN FRANCISCO**

18 COACHELLA VALLEY UNIFIED SCHOOL)
19 DISTRICT, CHULA VISTA ELEMENTARY)
20 SCHOOL DISTRICT, ALISAL UNION)
21 ELEMENTARY SCHOOL DISTRICT,)
22 TERRA BELLA UNION ELEMENTARY)
23 SCHOOL DISTRICT, PAJARO VALLEY)
24 UNIFIED SCHOOL DISTRICT, OXNARD)
25 ELEMENTARY SCHOOL DISTRICT,)
26 HAWTHORNE SCHOOL DISTRICT,)
27 HAYWARD UNIFIED SCHOOL DISTRICT,)
28 SWEETWATER UNION HIGH SCHOOL)
DISTRICT, SALINAS UNION HIGH)
SCHOOL DISTRICT, CALIFORNIA)
ASSOCIATION FOR BILINGUAL)
EDUCATION, CALIFORNIANS)
TOGETHER, CALIFORNIA LEAGUE OF)
UNIFIED LATIN AMERICAN CITIZENS,)
IVETTE ZAVALA, MELISSA ZAVALA, A)

CASE NO:
VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

1 Minor by IVETTE ZAVALA, Her Guardian)
 Ad Litem, LUIS OCHOA, JAMILET)
 2 OCHOA, by LUIS OCHOA, Her Guardian Ad)
 Litem,)
 3 Petitioners/Plaintiffs)
 4 vs.)
 5 STATE OF CALIFORNIA, ARNOLD)
 6 SCHWARZENEGGER, in his official)
 capacity as Governor of the State of)
 7 California, CALIFORNIA STATE BOARD)
 8 OF EDUCATION, RUTH E. GREEN, GLEE)
 JOHNSON, ALAN BERSIN, RUTH)
 9 BLOOM, YVONNE CHAN, DONALD G.)
 FISHER, KENNETH NOONAN, JOE)
 10 NUNEZ, BONNIE REISS, JONATHAN)
 11 WILLIAMS, in their official capacities as)
 Members of the Board of Education, JACK)
 12 O'CONNELL, in his official capacity as State)
 Superintendent of Public Instruction,)
 13 CALIFORNIA DEPARTMENT OF)
 14 EDUCATION and DOES 1 through 30,)
 inclusive,)
 15 Respondents/Defendants.)

16
 17
 18 **INTRODUCTION**

19 This lawsuit seeks to compel the State of California to comply with the federal No Child
 20 Left Behind Act (“NCLB”) (20 U.S.C. §6301, et seq.) with respect to California’s testing and
 21 accountability system for public school students who are not yet proficient in English. California
 22 has 1.6 million limited English proficient elementary and secondary students (also referred to as
 23 “English Learners” or “ELs”), 85% of whom speak Spanish as their primary language.

25 NCLB is a federal law which provides funding to state public school systems conditioned
 26 upon compliance with federal mandates regarding academic standards, assessment and
 27 accountability. As an element of accountability, each state must submit and adhere to a State
 28 Plan which demonstrates Annual Yearly Progress (“AYP”) in meeting established academic

1 achievement standards. California applied for and receives NCLB funds which have been
2 allocated to eligible school districts, including the districts that are petitioners in this case.

3 NCLB requires testing of English Learners for both English acquisition and academic
4 knowledge. NCLB mandates that states test English Learners for academic knowledge “in a valid
5 and reliable manner” and provided reasonable accommodations on assessments..... “*including,*
6 *to the extent practicable, assessment in the language and form most likely to yield accurate data*
7 *on what such students know and can do in academic content areas until such students have*
8 *achieved English language proficiency*”. 20 U.S.C. §6311(b)(3)(C)(ix)(III) (Emphasis added).

9 Despite this unmistakable language, California requires English Learners to be tested for
10 academic knowledge only in English, whether they understand it or not. As one expert observed,
11
12 for English Learners “a test in English is a test of English”.

13
14 To state the obvious – California’s testing of English Learners is neither valid nor
15 reliable.

16
17 The results have been disastrous. Schools in districts and districts throughout California
18 including petitioners and plaintiffs herein, who serve large numbers and/or percentages of
19 English Learners have been labeled educational failures on the basis of unreliable data. Schools
20 and districts that fail to meet accountability targets on the basis of these invalid data face an ever
21 increasing barrage of sanctions, as severe as dismantling their entire operations or being placed
22 in receivership. English Learners who understand the academics are unable to demonstrate their
23 knowledge simply because they do not yet speak English proficiently. Districts are being forced
24 to misdirect resources and implement inappropriate and unwise educational programs for these
25 children on the basis of invalid data. Teachers and administrators are being sanctioned
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1 from the State of California. The specifics as to each school district are set forth more fully in
2 Section V.

3 2. Petitioner/Plaintiff California Association for Bilingual Education (“CABE”) is a
4 non-profit corporation with its principal place of business in California. CABE has
5 approximately 7,000 members throughout the State of California, including teachers,
6 administrators, para-professionals, and parents, and over 60 chapters/affiliates statewide, all
7 working to promote equity and student achievement for students with diverse cultural, racial and
8 linguistic backgrounds. The mission of CABE is to promote and support educational excellence
9 and social justice for all children. CABE has a special concern for children who are EL students
10 and who face language barriers to equal educational opportunities in California's schools. CABE
11 members work to ensure that EL students have access to effective and quality educational
12 programs in which EL students can both achieve academically and acquire English language
13 proficiency. CABE promotes education programs that embrace all students in order to provide
14 all students the opportunity to benefit from the language and cultural diversity created by this
15 rich environment. Many CABE members are either parents of English Learners or educators who
16 teach English Learners in Title I schools covered by the mandates of NCLB. Many CABE
17 members have paid state income, real estate and other taxes to the state in the past year which
18 taxes are used to fund California public schools and the Respondents’ activities as set forth
19 herein. CABE brings suit on its own behalf and that of its members.

20 3. Petitioner/Plaintiff Californians Together is a statewide coalition of parents,
21 teachers, education advocates and civil rights groups committed to securing equal access to
22 quality education for all children. It is a non-profit corporation with its principal place of
23 business in California. Californians Together is committed to ensuring that all children have a
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1 quality education and that they are afforded the skills, opportunities and knowledge to fully
2 participate economically, intellectually, politically and socially in a democratic society.
3 Californians Together advocates statewide on behalf of language minority students in California
4 public schools in a variety of ways, such as developing education policy and advising legislators
5 and policymakers; promoting the educational development of teachers and administrators
6 through professional development workshops and institutes; supporting and encouraging parent
7 involvement; seeking and developing collaborations and partnerships with private and public
8 entities that are supportive of English Learners; and working with various school districts and
9 governmental bodies to develop strategies to best address the needs of all English Learners.
10 Californians Together members include educators who teach English Learners in Title I schools
11 covered by the mandates of NCLB.
12

13
14 4. Petitioner/Plaintiff California LULAC is a state affiliate of the national League of
15 United Latin American Citizens. LULAC is the oldest and largest national Hispanic civil rights
16 organization in the United States. The mission of LULAC is to advance the economic condition,
17 education attainment, political influence, health and civil rights of the Hispanic population of the
18 United States. California LULAC advocates on behalf of its thousands of members in California
19 on numerous areas of concern to Hispanics in California including civil rights and educational
20 equity. Among other issues, California LULAC advocates against discrimination and segregation
21 based on race, ethnicity or national origin and supports efforts dedicated to ensuring that
22 Hispanic youngsters are given full, fair and equal educational treatment throughout their public
23 school experience. California LULAC is a non-profit corporation with its principal place of
24 business in California. California LULAC brings suit on its own behalf and on behalf of its
25 members. Many California LULAC members have paid state income, real estate and other taxes
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1 to the state in the past year which taxes are used to fund California public schools and the
2 Respondents' activities as set forth herein.

3 5. Petitioner/Plaintiff Melissa Zavala is a student identified as limited English
4 proficient who is enrolled in the Palmview School in the Coachella Valley Unified School
5 District. She is represented by and through her Guardian Ad Litem Ivette Zavala.
6

7 Petitioner/Plaintiff Ivette Zavala is a parent of Melissa Zavala. Within one year prior to the
8 commencement of this action, Ivette Zavala paid taxes to the State of California which were used
9 in part to fund California public schools.
10

11 6. Petitioner/Plaintiff Jamilet Ochoa is a student identified as limited English
12 proficient who is enrolled in the Palmview School in the Coachella Valley Unified School
13 District. She is represented in this action by her Guardian Ad Litem Luis Ochoa.

14 Petitioner/Plaintiff Luis Ochoa is a parent of Jamilet Ochoa. Within one year prior to the
15 commencement of this action, Luis Ochoa paid taxes to the State of California which were used
16 in part to fund California public schools.
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18 7. Ivette Zavala and Luis Ochoa have or are, simultaneously with the filing of this
19 Complaint, filing petitions with the Court to act as Guardian ad Litem for their respective
20 children.
21

22 **B. RESPONDENTS/DEFENDANTS**

23 8. Respondent/Defendant State of California is the legal and political entity with
24 plenary responsibility for educating all California public school children, including the
25 responsibility to establish and maintain the system of common schools and a free education,
26 under the California Constitution Article IX, Section 5 and to assure that all California public
27 school children receive their fundamental right to equal education, under the equal protection
28

1 clause of the California Constitution Article I, Section 7(a) and 16(a). The State of California
2 applied for and received funds from the U. S. Department of Education for fiscal/academic years
3 2001-2005.

4
5 9. Respondent/Defendant California State Board of Education (“the State Board:)
6 and its members Ruth E. Green, Glee Johnson, Alan Bersin, Ruth Bloom, Yvonne Chan, Donald
7 G. Fisher, Kenneth Noonan, Joe Nunez, Bonnie Reiss, Jonathan Williams are charged with
8 determining the policies governing California schools and adopting and promulgating rules and
9 regulations for the standards and assessment of California school children mandated under State
10 and/or federal law. The above-named members of the California Board of Education are sued in
11 their official capacity. Pursuant to California Education Code §33030-33032, the State Board
12 must ensure that the State and local school districts comply with state and federal requirements
13 concerning educational services.
14

15
16 10. Respondent/Defendant Jack O’Connell is the State Superintendent of Public
17 Instruction for the State of California and is a Constitutional Officer in charge of supervision of
18 all California schools and school districts. In such capacity, he is obligated to take all necessary
19 steps to ensure that the State and school districts comply with state and federal law requirements
20 concerning educational services. Pursuant to California Education Code §33301-03, he is also
21 Director of Education in whom all executive and administrative functions of the California
22 Department of Education are vested and is the Executive Officer for the State Board. He is being
23 sued as his official capacity.
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26 11. Respondent/Defendant California Department of Education (“CDE”) is the
27 department of state government responsible for administering and enforcing laws related to
28 education pursuant to California Education Code §33308.

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III.

STATUTORY FRAMEWORK

17. NCLB was signed into law on January 8, 2002. It amended and re-authorized the Elementary and Secondary Education Act of 1965, the largest federally funded education program. The purpose of Title I of NCLB is to ensure that "all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments." 20 U.S.C. §6301.

18. NCLB requires states to adopt challenging academic content standards that apply to all schools and children in the State in subject areas that minimally include mathematics, reading or language arts, and science. 20 U.S.C. §6311(b)(1).

19. States are required to develop academic assessments that apply to all students and that must "be aligned with the State's challenging academic content and student academic achievement standards ... provide coherent information about student attainment of such standardsbe used for purposes for which such assessments are valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards." 20 U.S.C. §6311(b)(3)(c).

20. NCLB recognizes English Learners as a specific category of students needing special treatment in the implementation of standards and assessments. Under NCLB English Learners or "limited English proficient" students are those whose native language is a language other than English and "whose difficulties with speaking, reading, writing or understanding the English language, may be sufficient to deny the individual the ability to meet the State's proficient level of achievement on State (academic) assessments". 20 U.S.C. §7801(25).

1 21. NCLB requires school districts to provide the same educational opportunities for
2 English Learners to meet the same high academic standards as their peers. Specifically, NCLB
3 requires school districts to ensure that English Learners: (1) make adequate progress each year in
4 learning English; and (2) make adequate progress each year in achieving proficiency in the
5 State’s core academic areas (e.g. reading/language arts, mathematics and science). 20 U.S.C.
6 §6311(b) and §6312(g)(1)(A)(v).
7

8 22. NCLB requires states to measure how well school districts are doing in both areas
9 in a valid and reliable way. 20 U.S.C. §6311(b)(3) and (7).
10

11 23. NCLB mandates that assessments of proficiency in core academic areas must
12 actually “measure the proficiency of students” in those academic content areas and not simply be
13 another measure of the student’s English language proficiency. 20 U.S.C. §6311(b)(3)(C)(v)(I).
14

15 24. NCLB mandates that states establish an assessment method that is valid and
16 reliable and, to further that goal, allows states to measure academic proficiency of LEP students
17 by means other than tests written in English; provided that states must administer reading or
18 language arts tests written in English to students who have attended United States schools for
19 three or more consecutive years, unless a local educational agency determines that the student is
20 still not proficient in English and that a test written in another language would yield more
21 accurate results, in which case, NCLB allows an extension for up to two additional years. 20
22 U.S.C. §6311(b)(3)(C)(x)."
23

24 25. NCLB allows children to demonstrate their academic competence in any language
25 and presumes that within three to five years they will develop sufficient English language skills
26 to be able to demonstrate their competence in English. *Id.*
27
28

1 26. NCLB requires that states “identify the languages other than English that are
2 present in a participating student population and indicate the languages for which yearly student
3 academic assessments are not available and are needed”. 20 U.S.C. §6311(b)(7). NCLB further
4 requires that each state “make every effort to develop such assessments” and allows states to
5 “request assistance from the Secretary (of Education) if linguistically accessible academic
6 assessment measures are needed.” *Id.*

8 27. NCLB requires that states establish and implement an accountability system that
9 is based largely upon the required state academic content standards and on assessments that
10 ensure that all local educational agencies make adequate yearly progress (“AYP”) in enabling all
11 public school students to meet those academic standards. 20 U.S.C. §6311(b)(2).

13 28. NCLB requires that all students, including English Learners, be included in the
14 accountability system and requires the establishment of separate measurable annual objectives in
15 both mathematics and reading/language arts, for each of several target groups of students,
16 including English Learners. 20 U.S.C. §6311(b)(2). In order for a public school to achieve AYP,
17 it must have a 95% participation rate in the required academic assessments for each target group
18 of students. 20 U.S.C. §6311(b)(2)(I).

20 29. As a condition of receiving NCLB funds, states must develop a timeline for AYP
21 that ensures that, no later than academic year 2013-2014, all students, including students in each
22 target group, including English Learners, meet or exceed the state’s proficient level for academic
23 achievement. 20 U.S.C. §6311(b)(2)(F).

25 30. Schools that receive NCLB funding and do not meet the AYP criteria set by their
26 state for two consecutive years must be identified as “improvement schools” under NCLB. 20
27 U.S.C. §6316(b). “Improvement schools” face restrictions on use of funds and increasingly harsh
28

1 sanctions for each subsequent year that they do not meet AYP. These sanctions include
2 requirements that the schools notify parents and the public about their status, utilize a portion of
3 their funds to provide transportation to children whose parents wish to transfer them out of the
4 school and/or to provide supplemental services to students; develop plans to alter the school's
5 curriculum; replace staff "relevant to the failure to make adequate yearly progress"; turn the
6 operation of the school over to a private management entity, the state or a charter school. *Id.*

8 31. NCLB also requires that states establish AYP criteria for school districts as a
9 whole, again based largely on meeting adequate yearly progress goals on academic achievement
10 assessments, and to identify school districts as "improvement districts" when they do not meet
11 that AYP criteria for two consecutive years. School districts that do not make AYP for two
12 consecutive years after being designated "improvement districts" face increasingly harsh
13 sanctions ranging from reduced funding, replacement of personnel "relevant to the failure to
14 make adequate yearly progress," replacement of the superintendent or school board, or
15 ultimately, abolishment of the school district. 20 U.S.C. § 6316(c).

18 **V.**

19 **FACTUAL ALLEGATIONS**

20 32. Approximately 1.6 million students in California are identified as English
21 Learners, more than any other state in the nation and more than many states combined. 85% of
22 California's English Learners (more than 1.3 million) speak Spanish.

24 33. In response to the enactment of NCLB, the State Board developed a state plan
25 which includes the method by which California's schools and districts must demonstrate AYP
26 under NCLB. California's plan based AYP upon the percentage of students at a school scoring at
27 "proficient or above" on statewide assessment tests. California's assessment tests, pursuant to
28

1 The Public Schools Accountability Act of 1999, Education Code §52050 et seq., and as
2 implemented, include the California Standards Tests (CSTs), the California Achievement Test,
3 sixth edition survey (CAT-6), and the California High School Exit Exam (CAHSEE). Education
4 Code §52052. The CSTs, CAT-6 and CAHSEE are all tests designed for native English speakers
5 and they are administered to all students in English-only, regardless of whether or not the
6 students understand English.
7

8 34. The Public Schools Accountability Act also established standards for measuring
9 the progress of schools and districts called the Academic Performance Index (“API”). API uses a
10 numeric index that ranges from a low of 200 to a high of 1000. Schools are measured on a yearly
11 basis. Growth for each school and the district as a whole is measured by the API relative to
12 where they started in the baseline year.
13

14 35. As part of its attempt to comply with the mandates of NCLB, with respect to
15 English Learners, California excludes the test results of English Learners from the AYP
16 determination during the students’ first year of enrollment. After that, whether or not the student
17 has become English proficient, California tests that student in English-only and those tests count
18 in calculating API and AYP results for the student’s school, district and the state.
19

20 36. California already has a test to measure how well English Learners are learning
21 English as a second language. This test, the California English Language Development Test
22 (“CELDT”) was specifically designed for English Learners and is aligned to California’s English
23 Language Development Standards.
24

25 37. California fails to offer accommodations to English Learners in taking the
26 English-only tests that are sufficient to satisfy NCLB’s requirement that the testing produce valid
27 and reliable results.
28

1 38. California’s testing and accountability for English Learners is not valid and
2 reliable as mandated by NCLB for many reasons, including, without limitation, the following:

3 A. Relevant, nationally recognized professional and
4 technical standards and research have determined that
5 English Learners on average need between five to seven
6 years to become proficient enough that academic tests in
7 English will yield accurate results of what that student
8 knows and can do;

9 B. California’s model of testing children after one year
10 of English instruction is not valid, research-based or
11 consistent with recognized professional and technical
12 standards; and

13 C. Research on linguistic acquisition supports primary
14 language testing for those students being instructed in their
15 primary language and/or recent arrivals in the United
16 States. For other students not yet proficient in English and
17 being instructed in English, linguistic acquisition research
18 has determined that modifying the test questions and
19 answers to reduce linguistic complexity without reducing
20 academic rigor will yield more accurate results of what
21 these youngsters know and can do academically.

22 39. Primary language testing and meaningful accommodation including the
23 modification of tests for linguistic complexity offer proven effective accommodations based on
24 competent educational research. Thus these are “most likely” to yield accurate data on what
25 English Learners know and can do in academic content areas, until such students have achieved
26 English language proficiency.
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1 40. At least fourteen other states offer primary language testing to English Learners
2 and even more states offer modification of either the test directions, questions or both, to
3 minimize linguistic complexity for English Learners.

4 41. NCLB imposes a mandatory duty upon states participating in a federal NCLB
5 grant program, including California, to identify “languages other than English that are present in
6 a participating student population and indicate the languages for which yearly students academic
7 assessments are not available and are needed”. States are required to “make every effort to
8 develop such assessment.” California has neither identified those languages nor made any effort
9 to develop assessments to be used in computing a school’s or district’s AYP.

10 42. In 2005 California authorized the development of a primary language assessment
11 in Spanish for grades 2-11 that is “standards - aligned”. However, funding has only been
12 authorized to develop a test (within three years) for second grade. This assessment will not count
13 towards a school or district meeting its AYP.

14 43. The State Board has been repeatedly warned that English Only testing of English
15 Learners for academic knowledge with tests designed for native English-speakers does not
16 produce valid and reliable results. Despite these protests and manifest educational research to the
17 contrary, the State Board has steadfastly refused to test English Learners in a language or form
18 most likely to yield valid and reliable results. Thus, all administrative efforts to correct
19 California’s testing scheme as regards assessment of English Learners for NCLB accountability
20 have been fruitless. No administrative remedy is available to remedy the challenged practices
21 alleged herein.

22 44. Because of California’s refusal to comply with the mandates of NCLB with
23 respect to English Learner testing, parents, community members, teachers, schools and districts,
24 including plaintiffs, lack reliable data regarding what English Learner students know and can do
25 in academic subject areas.

26 45. But for California’s refusal to comply with the mandates of NCLB with respect to
27 English Learner testing and accountability, the petitioner school districts and most, if not all,
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1 schools within them would avoid “Program Improvement” status and the sanctions that
2 accompany that status.

3
4 **V.**

5 **FURTHER ALLEGATIONS ABOUT PETITIONER SCHOOL DISTRICTS**

6 **A. Coachella Valley Unified School District**

7 46. Petitioner Coachella Valley Unified School District is located in the region of
8 Riverside and Imperial counties known as the Coachella Valley. Located south of Palm Springs,
9 the district serves the communities of Coachella, Thermal, Mecca, Oasis, Indio and the Salton
10 Sea, and covers more than 1,200 square miles of mostly rural desert terrain. The District serves
11 more than 15,000 students in grades K-12 in thirteen elementary schools, two middle schools,
12 three comprehensive high schools, one continuation high school and one adult school.

14 47. More than two-thirds of the student population has been identified as limited
15 English speaking or English Learners. More than 50% of the students in the district are in the
16 beginning and intermediate levels of English proficiency. The primary language for English
17 Learner students in the district is almost exclusively Spanish. The population is highly transient
18 with 21% of all students in the district identified as migrant students. Many of the district's
19 English Learners students are first generation immigrant children and a large percentage of the
20 students in the district are newcomers to the United States. Over 1,600 students have been
21 identified as immigrant students who have been in the United States less than 36 months.

24 48. Most of the schools in the Coachella Valley Unified School District have been
25 identified as Program Improvement schools for failing to make AYP for two or more consecutive
26 years, including: Cahuila Desert Academy (High), Coachella Valley High, Duke Elementary,
27 John Kelley Elementary, Martinez Elementary, Mecca Elementary, Oasis Elementary, Palm
28 View Elementary, Peter Pendleton Elementary, Sea View Elementary, Valley View Elementary

1 and Westside Elementary. The concentration of EL students in these schools ranges from 49%
2 to 93% of the total student enrollment. In addition, the Coachella Valley Unified School District
3 has been designated a Program Improvement District.

4
5 49. All of the Program Improvement schools in the district met their annual
6 measurable achievement objectives for English proficiency for EL students in 2003-2004. That
7 is, all of these schools were able to demonstrate that they were making adequate progress in
8 teaching English to English Learners as required under NCLB. However, at each of these
9 schools, it is the scores of students who are tested for academic content knowledge in
10 mathematics or language arts in English that is a cause of the school's failure to make AYP.
11

12 50. At every school in the Coachella Valley Unified School District, EL students at
13 the lowest levels of proficiency in English (i.e., those who score a 1 or 2 on the California
14 English Language Development Test or CELDT) performed the lowest on the California
15 Standards Exams (CSTs), which are designed for native-English speakers and are administered
16 only in English. If the CST scores of those students in the beginning stages of English
17 proficiency were stricken from the results of schools on the State's Program Improvement list,
18 each of those schools would have made API and AYP goals.
19

20 51. Coachella Valley Unified School District has had the highest test score growth on
21 the API in the County of Riverside over the past five years. As EL students learn English, their
22 ability to demonstrate their academic skills in English dramatically improves. Once EL students
23 in the district master English (after four to seven years of instruction), they not only meet State
24 and Federal test requirements, they exceed them. The district's redesignated fluent English
25 Proficient students outperform their English-only peers on all of the California Standards Exams
26 (CSTs) in both language arts and mathematics.
27
28

1 **B. Chula Vista Elementary School District**

2 52. Petitioner Chula Vista Elementary School District serves more than 26,000
3 students in grades K-6 in 42 schools and is the largest K-6 elementary school district in the state.
4 The Chula Vista Elementary School District is located in southern San Diego County and has a
5 very large English Learner (EL) student population due to the close proximity to the Mexican
6 border.
7

8 53. Although the City of Chula Vista has a population of 190,949, the Chula Vista
9 Elementary School District actually serves a diverse population beyond Chula Vista including
10 Bonita, Sunnyside, portions of the City of San Diego, and other parts of unincorporated San
11 Diego County. Its schools include a multicultural population comprised of 64 percent Latino, 16
12 percent White, 9 percent Filipino, 5 percent African-American, 4 percent Asian/Pacific Islander,
13 and 2 percent with other backgrounds.
14

15 54. Close to 9,000 students in the Chula Vista Elementary School District are
16 identified as limited English proficient or EL students, representing more than one-third of the
17 district's total enrollment. Although students in the Chula Vista Elementary School District
18 speak more than 50 different languages, the predominant language spoken by students learning
19 English as a second language is Spanish. Approximately 93% of the EL students in the district
20 speak Spanish. More than 70% of the EL students are in grades 2-6 and over 1500 students have
21 been identified as immigrant students having been in the United States fewer than 36 months. Of
22 the total student population, 47% participate in the free/reduced lunch program.
23

24 55. Twelve schools in the Chula Vista Elementary School District have been
25 identified as Program Improvement schools for failing to meet adequate yearly progress (AYP)
26 for two or more consecutive years, including: the Chula Vista Learning Community Charter,
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1 Harborside, Juarez-Lincoln, Lauderbach, Loma Verde, Los Altos, Montgomery, Otay, Palomar,
2 Silver Wing, Valle Lindo and Vista Square elementary schools. All of these schools are among
3 the schools in the district with the highest numbers of EL students, with the concentration of EL
4 students ranging from 28% to 76% of the total student enrollment. EL students comprise the
5 majority of the student population in half of the Program Improvement schools. In all but two of
6 the district's Program Improvement schools, EL students comprise 39% or more of the total
7 student enrollment.

9 56. All of the Program Improvement schools in the district met their annual
10 measurable achievement objectives for English proficiency for EL students in 2003-2004. That
11 is, all of these schools were able to demonstrate that they were making adequate progress in
12 teaching English to EL students as required under NCLB. At each of these schools it is the scores
13 of students who are tested for academic content knowledge in a language they do not understand
14 that is a cause of the school's failure to make AYP. At every school in the district, EL students at
15 the lowest levels of proficiency in English (i.e., those who score a 1 or 2 on the California
16 English Language Development Test or CELDT) performed the lowest on the California
17 Standards Tests (CSTs), which are designed for native-English speakers and are administered
18 only in English. At most district schools on the state's Program Improvement list, simply
19 eliminating the scores of students at the beginning stages of English proficiency would have
20 allowed them to meet AYP and API goals.

24 57. Chula Vista Elementary School District uses multiple measures for internal
25 evaluation to determine whether or not students are at grade level in meeting state standards.
26 These multiple measures include primary language assessments in order to allow EL students at
27 the lowest level of English proficiency the opportunity to demonstrate what they know and can
28

1 do in academic content areas. Most EL students at the Program Improvement Schools in the
2 district can demonstrate mastery of state standards when tested in their primary language.

3 **C. Alisal Union Elementary School District**

4 58. Petitioner Alisal Union Elementary School District is located approximately 120
5 miles south of San Francisco, adjacent to the Monterey Peninsula, in East Salinas. The district
6 serves approximately 8,000 students in grades K-6 at eleven schools and one charter school. Ten
7 schools conduct Schoolwide Title I programs and one school conducts Title I Targeted
8 Assistance programs. The district serves a very poor and transient population. The composition
9 of the district is 95% minority, 88% are socio-economically disadvantaged and the entire district
10 qualifies for free and reduced-priced school lunch. The demographics of the district's student
11 population includes about 1% American Indian, 1% Asian, 2% Pacific Islanders, 2.5% Filipino,
12 89% Latino, 1% African American, and 5% White.

13 59. Over 70% of Alisal Union Elementary School District's population has been
14 identified as limited English speaking or English Learners. The primary language for English
15 Learner students in the district is almost exclusively Spanish. The population is highly transient
16 with 48% of all students in the district identified as migrant students. Many of the district's EL
17 students are first generation immigrant children and a large percentage of the students in the
18 district are newcomers to the United States. Almost 20% (over 5,500) of the district's EL
19 students who participated in testing have been identified as immigrant students having been in
20 the United States fewer than 36 months. More than 27% of the students in the district scored at
21 the beginner levels of English proficiency on the 2003-04 CELDT test.

22 60. Nine schools in the Alisal Union Elementary School District have been identified
23 as Program Improvement schools because the English Learner target group did not meet
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1 adequate yearly progress (AYP) for two or more consecutive years in English Language Arts,
2 including: the Alisal Community School, Bardin, Virginia Rocca Barton, Cesar E.Chavez, Dr.
3 Martin Luther King, Jr., Frank Paul, Fremont, Oscar R. Loya, and Jessie G. Sanchez elementary
4 schools. The only schools in the district not identified as Program Improvement schools are also
5 the only schools in the district with an English Learner student population that is under 50% of
6 the total school enrollment. The concentration of English Learners in district schools identified
7 as Program Improvement range from 61% to 89% of the total student enrollment.
8

9 61. At each of the Alisal Union Elementary School District's Program Improvement
10 schools, it is the scores of EL students on the CST English language arts exam that is a cause of
11 the school's failure to make AYP. At every school in the district, EL students at the lowest levels
12 of proficiency in English (i.e., those who score a 1 or 2 on the California English Language
13 Development Test or CELDT) performed the lowest on the California Standards Exams (CSTs),
14 which are designed for native-English speakers and are administered only in English. At all of
15 the district schools on the state's Program Improvement list, simply eliminating the scores of
16 students at the beginning stages of English proficiency would have allowed them to meet AYP
17 and API goals. Alternatively, if tested in their primary language, the children would have been
18 able to demonstrate a high degree of proficiency in both language arts and mathematics.
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21 62. Every school but two, and the Alisal Union Elementary School District as a
22 whole, have shown an average of at least 29 points growth on the API every year for the past five
23 years. Indeed, two of the district's Program Improvement schools were the top two schools in
24 Monterey County in terms of API growth: Oscar Loya and Frank Paul Elementary Schools,
25 respectively.
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1 **D. Terra Bella Union Elementary School District**

2 63. Petitioner Terra Bella Union Elementary School District is located in the Central
3 Valley about 80 miles south of Fresno in Tulare County. The district serves just over 800
4 students in grades K-8 at two schools: Terra Bella Union Elementary School and Carl Smith
5 Middle School.
6

7 64. Terra Bella Union Elementary School District's entire student population qualifies
8 for free and reduced lunch and over 60% of the students have been identified as limited English
9 speaking or English Learners (ELs). The primary language for English Learner students in the
10 district is almost exclusively Spanish. The population is highly transient with 22% of all students
11 in the district identified as eligible to receive service through migrant education. Many of the
12 district's EL students are first generation immigrant children and a significant percentage of the
13 students in the district are newcomers to the United States of the students in the district score at
14 the beginning, early intermediate or intermediate levels of English proficiency, as measured by
15 the California English Language Development Test ("CELDT").
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18 65. Both of the schools in the Terra Bella Union Elementary School District have
19 been identified as Program Improvement schools and the district as a whole has been designated
20 a Program Improvement District because the English Learner target group did not make adequate
21 yearly progress (AYP) for two or more consecutive years in English Language Arts.
22

23 66. At each of the Terra Bella Union Elementary School District's Program
24 Improvement schools, it is the scores of EL students on the CST English language arts exam that
25 cause the school's failure to make AYP. EL students at the lowest levels of proficiency in
26 English (i.e., those who score a 1 or 2 on the California English Language Development Test or
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1 CELDT) performed the lowest on the California Standards Exams (CSTs), which are designed
2 for native-English speakers and are administered only in English.

3 **E. Pajaro Valley Unified School District**

4 67. Petitioner Pajaro Valley Unified School District serves nearly 20,000 students in
5 grades K-12 at 31 schools. The Pajaro Valley Unified School District is a long narrow corridor
6 that starts in Santa Cruz County and extends into Monterey County. The district is divided into
7 three diverse zones which cover portions of Aptos, Corralitos, Las Lomas, Rio Del Mar and
8 Watsonville. Close to half of the Pajaro Valley Unified School District's student population is
9 comprised of students identified as limited English proficient or English Learners and over 60%
10 qualify for free and reduced priced lunches. More than three-fourths (76%) of the district's
11 students are Latino and 99% of the EL students in the district speak Spanish. 54% percent of the
12 students enrolled are migrant students and over 1,200 students have been identified as immigrant
13 students having been in the United States fewer than 36 months.

14 68. The North Zone in the Pajaro Valley Unified School District covers Aptos, Rio
15 Del Mar and Corralitos. The majority of the students enrolled in schools in the North Zone are
16 identified as White; fewer than 25% are eligible for free or reduced lunch and approximately
17 10% are identified as English Learners. The Central Zone covers the central part of Watsonville.
18 More than 90% of the students enrolled in schools in the Central Zone are Latino, approximately
19 77% are eligible for free or reduced lunch and approximately 55% are identified as English
20 Learners. The South Zone covers the southern part of Watsonville and extends into
21 unincorporated areas of Monterey County. Almost 95% of the students enrolled in schools in the
22 South Zone are Latino, more than 70% of the in the South Zone are eligible for free or reduced
23 lunch and 58% of students in those schools are identified as English Learners. In the two schools
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1 in the South Zone that have not been identified as a Program Improvement school, one just
2 opened in 2004-2005 and in the other, Watsonville High School, the percentage eligible for free
3 and reduced priced lunch is 53% and the percentage of English Learners is 39%.

4
5 69. With the exception of schools that opened during the 2004-2005 academic year,
6 every elementary and middle school in the Pajaro Valley Unified School District with more than
7 300 English Learners enrolled has been identified as a Program Improvement school. None of
8 the schools in the North Zone of the district are identified as Program Improvement schools. All
9 of the schools in the Central Zone, with the exception of Landmark Elementary and Pajaro
10 Valley High School that opened during the 2004-2005 school year, are identified as Program
11 Improvement schools, including: Amesti Elementary, Calabasas Elementary, Freedom
12 Elementary, Hyde Elementary, Lakeview Middle, Rolling Hills Middle and Starlight Elementary
13 Schools. All but one of the schools in the South Zone, with the exception of Radcliff Elementary
14 that also opened during the 2004-2005 school year, are identified as Program Improvement
15 Schools, including: E. A. Hall Middle, Hall District Elementary, Ohlone Elementary, Mintie
16 White Elementary, MacQuiddy Elementary, Pajaro Middle and Ann Soldo Elementary Schools.
17 Watsonville High School in the South Zone is also not a Program Improvement school. The
18 concentration of English Learners in district schools identified as Program Improvement range
19 from 43% to 76% of the total student enrollment at those schools.

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23 70. At each of the Pajaro Valley Unified School District's schools, it is the scores of
24 the English Learner student target group, who are tested for academic knowledge in English that
25 is a cause of the school's failure to make AYP. At every Program Improvement school in the
26 district, EL students at the lowest levels of proficiency in English (i.e., those who score a 1 or 2
27 on the California English Language Development Test or CELDT) performed the lowest on the
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1 California Standards Exams (CSTs), which are designed for native-English speakers and are
2 administered only in English. At most district schools on the state's Program Improvement list,
3 simply eliminating the scores of students at the beginning stages of English proficiency would
4 have allowed them to meet AYP and API goals.
5

6 71. Pajaro Valley Unified School District has been identified as a Program
7 Improvement District. The District's identification as a Program Improvement District is directly
8 related to the scores of its English Learner students.
9

10 72. Pajaro Valley Unified School District uses multiple measures for internal
11 purposes to determine whether or not students are at grade level in meeting state standards.
12 These multiple measures include primary language assessments in order to allow EL students at
13 the lowest level of English proficiency the opportunity to demonstrate what they know and can
14 do in academic content areas. A majority of EL students at the Program Improvement Schools in
15 the district can demonstrate mastery of state standards when tested in their primary language
16

17 73. As measured by the state's API, nearly every district school has either met and
18 often far exceeded, their growth targets over each of the past 5 years.
19

20 **F. Oxnard Elementary School District**

21 74. Petitioner/Plaintiff Oxnard Elementary School District is located in Ventura
22 County. The district serves more than 16,000 students in grades K-8 at 21 schools. All of the
23 districts schools are Title I schools, with three-fourths of the students being eligible for the free
24 and reduced priced lunch program. The composition of the district is more than 90% minority,
25 with a student population that includes about .5% American Indian, 1.5% Asian/Pacific
26 Islanders, 2% Filipino, 84% Latino, 2.6% African American, and 8.8% White.
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1 75. Just under half of the students in the Oxnard Elementary School District have
2 been identified as limited English speaking or English Learners. The primary language for
3 English Learners students in the district is almost exclusively Spanish.

4
5 76. Thirteen schools in the Oxnard Elementary School District have been identified as
6 Program Improvement Schools because {the English Learner target group did not make adequate
7 yearly progress (AYP) for two or more consecutive years in English Language Arts including:
8 Brekke Elementary, Chavez Elementary, Curren Elementary, Elm Street Elementary, Frank
9 Intermediate, Fremont Intermediate, Harrington Elementary, Haydock Intermediate, Kamala
10 Elementary, Marina West Elementary, McKinna Elementary, Ramona Elementary and Sierra
11 Linda Elementary schools. The concentration of English Learners in district schools identified as
12 Program Improvement range from 23% to 77% of the total student enrollment.

13
14 77. At each of the Oxnard Elementary School District's Program Improvement
15 Schools, it is the scores of EL students on the CST English language arts and mathematics exam
16 that is a cause of the school's failure to make AYP. At every school in the district, EL students at
17 the lowest levels of proficiency in English (i.e., those who score a 1 or 2 on the California
18 English Language Development Test or CELDT) performed the lowest on the California
19 Standards Exams (CSTs), which are designed for native-English speakers and are administered
20 only in English. At all of the district schools on the state's Program Improvement list, simply
21 eliminating the scores of students at the beginning stages of English proficiency would have
22 allowed them to meet AYP and API goals. Alternatively, if tested in their primary language, the
23 children would have been able to demonstrate a high degree of proficiency in both language arts
24 and mathematics.

1 78. Oxnard Elementary School District has not, as a district, met its AYP objectives
2 for years 02-03 and 03-04 and has been designated a Program Improvement District.

3 **G. Hawthorne School District**

4 79. Petitioner Hawthorne School District is located in Los Angeles County. The
5 district educates approximately 10,000 students at eight elementary schools, three middle schools
6 and one charter high school in a diverse urban community minutes from the Los Angeles
7 International Airport. Approximately 97% of the district's students are minorities and
8 approximately 84% are socio-economically disadvantaged (percentage of students who qualify
9 for free and reduced-priced school lunch program). The demographics of the district's student
10 population include about 4.5% Asian/Pacific Islanders, 2% Filipino, 63% Latino, 26% African
11 America, and 3% White.

12 80. Over 44% of the Hawthorne School District's population has been identified as
13 limited English speaking or English Learners. Over 92% of English Learner students in the
14 district speak Spanish. Just over 2% speak Vietnamese, just over 1% speaks Filipino (Tagalog)
15 and just over 1% speak Tongan.

16 81. All of the middle schools in the Hawthorne School District have been identified
17 as Program Improvement schools and the district as a whole has been identified as a Program
18 Improvement District. More than a third of the students at these schools are English Learners
19 students. At each of the district's Program Improvement schools, scores of English Learners
20 were a cause of the failure to make AYP. At Bud Carson and Hawthorne Middle Schools,
21 English Learners did not make AYP targets in English language arts, and at Prairie Vista Middle
22 School, English Learners failed to the meet the AYP target in mathematics.
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1 82. Although the Hawthorne School District has not met all of its state and federal
2 accountability targets, the District continues to grow in most areas. For the 2003-2004 Academic
3 Performance Index reporting cycle, Hawthorne’s 20 point API growth was greater than either the
4 state or county growth. Additionally, the Hawthorne School District met 39 of its 41 Adequate
5 Yearly Progress (AYP) criteria including the Annual Measureable Objectives (AMOs) for all
6 groups with the exception of the students with disabilities sub group. The Hawthorne School
7 District also met its 2004 Title III California English Language Development Test (CELDT)
8 Annual Measurable Achievement Objectives (AMAOs), indicating that English Learners are
9 making progress in learning the language of English as required under NCLB.
10

11
12 **H. Hayward Unified School District**

13 83. Petitioner Hayward Unified School District is located in Alameda County. The
14 district educates more than 24,000 students in grades K-12 in 25 elementary schools, 5 middle
15 schools, 4 high schools and 1 English Language Center for newcomer students.
16

17 84. The Hayward Unified School District’s schools include a multicultural population
18 comprised of 48 percent Latino, 13 percent White, 16 percent African-American, 13 percent
19 Asian/Pacific Islander, 8 percent Filipino, and approximately 2 percent with other backgrounds.
20

21 85. Over 8,000 students in the Hayward Unified School District are identified as
22 limited English proficient or EL students, representing more than one-third of the district’s total
23 enrollment. Although students in the Hayward Unified School District speak more than 40
24 different languages, the predominant language spoken by students learning English as a second
25 language is Spanish. Approximately 78% of the EL students in the district speak Spanish, 4.3%
26 speak Hindi, 4.1% speak Filipino (Tagalog), 3.3% speak Vietnamese, 2.5% speak Punjabi and
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1 1.9% speaks Farsi. Approximately 1247 students have been identified as immigrant students
2 having been in the United States fewer than 36 months.

3
4 86. Ten schools in the Hayward Unified School District have been identified as
5 Program Improvement schools, including: Cesar Chavez Middle, Cherryland Elementary,
6 Glassbrook Elementary, Harder Elementary, Markham Elementary, John Muir Elementary, Park
7 Elementary, Ruus Elementary, Shepherd Elementary, Tyrrell Elementary and Winton Middle
8 Schools. The concentration of EL students in the Program Improvement schools ranges from
9 30% to 65% of the total student enrollment. In all but two of the district's Program Improvement
10 schools, EL students comprise 39% or more of the total student enrollment.

11
12 87. At every school in the district, EL students at the lowest levels of proficiency in
13 English (i.e., those who score a 1 or 2 on the California English Language Development Test or
14 CELDT) performed the lowest on the California Standards Exams (CSTs), which are designed
15 for native-English speakers and are administered only in English. As EL students learn English,
16 their ability to demonstrate their academic skills in English dramatically improves.

17
18 88. Hayward Unified School District for internal purposes uses multiple measures to
19 determine whether or not students are at grade level in meeting state standards. These multiple
20 measures include primary language assessments in order to allow EL students at the lowest level
21 of English proficiency the opportunity to demonstrate what they know and can do in academic
22 content areas. Many EL students at the Program Improvement Schools in the district can
23 demonstrate mastery of state standards when tested in their primary language
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25
26 **I. Sweetwater Union High School District**

27 89. Petitioner Sweetwater Union High School District is the second largest secondary
28 school district in California, serving over 41,000 students in grades 7-12 in 11 middle or junior

1 high schools, 12 comprehensive high schools, 1 continuation high school, 1 charter school and 2
2 alternative programs for grades 7-12. Located in Southern San Diego County, Sweetwater
3 serves the cities of Chula Vista, Imperial Beach, National City, San Diego and communities in
4 and around Bonita, Otay Mesa, San Ysidro and South San Diego.
5

6 90. About 86% of Sweetwater students are from diverse ethnic backgrounds,
7 including approximately 69 percent Latino, 14 percent White, 9 percent Filipino, 5 percent
8 African-American, 3 percent Asian/Pacific Islander, and .6 percent American Indian. More than
9 half of the District's students eligible for the free and reduced lunch program and more than half
10 speak a language other than English at home. More than 10,000 students in the Sweetwater
11 Union High School District are identified as limited English proficient or EL students,
12 representing more than one-fourth of the district's total enrollment. Another one-fourth of the
13 district's students are identified as students who speak another language at home but who have
14 been successful in achieving fluency in English (FEP or Fluent English Proficient students).
15 Over 95% of the EL students in the district speak Spanish, just under 3% speak Filipino
16 (Tagalog) and the remaining 2% speak about a dozen other languages. Approximately 35% of
17 the District's EL students are in grades 7 and 8 and a significant number of students have been
18 identified as immigrant students having been in the United States fewer than 36 months.
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22 91. Nine schools in the Sweetwater Union High School District have been identified
23 as Program Improvement schools for failing to meet adequate yearly progress (AYP) for two or
24 more consecutive years, including: the Castle Park Middle, Castle Park Senior High, Granger
25 Junior High, Mar Vista Middle, Mar Vista Senior High, National City Middle, Southwest
26 Middle, Southwest Senior High, and Sweetwater High Schools. All of these schools have a
27 significant number of EL students, with the concentration of EL students ranging from 24% to
28

1 46% of the total student enrollment. At each of these schools, English Learner testing issues are
2 a cause of the school's identification as a Program Improvement school.

3 92. Sweetwater Union High School District uses multiple measures to determine
4 whether or not students are at grade level in meeting state standards, including District-designed
5 End-of-Course Exams in mathematics and science. These multiple measures include primary
6 language assessments for students instructed in their primary language in order to have a
7 meaningful measure of what EL students know and can do in these key academic content areas.
8 Many EL students at the Program Improvement Schools in the district can demonstrate content
9 mastery when tested in their primary language. District data shows that once its English Learners
10 learn English, they tend to outperform their English-only counterparts on tests administered in
11 English. CAHSEE results for 2003-2004, for example, show reclassified fluent English
12 proficient (RFEP) students outperforming their English-only counterparts.

13 93. Many of the schools on the Program Improvement list have received recognition
14 for the high quality of their instructional program and the outstanding performance of their
15 students in academics. For six years in a row, Sweetwater high schools have won the San Diego
16 County Academic Decathlon. For the last three years, Southwest High School has won top
17 honors in the County Academic Decathlon, besting more affluent schools such as Torrey Pines
18 High School. In April 2005, Southwest High School also won the San Diego County's academic
19 league championship, beating every school it competed against, including La Jolla High School
20 and San Dieguito High School Academy. Southwest High School, whose student population is
21 compromised of more than 40% English Learner students, was named one of the top 300 high
22 schools in the country by Newsweek Magazine.
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1 **J. Salinas Union High School District**

2 94. Petitioner Salinas Union High School District is located in Monterey County in
3 the City of Salinas. The district serves almost 14,000 students in grades 7-12 at 9 schools. The
4 composition of the district’s student body is 84% minority, with more than 55% of the students
5 from socio-economically disadvantaged families. The district’s student population is about
6 75.7% Latino, 14.7% White, 41% Filipino, 2.3% Asian/Pacific Islander, 2.5% African American
7 and .4% Native American.
8

9 95. Most of the District’s students speak a language other than English at home.
10 Approximately 35% of the Salinas Union High School District’s population has been identified
11 as limited English speaking or English Learners. In addition, another 19.4% of the students
12 speak another language at home but have been successful in achieving fluency in English (Fluent
13 English Proficient or RFEP students). The primary language for English Learner students in the
14 district is almost exclusively Spanish. The population is highly transient with 24% of all
15 students in the district identified as migrant students. Many of the district’s EL students are first
16 generation immigrant children and a large percentage of the students in the district are
17 newcomers to the United States. Over 1,000 of the district’s EL students who participated in
18 testing have been identified as immigrant students having been in the United States fewer than
19 36 months.
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23 96. Four schools in the Salinas Union High School District have been identified as
24 Program Improvement schools for failure to meet adequate yearly progress (AYP) for two or
25 more consecutive years, including La Paz Middle and Washington Middle schools, the high
26 school with the highest percentage of English Learner students, Alisal High and North Salinas
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1 High. The concentration of English Learners in district schools identified as Program
2 Improvement range from 25% to 50% of the total student enrollment.

3 97. At each of the Salinas Union High School District's Program Improvement
4 schools, it is the scores of EL students on the California Standards Exams (CSTs) or the
5 California High School Exit Exam (CAHSEE) that is a cause of the school's failure to make
6 AYP. At every school in the district, EL students at the lowest levels of proficiency in English
7 (i.e., those who score a 1 or 2 on the California English Language Development Test or CELDT)
8 performed the lowest on the CSTs and CAHSEE, which are designed for native-English speakers
9 and are administered only in English. At most of the district schools on the state's Program
10 Improvement list, simply eliminating the scores of students at the beginning stages of English
11 proficiency would have allowed them to meet AYP goals. Alternatively, if tested in their
12 primary language, it is likely that the children would have been able to demonstrate a high
13 degree of proficiency in both language arts and mathematics.
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17 **VII.**

18 **FIRST CAUSE OF ACTION**

19 **WRIT OF MANDATE - ABUSE OF DISCRETION**

20 **CALIFORNIA CODE OF CIVIL PROCEDURE §1085**

21 **(By All Petitioners Against All Respondents)**

22 98. Petitioners incorporate by reference paragraphs 1 through 89 as though fully set
23 forth herein.

24 99. Petitioners are entitled to a writ of mandate under California Code of Civil
25 Procedure §1085 in that Respondents have a clear, present and ministerial duty to comply with
26 NCLB to provide testing and accountability which adheres to the mandates of NCLB.

27 100. 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 is obligated to take all necessary steps to ensure that the State and school districts comply

1 with state and federal law requirements concerning testing and accountability of English Learner
2 students and their programs such as NCLB. He is charged with carrying out his responsibilities
3 in a manner consistent with the underlying purposes and specific provisions of NCLB.

4 101. Respondent State Board has a clear and present ministerial duty to determine the
5 policies governing California schools and to adopt and promulgate rules and regulations for the
6 testing and accountability of California school districts under NCLB. The State Board further has
7 a clear and present ministerial duty to ensure that State-wide testing and testing as administered
8 by local educational agencies including school districts is consistent with federal laws covering
9 testing and accountability including NCLB as pertains to English Learners and to ensure that the
10 State and districts carry out their testing and accountability functions consistent with the
11 underlying purposes and specific provisions of NCLB.

12 102. Respondent CDE is the department of state government with the clear and present
13 ministerial duty to administer and enforce laws related to the education of English Learner
14 children and school district compliance with all state and federal mandates with respects to
15 NCLB and is charged with ensuring that testing and accountability under NCLB as related to
16 English Learners occur in a manner consistent with the underlying purposes and specific
17 provisions of NCLB.

18 103. Respondent State of California, has a clear and present ministerial duty to comply
19 with NCLB including the creation and implementation of a testing and accountability system for
20 English Learners that complies with the underlying purposes and specific provisions of NCLB.

21 104. Respondent Governor Arnold Schwarzenegger is a Constitutional Officer with a
22 clear and present ministerial duty to approve and implement legislation as necessary under
23 NCLB in a manner that is consistent with underlying purposes and specific provisions of NCLB.

24 105. By creating, implementing, directing and otherwise engaging in the conduct
25 alleged in paragraphs 1 through 89, Respondents have acted in a manner inconsistent with
26 protecting the educational and civil rights of English Learners and have violated mandatory
27 provisions of NCLB.

28

1 106. Respondents, in committing the acts alleged herein, have abused their discretion
2 and/or have acted in an arbitrary and capricious manner to the detriment of Petitioners and in
3 violation of NCLB.

4 107. Petitioners have no administrative remedy available to them to resolve this
5 controversy.

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

8 109. As school districts, statewide organizations, students and parents who are the
9 intended beneficiaries of NCLB, Petitioners have a beneficial interest in the performance by
10 Respondents of their duties to establish proper assessments and accountability standards in
11 accordance with the requirements of state law and NCLB.

12 110. Petitioners' success in this action will result in the enforcement of important
13 rights affecting the general public by conferring significant benefits on a large class of persons.
14 Petitioners seek enforcement of rights not only for themselves, but for all school districts and
15 students enrolled in California public schools who will benefit from the relief sought by this
16 Complaint.

17 111. Furthermore, private enforcement of these rights is necessary as no other agencies
18 have protected these rights and the State of California is sanctioning the actions of the State
19 Board, State Superintendent and the CDE.

20 112. Petitioners take it upon themselves to enforce these rights for other districts and
21 individuals seeking equity in education for English Learners. Petitioners will not recover any
22 money as a direct result of the successful litigation of this matter. There is a financial burden
23 incurred in pursuing this action and it will be against the interests of justice to penalize
24 Petitioners by forcing them to pay attorneys fees. Therefore, an order of attorneys fees is
25 appropriate under California Code of Civil Procedure §1021.5.

26 113. The actions and omissions as outlined in this Petition and Complaint were
27 committed by Respondents, either personally or through the actions of their agencies, acting
28 pursuant to policy set by Respondents and/or ratified by Respondents.

1 **VII.**

2 **SECOND CAUSE OF ACTION**

3 **ILLEGAL EXPENDITURE OF TAXPAYERS FUNDS**

4 **CALIFORNIA CODE OF CIVIL PROCEDURE §526(a)**

5 **(By Petitioners CABE, Californians Together, California LULAC, Ivette Zavala And Luis**
6 **Ochoa As To All Respondents)**

7 114. Petitioners/Plaintiffs incorporate by reference paragraphs 1 through 89 as though
8 fully set forth herein.

9 115. Respondents and each of them, through the actions of the agencies, have
10 expended tax monies and threatened to continue and will continue to expend tax monies in an
11 illegal manner in violation of state law as outlined in this Petition and Complaint.

12 116. Respondents' regulations and actions relative to testing English Learners for
13 purposes of accountability under NCLB constitute an illegal expenditure of taxpayers funds
14 because it violates NCLB to contravene NCLB's express provisions and underlying purposes
15 pertaining to English Learner testing and the accountability of school districts.

16 117. Respondents' regulations and actions causing English Learners to be tested in a
17 manner that is not valid and reliable and refusing to use primary language assessments where
18 appropriate and other accommodations most likely to yield accurate results constitutes an illegal
19 expenditure of taxpayers funds because such conduct violates NCLB.

20 118. Respondents' regulations and actions as set forth herein have led to consequences
21 abhorrent to the underlying purposes and objectives of NCLB, thereby constituting an illegal
22 expenditure of taxpayers funds in several ways, including but not limited to the following
23 particulars:

- 24 A. Impacting administrator and teacher recruiting
25 based on improperly designating schools and districts as
26 "educational failures;"
27 B. Causing districts to expend funds that would
28 otherwise not be required to retain teachers and

1 administrators in the face of inappropriate designations for
2 school and districts as “educational failures.”

3 C. Causing transfers of students out of schools or
4 districts improperly labeled as “educational failures,”
5 thereby altering attendance and funding;

6 D. Forcing districts and schools to allocate resources
7 inappropriately based on inaccurate test data, causing waste
8 and unnecessary expenditure;

9 E. Curtailing basic educational programs to devote the
10 money inappropriately, based on invalid test results; and

11 F. Funding or reducing programs inappropriately
12 based on invalid test data thereby wasting taxpayer funds.

13 119. Petitioners CABE, Californians Together, California LULAC, Zavala and Ochoa
14 are citizens and residents of the United States and State of California and organizations with
15 members who are citizens and residents of the United States and State of California who have
16 within one year prior to the commencement of this action, paid taxes to the State of California
17 and bring this action as taxpayers pursuant to California Code of Civil Procedure §526(a).

18 120. Petitioners Zavala, Ochoa, CABE, Californians Together and California LULAC,
19 as citizens and taxpayers have suffered and continue to suffer irreparable injury and are without
20 plain, speedy and adequate remedy in the ordinary course of the law to compel Respondents to
21 enforce and comply with the legal requirements outlined in this Petition and Complaint, thereby
22 rendering a Writ of Mandate appropriate in that there is no provision in law for a taxpayers to
23 receive money damages for unlawful governmental conduct; damages would be difficult to
24 ascertain; and money damages would not adequately compensate taxpayers for unlawful
25 governmental activities.

26 121. The acts and omissions as outlined in this Petition and Complaint were committed
27 by Respondents, either personally or through the actions of their agency, acting pursuant to
28 policies set by Respondents.

1 VIII.

2 THIRD CAUSE OF ACTION

3 VIOLATION OF CALIFORNIA CONSTITUTIONAL RIGHT TO EDUCATION

4 CALIFORNIA CONSTITUTION ARTICLE 9, SECTIONS 1 AND 5, ARTICLE 1,

5 SECTION 7 AND ARTICLE 4, SECTION 16

6 (By Plaintiffs CABE, Californians Together, California LULAC, Ivette and Melissa Zavala
7 And Luis and Jamilet Ochoa Against All Defendants)

8 122. Petitioners/Plaintiffs incorporate by reference paragraphs 1 through 89 as though
9 fully set forth herein.

10 123. The California Constitution guarantees basic equity in public education regardless
11 of district residence. Because education is a fundamental interest in California, denials of basic
12 educational equity on the basis of district residence is ~~are~~ subject to strict scrutiny. The equal
13 protection clause of the California Constitution “precludes the State from maintaining its
14 common school system in a manner that denies students of one district an education basically
15 equivalent to that provided elsewhere throughout the State”. *Butt vs. State of California*, 4 Cal.
16 4th 668, 685 (1992).

17 124. Defendants have the obligation under the California Constitution~~al~~ to correct
18 basic disparities in the system of common schools even when the discriminatory effect was not
19 produced by the purposeful conduct of the State or its agencies. In sum, Respondents have a
20 Constitutional obligation to ensure that all students in California’s public school system,
21 including English Learners, have equal access to essential school services, without regard to
22 race, ethnicity or national origin.

23 125. Moreover, Defendants have a Constitutional obligation to ensure that state action
24 does not unfairly stigmatize and punish a discreet class of children based on a defined set of
25 criteria, here limited English proficiency or English Learner status. Innocent children cannot be
26 explicitly disadvantaged on the basis of the status of their birth based on a classifying trait - -
27 having a primary language other than English.

1 126. The conduct by Defendants as described herein violates California’s equal
2 protection clause in that (a) the testing and the consequences of such testing deny English
3 Learners equal educational opportunities; (b)the testing discriminates on the basis of an
4 immutable trait, national origin and ancestry; (c) it penalizes English speaking children who,
5 through no fault or choice of their own, reside in areas with large non-English speaking
6 populations; (d) it penalizes a discreet class of children who have been brought to this country by
7 their parents.

8 127. As a direct and proximate result of Respondents’ conduct alleged herein,
9 Plaintiffs have suffered injury in a variety of ways:

10 (A) Latino and children of other ethnicities who do not
11 speak English fluently have been unjustifiably stigmatized
12 as academically deficient;

13 (B) School districts and schools labeled as “Program
14 Improvement” have been forced to implement educational
15 programs and make programmatic cuts and shifts which
16 they would not, in the expertise of their educational leaders
17 have made but for the State’s improper labeling of the
18 schools and districts;

19 (C) English Learners are receiving less access to core
20 academic subject matter instruction because of the
21 exclusive fixation on increasing performance on English
22 assessments;

23 (D) Basic educational programs have been curtailed in
24 districts labeled “educational failures” compared to other
25 districts;

26 (E) English Learners’ ability to perform on college
27 entry exams or the SAT has been diminished as a result of
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skewed programmatic changes driven by inaccurate test results;

(F) English Learners’ graduation and receipt of diplomas is or will be adversely impacted based upon the mis-allocation of resources and programs driven by invalid testing;

(G) English Learners’ ability to advance to the next grade is or will be interfered with based upon inaccurate assessments of students’ knowledge of core academic subjects;

(H) Students in districts labeled “educational failures” are or will have a stigma associated with receiving a degree from that school district;

(I) Students brought to this country by their parents without the necessary English skills are being penalized;

(J) English speaking children in the affected districts are being penalized because of the stigma attached to schools and districts labeled “failing” due in substantial part to the presence of large groups of non-English speaking students;

(K) Native English speaking students not wishing to be stigmatized as having come from “failing” schools or districts have transferred based in substantial part upon the invalid and unjustified labels created by California’s testing under NCLB of English Learners;

(L) Students in schools and districts labeled “educational failures” are stigmatized because such schools will become more isolated and less successful such that the

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students will doubt themselves and their place in society and have no or fewer models of academic success to emulate;

(M) Schools and districts have lost or will lose resources or have those resources placed at risk because of invalid assessments;

(N) English Learners are or will be denied the ability and option to participate in extracurricular activities which are integral to the educational process and are available to students in districts not labeled “educational failures” such as drama, music and sports.

(O) Administrator and teacher morale have been severely and adversely impacted by improperly labeling districts and school as “educational failures; and

(P) Administrator and teacher recruiting and retention have been severely and adversely impacted by improperly labeling districts as “educational failures”.

128. Defendants acted in their official capacities under color of state law.

129. Defendants knew or should have known that their conduct, attitudes and actions were injurious to the Plaintiffs and to their Constitutionally protected rights.

130. Despite this knowledge Defendants failed to take steps to protect Plaintiffs and to ensure their Constitutional rights and instead mandated a course of conduct in violation of their rights under the California Constitution.

131. As a proximate result of Defendants’ violation of the Constitutional rights of Plaintiffs, they have suffered, are suffering and will continue to suffer irrevocable harm.

132. Plaintiffs have no plain, speedy and adequate remedy at law.

133. An actual controversy exists between Plaintiffs and Defendants concerning their rights, privileges and obligations.

1 **IX.**

2 **FOURTH CAUSE OF ACTION**

3 **DECLARATORY RELIEF**

4 **(By All Petitioners/Plaintiffs Against All Respondents/Defendants)**

5 134. Petitioners/Plaintiffs incorporate by reference paragraphs 1 through 89 as fully set
6 forth herein.

7 135. An actionable and existing controversy exists between Petitioners/Plaintiffs and
8 Respondents/Defendants because Petitioners/Plaintiffs contend and Respondents/Defendants
9 dispute that Respondents'/Defendants' actions as described above have violated the NCLB, and
10 the California Constitution and constitute an illegal expenditure of taxpayers funds.

11 136. Petitioners/Plaintiffs seek a judicial declaration that Respondents/Defendants
12 violated these Constitutional and statutory provisions.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioners and Plaintiffs pray that this Court:

15 1. Issue a declaratory judgment that Respondents' and Defendants' actions
16 complained of herein:

17 A. Violate the No Child Left Behind Act (20 U. S.C. §6301 et seq.);

18 B. Violate the California Constitution; and

19 C. Constitute an illegal expenditure of taxpayer funds.

20 2. Issue a peremptory writ of mandate commanding that Respondents, upon service
21 of the writ:

22 A. Withhold or withdraw any and all test results, scores, ranking, evaluations,
23 information or other evaluation of schools or school districts in California
24 based, in whole or in part, upon the testing of English Learners for No
25 Child Left Behind accountability purposes; and

26 B. Cease administration of the current versions of the California Standards
27 Tests and the California High School Exit Exam to English Learner
28 students who have been enrolled in United States public schools for fewer

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than three consecutive school years (or for longer periods where permitted by NCLB).

3. Identify the languages other than English that are present in the California student population and those languages for which yearly student academic assessment are not available and are needed for purposes of testing and accountability under No Child Left Behind.

4. For all testing used to evaluate schools or school districts for compliance under NCLB:

A. For English Learners literate in Spanish or instructed in Spanish and English in a bilingual classroom setting, develop and administer primary language assessments aligned to California’s academic content standards in Spanish. For English Learners literate or instructed in languages other than Spanish or English, develop and administer assessments aligned to California’s academic content standards in such languages where practicable. Administer these primary languages academic assessments until an English Learner has been reclassified as proficient in English;

B. For English Learners not included in point A above and for English Learners instructed in predominantly English Only settings (structured English immersion and mainstream) modify the assessments to account for linguistic complexity based upon the research from CRESST (Center for Research on Evaluation, Standards and Student Testing – University of California, Los Angeles) so as not to change the academic rigor of the test but to enable limited English proficient students to better understand the questions and answers; and

C. Scores derived from the tests administered in 4A and 4B will replace scores on current English standards tests for calculation of AYP to the full extent permitted under NCLB.

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- 5. Enjoin and/or cause to be withdrawn any sanctions based upon the scores of English Learners on academic tests administered for purposes of NCLB to date including labeling schools and districts as “underperforming” or “program improvement;
- 6. Enjoin the Respondents and Defendants from any further expenditure of state tax funds in support of any activity found unlawful herein.
- 7. In addition to the above, for all testing used for English Learners to compute compliance under No Child Left Behind, create academic assessments that are valid and reliable and consistent with relevant, nationally recognized professional technical standards in the language and form most likely to yield accurate data on what English Learners know and can do in academic content areas until such students have achieved English language proficiency and adopt any other appropriate accommodations that are practicable and that would yield more accurate data on what English Learners know and can do in academic subject areas.
- 8. For attorneys fees and costs as permitted by law; and
- 9. For such other further relief as this Court may deem just and proper.

Dated: June 2, 2005

BURKE, WILLIAMS & SORENSEN
HADSELL & STORMER, INC.
LAW OFFICES OF MARC COLEMAN

By _____
Marc Coleman
Attorneys for Petitioners & Plaintiffs