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13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 JULEUS CHAPMAN, by his guardian ad
17 litem MONIQUE CHAPMAN; RYAN
SMILEY, by his guardian ad litem KRISTA
18 SMILEY; JENNIFER LYONS, by her
guardian ad litem SUSAN LYONS, on behalf
19 of themselves and all individuals similarly
situated, LEARNING DISABILITIES
20 ASSOCIATION OF CALIFORNIA,

21 Plaintiffs,

v.

22 CALIFORNIA DEPARTMENT OF
23 EDUCATION; CALIFORNIA BOARD OF
EDUCATION; DELAINE EASTIN, in her
24 official capacity as Superintendent of Public
Instruction in California; FREMONT
25 UNIFIED SCHOOL DISTRICT; SHARON
JONES, Superintendent of Fremont Unified
26 School District,

27 Defendants.
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CASE NO. C-01-01780 CRB/JCS
CLASS ACTION
FIRST AMENDED COMPLAINT
DEMAND FOR JURY TRIAL

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INTRODUCTION

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- 2 1. This action arises out of intentional discrimination by Defendant CALIFORNIA
- 3 DEPARTMENT OF EDUCATION (“CDE”), Defendant CALIFORNIA BOARD OF
- 4 EDUCATION (“CBE”), and Defendant Delaine Eastin in her official capacity as
- 5 Superintendent of Public Instruction against hundreds of thousands of students with
- 6 disabilities in the California public school system. Defendants CDE, CBE, and EASTIN
- 7 (collectively referred to herein as “STATE DEFENDANTS”) are, without adequate
- 8 preparation or safeguards, hastily forcing the California High School Exit Exam
- 9 (hereafter referred to as the “Exit Exam” or “CAHSEE”) upon these disabled students,
- 10 destroying and ignoring their educational attainments and self esteem, flagrantly
- 11 violating their rights, and damaging their academic, professional and employment
- 12 opportunities forever. Because of Defendants’ refusal to obey federal law, and
- 13 Defendants’ almost total disregard of the educational interest of children with disabilities,
- 14 over 90% of public school children with disabilities who took the Exit Exam failed it.
- 15 2. Before forcing a high-stakes standardized high school exit exam on children with
- 16 disabilities, Defendants were required, under federal and state law, at a minimum, (a) to
- 17 have formulated and have in place a reasonable accommodations policy, (b) to have
- 18 developed and conducted alternate assessments for those disabled children who need
- 19 them, (c) to have established the validity of using the CAHSEE for high-stakes
- 20 consequences (such as a prerequisite to graduation) for individual students, (d) to
- 21 establish and affirmatively demonstrate the curricular and instructional validity of the test
- 22 (i.e., that disabled students are not being tested on matters they never had a chance to
- 23 learn), (e) to refrain from using the results of a single test as the sole determinant of
- 24 whether a child graduates, (f) to have a procedure available for requesting
- 25 accommodations and appealing denials of accommodation requests, if necessary, (g) to
- 26 disseminate, in timely fashion, clear information about all of the foregoing to all interested
- 27 parents, teachers and administrators in the State so that they can make rational decisions
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- 1 about children’s education, and (h) allow a sufficient period of time between the creation
2 of the test (and all of its safeguards) and the actual implementation of the test.
- 3 3. Although the forgoing safeguards are constitutional requirements, as well as mandated by
4 students, Defendants have not fulfilled any of them.
- 5 4. In formulating and administering the CAHSEE, STATE DEFENDANTS have thus failed
6 and refused to take into account the needs of children with disabilities. As a result, the
7 new Exit Exam discriminates against children with disabilities in numerous ways.
- 8 5. For example, STATE DEFENDANTS are required under federal law to provide an
9 “alternate assessment” to the CAHSEE, as a way of allowing children whose disability
10 prevents them from demonstrating their mastery of content standards on the CAHSEE to
11 show their abilities. In flagrant violation of that requirement, STATE DEFENDANTS
12 have stated that they will not develop an alternate assessment, and instead are requiring
13 all students to take the CAHSEE, regardless of whether an alternate assessment would be
14 a more appropriate measure of the students’ knowledge, skills and abilities. STATE
15 DEFENDANTS are fully aware of their failure to fulfill their legal obligation to provide
16 an alternate assessment to disabled students. Many students with disabilities should
17 participate in an alternate assessment rather than the CAHSEE because an alternate
18 assessment is the only method by which to provide an accurate measure of the students’
19 abilities and skills.
- 20 6. In addition, STATE DEFENDANTS have refused to establish any procedures for
21 students with disabilities to request reasonable accommodations on the CAHSEE.
22 Various steps to develop such procedures have been initiated, withdrawn, and changed
23 repeatedly, even as the Exam has been administered, and as plans continue for it to be re-
24 administered. As a result, students, parents, and school administrators do not know what
25 process should be followed to request reasonable accommodations, and there are no
26 uniform standards for consideration of, or granting of, accommodation requests.
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- 1 7. STATE DEFENDANTS have also failed to establish any procedure whatever to review
2 denials of requests for reasonable accommodations. Thus, students who are denied
3 accommodations that they need on the CAHSEE are unable to appeal these decisions,
4 regardless of how incorrect or arbitrary the denials may be.
- 5 8. The CAHSEE further unfairly discriminates against students with disabilities because the
6 children are being tested on material which they have never been taught. Thus, these
7 children have not been prepared by their administrators or teachers to take the Exit Exam.
8 Throughout their educations, many of these children have studied an individualized
9 curriculum set forth in their Individualized Education Programs (IEPs) or "Section 504"
10 education plans. Now, on the CAHSEE these children are tested on material that they
11 have never been taught.
- 12 9. As noted by an independent consultant hired by STATE DEFENDANTS to evaluate the
13 CAHSEE, the process of aligning students' IEPs or Section 504 plans to match the
14 curriculum tested on the exam is a lengthy one that requires a lead time of at least several
15 years. Despite the independent consultant's recommendation that STATE
16 DEFENDANTS institute measures to ensure that disabled students' IEPs and Section 504
17 Plans are modified to align with the curriculum tested on the CAHSEE, Defendants have
18 taken no such steps.
- 19 10. The CAHSEE has two parts: English and mathematics. Both must be passed in order to
20 graduate. The English portion of the test, which includes multiple choice questions and
21 two essays, addresses State Board of Education standards through grade ten.
- 22 11. The mathematics test covers arithmetic, statistics, data analysis and probability, number
23 sense, measurement and geometry, mathematical reasoning, and algebra.
- 24 12. Students in the class of 2004 were permitted to take the test on a voluntary basis in the
25 spring of 2001, when they were in the ninth grade.
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- 1 13. Students in the class of 2004 who did not pass the CAHSEE in 2001, and all students in
2 all subsequent classes, will be required to take the test in tenth grade, and then every year
3 thereafter (up to three times per year) until they pass both portions of the test.
- 4 14. The consequences to students of failing to pass the CAHSEE are profound. All public
5 school students beginning with the Class of 2004 are required to pass the CAHSEE in
6 order to graduate from high school and receive a diploma. Regardless of how bright and
7 talented students are, how hard they work, or how high achieving they may be, students
8 who do not pass the exam will not graduate from high school, will not receive a regular
9 diploma, and will be severely disadvantaged in applying for employment and for college
10 admission.
- 11 15. Without the proper accommodations (or alternative assessments, if appropriate), and
12 without modification of their specialized curriculum to include the subject matter being
13 tested, it is likely that a great majority of California students with disabilities, because of
14 their disabilities, will never be able to pass the CAHSEE, no matter how many times the
15 test is given to them, and therefore will not be able to graduate from high school.
16 Instead, these students will receive an inferior “Certificate of Attendance” or “Certificate
17 of Completion” that is not equivalent to a high school diploma.
- 18 16. By requiring children with disabilities to take discriminatory and unfair tests with high
19 stakes consequences and no alternate assessments, STATE DEFENDANTS have created
20 a dual track system of public education in which otherwise qualified students with
21 disabilities will be relegated to the lower tier and prevented from pursuing academic,
22 professional and employment opportunities simply because of their disabilities.
- 23 17. Although they are fully aware of the defects of the CAHSEE as it affects students with
24 disabilities, STATE DEFENDANTS have nevertheless chosen to proceed with the test,
25 and have already administered the exam in Spring, 2001. In contrast, other states have
26 taken and are taking extensive steps to ensure that their statewide assessment systems do
27 not discriminate against students with disabilities.
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1 18. For example, Oregon recently settled a lawsuit and agreed to adopt the recommendations
2 of a national panel of experts commissioned to study Oregon’s testing system and to
3 evaluate whether a similar high stakes testing system implemented there discriminated
4 against students with disabilities. Under the settlement, Oregon will (a) develop alternate
5 assessments for disabled students, (b) allow extensive accommodations for disabled
6 students, (c) provide comprehensive information and training to parents, teachers,
7 administrators, and IEP and 504 Plan team members regarding the assessment system and
8 participation options for students with disabilities, (d) ensure that the IEP and 504 teams
9 individually assess every disabled student to determine how that student should
10 participate in the assessment system, (e) institute a problem resolution and appeals
11 process by which students can appeal decisions regarding accommodation requests and
12 participation in an alternate assessment, and (f) conduct ongoing research regarding
13 accommodations and the validity and reliability of the assessment system for students
14 with disabilities.

15 19. Similarly, Massachusetts recently revised its regulations concerning its high school exit
16 exam, the Massachusetts Comprehensive Assessment System (“MCAS”), in response to
17 concerns raised by disability advocacy groups that the test discriminated against disabled
18 students. These new regulations provide that IEP and 504 teams will determine whether
19 a disabled student should participate in an alternate assessment or a standard assessment,
20 and, if a student takes the standard assessment, what accommodations he or she should
21 use on the tests. Unlike California, the list of accommodations available on the test is
22 extensive. The regulations provide specific guidance to IEP and 504 teams regarding the
23 factors to be considered when making decisions about how disabled students participate
24 in the MCAS. The regulations also explicitly note that disabled students who do not have
25 an IEP or 504 Plan may request accommodations.

26 20. Unlike Oregon and Massachusetts, STATE DEFENDANTS have knowingly disregarded
27 concerns, raised by their own expert consultant, that the Exit Exam discriminates against
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1 disabled students. Additionally, prior to instituting litigation Plaintiffs on numerous
2 occasions contacted the Governor’s office to inform the State of the multiple deficiencies
3 in the High School Exit Exam, and to seek a constructive resolution to the problem.
4 STATE DEFENDANTS have never provided a substantive response to Plaintiffs, and as
5 a result, Plaintiffs were forced to file this lawsuit in order to protect the rights of students
6 with disabilities.

7 21. Without immediate relief from the Court, Plaintiff students and children similarly
8 situated will be irreparably harmed in that they will be denied numerous academic,
9 professional and employment opportunities, may not graduate from high school, and will
10 experience severe damage to their self-esteem and emotional well-being.

11 **JURISDICTION**

12 22. The Court has subject matter jurisdiction over Plaintiffs’ federal law claims under 28
13 U.S.C. §§ 1331 and 1343.

14 23. The Court has pendant and supplemental jurisdiction over Plaintiffs’ state law claims.

15 24. The Court has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201
16 and 2202.

17 25. Plaintiffs are not required to exhaust the administrative procedures set forth in the
18 Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*, because
19 they are challenging policies and practices of general applicability that are contrary to
20 numerous federal laws (including IDEA) and because Plaintiffs cannot obtain adequate
21 relief through administrative remedies.

22 26. Venue is proper in this Court under 28 U.S.C. § 1391(b). All Defendants reside in the
23 State of California, and Defendants FREMONT UNIFIED SCHOOL DISTRICT and
24 SHARON JONES reside in the Northern District of California. Moreover, a substantial
25 part of the events giving rise to this action occurred in the Northern District of California.
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INTRADISTRICT ASSIGNMENT

27. Assignment of this action to either the San Francisco or Oakland Divisions is proper because a substantial part of the events or omissions which give rise to Plaintiffs’ claims occurred in Alameda County.

THE PARTIES

28. Named Plaintiff Juleus Chapman is a public school student in the class of 2005 with severe dyslexia. Juleus attends Hopkins Jr. High School in Fremont, California and will be required to take the CAHSEE beginning in 10th grade, and repeating it until he passes or completes the 12th grade. He must pass the CAHSEE in order to graduate with a diploma. Juleus’ mother, Monique Chapman, has previously filed a petition with the Court to act as his guardian ad litem.

29. Named Plaintiff RYAN SMILEY is a public school student in the class of 2004 with dyslexia and dysgraphia. Ryan attends Crescenta Valley High School in La Crescenta, California, and took the CAHSEE in March 2001. Ryan did not pass the CAHSEE, and he will be obligated to take the exam again each year until he passes or completes the 12th grade. He must pass the CAHSEE in order to graduate with a diploma. Ryan’s mother, Krista Smiley, has previously filed a petition with the Court to act as his guardian ad litem.

30. Named Plaintiff JENNIFER LYONS is a public school student in the class of 2005 with dyslexia. Jennifer attends Mountain Ridge Middle School in Magalia, California, and will be required to take the CAHSEE beginning in 10th grade, and repeating it until she passes or completes the 12th grade. She must pass the CAHSEE in order to graduate with a diploma. Jennifer’s mother, Susan Lyons, has previously filed a petition with the Court to act as her guardian ad litem.

31. Organizational Plaintiff LEARNING DISABILITIES ASSOCIATION OF CALIFORNIA (“LDA-CA”) is a 501(c)(3) non-profit volunteer organization founded in 1960. The purpose of LDA-CA is to promote awareness, increase knowledge, and

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1 support education in a manner that optimizes fulfillment of the individual potential of
2 children and adults with learning disabilities. This is accomplished through outreach,
3 advocacy, referrals, and collaboration. LDA-CA currently serves over 2,000 parent,
4 professional, and adult members with learning disabilities through publications,
5 conferences, and 12 regional locations and a State office in Sacramento. The
6 membership of LDA-CA includes parents of Plaintiff students, including MONIQUE
7 CHAPMAN, KRISTA SMILEY, and SUSAN LYONS. LDA-CA sues on its own behalf
8 and on behalf of its members.

9 32. Defendant CALIFORNIA DEPARTMENT OF EDUCATION is the department of state
10 government responsible for administering and enforcing laws related to education. The
11 CALIFORNIA DEPARTMENT OF EDUCATION is a public entity within the meaning
12 of Title II of the Americans with Disabilities Act and other applicable laws. The
13 CALIFORNIA DEPARTMENT OF EDUCATION receives federal financial assistance
14 from the United States Department of Education and is therefore covered by the
15 requirements of Section 504 of the Rehabilitation Act of 1973. The CALIFORNIA
16 DEPARTMENT OF EDUCATION is a state educational agency and is therefore covered
17 by the requirements of the Individuals with Disabilities Education Act.

18 33. Defendant CALIFORNIA BOARD OF EDUCATION is the policy making body for
19 California public school education. The CALIFORNIA BOARD OF EDUCATION is a
20 public entity within the meaning of Title II of the Americans with Disabilities Act and
21 other applicable laws. The CALIFORNIA BOARD OF EDUCATION receives federal
22 financial assistance from the United States Department of Education and is therefore
23 covered by the requirements of Section 504 of the Rehabilitation Act of 1973. The
24 CALIFORNIA BOARD OF EDUCATION is a state educational agency and is therefore
25 covered by the requirements of the Individuals with Disabilities Education Act.

- 1 34. Defendant DELAINE EASTIN, sued in her official capacity, is the State Superintendent
2 of Public Instruction in California and the ex officio Director of Education for the
3 CALIFORNIA DEPARTMENT OF EDUCATION.
- 4 35. Defendants CALIFORNIA DEPARTMENT OF EDUCATION, CALIFORNIA BOARD
5 OF EDUCATION and DELAINE EASTIN are each responsible for the administration of
6 the CAHSEE, including, but not limited to, formation, use and ensuring its validity with
7 respect to disabled children, creating a policy of offering reasonable accommodations and
8 creating and conducting alternate assessments.
- 9 36. Defendant FREMONT UNIFIED SCHOOL DISTRICT is a local government entity
10 within the meaning of Title II of the ADA, a recipient of federal financial assistance
11 within the meaning of Section 504 of the Rehabilitation Act, and a local educational
12 agency covered by the Individuals with Disabilities Education Act. FREMONT
13 UNIFIED SCHOOL DISTRICT has at least fifty employees.
- 14 37. Defendant SHARON JONES is Superintendent of FREMONT UNIFIED SCHOOL
15 DISTRICT. She is being sued in her official capacity.
- 16 38. References in this complaint to STATE DEFENDANTS include Defendant
17 CALIFORNIA DEPARTMENT OF EDUCATION, Defendant CALIFORNIA BOARD
18 OF EDUCATION and Defendant DELAINE EASTIN in her official capacity as
19 Superintendent of Public Instruction for the State of California.
- 20 39. References in this complaint to DISTRICT DEFENDANTS includes Defendant
21 FREMONT UNIFIED SCHOOL DISTRICT and Defendant SHARON JONES in her
22 official capacity as Superintendent of the Fremont Unified School District.
- 23 40. References in this Complaint to Defendants, unless otherwise stated, shall be deemed to
24 refer to all defendants, and to each of them.
- 25 41. Plaintiffs allege that Defendants are jointly and severally liable for the claims raised in
26 this complaint.
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CLASS ALLEGATIONS

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42. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), Plaintiffs bring this action on their own behalf and on behalf of all persons similarly situated. The class which these Plaintiffs represent is composed of all students with disabilities who are or will in the future be required to take the CAHSEE. The class is sometimes hereafter referred to as “Plaintiff students” or “Plaintiff children.”
43. The persons in the class are so numerous that joinder of all such persons is impracticable.
44. There are numerous issues of fact and questions of law common to the class. These common factual issues include, but are not limited to, the following:
- a. Defendants’ failure to develop an alternate assessment to the CAHSEE.
 - b. Defendants’ development and administration of the CAHSEE, which all public high school students are required to pass to graduate from high school with a diploma.
 - c. Defendants’ failure to establish a fair and lawful policy of providing reasonable accommodations.
 - d. Defendants’ failure to establish the validity of using the test as a prerequisite to graduation for students with disabilities.
 - e. Defendants’ failure to adopt regulations specifying either a process for requesting accommodations or a standard for consideration of, and granting of, such requests.
 - f. Defendants’ failure to establish an appeals process by which students can appeal denials of accommodations requests.
 - g. Defendants’ failure to provide training and guidance to teachers, administrators, and IEP and 504 Plan team members regarding the CAHSEE and participation options for students with disabilities.
 - h. Defendants’ failure to modify the IEPs or 504 Plans of disabled students to align with the curriculum tested on the CAHSEE.

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- 1 i. Defendants' administration of the CAHSEE without sufficient notice to students
2 with disabilities and their parents.
- 3 j. Defendants' failure to follow established and sound psychometric standards by
4 using performance on a single test as the sole determinate of whether a child with
5 a disability graduates.
- 6 44. The common questions of law include, but are not limited to, the following:
- 7 a. Does Defendants' failure and refusal to provide an alternate assessment to the
8 CAHSEE violate state or federal law?
- 9 b. Does Defendants' failure to modify disabled students' IEPs and Section 504 plans
10 to align with the curriculum tested on the CAHSEE violate state or federal law?
- 11 c. Does Defendants' failure to establish any procedure for consideration of, or
12 granting of, requests for reasonable accommodations on the CAHSEE violate
13 state or federal law?
- 14 d. Does Defendants' failure to establish any procedure for appealing denials of
15 requests for reasonable accommodations violate state or federal law?
- 16 e. Is the CAHSEE an invalid test for assessing the knowledge, skills and abilities of
17 students with disabilities, in violation of the due process protections of the United
18 States Constitution?
- 19 f. Have students with disabilities been provided with an adequate opportunity to
20 learn the material tested on the CAHSEE as required by the due process
21 protections of the United States Constitution?
- 22 g. Is the CAHSEE, used as a prerequisite to graduation, an invalid test for assessing
23 the knowledge, skills and abilities of students with disabilities, in violation of the
24 Equal Protection provisions of the California Constitution?
- 25 45. The claims of the named Plaintiffs are typical of those of the class, and named Plaintiffs
26 will fairly and adequately represent the interests of the class. Plaintiffs have engaged
27 competent counsel to assist them in prosecuting their claims.
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1 46. Defendants have acted and refused to act on grounds generally applicable to the class,
2 thereby making appropriate final injunctive relief and/or corresponding declaratory relief
3 with respect to the class as a whole.

4 47. References to Plaintiffs shall be deemed to include the named plaintiffs and each member
5 of the class.

6 **FACTUAL ALLEGATIONS**

7 48. Named Plaintiffs, who attend public schools throughout California, are students with
8 disabilities protected by federal law. The organizational plaintiff includes as members
9 numerous additional public school students with disabilities and their parents or
10 guardians. There are hundreds of thousands of disabled children who attend California's
11 public schools and who will be required to take the High School Exit Exam and pass it in
12 order to graduate from high school with a diploma.

13 49. By virtue of their disabilities, many Plaintiff students have either a legally mandated
14 Individualized Education Program ("IEP") pursuant to the Individuals with Disabilities In
15 Education Act ("IDEA"), or a Section 504 Education Plan ("504 Plan") pursuant to
16 Section 504 of the Rehabilitation Act of 1973. These plans are required by law to be
17 created through an interactive process between educators, parents and their children, and
18 are supposed to specify a child's individual needs, including whether and how a student
19 will participate on statewide assessments such as the CAHSEE.

20 50. Some students with disabilities do not have either an IEP or a Section 504 Plan.

21 **Learning Disabilities**

22 51. People with learning disabilities span the intelligence spectrum and many children with
23 learning disabilities are of very high intelligence. Learning disabilities are the result of
24 permanent neurological dysfunction or information processing disruptions that result in
25 limited, unexpected, and usually intractable impediments in the ability to learn one or
26 more basic skills taught through traditional formal education. Many people with learning
27 disabilities work far harder than others in order to compensate for their disabilities.

1 52. There are several types of learning disabilities. Dyslexia, a particular learning disability,
 2 results from a neurological difference in processing phonemes, the basic unit of language,
 3 and can be seen in brain scans as early as infancy. Dyslexia impairs the ability to process
 4 language. A dyslexic individual may have difficulty reading, developing age/grade
 5 appropriate vocabulary, handwriting, spelling, taking notes, and memorizing rote and
 6 sequential facts, steps and information. Dysgraphia, another specific learning disability,
 7 is a neurocognitive, neuromotor language-based processing disorder often, but not always
 8 associated with dyslexia. Dysgraphia impairs an individual's ability to write legibly in a
 9 defined space over a normal timeframe. Dyscalculia is a mathematical learning disability
 10 in which a person has significant difficulty grasping math concepts and acquiring and
 11 retaining math computation and problem solving skills.

Named Plaintiffs' Experiences

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- 13 53. Named Plaintiff Juleus Chapman has dyslexia, a specific type of learning disability.
 14 Juleus lives in Fremont, California, and he attends public schools in that city. He is in the
 15 class of 2005. Juleus will be required to take and pass the CAHSEE to obtain a diploma.
- 16 54. Juleus has an Individualized Education Program that specifies he is allowed to use certain
 17 testing accommodations due to his dyslexia. These testing accommodations include,
 18 *inter alia*, extended time, use of a laptopcomputer, use of a calculator, and audio
 19 presentation of test items. Juleus requires these accommodations to minimize the effect
 20 of his dyslexia and to demonstrate his skills and abilities. Depending on the
 21 accommodations which are or are not made available to him, Juleus may require an
 22 alternate method of assessment in order to fairly demonstrate his abilities.
- 23 55. Juleus was told by a Fremont school official that when he takes the CAHSEE he will not
 24 be allowed to use *any* accommodations on the tests. Juleus and his parents have not been
 25 provided any information about how to request reasonable accommodations or an
 26 alternate assessment for the CAHSEE or how to appeal a denial of a request.
- 27 56. Juleus' IEP has not been modified to align with the curriculum tested on the CAHSEE.
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1 57. Juleus requires an individual assessment by his IEP team to determine whether he should
2 participate in the CAHSEE with accommodations, or whether an alternate assessment
3 would be more appropriate.

4 58. Named Plaintiff Ryan Smiley has dyslexia and dysgraphia. Ryan lives in Montrose,
5 California, and he attends public schools in La Crescenta, California. Ryan is in the class
6 of 2004. He will be required to take and pass the CAHSEE to obtain a diploma. He took
7 the CAHSEE on a voluntary basis in the spring of 2001, but he did not pass either
8 section.

9 59. Ryan has an Individualized Education Program that specifies he is allowed to use certain
10 testing accommodations due to his learning disabilities. These testing accommodations
11 include, *inter alia*, extended time, use of a specialized laptopcomputer called an
12 “Alphasmart,” use of a calculator, and audio presentation of test items. Ryan requires
13 these accommodations to minimize the effect of his learning disabilities and to
14 demonstrate his skills and abilities.

15 60. During Ryan’s IEP meeting in the fall of 2000, Ryan’s mother, Krista Smiley, was told
16 that Ryan would be allowed to use full accommodations on all tests. Mrs. Smiley
17 understood this to mean that Ryan would be allowed to use the accommodations he
18 needed on the CAHSEE.

19 61. Prior to the administration of the CAHSEE in the spring of 2001, Ryan and his parents
20 were not provided any information about how to request an accommodation for the exam
21 or how to appeal a denial of an accommodation request. The only information Ryan
22 received about the CAHSEE was that he was told, along with the other learning disabled
23 students in his special education class, that he and the other learning disabled students
24 would take the exam in a separate room and be allowed to have extra time on the test.

25 62. When Ryan took the CAHSEE in March 2001, he was not allowed to use all of the
26 testing accommodations specified in his IEP. Although he normally has exams read to
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- 1 him, a reader was not provided for the English portion of the Exit Exam. In addition,
2 Ryan was allowed to use his Alphasmart word processor on only one of the two essays.
- 3 63. Ryan had not studied much of the content that was tested on the math portion of the
4 CAHSEE. Ryan is currently enrolled in pre-Algebra, and has not studied Algebra or
5 Geometry, both of which are tested on the CAHSEE.
- 6 64. Ryan's IEP has not been modified to align with the curriculum tested on the CAHSEE.
- 7 65. Ryan requires an individual assessment by his IEP team to determine whether he should
8 participate in the CAHSEE with accommodations, or whether an alternate assessment
9 would be more appropriate.
- 10 66. Named Plaintiff Jennifer Lyons has dyslexia. Jennifer lives in Magalia, California, and
11 attends public schools in Paradise, California. She is in the class of 2005. She will be
12 required to take and pass the CAHSEE to obtain a diploma.
- 13 67. Jennifer has an Individualized Education Program that specifies she is allowed to use
14 certain testing accommodations due to her learning disability. These testing
15 accommodations include, *inter alia*, use of an electronic spell checker, use of a
16 calculator, use of a computer, scanner, and cassette recorder. Jennifer requires these
17 accommodations to minimize the effect of her dyslexia. These accommodations are
18 probably not sufficient, however, to allow her to fully demonstrate her knowledge, skills
19 and abilities on the CAHSEE, and Jennifer most likely requires an alternate assessment.
- 20 68. Jennifer and her parents have not been provided any information about how to request
21 reasonable accommodations or an alternate assessment for the CAHSEE, or how to
22 appeal a denial of a request.
- 23 69. Jennifer's IEP has not been modified to align with the curriculum tested on the CAHSEE.
- 24 70. Jennifer requires an individual assessment by her IEP team to determine whether she
25 should participate in the CAHSEE with accommodations, or whether an alternate
26 assessment would be more appropriate.
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History of the CAHSEE

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- 2 71. In 1999 the California legislature passed legislation (SB 2, codified at Cal. Ed. Code
- 3 § 60850 *et seq.*) directing the Superintendent of Public Instruction to develop a high
- 4 school exit examination in language arts and mathematics.
- 5 72. Pursuant to that legislation, Defendants hired a contractor to develop and field test the
- 6 CAHSEE over a period of several months in 2000.
- 7 73. As required by law, Defendants hired an independent consultant to evaluate the
- 8 CAHSEE.
- 9 74. The independent evaluator concluded that the CAHSEE should be delayed by at least one
- 10 to two years because key components of the testing system were not properly developed.
- 11 75. Specifically, the independent evaluator found that students with disabilities had not been
- 12 adequately prepared for the tests. The independent consultant found that students with
- 13 disabilities had not had their IEPs or Section 504 Plans modified to align with the
- 14 curriculum tested on the CAHSEE, and that therefore these students were tested on
- 15 material that they had never been taught.
- 16 76. The independent evaluator also found that Defendants had gathered insufficient
- 17 information regarding the use of accommodations on the CAHSEE, and recommended
- 18 that Defendants gather, review and discuss more information on the appropriateness and
- 19 effectiveness of testing accommodations for students with disabilities, as well as the
- 20 differential impact of the Exit Exam on students with disabilities.
- 21 77. The independent evaluator also noted that a greater percentage of students with
- 22 disabilities are likely to fail the CAHSEE than the student population as a whole.
- 23 78. The independent evaluator's report is publicly available on the Department of
- 24 Education's website at www.cde.ca.gov.
- 25 79. In the face of compelling evidence that the CAHSEE is invalid and discriminatory, and
- 26 despite the recommendation by their own expert independent consultant to delay the
- 27 implementation of the CAHSEE, Defendants nevertheless decided to proceed with
- 28

1 implementation of the CAHSEE and have already administered the exam in the Spring of
2 2001 to students in the Class of 2004. These students will be required to pass the
3 CAHSEE to graduate from high school.

4 80. In 2001, the California legislature passed AB 1609, codified as amendments to the
5 portions of the California Education Code concerning the CAHSEE. This legislation
6 calls for a review of the CAHSEE *after* it has already been administered multiple times to
7 public school children, including the plaintiff class. This review will study whether the
8 test development process and implementation were proper.

9 81. Based on this review, in 2003, Defendant BOARD OF EDUCATION is permitted, but
10 not required to suspend the requirement that students pass the CAHSEE in order to obtain
11 a high school diploma.

12 82. Students, including the plaintiff class, will be obligated to take the CAHSEE multiple
13 times prior to a determination by the BOARD of EDUCATION regarding the diploma
14 requirement, without knowing whether they are at risk of failing to obtain a diploma
15 unless they pass the CAHSEE.

16 83. Based on voluntary participation of students in the class of 2004 who chose to take the
17 CAHSEE in the spring of 2001, the independent evaluator found that over 90% of
18 students with disabilities who chose to take the Exist Exam failed to pass. Of all students
19 who took the Exit Exam in the spring of 2001 (including the students with disabilities),
20 approximately 55% did not pass.

21 84. Even if students, including the plaintiff class, are not ultimately required to pass the
22 CAHSEE to obtain a high school diploma, the students in the plaintiff class will suffer
23 ongoing harm and repeatedly experience failure if they are required to take the CAHSEE
24 without appropriate reasonable accommodations or an alternate assessment. Such
25 experiences are linked with multiple harms, including increased risk of dropping out of
26 school.

- 1 85. The defects in the CAHSEE are due, at least in part, to the fact that Defendants hastily
2 developed and implemented the exam.
- 3 86. The entire test was developed and field tested over a period of just several months.
- 4 87. It is impossible to adequately design a high school graduation test in such a limited
5 amount of time. As noted by the independent evaluator hired by Defendants to evaluate
6 the CAHSEE, tests like the CAHSEE are generally developed and analyzed over a period
7 of years before they are implemented.
- 8 88. With regard to students with disabilities, this lead time is especially necessary in order to
9 conduct the essential groundwork that must be done to ensure that, at a minimum, (a) the
10 test is psychometrically valid and reliable for disabled students, (b) disabled students
11 have been taught the material tested on the exam, (c) alternate assessments have been
12 developed for students with disabilities, (d) students, parents, teachers and administrators
13 are aware of the requirements of the test and the participation options for students with
14 disabilities, (e) an accommodations policy has been developed and disseminated to
15 students, parents, teachers, administrators, and IEP and 504 Plan team members, (f) IEP
16 and 504 forms have been modified to include a checklist of options for participation in
17 the test, and (g) an appeals process has been set up by which students can appeal denials
18 of accommodations requests and other aspects of the assessment system.
- 19 89. None of these essential steps were taken with the CAHSEE, and Defendants are fully
20 aware that the failure to take such steps has resulted in an exam that discriminates against
21 students with disabilities. The CAHSEE discriminates against students with disabilities
22 in at least the following multiple ways:

23 **Alternate Assessment**

- 24 90. Defendants have failed to develop an “alternate assessment” to the CAHSEE for students
25 who cannot adequately demonstrate their mastery of state content standards on the exam,
26 even with appropriate reasonable accommodations.
- 27
- 28

- 1 91. Alternate assessments are specifically required by multiple federal statutes, including the
2 Individuals with Disabilities Education Act (“IDEA”).
- 3 92. IDEA was amended in 1997 to require all states to develop and implement “alternate
4 assessments” for any statewide assessment administered by the State. Under the 1997
5 amendments, these alternate assessments were to be in place by July of 2000. *See* 20
6 U.S.C. § 1412(a)(17)(A); 34 C.F.R. § 300.138.
- 7 93. In addition, the Goals 2000: Educate America Act and Title I of the Improving America’s
8 Schools Act of 1994 each specifically require alternate assessments as necessary for
9 students with diverse learning needs, including students with disabilities.
- 10 94. The legislation which required the creation of the CAHSEE specifically requires that the
11 test must conform to the requirements of IDEA, among other civil rights laws.
- 12 95. Defendants have been and remain fully aware of their legal obligation to develop
13 alternate assessments to the CAHSEE. However, Defendants have ignored this legal
14 obligation and refused to develop any alternate assessment to the CAHSEE. Instead,
15 Defendants require *all* students to take the CAHSEE, and do not allow any students to
16 opt out or be exempted from the Exit Exam or to demonstrate their mastery of state
17 content standards by any other means.
- 18 96. The requirement to provide an alternate assessment is essential to allowing students with
19 disabilities an equal opportunity with respect to statewide assessments such as the
20 CAHSEE. Alternate assessments are required for any student with a disability who is
21 unable to participate in the standard assessment by virtue of his or her disability.
- 22 97. By failing and refusing to develop and provide an alternate assessment to the CAHSEE,
23 Defendants are intentionally discriminating against thousands of students with disabilities
24 for whom an alternate assessment, rather than the standard assessment is appropriate.
25 These students will not be properly assessed by the CAHSEE, and will not be able to
26 accurately demonstrate their knowledge, skills and abilities.
- 27
28

Reasonable Accommodation

- 1
- 2 98. Plaintiff students require and are guaranteed under federal and state law reasonable
- 3 accommodations on the CAHSEE such that they are tested on their mastery of state
- 4 content standards rather than on their disabilities.
- 5 99. Without such accommodations, Plaintiff students are subjected to discrimination because
- 6 they are tested on their disabilities, not their abilities. Without the reasonable
- 7 accommodations they require, Plaintiff students will be unable to pass the CAHSEE and
- 8 therefore will be unable to graduate from high school with a diploma.
- 9 100. Defendants have created chaos and confusion by failing to formulate clear policies and
- 10 procedures regarding the provision of reasonable accommodations on the CAHSEE.
- 11 101. At the time of the administration of the CAHSEE in Spring of 2001, STATE
- 12 DEFENDANTS had not issued final regulations regarding the policies and procedures for
- 13 obtaining reasonable accommodations on the Exam.
- 14 102. Instead, Plaintiff students, their parents, and school administrators were either provided
- 15 with no information or guidance about the use of accommodations on the March 2001
- 16 Exam, or were provided with conflicting, misleading, and confusing information about
- 17 accommodations.
- 18 103. Currently, STATE DEFENDANTS still have not issued final regulations regarding the
- 19 policies and procedures for obtaining reasonable accommodations on the Exam.
- 20 104. Defendants have issued (but not finalized) a variety of regulations regarding
- 21 accommodations for the High School Exit Exam since the original legislation was
- 22 enacted.
- 23 105. Only days in advance of the administration of the CAHSEE in the spring of 2001,
- 24 *interim* regulations regarding accommodations were approved by the State Board of
- 25 Education. Because the regulations were issued so close to the administration of the
- 26 exam, teachers, test administrators, parents and students did not have sufficient time to
- 27 request (or appeal denials of) reasonable accommodations.
- 28

1 106. Subsequent to the administration of the CAHSEE, in the Spring of 2001, the belated and
2 limited accommodations regulations were withdrawn in June.

3 107. From June until October, 2001, there were *no regulations whatsoever* regarding
4 accommodations on the CAHSEE.

5 108. On or around November 8, 2001 new regulations were adopted by the Board of
6 Education. Even these regulations are not yet final; further administrative action is still
7 necessary (and anticipated) for them to be finalized.

8 109. Notwithstanding the startlingly high failure rate among students with disabilities, these
9 new regulations represent a reversal from the previously issued regulations in that they
10 allow *fewer* accommodations for disabled students and also indicate that
11 accommodations not listed in a students' IEP or 504 plan may not be used on the
12 CAHSEE.

13 110. The present proposed regulations for the first time specifically prohibit the use of
14 accommodations such as oral presentation of exam materials on the English portion of
15 the CAHSEE or use of a calculator on the mathematics portion of the exam.

16 111. The new regulations further provide that school districts (not individual students) may
17 request accommodations not listed in the regulations at least nine weeks prior to the exam
18 (*i.e.* by December, 2001 for the March, 2002 administration). Neither IEP teams nor
19 school districts will have sufficient time to determine which accommodations each
20 student should receive in advance of the next planned administration of the CAHSEE in
21 the Spring of 2002.

22 112. Separate from the regulations, STATE DEFENDANTS are now developing a “waiver”
23 policy for students with disabilities. This policy is not yet final. However, as it now
24 stands, school districts (not students or parents) would be permitted (not obligated) to
25 “excuse” a student from the CAHSEE by pursuing an extremely convoluted process:
26 (a) The district would first have to seek a waiver permitting the student to take the
27 CAHSEE with the “prohibited” accommodation; (b) The student would have to take the
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1 exam and receive a passing score; (c) Notwithstanding the fact that the student would
2 already have achieved a passing score on the CAHSEE, the district would have to seek a
3 second waiver, “excusing” the student from the CAHSEE requirement. In other words,
4 the student would be required to pass the test in order to qualify to be excused from the
5 test (and the work done by the student in obtaining a passing score would be dismissed as
6 immaterial, and never be acknowledged).

7 113. Under this waiver scheme, Plaintiff students would be subject to the whims of their
8 individual school districts to even be permitted to pursue a “waiver,” which, in any case,
9 could not be effectively obtained in time to permit students to take the Spring 2002 exam
10 with the “prohibited” accommodations.

11 114. This waiver scheme effectively transforms a student’s right to appropriate
12 accommodations into a theoretical possibility, which could only be obtained, if at all, by
13 pursuing a complicated and humiliating process.

14 115. Defendants’ failure to approve regulations and distribute information in a timely and
15 appropriate manner has caused ongoing confusion among students, parents and
16 administrators.

17 116. The regulations are deficient and discriminatory because they do not allow for students
18 with disabilities to use certain accommodations on the CAHSEE which they routinely use
19 in the classroom and on other exams.

20 117. The regulations are also discriminatory in that they do not allow students with disabilities
21 to use certain accommodations they may need for the CAHSEE, but which are not listed
22 in their IEP or 504 Plan.

23 118. Certain students with disabilities may require accommodations on the CAHSEE that they
24 have not previously required for classroom assessments because of the different nature of
25 the CAHSEE.

26 119. The regulations are also discriminatory in that they do not allow a disabled student who
27 does not have an IEP or 504 Plan to use accommodations on the Exit Exam.
28

- 1 120. While the majority of students eligible for accommodations are those with an IEP or 504
2 Plan, there are students with disabilities who do not have either an IEP or 504 Plan who
3 will need accommodations on the Exit Exam. Other states, such as Massachusetts, have
4 recognized this and explicitly provide in their regulations that disabled students who do
5 not have IEPs or 504 Plans may request accommodations on statewide assessments.
- 6 121. In addition, the regulations do not set forth any information regarding the procedure to be
7 used for requesting accommodations on the CAHSEE.
- 8 122. Therefore, students, parents, and administrators do not know what process is available for
9 seeking necessary reasonable accommodations, or what standards are used in reviewing
10 and granting these accommodation requests.
- 11 123. The regulations do not provide for any appeals of denials of accommodation requests.
- 12 124. Thus, regardless of how arbitrary or incorrect a denial of an accommodation request is, a
13 student has no avenue to appeal that denial.
- 14 125. Defendants have failed to provide mechanisms, procedures, policies or personnel to
15 engage in the legally required interactive process with parents and students for the
16 fashioning of reasonable accommodations. STATE DEFENDANTS have not provided
17 adequate training or information to schools and school districts regarding the
18 individualized assessment necessary to determine what accommodations a disabled
19 student will require on the CAHSEE. School districts, including DISTRICT
20 DEFENDANTS have not provided adequate information to parents and students.
- 21 126. Due to the lack of clear policies and procedures regarding the process for obtaining
22 accommodations on the CAHSEE, Plaintiffs and their parents have received and continue
23 to receive conflicting, confusing and misleading information from STATE
24 DEFENDANTS and from their school districts, including DISTRICT DEFENDANTS.
25 As a result, parents of Plaintiff students (a) have been unable to make informed decisions
26 about how their child should approach or take the tests, (b) have been misled about the
27 procedures and consequences, (c) have been forced to make decisions which may be
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1 unnecessarily damaging to their children's future and/or (d) have been discouraged from
2 requesting the reasonable accommodations and alternate assessments to which they are
3 entitled as a matter of law.

4 127. As another consequence of the lack of policies and procedures for providing reasonable
5 accommodations on the CAHSEE, Plaintiff students and their parents have been unable
6 to participate meaningfully in designing Plaintiffs' Individualized Education Programs or
7 Section 504 Education Plans.

8 **Failure to Provide Curriculum Alignment**

9 128. Due to the premature implementation of the CAHSEE, students with disabilities have not
10 been given adequate time and notice to prepare for these new testing requirements.
11 Without such time and notice, the CAHSEE will unfairly test them on material that they
12 have not had the opportunity to learn.

13 129. Throughout their educations, Plaintiff children have been provided with individualized,
14 specific curricula in accordance with their IEPs or 504 Plans. In many cases, these
15 individualized plans deviate from the general curriculum.

16 130. These IEPs and 504 Plans have not been modified to be aligned with the subject matter
17 tested on the CAHSEE.

18 131. As noted by the independent evaluator hired by Defendants to review the CAHSEE, the
19 process of modifying IEPs and Section 504 Plans to align with the curriculum tested on
20 the exam will be lengthy and may require a lead time of several years.

21 132. Despite the fact that Defendants have already administered the CAHSEE, Defendants
22 have not taken any steps whatsoever to ensure that Plaintiff students' IEPs and Section
23 504 Plans are modified to align with the Exam.

24 133. In addition, Defendants have not created any materials or programs for teaching children
25 with disabilities what they need to know to pass the CAHSEE.

26 134. Defendants have instituted no steps to ensure appropriate remediation for disabled
27 students who do not pass the CAHSEE on their first attempt.

1 135. Without immediate relief from the Court, Plaintiffs and other children who cannot pass
2 the CAHSEE because it tests them on materials that they never had the opportunity to
3 learn will be irreparably harmed in that they will be denied numerous academic,
4 employment and professional opportunities, may not graduate from high school, and will
5 experience severe damage to their self-esteem and emotional well-being.

6 **Failure to Conform to Psychometric Standards, Including Validity**

7 136. The CAHSEE does not conform to relevant nationally recognized professional and
8 technical standards for standardized tests. Such psychometric standards include, but are
9 not limited to, the following positions: (a) high stakes assessments must be validated for
10 each specific use to which they are put; (b) cutscores (i.e. the place where the line is
11 drawn between passing and failing) must be set based on appropriate, documented
12 analysis; (c) tests that are designed to “lead” a curriculum should not have high stakes
13 consequences for individuals; and (d) high stakes consequences for individual students
14 should not be based on a single test.

15 137. Federal law, including Goals 2000 and Title I, specifically require that state assessments
16 conform to national standards. Defendants are aware of this requirement, but have
17 disregarded the relevant standards in their development and use of the CAHSEE

18 **FIRST CLAIM**

19 (Violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*)
(ALL DEFENDANTS)

20 138. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-137 inclusive.

21 139. Defendants’ acts and omissions alleged herein are in violation of the Americans with
22 Disabilities Act, 42 U.S.C. § 12101, *et seq.*, (“ADA”) and the regulations promulgated
23 thereunder, 28 C.F.R. Part 35, *et seq.*

24 140. Plaintiffs are qualified individuals with disabilities within the meaning of the ADA. 42
25 U.S.C. § 12131(2).
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1 141. STATE DEFENDANTS, and DISTRICT DEFENDANTS are public entities within the
2 meaning of Title II of the ADA and the regulations promulgated thereunder. 42 U.S.C.
3 § 12131(1)(B).

4 142. Defendants have violated the ADA by failing to evaluate their policies and practices with
5 regard to the CAHSEE to ensure that these policies and procedures do not exclude or
6 limit the participation of individuals with disabilities in their programs and activities. 28
7 C.F.R. § 35.105.

8 143. Defendants have violated the ADA by failing and refusing to develop and provide
9 alternate assessments in place of the CAHSEE to those Plaintiff children whose disability
10 is such that they require an alternate assessment to demonstrate their mastery of content
11 standards. 28 C.F.R. § 35.130.

12 144. Defendants have violated the ADA with regard to the CAHSEE by excluding Plaintiff
13 children from participation in and denying them the benefits of the services, programs or
14 activities of a public entity solely on the basis of disability. Defendants have further
15 violated the ADA by otherwise subjecting Plaintiff children to discrimination based upon
16 disability. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).

17 145. Defendants have violated the ADA with regard to the CAHSEE by denying Plaintiff
18 children the opportunity to participate in or benefit from aids, benefits and services
19 provided by the public entities, and by providing Plaintiff children with the opportunity
20 to participate in or benefit from aids, benefits or services that are not equal to those
21 afforded non-disabled children who attend California's public schools. 28 C.F.R. §
22 35.130(b)(1)(i)-(ii).

23 146. Defendants have violated the ADA with regard to the CAHSEE by providing Plaintiff
24 children with benefits that are different and/or not as effective in affording equal
25 opportunity to obtain the same results, to gain the same benefits, or to reach the same
26 levels of achievement as that provided to others. 28 C.F.R. § 35.130(b)(1)(iii)-(iv).

1 147. Defendants have violated the ADA with regard to the CAHSEE by utilizing criteria or
2 methods of administration that have the effect of subjecting Plaintiff children to
3 discrimination on the basis of disability or that have the purpose or effect of defeating or
4 substantially impairing accomplishment of the objectives of the public entity’s program
5 with respect to individuals with disabilities. 28 C.F.R. § 35.130(b)(3).

6 148. Defendants have violated the ADA by administering a certification program in a manner
7 that subjects Plaintiff children to discrimination on the basis of disability. 28 C.F.R.
8 § 35.130(b)(6).

9 149. Defendants have violated the ADA by failing to make reasonable modifications in
10 policies, practices or procedures with regard to the CAHSEE when the modifications are
11 necessary to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(7).

12 150. Defendants have violated the ADA with regard to the CAHSEE by imposing eligibility
13 requirements that screen out or tend to screen out an individual with a disability or any
14 class of individuals with disabilities from fully and equally enjoying any service,
15 program, or activity offered by Defendants. 28 C.F.R. § 130.(b)(8).

16 151. WHEREFORE, Plaintiffs request relief as set forth below.

17 **SECOND CLAIM**

18 (Violation of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*)

(ALL DEFENDANTS)

19 152. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-151 inclusive.

20 153. Plaintiffs are qualified individuals with disabilities within the meaning the Rehabilitation
21 Act of 1973 (“Rehab Act”).

22 154. STATE DEFENDANTS and DISTRICT DEFENDANTS are the recipients of federal
23 funds sufficient to invoke the coverage of the Rehab Act.

24 155. With regard to the CAHSEE, Defendants have intentionally discriminated against
25 Plaintiffs on the basis of their disabilities in violation of the Rehabilitation Act. 29
26 U.S.C. § 794.

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1 156. With regard to the CAHSEE, solely by reason of their disabilities, Plaintiffs have been,
2 and continue to be, excluded from participation in, denied the benefits of, and subjected
3 to discrimination in their attempts to receive, full and equal access to the programs,
4 services and activities offered by Defendants in violation of the Rehabilitation Act. 29
5 U.S.C. § 794.

6 157. WHEREFORE, Plaintiffs request relief as set forth below.

7 **THIRD CLAIM**

8 (Violation of Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq*)
9 (ALL DEFENDANTS)

10 158. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-157 inclusive.

11 159. Defendants have violated the Individuals with Disabilities Education Act (“IDEA”) by
12 failing to develop adequate regulations for the provision of appropriate accommodations
13 to students with disabilities on the CAHSEE. 20 U.S.C. § 1412(a)(17)(A).

14 160. Defendants have violated IDEA by failing to develop guidelines for the participation of
15 children with disabilities in alternate assessments for those disabled students who cannot
16 participate in the CAHSEE because of their disability. 20 U.S.C. § 1412(a)(17)(A)(i).

17 161. Defendants have violated IDEA by failing to ensure that the CAHSEE has been validated
18 for the specific purpose for which it is used. 20 U.S.C. § 1414(b)(3)(B)(i).

19 162. Defendants have violated IDEA by failing to ensure that the CAHSEE is administered in
20 accordance with any instructions provided by the producer of the exam. 20 U.S.C.
21 § 1414(b)(3)(B)(iii).

22 163. Defendants have adopted a policy of discrimination based solely upon the disabilities of
23 school children, resulting in severe interference with and deprivation of Plaintiffs’
24 fundamental right to a free and appropriate public education which is secured to them by
25 the laws of the United States and specifically pursuant to IDEA. 20 U.S.C. § 1401(8).
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1 164. No administrative remedy exists under IDEA to address these wholesale violations by
2 STATE DEFENDANTS. Accordingly, Plaintiffs are not required to exhaust the
3 administrative procedures set forth in IDEA.

4
5 165. WHEREFORE, Plaintiffs request relief as set forth below.

6 **FOURTH CLAIM**

7 (Violation of the Goals 2000: Educate America Act, 20 U.S.C. § 5801 *et seq.*)
8 (ALL STATE DEFENDANTS)

9 166. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-165, inclusive
10 167. STATE DEFENDANTS receive funding under the Goals 2000: Educate America Act
11 (“Goals 2000”), and are thus subject to its requirements.

12 168. STATE DEFENDANTS intend that the CAHSEE constitutes the assessment component
13 of the State improvement plan to meet the National Education Goals set forth in Goals
14 2000.

15 169. STATE DEFENDANTS have violated Goals 2000 by failing to develop and implement
16 valid, nondiscriminatory, and reliable state assessments which are aligned with state
17 content standards, which involve multiple measures of student performance, and which
18 provide for participation by all students with diverse learning needs through necessary
19 adaptations and accommodations. 20 U.S.C. § 5886 (c)(1)(B).

20
21 170. Specifically, STATE DEFENDANTS have violated Goals 2000 in that the CAHSEE is
22 not aligned with the State’s content standards for plaintiff students. 20 U.S.C.
23 § 5886(c)(1)(B)(i)(I).

24
25 171. In addition, STATE DEFENDANTS have violated Goals 2000 in that the CAHSEE does
26 not involve multiple measure of student performance. 20 U.S.C. § 5886(c)(1)(B)(i)(II).

1 172. STATE DEFENDANTS have also violated Goals 2000 in that the CAHSEE does not
2 provide for assessment of “all student with diverse learning needs” using the “adaptations
3 and accommodations necessary to permit such participation.” 20 U.S.C.
4 § 5886(c)(1)(B)(i)(III).

5
6 173. STATE DEFENDANTS have also violated Goals 2000 in that the CAHSEE is not
7 consistent with “relevant, nationally recognized professional and technical standards.”
8 20 U.S.C. § 5886(c)(1)(B)(i)(IV).

9 174. STATE DEFENDANTS’ conduct constitutes ongoing and continuous violations of Goals
10 2000, and, unless restrained from doing so STATE DEFENDANTS will continue to
11 violate said law. Said conduct, unless enjoined, will continue to inflict injuries for which
12 Plaintiff children have no remedy under Goals 2000 and no adequate remedy at law.
13 Consequently, plaintiff children are entitled to injunctive relief under 42 U.S.C. § 1983.

14
15 175. WHEREFORE, Plaintiffs request relief as set forth below.

16
17 **FIFTH CLAIM**

18 (Violation of Title I of the Improving America’s
19 Schools Act of 1994, 20 U.S.C. § 6301 *et seq.*)
20 (ALL STATE DEFENDANTS)

21 176. Plaintiffs incorporate by reference herein the allegations of paragraphs 1-175, inclusive.

22 177. STATE DEFENDANTS receive funding under Title I of the Improving America’s
23 Schools Act of 1994, 20 U.S.C. § 6301 *et seq.* (“Title I”), and are thus subject to its
24 requirements.

25 178. STATE DEFENDANTS intend that the CAHSEE to constitute the assessment
26 component of the Standards and Assessments requirements of Title I.

27 179. STATE DEFENDANTS have violated Title I in that the CAHSEE is not aligned with the
28 State’s content standards for plaintiff students. 20 U.S.C. § 6311(b)(3)(B).

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1 180. STATE DEFENDANTS have violated Title I in that the CAHSEE is not being used “for
2 purposes for which [it is] valid and reliable.” 20 U.S.C. § 6311(b)(3)(C).

3 181. STATE DEFENDANTS have violated Title I in that their proposed use of the CAHSEE
4 is not “consistent with relevant, nationally recognized professional and technical
5 standards for such assessments.” 20 U.S.C. § 6311(b)(3)(C).

6 182. STATE DEFENDANTS have violated Title I in that their proposed use of the CAHSEE
7 does not provide “reasonable adaptations and accommodations for students with diverse
8 learning needs, necessary to measure the achievement of such students relative to State
9 content standards.” 20 U.S.C. § 6311(b)(3)(F)(ii).

10 183. STATE DEFENDANTS’ conduct constitutes ongoing and continuous violations of
11 Title I, and, unless restrained from doing so STATE DEFENDANTS will continue to
12 violate said law. Said conduct, unless enjoined, will continue to inflict injuries for which
13 Plaintiff children have no remedy under Title I, and no adequate remedy at law.
14 Consequently, plaintiff children are entitled to injunctive relief under 42 U.S.C. § 1983.

15 184. WHEREFORE, Plaintiffs request relief as set forth below.

16 **SIXTH CLAIM**

17 (Violation of Cal. Ed. Code § 60850)
18 (ALL STATE DEFENDANTS)

19 185. Plaintiffs incorporate by reference herein the allegations of paragraphs 1-184, inclusive.

20 186. STATE DEFENDANTS have violated Cal. Ed. Code § 60850, the provision establishing
21 the CAHSEE, because the State Education Code on its face prohibits using the CAHSEE
22 as a condition of graduation unless it complies with constitutional Due Process
23 requirements (including notice and validity requirements). Cal. Ed. Code § 60850(e).
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1 187. STATE DEFENDANTS have further violated Cal. Ed. Code § 60850 in that the State
2 Education Code on its face requires that the CAHSEE shall be offered to “individuals
3 with exceptional needs” (which includes the plaintiff class) in a manner that conforms to
4 IDEA and the Rehab Act. Cal. Ed. Code § 60850(g). Thus, a violation of IDEA and/or
5 the Rehab Act is also a violation of Cal. Ed. Code § 60850.
6

7 188. STATE DEFENDANTS have further violated Cal. Ed. Code § 60850 in that the State
8 Education Code on its face requires that the CAHSEE shall be administered to students
9 “with exceptional needs” with “appropriate accommodations.” Cal. Ed. Code
10 § 60850(g).
11

12 189. STATE DEFENDANTS’ failure to comply with mandatory requirements of Cal. Ed.
13 Code § 60850 constitute a breach of a mandatory duty imposed by an enactment that is
14 designed to protect against the risk of a particular kind of injury, in that:

- 15 a. The enactments of Cal. Ed. Code §§ 60850(e) and (g) impose a mandatory duty
- 16 on STATE DEFENDANTS;
- 17 b. The enactments of Cal. Ed. Code §§ 60850(e) and (g) are intended to protect
- 18 against the kind of risk of injury suffered by the plaintiff class; and
- 19 c. Breach of Cal. Ed. Code §§ 60850(e) and (g) is a proximate cause of the injuries
- 20 suffered by the plaintiff class.
21

22 Thus, STATE DEFENDANTS are liable and Plaintiffs are entitled to injunctive relief
23 under Cal. Gov’t Code § 815.6.
24

25 190. WHEREFORE, Plaintiffs request relief as set forth below.
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SEVENTH CLAIM

(Violation of Cal. Gov't Code §11135 *et seq.*)
(ALL STATE DEFENDANTS)

191. Plaintiffs incorporate by reference herein the allegations of paragraphs 1-190, inclusive.

192. California Government Code §11135 and the regulations promulgated thereunder, prohibit discrimination against people with disabilities by recipients of state funding.

Section 11135 provides, in pertinent part, that:

No person in the State of California shall, on the basis of...disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the State.

193. Defendants have received substantial state financial assistance at all relevant times.

194. Defendants have discriminated against plaintiffs in programs and activities receiving state financial assistance solely because of their disabilities in violation of Government Code §11135 and the regulations promulgated thereunder.

195. As a proximate result of defendants' violations of Section 11135, plaintiffs have been injured as set forth herein.

196. WHEREFORE, plaintiffs pray for relief as set forth below.

EIGHTH CLAIM

(Violation of Due Process Clause of United States Constitution)
(ALL DEFENDANTS)

197. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-196, inclusive.

198. The actions of Defendants have violated and continue to violate the Fourteenth Amendment to the United States Constitution in that Defendants have failed to provide Plaintiff children and their parents with adequate notice of the testing requirements for the CAHSEE. Due to the lack of adequate notice, parents and educators have not had sufficient time to consider and determine whether and how the skills tested on the

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1 statewide tests should be addressed in a child's IEP or Section 504 Plan. California
2 schools have never taught or trained children with disabilities many of the skills and
3 content currently being tested on the CAHSEE.

4
5 199. Defendants have taken no steps to ensure that disabled students' IEPs or Section 504
6 Plans are modified to align with the curriculum and skills tested on the Exit Exam.
7 Instead, Defendants have embarked upon a one-test-fits-all, test-first-provide-education-
8 later procedure without conducting adequate research into the far reaching negative
9 consequences for students with disabilities, which effectively makes it impossible for
10 these students to pass the required exams.

11
12 200. The actions of Defendants have violated and continue to violate the Fourteenth
13 Amendment to the United States Constitution because the CAHSEE, as currently
14 formulated and administered, lacks both instructional and curricular validity in that the
15 state cannot meet its burden of showing that the test covers materials that the plaintiff
16 students have had the opportunity to learn.

17
18 201. The actions of Defendants have violated and continue to violate the Fourteenth
19 Amendment to the United States Constitution because the CAHSEE, as currently
20 formulated and administered, is not consistent with relevant, nationally recognized
21 professional and technical standards.

22
23 202. Defendants have also violated and continue to violate the Fourteenth Amendment to the
24 United States Constitution by failing to create and implement clear, consistent and
25 understandable policies and procedures regarding provision of reasonable
26 accommodations on the CAHSEE.

1 203. Defendants have violated and continue to violate the Fourteenth Amendment to the
2 United States Constitution by failing to establish a procedure for parents and students to
3 challenge even the most arbitrary conduct with regard to the denials of reasonable
4 accommodations on the CAHSEE.

5
6 204. The actions of Defendants have violated and continue to violate the Fourteenth
7 Amendment to the United States Constitution in that the CAHSEE is fundamentally
8 unfair because many students with disabilities will not be accurately assessed by the
9 exam because they require an alternate assessment. Defendants have refused, in violation
10 of federal law, to develop alternate assessments to the CAHSEE.

11
12 205. WHEREFORE, Plaintiffs request relief as set forth below.

13 **NINTH CLAIM**

14 (Violation of Equal Protection Clause of the California Constitution)
15 (ALL STATE DEFENDANTS)

16 206. Plaintiffs incorporate by reference herein the allegations of paragraphs 1-205, inclusive.

17 207. Under the California Constitution, the right to an education is a fundamental interest, and
18 any action which impinges upon such right is subject to strict scrutiny. *Serrano v. Priest*,
19 18 Cal. 3d 728 (1977).

20 208. STATE DEFENDANTS have violated and continue to violate the Equal Protection
21 provisions of the California Constitution by failing to ensure that plaintiff students with
22 disabilities have an equal opportunity as nondisabled students to demonstrate mastery of
23 the content standards addressed in the CAHSEE through use of reasonable
24 accommodations and/or an alternate assessment.

25
26 209. In the first administration of the CAHSEE, over 90% of the students with disabilities who
27 took the exam (without an appropriate policy for reasonable accommodations or an
28

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1 alternate assessment in place) failed to pass. Overall, approximately 55% of the public
2 school students who chose to take the CAHSEE in the spring of 2001 (including students
3 with disabilities) did not pass.

4
5 210. Unless student plaintiffs are provided with appropriate reasonable accommodations
6 and/or an alternate assessment, students with disabilities will continue to fail the
7 CAHSEE in disproportionate numbers, and thus will be deprived of the opportunity to
8 obtain a high school diploma.

9 211. Moreover, because the CAHSEE lacks curricular validity in that it tests materials that
10 students have not had the opportunity to learn, it is not even rationally related to any state
11 interest. *See Debra P. v. Turlington*, 644 F.2d 397, 406 (5th Cir. 1981).

12
13 212. WHEREFORE, Plaintiffs request relief as set forth below.

14 **TENTH CLAIM**

15 (Declaratory Relief, 28 U.S.C. §§ 2201, 2202)

16 (All Defendants)

17 213. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-212, inclusive.

18 214. Plaintiffs contend, and are informed and believe that Defendants deny that they have
19 failed to comply with applicable laws prohibiting discrimination against persons with
20 disabilities and are in violation of the Americans with Disabilities Act, 42 U.S.C.

21 § 12101, *et seq*; the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq*; the Individuals
22 with Disabilities Education Act 20 U.S.C. § 1400, *et seq*; Goals 2000, 20 U.S.C. § 5801
23 *et seq.*; Title I, 20 U.S.C. § 6301 *et seq.*; the California Education Code, California
24 Government Code § 11135, *et seq.*, and the Constitutions of the United States and
25 California.
26
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1 215. A judicial declaration is necessary and appropriate at this time in order that each of the
2 parties may know his or her respective rights and duties and act accordingly.

3 216. WHEREFORE, Plaintiffs request relief as set forth below.
4

5 **RELIEF REQUESTED**

6 WHEREFORE, Plaintiffs pray for relief as follows:

- 7 1. A determination by this Court that this action may be maintained as a class action.
8 2. The issuance of a declaratory judgment that Defendants have violated the Americans
9 with Disabilities Act; the Rehabilitation Act of 1973; the Individuals with Disabilities
10 Education Act; Goals 2000, Title I, the California Education Code, California
11 Government Code § 11135, *et seq.*, and the Constitutions of the United States and
12 California.
13 3. The issuance of a preliminary injunction staying the administration of the CAHSEE in
14 Spring of 2002.
15 4. The issuance of a permanent injunction ordering Defendants to provide appropriate
16 protections for plaintiff students as required by law, including but not limited to:
17 (a) developing and providing alternate assessments to all disabled students who require
18 such an assessment to demonstrate their mastery of state content standards; (b) issuing
19 regulations and establishing procedures by which plaintiff students and their parents can
20 request appropriate reasonable accommodations on the CAHSEE, as well as appropriate
21 standards for consideration and granting of such requests; (c) establishing an appeals
22 process by which students can appeal denials of accommodations requests; (d) effectively
23 disseminating appropriate information about policies regarding the CAHSEE to all
24 parents and students; (e) taking all steps necessary to ensure that the CAHSEE is valid
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1 and reliable for students with disabilities; (f) taking all steps necessary to ensure that use
2 of the CAHSEE is consistent with relevant, nationally recognized professional and
3 technical standards for such assessments.

4
5 5. Retention of jurisdiction by this Court until such time as the Court is satisfied that
6 Defendants' unlawful policies, practices, acts, and omissions complained of herein have
7 been remedied and will not recur.

8 6. An award of reasonable attorneys' fees and costs.

9 7. Such other and further relief as the Court deems just and proper.

10 DATE: December 4, 2001

11 Respectfully submitted,

12
13 By: S/Sid Wolinsky
14 SID WOLINSKY
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