

1 SID WOLINSKY (Bar No. 33716)  
2 MELISSA W. KASNITZ (Bar No. 162679)  
3 ALISON M. AUBREJUAN (Bar No. 194107)  
4 DISABILITY RIGHTS ADVOCATES  
5 449 15th Street, Suite 303  
6 Oakland, California 94612  
7 Telephone: (510) 451-8644  
8 Facsimile: (510) 451-8511  
9 TTY: (510) 451-8716  
10 Email: general@dralegal.org

11 ELIZABETH J. CABRASER (Bar No. 83151)  
12 MORRIS A. RATNER (Bar No. 157554)  
13 EVE H. CERVANTEZ (Bar No. 164709)  
14 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP  
15 Embarcadero Center West  
16 275 Battery Street, 30<sup>th</sup> Floor  
17 San Francisco, CA 94111  
18 Telephone: (415) 956-1000  
19 Facsimile: (415) 956-1008  
20 Email: mratner@lchb.com

21 Attorneys for Plaintiffs

22 UNITED STATES DISTRICT COURT  
23 NORTHERN DISTRICT OF CALIFORNIA

24 JULEUS CHAPMAN, by his guardian ad  
25 litem MONIQUE CHAPMAN; RYAN  
26 SMILEY, by his guardian ad litem KRISTA  
27 SMILEY; JENNIFER LYONS, by her  
28 guardian ad litem SUSAN LYONS;  
ASHLEY HARLEY, a minor, by her  
guardian ad litem Jacqueline Harley; PHILIP  
CACHO, a minor, by his guardian ad litem  
Ann McDonald-Cacho; KYLE STOFLE, a  
minor, by his guardian ad litem Karen Bruno;  
JUSTIN PIERCE, a minor, by his guardian  
ad litem Melody Arevalo; ASHTON  
THADANI, a minor, by his guardian ad  
litem Louise Dutka; on behalf of themselves  
and all individuals similarly situated, and  
LEARNING DISABILITIES  
ASSOCIATION OF CALIFORNIA,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF  
EDUCATION; CALIFORNIA BOARD OF  
EDUCATION; JACK O'CONNELL, in his  
official capacity as Superintendent of Public  
Instruction in California,

Defendants.

CASE NO. C-01-01780 CRB/JCS

**CLASS ACTION**

**SECOND AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

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449 Fifteenth Street, Suite 303  
Oakland, CA 94612-2821  
(510) 451-8644

**INTRODUCTION**

- 1  
2  
3 1. This action arises out of intentional discrimination by Defendant CALIFORNIA  
4 DEPARTMENT OF EDUCATION (“CDE”), Defendant CALIFORNIA BOARD OF  
5 EDUCATION (“CBE”), and Defendant JACK O’CONNELL in his official capacity as  
6 Superintendent of Public Instruction against hundreds of thousands of students with  
7 disabilities in the California public school system. Defendants CDE, CBE, and  
8 O’CONNELL (collectively referred to herein as “DEFENDANTS”) are, without  
9 adequate preparation or safeguards, hastily forcing the California High School Exit Exam  
10 (hereafter referred to as the “Exit Exam” or “CAHSEE”) upon these disabled students,  
11 destroying and ignoring their educational attainments and self esteem, flagrantly  
12 violating their rights, and damaging their academic, professional and employment  
13 opportunities forever. Because of Defendants’ refusal to obey federal law, and  
14 Defendants’ almost total disregard of the educational interest of children with disabilities,  
15 over 90% of public school children with disabilities who have taken the Exit Exam have  
16 failed it.
- 17 2. Before forcing a high-stakes standardized high school exit exam on children with  
18 disabilities, Defendants were required under federal law at a minimum, (a) to have  
19 formulated and have in place a reasonable accommodations policy, (b) to have developed  
20 and conducted alternate assessments for those disabled children who need them, (c) to  
21 have established the validity of using the CAHSEE for high-stakes consequences (such as  
22 a prerequisite to graduation) for individual students, (d) to establish and affirmatively  
23 demonstrate the curricular and instructional validity of the test (i.e., that disabled students  
24 are not being tested on matters they never had a chance to learn), (e) to refrain from using  
25 the results of a single test as the sole determinant of whether a child graduates, (f) to have  
26 a procedure available for requesting accommodations and appealing denials of  
27 accommodation requests, if necessary, (g) to disseminate, in timely fashion, clear  
28 information about all of the foregoing to all interested parents, teachers and

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1 administrators in the State so that they can make rational decisions about children's  
2 education, and (h) allow a sufficient period of time between the creation of the test (and  
3 all of its safeguards) and the actual implementation of the test.

4 3. Although the foregoing safeguards are constitutional requirements, as well as mandated  
5 by statute, Defendants have not fulfilled any of them.

6 4. In formulating and administering the CAHSEE, DEFENDANTS have thus failed and  
7 refused to take into account the needs of children with disabilities. As a result, the Exit  
8 Exam discriminates against children with disabilities in numerous ways.

9 5. For example, DEFENDANTS are required under federal law to provide an "alternate  
10 assessment" to the CAHSEE, as a way of allowing children whose disabilities prevents  
11 them from demonstrating their mastery of content standards on the CAHSEE to show  
12 their abilities. In flagrant violation of that requirement, DEFENDANTS have stated that  
13 they will not develop an alternate assessment, and instead are requiring all students to  
14 take the CAHSEE, regardless of whether an alternate assessment would be a more  
15 appropriate measure of the students' knowledge, skills and abilities. DEFENDANTS are  
16 fully aware of their failure to fulfill their legal obligation to provide an alternate  
17 assessment to disabled students. Many students with disabilities should participate in an  
18 alternate assessment rather than the CAHSEE because an alternate assessment is the only  
19 method by which to provide an accurate measure of the students' abilities and skills.

20 6. In addition, DEFENDANTS have refused to establish an appropriate and effective  
21 procedure for students with disabilities to request reasonable accommodations on the  
22 CAHSEE. Various steps to develop such procedures have been initiated, withdrawn, and  
23 changed repeatedly, even as the Exam has been administered, and as plans continue for it  
24 to be re-administered. As a result, students, parents, and school administrators do not  
25 know what process should be followed to request reasonable accommodations, and there  
26 are no uniform standards for consideration of, or granting of, accommodation requests.

- 1 7. Subsequent to the filing of the original complaint, defendants expanded the number of  
2 accommodations that children with disabilities are prohibited from using without  
3 invalidating their test scores. After the Exit Exam was administered in 2001, and before  
4 it was administered in 2002, defendants decided that children with disabilities would not  
5 be permitted to use readers and calculators (two frequently used accommodations that are  
6 absolutely necessary for some students to demonstrate what they know) without  
7 invalidating their test scores. At this time, in addition to the reader and calculator,  
8 children with disabilities may not use spell check devices or transcription devices without  
9 invalidating their test scores. Defendants have also stated that they may continue to add  
10 to the list of prohibited accommodations.
- 11 8. DEFENDANTS have also failed to establish any procedure whatever to review denials of  
12 requests for reasonable accommodations. Thus, students who are denied  
13 accommodations that they need on the CAHSEE are unable to appeal these decisions,  
14 regardless of how incorrect or arbitrary the denials may be.
- 15 9. The CAHSEE further unfairly discriminates against students with disabilities because the  
16 children are being tested on material which they have never been taught. Thus, these  
17 children have not been prepared by their administrators or teachers to take the Exit Exam.  
18 Throughout their educations, many of these children have studied an individualized  
19 curriculum set forth in their Individualized Education Programs (IEPs) or "Section 504"  
20 education plans. Now, on the CAHSEE these children are tested on material that they  
21 have never been taught.
- 22 10. As noted by an independent consultant hired by DEFENDANTS to evaluate the  
23 CAHSEE, the process of aligning students' IEPs or Section 504 plans to match the  
24 curriculum tested on the exam is a lengthy one that requires a lead time of at least several  
25 years. Despite the independent consultant's recommendation that DEFENDANTS  
26 institute measures to ensure that disabled students' IEPs and Section 504 Plans are

1 modified to align with the curriculum tested on the CAHSEE, Defendants have taken no  
2 such steps.

3 11. The CAHSEE has two parts: English and mathematics. Both must be passed in order to  
4 graduate. The English portion of the test, which includes multiple choice questions and  
5 two essays, addresses State Board of Education standards through grade ten.

6 12. The mathematics test covers arithmetic, statistics, data analysis and probability, number  
7 sense, measurement and geometry, mathematical reasoning, and algebra.

8 13. Students in the class of 2004 were permitted to take the test on a voluntary basis in the  
9 spring of 2001, when they were in the ninth grade.

10 14. Subsequent to the filing of the original complaint, students in the class of 2004 who did  
11 not pass the CAHSEE in spring 2001 were required to take the test in spring 2002.

12 15. Students in the class of 2004 who did not pass the CAHSEE in any previous  
13 administration, and all students in all subsequent classes, will be required to take the test  
14 in tenth grade, and then every year thereafter (up to three times per year) until they pass  
15 both portions of the test or complete the 12<sup>th</sup> grade.

16 16. The consequences to students of failing to pass the CAHSEE are profound. All public  
17 school students beginning with the Class of 2004 are required to pass the CAHSEE in  
18 order to graduate from high school and receive a diploma. Regardless of how bright and  
19 talented students are, how hard they work, or how high achieving they may be, students  
20 who do not pass the exam will not graduate from high school, will not receive a regular  
21 diploma, and will be severely disadvantaged in applying for employment and for college  
22 admission.

23 17. Without the proper accommodations (or alternative assessments, if appropriate), and  
24 without modification of their specialized curriculum to include the subject matter being  
25 tested, it is likely that a great majority of California students with disabilities, because of  
26 their disabilities, will never be able to pass the CAHSEE, no matter how many times the  
27 test is given to them, and therefore will not be able to graduate from high school.

28

1 Instead, these students will receive an inferior “Certificate of Attendance” or “Certificate  
2 of Completion” that is not equivalent to a high school diploma.

3 18. By requiring children with disabilities to take discriminatory and unfair tests with high  
4 stakes consequences and no alternate assessments, DEFENDANTS have created a dual  
5 track system of public education in which otherwise qualified students with disabilities  
6 will be relegated to the lower tier and prevented from pursuing academic, professional  
7 and employment opportunities simply because of their disabilities.

8 19. Although they are fully aware of the defects of the CAHSEE as it affects students with  
9 disabilities, DEFENDANTS have nevertheless chosen to proceed with the test, and have  
10 already administered the exam in Spring, 2001, and Spring, Summer and Fall of 2002. In  
11 contrast, other states have taken and are taking extensive steps to ensure that their  
12 statewide assessment systems do not discriminate against students with disabilities.

13 20. For example, Oregon recently settled a lawsuit and agreed to adopt the recommendations  
14 of a national panel of experts commissioned to study Oregon’s testing system and to  
15 evaluate whether a similar high stakes testing system implemented there discriminated  
16 against students with disabilities. Under the settlement, Oregon will (a) develop alternate  
17 assessments for disabled students, (b) allow extensive accommodations for disabled  
18 students, (c) provide comprehensive information and training to parents, teachers,  
19 administrators, and IEP and 504 Plan team members regarding the assessment system and  
20 participation options for students with disabilities, (d) ensure that the IEP and 504 teams  
21 individually assess every disabled student to determine how that student should  
22 participate in the assessment system, (e) institute a problem resolution and appeals  
23 process by which students can appeal decisions regarding accommodation requests and  
24 participation in an alternate assessment, and (f) conduct ongoing research regarding  
25 accommodations and the validity and reliability of the assessment system for students  
26 with disabilities.

1 21. DEFENDANTS have knowingly disregarded concerns, raised by their own expert  
2 consultant, that the Exit Exam discriminates against disabled students. Additionally,  
3 prior to instituting litigation Plaintiffs on numerous occasions contacted the Governor’s  
4 office to inform the State of the multiple deficiencies in the High School Exit Exam, and  
5 to seek a constructive resolution to the problem. DEFENDANTS did not provide a  
6 substantive response to Plaintiffs, and as a result, Plaintiffs were forced to file this  
7 lawsuit in order to protect the rights of students with disabilities.

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

12 **JURISDICTION**

13 23. The Court has subject matter jurisdiction over Plaintiffs’ claims under 28 U.S.C. §§ 1331  
14 and 1343.

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 a substantial part of the events giving rise to this action occurred  
24 in the Northern District of California.

25 **INTRADISTRICT ASSIGNMENT**

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449 Fifteenth Street, Suite 303  
Oakland, CA 94612-2821  
(510) 451-8644

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

4 **THE PARTIES**

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

11 29. Named Plaintiff RYAN SMILEY is a public school student in the class of 2004 with  
12 dyslexia and dysgraphia. Ryan attends Crescenta Valley High School in La Crescenta,  
13 California, and took the CAHSEE in March 2001. Ryan failed this exam. Subsequent to  
14 the filing of the original complaint, Ryan took the CAHSEE again in March 2002. Ryan  
15 later learned that although he received a "passing" score on the English Language Arts  
16 portion of the CAHSEE in March 2002, his score was invalidated because he used a  
17 "modification." Ryan must now seek a waiver for that portion of the exam. On his third  
18 attempt, Ryan took and passed the mathematics portion of the CAHSEE during the  
19 summer of 2002. If Ryan does not receive a waiver, he will be obligated to take the  
20 English Language Arts portion again each year until he passes or completes the 12<sup>th</sup>  
21 grade. He must pass the CAHSEE in order to graduate with a diploma. Ryan's mother,  
22 Krista Smiley, is his guardian ad litem.

23 30. Named Plaintiff JENNIFER LYONS is a public school student in the class of 2005 with  
24 dyslexia. Jennifer attends Mountain Ridge Middle School in Magalia, California, and  
25 will be required to take the CAHSEE beginning in 10<sup>th</sup> grade, and repeating it until she  
26 passes or completes the 12<sup>th</sup> grade. She must pass the CAHSEE in order to graduate with  
27  
28

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1 a diploma. Jennifer's mother, Susan Lyons, has previously filed a petition with the  
2 Court to act as her guardian ad litem.

3 31. Named Plaintiff ASHLEY HARLEY is a public school student in the class of 2004 with  
4 dyslexia. Ashley attends Alameda High School in Alameda, California. Ashley took and  
5 failed the CAHSEE in March 2001 and March 2002. Ashley took the CAHSEE again in  
6 November 2002 and is awaiting her results. If Ashley remains in public school, she will  
7 be obligated to take the exam again repeatedly until she passes in order to receive a high  
8 school diploma. Ashley and her family fear that she will be unable to pass the CAHSEE  
9 because of her disabilities and the fact that the CAHSEE tests material that Ashley has  
10 never been taught. If Ashley has not passed the CAHSEE by the end of her junior year  
11 (June 2003), her parents have decided to remove her from public school and place her in  
12 a private school so that she can complete her high school work and obtain a high school  
13 diploma. Ashley's mother, Jacqueline Harley, is her guardian ad litem.

14 32. Named Plaintiff PHILIP CACHO is a seventeen year old with cerebral palsy. Philip  
15 attended Berkeley High School in Berkeley, California until late October 2002. At  
16 Berkeley High School, Philip was studying an academic curriculum and was scheduled to  
17 graduate in 2004. However, Philip's parents removed him from Berkeley High School's  
18 academic program in October 2002 because Philip needs an alternate assessment to the  
19 CAHSEE and it is impossible for Philip to take, much less pass, the CAHSEE in its  
20 current format, even with accommodations and "modifications." Philip is still enrolled at  
21 Berkeley High School in a non academic program of home and community-based  
22 transition instruction in order to remain eligible for public services. If the CAHSEE was  
23 not an insurmountable obstacle to Philip's graduation, he would still be enrolled as a  
24 diploma-track student at Berkeley High School. Philip's mother, Ann McDonald-Cacho,  
25 is his guardian ad litem.

26 33. Named Plaintiff KYLE STOFLE is a public school student in the class of 2004 with  
27 dyslexia and dysgraphia. Kyle attends Pittsburg High School in Pittsburg, California.  
28

1 Kyle took and failed the CAHSEE in March 2001. Kyle took the CAHSEE again in  
 2 March 2002 and his test results were lost. Kyle took the CAHSEE again in September  
 3 2002, and is currently awaiting his results. Kyle has repeatedly been told that he must  
 4 pass the CAHSEE in order to graduate from high school. Kyle and his family fear that he  
 5 will not pass the CAHSEE because of his disabilities and the fact that the CAHSEE tests  
 6 material that he has never been taught. Kyle's family has decided that if he has not  
 7 passed the CAHSEE by the end of his junior year (June 2003), he will move to Nevada to  
 8 live with his grandmother to finish high school and obtain a high school diploma. Kyle's  
 9 mother, Karen Bruno, is his guardian ad litem.

10 34. Named Plaintiff JUSTIN PIERCE is a student in the class of 2004 with dyslexia and an  
 11 auditory processing delay. Through his sophomore year, Justin attended Vintage High  
 12 School in Napa, California. Justin now attends Flower Mound High School in Flower  
 13 Mound, Texas. Justin's family sent him to Texas to live with relatives in order to finish  
 14 high school and receive a high school diploma because of their fear that he would not  
 15 pass the CAHSEE because of his disabilities and the fact that he has not been taught  
 16 much of the material tested on the exam. After two attempts, Justin managed to pass the  
 17 English Language Arts portion of the CAHSEE. However, Justin failed the mathematics  
 18 portion of the CAHSEE both in March 2001 and March 2002. Justin has experienced  
 19 severe stress, anxiety, and feelings of failure as a result of the CAHSEE, and in the  
 20 Spring of 2002 was diagnosed with depression. Justin has suffered from panic attacks  
 21 and insomnia. Justin and his family desperately would like for him to return to California  
 22 for his senior year of high school. If the CAHSEE were not an impediment to Justin's  
 23 ability to graduate from high school, he would return to California and complete high  
 24 school in Napa. Justin's mother, Melody Arevalo, is his guardian ad litem.

25 35. Named Plaintiff ASHTON THADANI is a public school student in the class of 2004 with  
 26 multiple disabilities, including attention deficit disorder, sensory integration dysfunction,  
 27 receptive/expressive language disorder, auditory processing issues, and post traumatic  
 28

1 stress disorder. Ashton attends Saratoga High School in Saratoga, California. Ashton  
2 took the English Language Arts portion of the CAHSEE in March 2002 without any of  
3 the accommodations listed in his IEP. Ashton and his mother fear that he will not be able  
4 to pass the CAHSEE because it tests material that he has never been taught and because  
5 he needs a number of accommodations that the State has designated as impermissible  
6 “modifications.” Ashton’s mother is currently making plans to send Ashton to  
7 Massachusetts so that Ashton can complete high school there and receive a high school  
8 diploma. Ashton’s mother, Louise Dutka, is his guardian ad litem.

9 36. Organizational Plaintiff LEARNING DISABILITIES ASSOCIATION OF  
10 CALIFORNIA (“LDA-CA”) is a 501(c)(3) non-profit volunteer organization founded in  
11 1960. The purpose of LDA-CA is to promote awareness, increase knowledge, and  
12 support education in a manner that optimizes fulfillment of the individual potential of  
13 children and adults with learning disabilities. This is accomplished through outreach,  
14 advocacy, referrals, and collaboration. LDA-CA currently serves over 2,000 parent,  
15 professional, and adult members with learning disabilities through publications,  
16 conferences, and 12 regional locations and a State office in Sacramento. The  
17 membership of LDA-CA includes parents of Plaintiff students, including MONIQUE  
18 CHAPMAN, KRISTA SMILEY, and SUSAN LYONS. LDA-CA sues on its own behalf  
19 and on behalf of its members.

20 37. Defendant CALIFORNIA DEPARTMENT OF EDUCATION is the department of state  
21 government responsible for administering and enforcing laws related to education. The  
22 CALIFORNIA DEPARTMENT OF EDUCATION is a public entity within the meaning  
23 of Title II of the Americans with Disabilities Act and other applicable laws. The  
24 CALIFORNIA DEPARTMENT OF EDUCATION receives federal financial assistance  
25 from the United States Department of Education and is therefore covered by the  
26 requirements of Section 504 of the Rehabilitation Act of 1973. The CALIFORNIA

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(510) 451-8644

1 DEPARTMENT OF EDUCATION is a state educational agency and is therefore covered  
2 by the requirements of the Individuals with Disabilities Education Act.

3 38. Defendant CALIFORNIA BOARD OF EDUCATION is the policy making body for  
4 California public school education. The CALIFORNIA BOARD OF EDUCATION is a  
5 public entity within the meaning of Title II of the Americans with Disabilities Act and  
6 other applicable laws. The CALIFORNIA BOARD OF EDUCATION receives federal  
7 financial assistance from the United States Department of Education and is therefore  
8 covered by the requirements of Section 504 of the Rehabilitation Act of 1973. The  
9 CALIFORNIA BOARD OF EDUCATION is a state educational agency and is therefore  
10 covered by the requirements of the Individuals with Disabilities Education Act.

11 39. Defendant JACK O'CONNELL, sued in his official capacity, is the State Superintendent  
12 of Public Instruction in California and the ex officio Director of Education for the  
13 CALIFORNIA DEPARTMENT OF EDUCATION.

14 40. Defendants CALIFORNIA DEPARTMENT OF EDUCATION, CALIFORNIA BOARD  
15 OF EDUCATION and JACK O'CONNELL are each responsible for the administration  
16 of the CAHSEE, including, but not limited to, formation, use and ensuring its validity  
17 with respect to disabled children, creating a policy of offering reasonable  
18 accommodations and creating and conducting alternate assessments.

19 41. References in this complaint to DEFENDANTS include Defendant CALIFORNIA  
20 DEPARTMENT OF EDUCATION, Defendant CALIFORNIA BOARD OF  
21 EDUCATION and Defendant JACK O'CONNELL in his official capacity as  
22 Superintendent of Public Instruction for the State of California.

23 42. References in this Complaint to Defendants, unless otherwise stated, shall be deemed to  
24 refer to all defendants, and to each of them.

25 43. Plaintiffs allege that Defendants are jointly and severally liable for the claims raised in  
26 this complaint.

27 **CLASS ALLEGATIONS**

1 44. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), Plaintiffs bring this  
2 action on their own behalf and on behalf of all persons similarly situated. The class  
3 which these Plaintiffs represent is composed of all students eligible for an Individualized  
4 Education Program (“IEP”) pursuant to the Individuals with Disabilities Education Act or  
5 a Section 504 Education Plan (“504 Plan”) pursuant to the Rehabilitation Act of 1973,  
6 who (1) attend California public schools and have taken or will be required to take the  
7 California High School Exit Exam, and (2) who would attend California public schools  
8 but for the CAHSEE. The class is sometimes hereafter referred to as “Plaintiff students”  
9 or “Plaintiff children.”

10 45. The persons in the class are so numerous that joinder of all such persons is impracticable.

11 46. There are numerous issues of fact and questions of law common to the class. These  
12 common factual issues include, but are not limited to, the following:

- 13 a. Defendants’ failure to develop an alternate assessment to the CAHSEE.
- 14 b. Defendants’ development and administration of the CAHSEE, which all public  
15 high school students are required to pass to graduate from high school with a  
16 diploma.
- 17 c. Defendants’ failure to establish a fair and lawful policy of providing reasonable  
18 accommodations.
- 19 d. Defendants’ failure to establish the validity of using the test as a prerequisite to  
20 graduation for students with disabilities.
- 21 e. Defendants’ failure to adopt regulations specifying either a process for requesting  
22 accommodations or a standard for consideration of, and granting of, such  
23 requests.
- 24 f. Defendants’ failure to establish an appeals process by which students can appeal  
25 denials of accommodations requests.

- 1 g. Defendants' failure to provide training and guidance to teachers, administrators,  
2 and IEP and 504 Plan team members regarding the CAHSEE and participation  
3 options for students with disabilities.
- 4 h. Defendants' failure to modify the IEPs or 504 Plans of disabled students to align  
5 with the curriculum tested on the CAHSEE.
- 6 i. Defendants' administration of the CAHSEE without sufficient notice to students  
7 with disabilities and their parents.
- 8 j. Defendants' failure to follow established and sound psychometric standards by  
9 using performance on a single test as the sole determinate of whether a child with  
10 a disability graduates.
- 11 44. The common questions of law include, but are not limited to, the following:
- 12 a. Does Defendants' failure and refusal to provide an alternate assessment to the  
13 CAHSEE violate federal law?
- 14 b. Does Defendants' failure to modify disabled students' IEPs and Section 504 plans  
15 to align with the curriculum tested on the CAHSEE violate federal law?
- 16 c. Does Defendants' failure to establish any procedure for consideration of, or  
17 granting of, requests for reasonable accommodations on the CAHSEE violate  
18 federal law?
- 19 d. Does Defendants' failure to establish any procedure for appealing denials of  
20 requests for reasonable accommodations violate federal law?
- 21 e. Is the CAHSEE an invalid test for assessing the knowledge, skills and abilities of  
22 students with disabilities, in violation of the due process protections of the United  
23 States Constitution?
- 24 f. Have students with disabilities been provided with an adequate opportunity to  
25 learn the material tested on the CAHSEE as required by the due process  
26 protections of the United States Constitution?
- 27
- 28

1 45. The claims of the named Plaintiffs are typical of those of the class, and named Plaintiffs  
2 will fairly and adequately represent the interests of the class. Plaintiffs have engaged  
3 competent counsel to assist them in prosecuting their claims.

4 46. Defendants have acted and refused to act on grounds generally applicable to the class,  
5 thereby making appropriate final injunctive relief and/or corresponding declaratory relief  
6 with respect to the class as a whole.

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

9 **FACTUAL ALLEGATIONS**

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

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

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

25 51. Over half of California public students with disabilities have been diagnosed with a  
26 learning disability. People with learning disabilities span the intelligence spectrum and  
27 many children with learning disabilities are of very high intelligence. Learning  
28

1 disabilities are the result of permanent neurological dysfunction or information  
 2 processing disruptions that result in limited, unexpected, and usually intractable  
 3 impediments in the ability to learn one or more basic skills taught through traditional  
 4 formal education. Many people with learning disabilities work far harder than others in  
 5 order to compensate for their disabilities.

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

17 53. Children with numerous other disabilities attend California's public schools. These  
 18 children include, *inter alia*, those with cerebral palsy, autism, mental retardation, speech  
 19 or language impairments, visual impairments, orthopedic impairments, and those who are  
 20 deaf and hard of hearing.

### 21 Named Plaintiffs' Experiences

22 54. Named Plaintiff Juleus Chapman has dyslexia, a specific type of learning disability.  
 23 Juleus lives in Fremont, California, and he attends public schools in that city. He is in the  
 24 class of 2005. Juleus will be required to take and pass the CAHSEE to obtain a diploma.

25 55. Juleus has an Individualized Education Program that specifies he is allowed to use certain  
 26 testing accommodations due to his dyslexia. These testing accommodations include,  
 27 *inter alia*, extended time, use of a laptop computer, use of a calculator, and audio  
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1 presentation of test items. Juleus requires these accommodations to minimize the effect  
2 of his dyslexia and to demonstrate his skills and abilities. Depending on the  
3 accommodations which are or are not made available to him, Juleus may require an  
4 alternate method of assessment in order to fairly demonstrate his abilities.

5 56. Juleus was told by a Fremont school official that when he takes the CAHSEE he will not  
6 be allowed to use *any* accommodations on the tests. Juleus and his parents have not been  
7 provided any information about how to request reasonable accommodations or an  
8 alternate assessment for the CAHSEE or how to appeal a denial of a request.

9 57. Juleus' IEP has not been modified to align with the curriculum tested on the CAHSEE.

10 58. Juleus requires an individual assessment by his IEP team to determine whether he should  
11 participate in the CAHSEE with accommodations, or whether an alternate assessment  
12 would be more appropriate.

13 59. Subsequent to the filing of the original complaint in this action, Juleus' IEP has been  
14 updated to specify that he might require an alternate assessment to the CAHSEE which  
15 would allow him to pursue a diploma.

16 60. Named Plaintiff Ryan Smiley has dyslexia and dysgraphia. Ryan lives in Montrose,  
17 California, and he attends public schools in La Crescenta, California. Ryan is in the class  
18 of 2004. He will be required to take and pass the CAHSEE to obtain a diploma. He took  
19 the CAHSEE on a voluntary basis in the spring of 2001, but he did not pass either  
20 section.

21 61. Subsequent to the filing of the original complaint in this action, Ryan retook the exam in  
22 the spring of 2002. Ryan learned that he had obtained a passing score on the English  
23 Language Arts portion of the CAHSEE, but that his results were invalidated by the State  
24 because he used a spell checker. Ryan did not pass the mathematics portion of the  
25 CAHSEE.

26 62. In July, 2002, Ryan took the mathematics portion of the CAHSEE for a third time.  
27 Despite the fact that his IEP permits him to use a calculator as a form of reasonable  
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1 accommodation, he chose not to do so because of his concern that his score would be  
2 invalidated. Ryan managed to pass the mathematics portion by a few points. He is  
3 concerned that his low scores will be viewed negatively by colleges and universities in  
4 the admissions process.

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

11 64. During Ryan’s IEP meeting in the fall of 2000, Ryan’s mother, Krista Smiley, was told  
12 that Ryan would be allowed to use full accommodations on all tests. Mrs. Smiley  
13 understood this to mean that Ryan would be allowed to use the accommodations he  
14 needed on the CAHSEE.

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

21 66. When Ryan took the CAHSEE in March 2001, he was not allowed to use all of the  
22 testing accommodations specified in his IEP. Although he normally has exams read to  
23 him, a reader was not provided for the English portion of the Exit Exam. In addition,  
24 Ryan was allowed to use his Alphasmart word processor on only one of the two essays.  
25 When Ryan took the CAHSEE in March 2002, he was denied the use of a calculator.  
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- 1 67. Ryan had not studied much of the content that was tested on the math portion of the  
2 CAHSEE. Ryan is currently enrolled in pre-Algebra, and has not studied Algebra or  
3 Geometry, both of which are tested on the CAHSEE.
- 4 68. Ryan’s IEP has not been modified to align with the curriculum tested on the CAHSEE.
- 5 69. Ryan should have been provided with an individual assessment by his IEP team to  
6 determine whether he should participate in the CAHSEE with accommodations, or  
7 whether an alternate assessment would be more appropriate.
- 8 70. Named Plaintiff Jennifer Lyons has dyslexia. Jennifer lives in Magalia, California, and  
9 attends public schools in Paradise, California. She is in the class of 2005. She will be  
10 required to take and pass the CAHSEE to obtain a diploma.
- 11 71. Jennifer has an Individualized Education Program that specifies she is allowed to use  
12 certain testing accommodations due to her learning disability. These testing  
13 accommodations include, *inter alia*, use of an electronic spell checker, use of a  
14 calculator, use of a computer, scanner, and cassette recorder. Jennifer requires these  
15 accommodations to minimize the effect of her dyslexia. These accommodations are  
16 probably not sufficient, however, to allow her to fully demonstrate her knowledge, skills  
17 and abilities on the CAHSEE, and Jennifer most likely requires an alternate assessment.
- 18 72. Jennifer and her parents have not been provided any information about how to request  
19 reasonable accommodations or an alternate assessment for the CAHSEE, or how to  
20 appeal a denial of a request.
- 21 73. Jennifer’s IEP has not been modified to align with the curriculum tested on the CAHSEE.
- 22 74. Jennifer requires an individual assessment by her IEP team to determine whether she  
23 should participate in the CAHSEE with accommodations, or whether an alternate  
24 assessment would be more appropriate.
- 25 75. Named Plaintiff Ashley Harley has dyslexia. Ashley lives and attends public school in  
26 Alameda, California. She is in the class of 2004, and will be required to take and pass the  
27 CAHSEE to obtain a diploma.
- 28

1 76. Ashley has an Individualized Education Program that specifies she is allowed to use  
2 certain testing accommodations due to her learning disability. These testing  
3 accommodations include, *inter alia*, use of a calculator, a cassette recorder for dictation,  
4 and extra time. Ashley requires these accommodations to minimize the effect of her  
5 dyslexia. These accommodations are probably not sufficient, however, to allow her to  
6 fully demonstrate her knowledge, skills and abilities on the CAHSEE, and Ashley most  
7 likely requires an alternate assessment. Ashley's IEP states that she can best demonstrate  
8 her abilities on oral as opposed to written exams. When tested in this alternate manner,  
9 as she has been for the majority of her educational career, Ashley excels. Without the  
10 opportunity to be assessed in an alternate manner, Ashley is uncertain of whether she will  
11 have the opportunity to demonstrate her real skills on the Exit Exam.

12 77. Ashley and her parents have been provided confusing and conflicting information about  
13 the accommodations policy for the Exit Exam. In Ashley's IEP meetings, Ashley's  
14 mother was told that the effect of using calculators was unknown because the State  
15 designated calculators as impermissible in some notices and not in others.

16 78. Ashley's IEP has not been modified to align with the curriculum tested on the CAHSEE.  
17 For example, Ashley has not taken Algebra II or Geometry, both of which are tested on  
18 the Exit Exam.

19 79. Ashley requires an individual assessment by her IEP team to determine whether she  
20 should participate in the CAHSEE with accommodations, or whether an alternate  
21 assessment would be more appropriate.

22 80. Named Plaintiff Philip Cacho has cerebral palsy as the result of lack of oxygen at birth.  
23 Philip's cerebral palsy is severe, resulting in Spastic Quadriplegia, which means that he  
24 is unable to move his limbs in functional ways. Philip uses a wheelchair and requires the  
25 assistance of others for physical needs. Philip also does not have verbal speech,  
26 necessitating the use of augmentative and alternative means of communication. The  
27 injury to Philip's brain also resulted in cortical visual impairment, which in Philip's case  
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1 renders him unable to track across a horizontal line of type and results in a loss of visual  
2 field and poor visual acuity. Philip’s cognitive abilities are unaffected by his disabilities,  
3 and his ability to learn, understand, and reason are intact and he is considered bright.

4 81. Philip lives in Berkeley, California, and until October 2002 he attended Berkeley High  
5 School. Philip was scheduled to graduate in 2004. In October 2002, Philip’s parents  
6 made the excruciating decision to remove him from Berkeley High School’s academic  
7 program and abandon Philip’s goal of achieving a high school diploma. Philip’s parents  
8 made this decision after it became clear that the CAHSEE posed an insurmountable  
9 obstacle for Philip because he cannot take the exam even with accommodations and  
10 “modifications,” and because there is no alternate assessment available to the CAHSEE.  
11 If the Exit Exam were not an impediment to Philip’s graduation with the Class of 2004,  
12 he would still be enrolled as a diploma track student at Berkeley High School.

13 82. An alternate assessment is the only way that Philip can demonstrate his mastery of the  
14 curriculum. Philip’s parents were initially told by his IEP team that Philip would not be  
15 able to participate in the CAHSEE because he required an alternate assessment and there  
16 was no alternate assessment available. Because Philip and his parents were determined  
17 for Philip to achieve a high school diploma, they insisted on working with the IEP team  
18 to determine a way that Philip could take the Exit Exam with accommodations and  
19 “modifications.” Philip’s IEP states that Philip requires testing accommodations such as  
20 an alternate setting, frequent breaks, and a one-to-one monitor who orally transmits  
21 exams to Philip and who is trained to observe Philip’s answers through Philip’s  
22 augmented communication system of physical responses. Philip’s parents and IEP team  
23 spent an extraordinary amount of time and energy developing ways in which Philip could  
24 provide responses to multiple choice questions and exploring ways for Philip to provide  
25 essay responses. Administering the CAHSEE to Philip could take weeks, possibly  
26 months because of the way in which the examiner must present the questions to Philip  
27 and record his responses. Because of the nature of Philip’s disability, attempting to  
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1 complete the CAHSEE would literally require a suspension of Philip's opportunity to  
 2 participate in his curricular program. Even then administration of portions of the exam,  
 3 such as the essay section, would likely be impossible because of the highly-economical  
 4 and protracted method of generating language that Philip, as a non-verbal individual,  
 5 must use. However, even with these accommodations and "modifications," Philip is not  
 6 able to demonstrate his actual skills and abilities. Philip's IEP states that he should be  
 7 provided with an alternate assessment in the form of a portfolio review of his work.

8 83. Philip's IEP has not been aligned with the curriculum tested on the CAHSEE.

9 84. Philip continues to be enrolled at Berkeley High School in a non academic program of  
 10 home and community-based transition instruction in order to remain eligible for public  
 11 services. If it were not for the Exit Exam, Philip would be on track to graduate from  
 12 Berkeley High School in 2004. Philip has always wanted and planned to attend college  
 13 at the University of California at Berkeley. Now, because he has abandoned his hope of  
 14 receiving a high school diploma because of the Exit Exam, he will likely never be able to  
 15 pursue his plans for college.

16 85. Named Plaintiff Kyle Stofle has dyslexia and dysgraphia. Kyle lives in Pittsburg,  
 17 California, and attends public high school in that city. He is in the class of 2004 and will  
 18 be required to take and pass the CAHSEE to obtain a diploma.

19 86. Kyle has an Individualized Education Program that specifies he is allowed to use certain  
 20 testing accommodations due to his learning disability. These testing accommodations  
 21 include, *inter alia*, extended time, flexible setting, frequent breaks, an oral reader, and  
 22 either a way to respond orally or a word processor. Kyle requires these accommodations  
 23 to minimize the effect of his disabilities. These accommodations are probably not  
 24 sufficient, however, to allow him to fully demonstrate his knowledge, skills and abilities  
 25 on the CAHSEE, and Kyle may require an alternate assessment.

1 87. Kyle and his parents have been provided with confusing and inadequate information  
2 about how the availability of reasonable accommodations for the CAHSEE as well as the  
3 waiver process.

4 88. Kyle's IEP has not been modified to align with the curriculum tested on the CAHSEE.

5 89. Kyle requires an individual assessment by his IEP team to determine whether she should  
6 participate in the CAHSEE with accommodations, or whether an alternate assessment  
7 would be more appropriate.

8 90. If Kyle has not passed the CAHSEE by the end of his junior year (June 2003), he will  
9 move to Nevada to live with his grandmother in order to finish high school and receive a  
10 diploma.

11 91. Named Plaintiff Justin Pierce has dyslexia and an auditory processing delay. Justin is in  
12 the Class of 2004 and is required to pass the Exit Exam in order to graduate from public  
13 high school in California. Through his sophomore year, Justin lived in Napa, California  
14 with his mother and attended Vintage High School in Napa. However, due to fears that  
15 Justin would not pass the Exit Exam and therefore would not graduate from high school,  
16 Justin moved to Texas to live with relatives, and currently lives and attends school in  
17 Flower Mound, Texas. Justin would like to return to California for his senior year of  
18 high school. However, if the Exit Exam remains a requirement for the Class of 2004 he  
19 will complete his high school education in Texas.

20 92. Justin has an Individualized Education Program that specifies he is allowed to use certain  
21 testing accommodations due to his learning disability. These testing accommodations  
22 include, *inter alia*, breaking up the test administration, extended time, alternate testing  
23 environment, the option to respond orally, a calculator, and a spell-checker. Justin  
24 requires these accommodations to minimize the effect of his disabilities. These  
25 accommodations are probably not sufficient, however, to allow him to fully demonstrate  
26 her knowledge, skills and abilities on the CAHSEE, and Justin may require an alternate  
27 assessment.

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1 93. As a result of the extreme stress, anxiety, and sense of failure that Justin felt as a result of  
2 the Exit Exam, Justin experienced panic attacks and insomnia as a result of his stress  
3 about the possibility of not graduating from high school. Relatedly, Justin was diagnosed  
4 with depression in the Spring of 2002.

5 94. Justin and his mother have been provided with confusing, conflicting and inadequate  
6 information about the availability of reasonable accommodations for the CAHSEE, or the  
7 waiver process.

8 95. Justin's IEP was not been modified to align with the curriculum tested on the CAHSEE.  
9 For example, Justin has not been taught geometry or Algebra II, both of which are tested  
10 on the Exit Exam.

11 96. Justin requires an individual assessment by his IEP team to determine whether he should  
12 participate in the CAHSEE with accommodations, or whether an alternate assessment  
13 would be more appropriate.

14 97. Named Plaintiff Ashton Thadani has multiple disabilities, including attention deficit  
15 disorder, sensory integration dysfunction, receptive/expressive language disorder,  
16 auditory processing issues, and post traumatic stress disorder. Ashton lives and attends  
17 public school in Saratoga, California. He is in the class of 2004 and will be required to  
18 take and pass the CAHSEE to obtain a diploma.

19 98. Ashton has an Individualized Education Program that specifies he should not be assessed  
20 through standardized testing and that he should receive certain testing accommodations  
21 such as a one-to-one aide who helps him process information and express his knowledge,  
22 and use of a word processor and calculator. Because of his complex disabilities, Ashton  
23 needs these accommodations in order to fully demonstrate his knowledge and abilities on  
24 tests such as the Exit Exam.

25 99. Ashton took the English Language Arts portion of the CAHSEE in March 2002. Ashton  
26 was not provided with any of his accommodations set forth in his IEP on the March 2002  
27  
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1 test, and he failed that test. Ashton and his mother have been provided with confusing  
2 and incomplete information about the availability of accommodations on the CAHSEE.  
3 100. Ashton's IEP has not been modified to align with the curriculum tested on the CAHSEE.  
4 For example, Ashton is currently enrolled in Algebra, and has not been exposed to many  
5 of the mathematical concepts, such as probability and geometry, that are tested on the  
6 Exit Exam.

7 101. Ashton requires an individual assessment by his IEP team to determine whether he  
8 should participate in the CAHSEE with accommodations, or whether an alternate  
9 assessment would be more appropriate, particularly since his IEP specifies that  
10 standardized assessments are not appropriate due to Ashton's disabilities.

11 102. Ashton and his mother fear that Ashton will not be able to pass the CAHSEE due to the  
12 failure to accommodate his disabilities and the failure to teach Ashton material tested on  
13 the exam. Ashton's mother is currently making plans to send Ashton to Massachusetts so  
14 that Ashton can complete high school there and receive a high school diploma.  
15 Relocation to Massachusetts will be extremely disruptive and difficult for Ashton and his  
16 mother. Because Ashton and his mother, who is a single parent, do not want to be  
17 separated from each other, Ashton's mother will most likely be forced to quit her job and  
18 find another position in Massachusetts.

19 **History of the CAHSEE**

20 103. In 1999 the California legislature passed legislation (SB 2, codified at Cal. Ed. Code  
21 § 60850 *et seq.*) directing the Superintendent of Public Instruction to develop a high  
22 school exit examination in language arts and mathematics.

23 104. Pursuant to that legislation, Defendants hired a contractor to develop and field test the  
24 CAHSEE over a period of several months in 2000.

25 105. As required by law, Defendants hired an independent consultant to evaluate the  
26 CAHSEE.

- 1 106. The independent evaluator concluded that the CAHSEE should be delayed by at least one  
2 to two years because key components of the testing system were not properly developed.
- 3 107. Specifically, the independent evaluator found that students with disabilities had not been  
4 adequately prepared for the tests. The independent consultant found that students with  
5 disabilities had not had their IEPs or Section 504 Plans modified to align with the  
6 curriculum tested on the CAHSEE, and that therefore these students were tested on  
7 material that they had never been taught.
- 8 108. The independent evaluator also found that Defendants had gathered insufficient  
9 information regarding the use of accommodations on the CAHSEE, and recommended  
10 that Defendants gather, review and discuss more information on the appropriateness and  
11 effectiveness of testing accommodations for students with disabilities, as well as the  
12 differential impact of the Exit Exam on students with disabilities.
- 13 109. The independent evaluator also noted that a greater percentage of students with  
14 disabilities are likely to fail the CAHSEE than the student population as a whole.
- 15 110. The independent evaluator's reports are publicly available on the Department of  
16 Education's website at [www.cde.ca.gov](http://www.cde.ca.gov).
- 17 111. In the face of compelling evidence that the CAHSEE is invalid and discriminatory, and  
18 despite the recommendation by their own expert independent consultant to delay the  
19 implementation of the CAHSEE, Defendants nevertheless decided to proceed with  
20 implementation of the CAHSEE and have already administered the exam in the Spring of  
21 2001, and the Spring, Summer and Fall of 2002, to students in the Class of 2004. These  
22 students will be required to pass the CAHSEE to graduate from high school.
- 23 112. In 2001, the California legislature passed AB 1609, codified as amendments to the  
24 portions of the California Education Code concerning the CAHSEE. This legislation  
25 calls for a review of the CAHSEE *after* it has already been administered multiple times to  
26 public school children, including the plaintiff class. This review will study whether the  
27 test development process and implementation were proper.
- 28

1 113. Based on this review, in 2003, Defendant BOARD OF EDUCATION is permitted, but  
2 not required to suspend the requirement that students pass the CAHSEE in order to obtain  
3 a high school diploma.

4 114. Students, including the plaintiff class, will be obligated to take the CAHSEE multiple  
5 times prior to a determination by the BOARD of EDUCATION regarding the diploma  
6 requirement, without knowing whether they are at risk of failing to obtain a diploma  
7 unless they pass the CAHSEE.

8 115. Based on voluntary participation of students in the class of 2004 who chose to take the  
9 CAHSEE in the spring of 2001, the independent evaluator found that over 90% of  
10 students with disabilities who chose to take the Exist Exam failed to pass. Of all students  
11 who took the Exit Exam in the spring of 2001 (including the students with disabilities),  
12 approximately 55% did not pass.

13 116. Subsequent to the filing of the original complaint in this action, results have been  
14 released for the Spring, 2002 administration of the CAHSEE showing that approximately  
15 90% of students with disabilities who took the Exit Exam did not pass. Of all students  
16 who took the exam in the Spring of 2002, including the students with disabilities,  
17 approximately 48% did not pass.

18 117. Even if students, including the plaintiff class, are not ultimately required to pass the  
19 CAHSEE to obtain a high school diploma, the students in the plaintiff class will suffer  
20 ongoing harm and repeatedly experience failure if they are required to take the CAHSEE  
21 without appropriate reasonable accommodations or an alternate assessment. Such  
22 experiences are linked with multiple harms, including dropping out of school, leaving  
23 California public schools to enter private schools, moving to other states in order to avoid  
24 the Exit Exam, and psychological injury such as depression, panic attacks, insomnia, and  
25 severe anxiety.

26 118. The defects in the CAHSEE are due, at least in part, to the fact that Defendants hastily  
27 developed and implemented the exam.  
28

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

21 **Alternate Assessment**

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

22 **Reasonable Accommodation**

- 23 130. Plaintiff students require and are guaranteed under federal law reasonable  
24 accommodations on the CAHSEE such that they are tested on their mastery of state  
25 content standards rather than on their disabilities.
- 26 131. Without such accommodations, Plaintiff students are subjected to discrimination because  
27 they are tested on their disabilities, not their abilities. Without the reasonable  
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1 accommodations they require, Plaintiff students will be unable to pass the CAHSEE and  
2 therefore will be unable to graduate from high school with a diploma.

3 132. Defendants have created chaos and confusion by failing to formulate clear policies and  
4 procedures regarding the provision of reasonable accommodations on the CAHSEE.

5 133. At the time of the administration of the CAHSEE in Spring of 2001, DEFENDANTS had  
6 not issued final regulations regarding the policies and procedures for obtaining  
7 reasonable accommodations on the Exam.

8 134. Instead, Plaintiff students, their parents, and school administrators were either provided  
9 with no information or guidance about the use of accommodations on the March 2001  
10 Exam, or were provided with conflicting, misleading, and confusing information about  
11 accommodations.

12 135. Currently, DEFENDANTS still have not issued final regulations regarding the policies  
13 and procedures for obtaining reasonable accommodations on the Exam.

14 136. Defendants have issued a variety of regulations regarding accommodations for the High  
15 School Exit Exam since the original legislation was enacted.

16 137. Only days in advance of the administration of the CAHSEE in the spring of 2001,  
17 *interim* regulations regarding accommodations were approved by the State Board of  
18 Education. Because the regulations were issued so close to the administration of the  
19 exam, teachers, test administrators, parents and students did not have sufficient time to  
20 request (or appeal denials of) reasonable accommodations.

21 138. Subsequent to the administration of the CAHSEE, in the Spring of 2001, the belated and  
22 limited accommodations regulations were withdrawn in June.

23 139. From June until October, 2001, there were *no regulations whatsoever* regarding  
24 accommodations on the CAHSEE.

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

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- 1 141. Notwithstanding the startlingly high failure rate among students with disabilities, these  
2 new regulations represent a reversal from the previously issued regulations in that they  
3 allow *fewer* accommodations for disabled students and also indicate that  
4 accommodations not listed in a students' IEP or 504 plan may not be used on the  
5 CAHSEE.
- 6 142. The regulations issued before the Spring, 2002 administration of the CAHSEE for the  
7 first time specifically prohibited the use of accommodations such as oral presentation of  
8 exam materials on the English portion of the CAHSEE or use of a calculator on the  
9 mathematics portion of the exam.
- 10 143. After the March, 2002 administration of the CAHSEE, Defendants issued additional  
11 "guidance" to school districts, informing them for the first time ever that additional  
12 accommodations, including use of spell checkers and use of electronic or mechanical  
13 transcription devices were also prohibited "modifications" which would invalidate a  
14 student's test score. This policy, which directly contradicts the regulations with respect  
15 to transcription devices, was applied retroactively to the March, 2002 test results.
- 16 144. The regulations issued prior to the Spring, 2002 administration of the CAHSEE further  
17 provide that school districts (not individual students) may request accommodations not  
18 listed in the regulations at least nine weeks prior to the exam (*i.e.* by December, 2001 for  
19 the March, 2002 administration). Neither IEP teams nor school districts had sufficient  
20 time to determine which accommodations each student should receive in advance of the  
21 administration of the CAHSEE in the Spring of 2002.
- 22 145. Separate from the regulations, Defendants in December 2001 issued a "waiver" policy for  
23 students with disabilities. Under the "waiver" process, a student who uses a prohibited  
24 "modification" and receives a passing score *may* receive a waiver of the CAHSEE  
25 requirement. This confusing and discriminatory policy was not made final until the  
26 summer of 2002. Since the filing of the original complaint, the waiver policy has been  
27 further changed by legislation passed in the fall of 2002. This most recent iteration of the  
28

1 waiver policy, which is not effective until January 1, 2003, requires parents to initiate the  
2 waiver process by requesting school principals to submit waiver requests to the school  
3 districts. This process is contrary to previous versions of the waiver policy under which  
4 school districts submitted waiver requests to the State.

5 146. The new waiver policy suffers from numerous defects. These defects include: (1)  
6 granting a waiver is entirely discretionary with each school district, (2) there are no  
7 standards to guide districts in reviewing waiver requests, (3) there are no standards to  
8 guide principals with respect to certifying whether a student has met certain conditions  
9 set forth in the new waiver law, Cal. Educ. Code § 60851(c)(2), (4) there is no process by  
10 which a parent can ensure that a principal in fact submits a waiver request to the school  
11 district, (5) if a district denies a waiver request, there is no process for appealing that  
12 decision, and (6) to even qualify for a waiver, a principal must certify that a student's IEP  
13 or 504 plan specifies that accommodations and modifications must be provided on the  
14 CAHSEE specifically as opposed to on classroom work or testing generally.

15 147. Under the new convoluted and lengthy waiver process: (a) The student would have to  
16 take the exam with "prohibited" accommodations and receive a passing score; and (b)  
17 Notwithstanding the fact that the student would already have achieved a passing score on  
18 the CAHSEE, the parent would have to seek, and the school district would have to grant,  
19 a waiver "excusing" the student from the CAHSEE requirement. In other words, the  
20 student would be required to pass the test in order to qualify to be excused from the test  
21 (and the work done by the student in obtaining a passing score would be dismissed as  
22 immaterial, and never be acknowledged).

23 148. The waiver scheme effectively transforms a student's right to appropriate  
24 accommodations into a theoretical possibility, at an indeterminate future time, which  
25 could only be obtained, if at all, by pursuing a complicated, uncertain, and humiliating  
26 process.



- 1 149. Defendants' failure to approve regulations and distribute information in a timely and  
2 appropriate manner has caused ongoing confusion among students, parents and  
3 administrators.
- 4 150. The regulations are deficient and discriminatory because they do not allow for students  
5 with disabilities to use certain accommodations on the CAHSEE which they routinely use  
6 in the classroom and on other exams.
- 7 151. The regulations are also discriminatory in that they do not allow students with disabilities  
8 to use certain accommodations they may need for the CAHSEE, but which are not listed  
9 in their IEP or 504 Plan.
- 10 152. Certain students with disabilities may require accommodations on the CAHSEE that they  
11 have not previously required for classroom assessments because of the different nature of  
12 the CAHSEE.
- 13 153. The regulations are also discriminatory in that they do not allow a disabled student who  
14 does not have an IEP or 504 Plan to use accommodations on the Exit Exam.
- 15 154. While the majority of students eligible for accommodations are those with an IEP or 504  
16 Plan, there are students with disabilities who do not have either an IEP or 504 Plan who  
17 will need accommodations on the Exit Exam. Other states, such as Massachusetts, have  
18 recognized this and explicitly provide in their regulations that disabled students who do  
19 not have IEPs or 504 Plans may request accommodations on statewide assessments.
- 20 155. Students, parents, and administrators do not know what process is available for seeking  
21 necessary reasonable accommodations, or what standards are used in reviewing and  
22 granting these accommodation requests.
- 23 156. The regulations do not provide for any appeals of denials of accommodation requests.
- 24 157. Thus, regardless of how arbitrary or incorrect a denial of an accommodation request is, a  
25 student has no effective avenue to appeal that denial.
- 26 158. Defendants have failed to provide mechanisms, procedures, policies or personnel to  
27 engage in the legally required interactive process with parents and students for the  
28

1 fashioning of reasonable accommodations. Defendants have not provided adequate  
 2 training or information to schools and school districts regarding the individualized  
 3 assessment necessary to determine what accommodations a disabled student will require  
 4 on the CAHSEE. School districts have not provided adequate information to parents and  
 5 students.

6 159. Due to the lack of clear policies and procedures regarding the process for obtaining  
 7 accommodations on the CAHSEE, Plaintiffs and their parents have received and continue  
 8 to receive conflicting, confusing and misleading information from Defendants and from  
 9 their school districts. As a result, parents of Plaintiff students (a) have been unable to  
 10 make informed decisions about how their child should approach or take the tests,  
 11 (b) have been misled about the procedures and consequences, (c) have been forced to  
 12 make decisions which may be unnecessarily damaging to their children's future and/or  
 13 (d) have been discouraged from requesting the reasonable accommodations and alternate  
 14 assessments to which they are entitled as a matter of law.

15 **Failure to Provide Curriculum Alignment**

16 160. Due to the premature implementation of the CAHSEE, students with disabilities have not  
 17 been given adequate time and notice to prepare for these new testing requirements.  
 18 Without such time and notice, the CAHSEE will unfairly test them on material that they  
 19 have not had the opportunity to learn.

20 161. Throughout their educations, Plaintiff children have been provided with individualized,  
 21 specific curricula in accordance with their IEPs or 504 Plans. In many cases, these  
 22 individualized plans deviate from the general curriculum.

23 162. These IEPs and 504 Plans have not been modified to be aligned with the subject matter  
 24 tested on the CAHSEE.

25 163. As noted by the independent evaluator hired by Defendants to review the CAHSEE, the  
 26 process of modifying IEPs and Section 504 Plans to align with the curriculum tested on  
 27 the exam will be lengthy and may require a lead time of several years.  
 28

- 1 164. Despite the fact that Defendants have already administered the CAHSEE, Defendants  
 2 have not taken any steps whatsoever to ensure that Plaintiff students' IEPs and Section  
 3 504 Plans are modified to align with the Exam.
- 4 165. In addition, Defendants have not created any materials or programs for teaching children  
 5 with disabilities what they need to know to pass the CAHSEE.
- 6 166. Defendants have instituted no steps to ensure appropriate remediation for disabled  
 7 students who do not pass the CAHSEE on their first attempt.
- 8 167. Without immediate relief from the Court, Plaintiffs and other children who cannot pass  
 9 the CAHSEE because it tests them on materials that they never had the opportunity to  
 10 learn will be irreparably harmed in that they will be denied numerous academic,  
 11 employment and professional opportunities, may not graduate from high school, and will  
 12 experience severe damage to their self-esteem and emotional well-being.

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

- 14 168. The CAHSEE does not conform to relevant nationally recognized professional and  
 15 technical standards for standardized tests. Such psychometric standards include, but are  
 16 not limited to, the following positions: (a) high stakes assessments must be validated for  
 17 each specific use to which they are put; (b) cut scores (i.e. the place where the line is  
 18 drawn between passing and failing) must be set based on appropriate, documented  
 19 analysis; (c) tests that are designed to "lead" a curriculum should not have high stakes  
 20 consequences for individuals; and (d) high stakes consequences for individual students  
 21 should not be based on a single test.

22 **FIRST CLAIM**

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

- 24 169. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-137 inclusive.
- 25 170. Defendants' acts and omissions alleged herein are in violation of the Americans with  
 26 Disabilities Act, 42 U.S.C. § 12101, *et seq.*, ("ADA") and the regulations promulgated  
 27 thereunder, 28 C.F.R. Part 35, *et seq.*
- 28

- 1 171. Plaintiffs are qualified individuals with disabilities within the meaning of the ADA. 42  
2 U.S.C. § 12131(2).
- 3 172. DEFENDANTS are public entities within the meaning of Title II of the ADA and the  
4 regulations promulgated thereunder. 42 U.S.C. § 12131(1)(B).
- 5 173. Defendants have violated the ADA by failing to evaluate their policies and practices with  
6 regard to the CAHSEE to ensure that these policies and procedures do not exclude or  
7 limit the participation of individuals with disabilities in their programs and activities. 28  
8 C.F.R. § 35.105.
- 9 174. Defendants have violated the ADA by failing and refusing to develop and provide  
10 alternate assessments in place of the CAHSEE to those Plaintiff children whose disability  
11 is such that they require an alternate assessment to demonstrate their mastery of content  
12 standards. 28 C.F.R. § 35.130.
- 13 175. Defendants have violated the ADA with regard to the CAHSEE by excluding Plaintiff  
14 children from participation in and denying them the benefits of the services, programs or  
15 activities of a public entity solely on the basis of disability. Defendants have further  
16 violated the ADA by otherwise subjecting Plaintiff children to discrimination based upon  
17 disability. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).
- 18 176. Defendants have violated the ADA with regard to the CAHSEE by denying Plaintiff  
19 children the opportunity to participate in or benefit from aids, benefits and services  
20 provided by the public entities, and by providing Plaintiff children with the opportunity  
21 to participate in or benefit from aids, benefits or services that are not equal to those  
22 afforded non-disabled children who attend California's public schools. 28 C.F.R. §  
23 35.130(b)(1)(i)-(ii).
- 24 177. Defendants have violated the ADA with regard to the CAHSEE by providing Plaintiff  
25 children with benefits that are different and/or not as effective in affording equal  
26 opportunity to obtain the same results, to gain the same benefits, or to reach the same  
27 levels of achievement as that provided to others. 28 C.F.R. § 35.130(b)(1)(iii)-(iv).
- 28

1 178. 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).

6 179. 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).

9 180. 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).

12 181. 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).

16 182. Defendants have engaged in deliberate indifference of plaintiffs’ rights under the ADA in  
17 that Defendants have had notice that harm to plaintiffs’ rights was substantially likely,  
18 and Defendants deliberately failed to act to prevent or remedy such harm.

19 183. WHEREFORE, Plaintiffs request relief as set forth below.

20 **SECOND CLAIM**

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

21 (ALL DEFENDANTS)

22 184. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-151 inclusive.

23 185. Plaintiffs are qualified individuals with disabilities within the meaning the Rehabilitation  
24 Act of 1973 (“Rehab Act”).

25 186. DEFENDANTS are the recipients of federal funds sufficient to invoke the coverage of  
26 the Rehab Act.

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449 Fifteenth Street, Suite 303  
Oakland, CA 94612-2821  
(510) 451-8644

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Oakland, CA 94612-2821  
(510) 451-8644

1 187. With regard to the CAHSEE, Defendants have intentionally discriminated against  
2 Plaintiffs on the basis of their disabilities in violation of the Rehabilitation Act. 29  
3 U.S.C. § 794.

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

9 189. Defendants have engaged in deliberate indifference of plaintiffs’ rights under the  
10 Rehabilitation Act in that Defendants have had notice that harm to plaintiffs’ rights was  
11 substantially likely, and Defendants deliberately failed to act to prevent or remedy such  
12 harm.

13 190. WHEREFORE, Plaintiffs request relief as set forth below.

14 **THIRD CLAIM**  
15 (Violation of Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq*)  
(ALL DEFENDANTS)

16 191. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-157 inclusive.

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

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

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

25 195. Defendants have violated IDEA by failing to ensure that the CAHSEE is administered in  
26 accordance with any instructions provided by the producer of the exam. 20 U.S.C.  
27 § 1414(b)(3)(B)(iii)

28

1 196. Defendants have adopted a policy of discrimination based solely upon the disabilities of  
2 school children, resulting in severe interference with and deprivation of Plaintiffs’  
3 fundamental right to a free and appropriate public education which is secured to them by  
4 the laws of the United States and specifically pursuant to IDEA. 20 U.S.C. § 1401(8).

5 197. No administrative remedy exists under IDEA to address these wholesale violations by  
6 DEFENDANTS. Accordingly, Plaintiffs are not required to exhaust the administrative  
7 procedures set forth in IDEA.

8 198. WHEREFORE, Plaintiffs request relief as set forth below.

9 **FOURTH CLAIM [FORMERLY EIGHTH CLAIM]**  
10 (Violation of Due Process Clause of United States Constitution)  
(ALL DEFENDANTS)

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

12 200. The actions of Defendants have violated and continue to violate the Fourteenth  
13 Amendment to the United States Constitution in that Defendants have failed to provide  
14 Plaintiff children and their parents with adequate notice of the testing requirements for  
15 the CAHSEE. Due to the lack of adequate notice, parents and educators have not had  
16 sufficient time to consider and determine whether and how the skills tested on the  
17 statewide tests should be addressed in a child’s IEP or Section 504 Plan. California  
18 schools have never taught or trained children with disabilities many of the skills and  
19 content currently being tested on the CAHSEE.

20 201. Defendants have taken no steps to ensure that disabled students’ IEPs or Section 504  
21 Plans are modified to align with the curriculum and skills tested on the Exit Exam.  
22 Instead, Defendants have embarked upon a one-test-fits-all, test-first-provide-education-  
23 later procedure without conducting adequate research into the far reaching negative  
24 consequences for students with disabilities, which effectively makes it impossible for  
25 these students to pass the required exams.

26 202. The actions of Defendants have violated and continue to violate the Fourteenth  
27 Amendment to the United States Constitution because the CAHSEE, as currently  
28

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(510) 451-8644

1 formulated and administered, lacks both instructional and curricular validity in that the  
2 State cannot meet its burden of showing that the test covers materials that the plaintiff  
3 students have had the opportunity to learn.

4 203. The actions of Defendants have violated and continue to violate the Fourteenth  
5 Amendment to the United States Constitution because the CAHSEE, as currently  
6 formulated and administered, is not consistent with relevant, nationally recognized  
7 professional and technical standards.

8 204. Defendants have also violated and continue to violate the Fourteenth Amendment to the  
9 United States Constitution by failing to create and implement clear, consistent and  
10 understandable policies and procedures regarding provision of reasonable  
11 accommodations on the CAHSEE.

12 205. Defendants have violated and continue to violate the Fourteenth Amendment to the  
13 United States Constitution by failing to establish a procedure for parents and students to  
14 challenge even the most arbitrary conduct with regard to the denials of reasonable  
15 accommodations on the CAHSEE.

16 206. The actions of Defendants have violated and continue to violate the Fourteenth  
17 Amendment to the United States Constitution in that the CAHSEE is fundamentally  
18 unfair because many students with disabilities will not be accurately assessed by the  
19 exam because they require an alternate assessment. Defendants have refused, in violation  
20 of federal law, to develop alternate assessments to the CAHSEE.

21 207. WHEREFORE, Plaintiffs request relief as set forth below.

22 **FIFTH CLAIM [FORMERLY TENTH CLAIM]**  
23 (Declaratory Relief, 28 U.S.C. §§ 2201, 2202)  
( All Defendants)

24 208. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-212, inclusive.

25 209. Plaintiffs contend, and are informed and believe that Defendants deny that they have  
26 failed to comply with applicable laws prohibiting discrimination against persons with  
27 disabilities and are in violation of the Americans with Disabilities Act, 42 U.S.C.  
28

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1 § 12101, *et seq*; the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq*; the Individuals  
2 with Disabilities Education Act 20 U.S.C. § 1400, *et seq*; and the U.S. Constitution.

3 210. A judicial declaration is necessary and appropriate at this time in order that each of the  
4 parties may know his or her respective rights and duties and act accordingly.

5 211. WHEREFORE, Plaintiffs request relief as set forth below.

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiffs pray for relief as follows:

- 8 1. A determination by this Court that this action may be maintained as a class action.
- 9 2. The issuance of a declaratory judgment that Defendants have violated the Americans  
10 with Disabilities Act; the Rehabilitation Act of 1973; the Individuals with Disabilities  
11 Education Act; and the Constitution of the United States.
- 12 3. The issuance of a preliminary injunction staying the administration of the CAHSEE in  
13 Spring of 2002.
- 14 4. The issuance of a permanent injunction ordering Defendants to provide appropriate  
15 protections for plaintiff students as required by law, including but not limited to:  
16 (a) developing and providing alternate assessments to all disabled students who require  
17 such an assessment to demonstrate their mastery of state content standards; (b) issuing  
18 regulations and establishing procedures by which plaintiff students and their parents can  
19 request appropriate reasonable accommodations on the CAHSEE, as well as appropriate  
20 standards for consideration and granting of such requests; (c) establishing an appeals  
21 process by which students can appeal denials of accommodations requests; (d) effectively  
22 disseminating appropriate information about policies regarding the CAHSEE to all  
23 parents and students; (e) taking all steps necessary to ensure that the CAHSEE is valid  
24 and reliable for students with disabilities; (f) taking all steps necessary to ensure that use  
25 of the CAHSEE is consistent with relevant, nationally recognized professional and  
26 technical standards for such assessments.
- 27  
28

- 1 5. Retention of jurisdiction by this Court until such time as the Court is satisfied that
- 2 Defendants' unlawful policies, practices, acts, and omissions complained of herein have
- 3 been remedied and will not recur.
- 4 6. An award of reasonable attorneys' fees and costs.
- 5 7. Damages in an amount to be determined by proof.
- 6 8. Such other and further relief as the Court deems just and proper.

7 DATE: December 20, 2002

8 Respectfully submitted,

9 By: S/Sid Wolinsky

10 SID WOLINSKY

11 DISABILITY RIGHTS ADVOCATES

12 449 15th Street, Suite 303

13 Oakland, California 94612

14 Telephone: (510) 451-8644

15 Facsimile: (510) 451-8511

16 TTY: (510) 451-8716

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DISABILITY RIGHTS ADVOCATES  
 449 Fifteenth Street, Suite 303  
 Oakland, CA 94612-2821  
 (510) 451-8644