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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DOE 1; DOE 2; DOE 3; DOE 4; DOE 5; NONA
RHEA; MYRON BULLER; CAROL HIRAHARA;
LYNN DERFELT; ANGELINA OGATA,

Plaintiffs,

v.

STATE OF CALIFORNIA; TOM TORLAKSON, in
his official capacity as STATE SUPERINTENDENT
OF PUBLIC INSTRUCTION; STATE BOARD OF
EDUCATION; MICHAEL KIRST, in his official
capacity; TRISH BOYD WILLIAMS, in her official
capacity; JAMES D. ASCHWANDEN, in his official
capacity; YVONNE CHAN, in her official capacity;
CARL A. COHN, in her official capacity; AIDA
MOLINA, in her official capacity; JAMES RAMOS, in
his official capacity; PATRICIA ANN RUCKER, in
her official capacity; ILENE STRAUS, in her official
capacity; CAITLIN SNELL, in her official capacity;
CALIFORNIA DEPARTMENT OF EDUCATION;
DINUBA UNIFIED SCHOOL DISTRICT,

Defendants.

FILED
Superior Court Of California,
Sacramento
05/30/2012
amacias
By _____, Deputy
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34-2012-80001164

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CASE NO.

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

DEPARTMENT 31

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

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INTRODUCTION

1. No state has a greater stake in the education of students who are learning English as a second language than California. Yet nearly every available measurement of academic achievement or success demonstrates that the English Language Learner (“ELL”) students enrolled in California public schools suffer from a significant achievement gap when compared to the general school population.

2. Mastery of English for these children is the prerequisite for basic literacy, and a system of education that fails to ensure this language acquisition deprives them of the most essential tool to fulfill their potentialities and become productive members of our society. It is common sense, supported by irrefutable educational research, that without a “good working knowledge of English,” Cal. Educ. Code § 305, children will be lost in school. As Defendant California Department of Education (“CDE”) has powerfully put it, in such straits, “[ELL students] fall further behind the longer they are in California schools The curriculum and teaching supports currently in place are not preparing these students for the higher-order skills expected in high school and beyond.” Transitions Advisory Team, Cal. Dept. of Educ., A Blueprint for Great Schools, August 9, 2011, *available at* <http://www.cde.ca.gov/eo/in/bp/bpstrategy2.asp> (last visited May 28, 2012).

3. The failure to properly educate ELL students to communicate and comprehend English is tragic at any age or grade level, and particularly indefensible when children are young and their capacity to learn a second language is developmentally most acute. Young children in grades K-3 in particular can learn English readily when taught to do so using any of the available research-based approaches proven successful in real-life applications and consistent with well-established pedagogies of linguistics. California teachers, when allowed to use programs based on sound educational theory, can and will succeed in preparing ELL students for educational success.

4. Yet stunningly, for the past three years, young ELL children in the Dinuba Unified School District (“Dinuba Unified”) have been subjected to a program for English language acquisition that lacks sound educational support, contradicts bedrock principles of how children learn language, and continues to be resisted vigorously by their knowledgeable and caring teachers who have correctly concluded that the curriculum they are required to use in their instruction is nonsense, a prescription for

1 holding back their students who are eager and capable of learning English in a short time. This program
2 deprives ELL students of foundational reading instruction that is the launching pad for all learning and,
3 concomitantly, love of learning. While other first-, second- and, in some instances, third-grade students
4 just down the hall from their classrooms are learning to read so that they can read to learn, ELL students
5 in Dinuba Unified have been segregated from their English-speaking peers and compelled to languish in
6 a program labeled Structured Language Acquisition Development Instruction (“SLADI”), which does
7 not teach them how to communicate or read in English and thus provides no access to the core curricula
8 the State of California expects and mandates that all children master. The SLADI program is not just
9 unsupported by sound educational theory, but there also is no theoretical basis supporting its use as a
10 way to deliver meaningful language acquisition instruction to young children.

11 5. The SLADI program, which was adopted by Dinuba Unified with the explicit approval of
12 the State of California in 2009, forces first-, second- and, in some instances, third-grade students into a
13 narrowed, separate, and unequal educational curriculum, which denies them the basic educational
14 equality guaranteed to them by the California Constitution and the federal Equal Education Opportunity
15 Act. The SLADI program has no grounding in sound pedagogical theory and indeed is based on the
16 wrongheaded assumption that all ELL students possess certain skills in a primary language that they do
17 not yet have, especially young children in first through third grade, such as first language literacy and
18 advanced knowledge of grammar and formal language structure.

19 6. The SLADI program subjects these young ELL students to age-inappropriate grammar
20 lessons, while their English-speaking peers are explicitly taught how to read and other critical skills and
21 knowledge included in the California Content Standards for English Language Arts (“ELA”). These
22 grammar lessons involve six, seven and eight year old ELL students parsing sentence structure and
23 memorizing by rote formal parts of speech like prepositions and sentence objects. Such lessons are
24 devoid of any language acquisition significance for students who are not yet familiar with grammatical
25 concepts in their native language, much less being taught about them in a language—English—that they
26 do not yet know. As experts on language acquisition and developmental psychology attest, teaching
27 isolated grammar components without context works incredible harm upon young children who are
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developmentally incapable of acquiring a new language in such a manner. Like teaching swimming by having children memorize the chemical formula for water, SLADI defies sound educational theory.

7. Since 2009, ELL students in the first two years of the SLADI program (most of whom are in first through third grades) have been removed from 2.5 hours of ELA instruction per day for the first half of the year, deprived of reading instruction, and instead forced to diagram sentences and memorize formal parts of speech. Consequently, each year, young ELL students in Dinuba Unified are denied between 100 and 200 hours of reading instruction that their non-ELL peers receive. Moreover, Dinuba Unified has no official practice or plan to provide current and former ELL students any specialized program and instruction to address the serious knowledge gaps that exist as a result of their segregation and exclusion from the reading and other ELA curricular content that their non-ELL peers receive. Indeed, when one teacher specifically asked whether Dinuba Unified would provide afterschool interventions for ELL students so they could make up the ELA instruction they were being denied, Dinuba Unified refused her request.

8. As Dinuba Unified's ELL students strive like all students to accumulate knowledge upon a foundation of basic literacy, SLADI undermines their aspirations, instead setting them up for academic failure and lifelong despair. The harms wrought by SLADI produce severe and predictable long-term effects on their access to the basic educational opportunities that the State is constitutionally obliged to provide. In 2009, the year SLADI was implemented, four out of five elementary schools (80 percent) in Dinuba Unified met Annual Measurable Achievement Objectives ("AMAO") 1, which means that ELL students in four out of five elementary schools were making progress in learning English. Since SLADI was adopted, this number has declined sharply, so that, in 2011, four out of five elementary schools *failed* to meet AMAO 1. This poor performance is reflected in the Plaintiffs' test scores on the California English Language Development Test (hereinafter "CELDT"). For example, Doe 1's reading scores have dropped from the Early Intermediate level in 2010-11, to a very low Beginning score in 2011-12. Doe 2 has seen his reading scores stagnate at the Beginning level during that same time period. Their writing scores have been similarly affected, making it clear that SLADI is not teaching them to read and write in English.

1 9. SLADI is, moreover, directly counter to prevailing statewide standards, actively
2 impeding the acquisition of skills and knowledge the State deems essential for all its students. In
3 particular, California’s English Language Development standards and Common Core Standards
4 establish a prevailing state expectation and standard that districts teach all students literacy skills in
5 grades K-5. Defendant CDE has specifically emphasized the importance of teaching children, early and
6 simultaneously with other academic content, how to read. *See* California Department of Education,
7 English Language Development Standards for California Public Schools, Kindergarten Through Grade
8 Twelve (California Department of Education, July 1999, Reposed July 9, 2009), *available at*
9 <http://www.cde.ca.gov/be/st/ss/documents/englangdevstnd.pdf> (last visited May 28, 2012). “All English
10 learners, regardless of grade level or primary-language literacy level, must receive reading instruction in
11 English.” *Id.* at 12. The California Common Core Standards for 2010 also call for students in grades K-
12 5 to learn reading, writing, and foundational, grade-specific reading skills. *See* California’s Common
13 Core State Standards, *available at*
14 http://www.scoe.net/castandards/agenda/2010/ela_ccs_recommendations.pdf (last visited May 8, 2012).

15 10. To make matters worse, SLADI is not a program that was imposed by Dinuba Unified
16 without the knowledge of the State. To the contrary, because Dinuba Unified has repeatedly failed to
17 deliver to its students minimal standards of academic achievement for ELL students, among other
18 groups, SLADI was affirmatively presented to the CDE for approval, and the CDE approved SLADI
19 without even requiring documentation that the program is supportable by sound academic theory.
20 Despite its failure to meet the State’s articulated core standards for English Language Development, and
21 with no more than a thumbs up from the State, SLADI was put into place and has been maintained for
22 the past three years absent a scintilla of evidence that ELL students in the district are learning any better
23 than if there were no program at all.

24 11. This failure on the part of the State is violative of its constitutional and statutory duties to
25 ensure basic equality to all public school students, and representative of the State’s wholesale failure to
26 properly superintend and monitor the delivery of sound educational ELL instruction to students
27 throughout California. It is both tragic and inexplicable that California’s governmental entities charged
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1 with the duty to enforce the fundamental right of education that our Constitution enshrines have not
2 developed, let alone enforced, a set of policies, practices, and protocols that would correct the abysmal
3 record of districts across California when it comes to teaching ELL children basic literacy skills and core
4 curriculum, beginning with learning how to speak, read, and write in English.

5 12. Students, family members, and teachers in Dinuba have united in their attempts to replace
6 SLADI with a proven methodology for teaching English and literacy. Teachers recognize that SLADI
7 has, for the past three years, deprived young children in Dinuba of critical reading instruction, which is
8 the foundation for education. The Executive Board of the Dinuba Teachers' Association signed and
9 mailed a statement to Dinuba Unified nearly seven months ago, on September 28, 2011, stating:
10 "Teachers within our association have determined that this program is ineffective" and that "teachers
11 have ethical and moral issues with this program." In April 2012, the professional association of teachers
12 in Dinuba formally took the position that it was unconscionable that Dinuba Unified adopted a program
13 that defies accepted research and common sense, noting "for our K-2 students this is a backwards model
14 that could prove detrimental to their futures. Teachers cannot reconcile this in their minds and hearts . . .
15 ." Nonetheless, Dinuba Unified continues to force its ELL students into the predictable cycle of
16 educational failure inherent in the SLADI program's refusal to provide pedagogically sound language
17 acquisition instruction for young learners and denial of instruction in reading and language
18 comprehension, which are foundational skills for future academic success.

19 13. Dinuba Unified's adoption and stubborn insistence on maintaining an ELL program that
20 is wholly unsupported by sound educational theory as an appropriate program for young ELL students is
21 representative of the State's broader failure to ensure that school districts provide ELL instruction that is
22 pedagogically sound. Moreover, the State's explicit approval of the SLADI program underscores its
23 abject failure to monitor and correct districts that fail to provide theoretically sound programs for ELL
24 students, that continue year after year to provide ELL programming that data demonstrates is not
25 working for the district's ELL population, and that, in many instances, affirmatively cause ELL students
26 to regress.

27 14. Through this action, Plaintiffs seek to ensure that Dinuba Unified does not continue to
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1 segregate young ELL students into a version of the SLADI program that, by definition, denies ELL
2 students equal educational opportunity and leads to a predictable and ever-widening achievement gap
3 between ELL students and their peers that can never be closed. In short, sound educational theory
4 supports an urgent end to SLADI and the immediate adoption of a replacement remedial program. Such
5 relief is precisely what Plaintiffs seek through this action—nothing less. Additionally, Plaintiffs seek to
6 ensure that the State fulfills its ultimate constitutional and statutory obligation not to rubber stamp ELL
7 programs that have no grounding in sound educational theory and instead ensure that all ELL students
8 have meaningful educational opportunity.

9 **PARTIES**

10 15. Plaintiffs Doe 1 and Doe 2 are minors, who bring this action through their respective
11 guardians ad litem. They are each currently enrolled in California public schools and classified as ELL
12 students.

13 16. Plaintiffs Doe 3 and Doe 4 are the parents and guardians ad litem of Doe 1 and Doe 2,
14 respectively. They are each taxpayers residing in Tulare County.

15 17. Plaintiff Doe 1 is eight years old and just completed the second grade at an elementary
16 school in Dinuba Unified. She appears in this action by and through her mother, Doe 3. Plaintiff Doe 1
17 spent first- and second-grade in the 2.5 hour Structured English Immersion (“SEI”) SLADI program.
18 Her placement in this program has caused, and continues to cause, substantial harm to her ability to read
19 and write in English. For example, her reading and writing scores on the CELDT dropped drastically
20 between her first-and second-grade years, after she enrolled in SLADI. Her reading scores have
21 dropped from Early Intermediate to a very low Beginning score since she began participating in the
22 SLADI program. Doe 3 is the mother of Doe 1. Doe 3 was never informed that her daughter was in
23 SLADI, nor was the program ever explained to her. Doe 3 is very concerned that Doe 1 still does not
24 know how to read at the end of her second grade year.

25 18. Plaintiff Doe 2 is eight years old and just completed the second grade at an elementary
26 school in Dinuba Unified. He appears in this action by and through his mother. Plaintiff Doe 2 spent
27 first and second grade in the 2.5 hour SEI SLADI program. Doe 2 has suffered academically due to his
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1 participation in the SLADI program. His placement in this program has caused and continues to cause
2 substantial harm to his ability to read and write in English. Doe 2's overall CELDT scores have largely
3 stagnated at the Beginning level from kindergarten to second grade. In particular, his reading and
4 writing scores were at the Beginning level in first grade, and remained there in second grade. Doe 4 is
5 the mother of Doe 2. Doe 4 is very concerned that her son is not advancing in reading and writing.

6 19. Plaintiffs Doe 3 and Doe 4 are the parents of Plaintiffs Doe 1 and Doe 2 and have filed
7 simultaneously with this Complaint petitions with the court to act as Plaintiffs' guardians ad litem.

8 20. Plaintiff Doe 5 is a taxpayer residing in the Dinuba Unified School District. She has
9 lived in Dinuba since she was a young girl, when she emigrated from Mexico with her family. She
10 attended public school in Dinuba from that time until she graduated from Dinuba High School, and she
11 has lived or worked in Dinuba since that time. She is extremely concerned that ELL students in Dinuba
12 are not being given equal educational opportunity. She herself was an ELL student in Dinuba many
13 years ago, and she believes that Dinuba's future depends upon giving every child a fair chance at
14 receiving a good education.

15 21. Plaintiff Nona Rhea is a taxpayer residing in Fresno County. She teaches third grade at
16 Roosevelt Elementary School, where she was awarded "Teacher of the Year" in 2012. She has been an
17 elementary school teacher for twenty-three years and has taught in Dinuba Unified for the last fifteen
18 years. She holds a Crosscultural, Language, and Academic Development ("CLAD") credential in
19 teaching ELL students. She has expressed grave concern to Dinuba Unified about the SLADI program
20 since its inception in 2009, because she firmly believes that the program limits the opportunity of every
21 child to receive the basic education she or he needs to succeed as a student and as a citizen.

22 22. Plaintiff Myron Buller is a taxpayer residing in Fresno County. He teaches second grade
23 at Roosevelt Elementary School. He has been a teacher or administrator in Dinuba Unified for twenty-
24 four years, and for most of those years, he has taught in the elementary grades. He is certified by the
25 State to teach ELL students. He is concerned about Dinuba Unified's ELL program because he believes
26 that providing children equal opportunity to learn how to read in first and second grade is extremely
27 important to their success in later life and that it is unethical to deny any child that opportunity. He also
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believes, from his experience as an elementary school teacher, that SLADI is ineffective at teaching children English and deters children from wanting to learn.

23. Plaintiff Carol Hirahara is a taxpayer residing in Fresno County. She teaches first-grade students in the Structured English Immersion (“SEI”) program at Grand View Elementary School, using the SLADI curriculum. She has been an elementary school teacher in Dinuba Unified for thirty-five years. She is concerned about Dinuba Unified’s ELL program because she has taught the SLADI curriculum for the last two years. She believes that her students have been harmed because Dinuba Unified denied them reading instruction for the entire first semester of the first-grade year, while children who are not in the ELL program were learning how to read. She has visited Dinuba Unified’s Superintendent and every member of the Dinuba Board of Education to express her concern about the ELL program because she believes the program is not effective in teaching English and because it is fundamentally unfair that her students are not given equal access to reading instruction in first-grade simply because their first language is not English.

24. Plaintiff Lynn Derfelt is a taxpayer residing in Fresno County. She teaches first-grade students in the SEI program at Roosevelt Elementary School, using the SLADI curriculum. She has been an elementary school teacher in Dinuba Unified for twenty-five years. She is concerned about Dinuba Unified’s ELL program because, in her experience using the SLADI curriculum to ELL students, she has found it to be ineffective in teaching English and she believes her students are harmed because they are not taught to read during the first half of their first-grade year, when other first-grade students who are not in the ELL program are taught to read.

25. Plaintiff Angelina Ogata is a taxpayer residing in Tulare County. She teaches high school students at Dinuba High School. She has been teaching English at Dinuba High School for the last seven years. She believes that the SLADI curriculum is an ineffective way to teach students academic English, because she has seen high school students who have gone through the high school SLADI program make basic writing errors because they are not taught English properly.

26. Each of the Plaintiffs (or their guardians ad litem) pay taxes to the City and County in which they reside and to the State of California.

1 27. Defendant State of California (“State”) is a state government and “grantee” within the
2 meaning of 34 C.F.R. § 80.3. The State receives federal grants from the U.S. Department of Education
3 to provide specialized education services to California children and youth, including ELL students,
4 consistent with the provisions of federal law and the express conditions of grant agreements. The State
5 is the legal entity with the ultimate authority and responsibility to guarantee an equal public education
6 under the California Constitution. Cal. Const. art. I § 7; art. 4 § 16(a); art. 9 § 1. The permanent seat of
7 the California State government is Sacramento County. *See* Cal. Gov. Code § 450.

8 28. Defendant Tom Torlakson is the State Superintendent of Public Instruction (“SPI”) for
9 the State and is a Constitutional Officer of the State charged with the supervision of all California
10 schools and school districts. Cal. Educ. Code § 33112. In such capacity, he is obligated to take all
11 necessary steps to ensure that school districts comply with state and federal legal requirements
12 concerning educational programs and services. He is also the Director of Education in whom all
13 executive and administrative functions of the California Department of Education are vested, and is the
14 Executive Officer for the State Board of Education. Cal. Educ. Code §§ 33111 and 33301-03. He is
15 sued in his official capacity.

16 29. Defendant State Board of Education and its members, Michael Kirst, Trish Boyd
17 Williams, James D. Aschwanden, Yvonne Chan, Carl A. Cohn, Aida Molina, James Ramos, Patricia
18 Ann Rucker, Ilene Straus and Caitlin Snell (collectively “SBE”) are an agency of the State of California
19 charged with determining the policies governing California schools and with adopting and promulgating
20 rules and regulations for the supervision and administration of all local school districts that are not
21 inconsistent with the laws of the State of California. SBE must ensure that local school districts comply
22 with state and federal law requirements concerning educational services. Cal. Educ. Code §§ 33030-
23 33032. The members of the SBE are sued in their official capacities.

24 30. Defendant California Department of Education (“CDE”) is the department of state
25 government responsible for administering and enforcing laws related to education. Cal. Educ. Code §
26 33308. CDE is charged with cooperating with federal and state agencies in prescribing rules and
27 regulations and instructions required by those agencies. Cal. Educ. Code § 33316(b).

31. The SBE, the SPI, and the CDE are also “State Educational Agencies” within the meaning of the Equal Educational Opportunities Act, 20 U.S.C. §§ 1703 and 1720(a), and have an obligation to supervise local school districts to ensure compliance with the state and federal laws that address the language needs of California’s ELL students. 20 U.S.C. § 1703(f).

32. Defendant Dinuba Unified is, and at all times mentioned herein was, a school district duly organized and existing under the laws of the State of California and is charged with providing a public education and education-related services to students within its jurisdiction. Defendant Dinuba Unified is, and at all times mentioned herein was, a local agency as that term is defined in 22 California Code of Regulations § 98010, receives state financial assistance from the State of California, and is funded directly by the State of California to provide educational services to children who reside and/or are enrolled in public schools within its boundaries. Additionally, Defendant Dinuba Unified is, and at all times mentioned herein was, a local educational agency within the meaning of the Equal Educational Opportunities Act, 20 U.S.C. §§ 1703 and 1720(a), and has received federal financial assistance and/or subgrants of federal financial assistance from the State of California to provide educational services to ELL children who reside and/or are enrolled in public schools within its boundaries.

33. At all relevant times, Defendant Dinuba Unified was a political subdivision of the State, and received funding and direction from the State.

34. At all relevant times, Defendants, as well as the public schools under their supervision, were the recipients of federal financial assistance.

JURISDICTION AND VENUE

35. Plaintiffs' claims arise under state and federal law. This Court has jurisdiction under California Code of Civil Procedure §§ 525-526 and 1085, and California Government Code § 11350.

36. Pursuant to California Code of Civil Procedure § 401(1), venue for this action properly lies in the Superior Court of Sacramento, where the Attorney General maintains an office.

37. This action may be brought in Sacramento County under Code of Civil Procedure § 395 because at least some of the Defendants reside there and because some of the acts and omissions complained of in this Complaint took place in Sacramento County.

1 **FACTUAL ALLEGATIONS**

2 **Defendants' Legal Duties to Provide Equal Educational Opportunity to English Language**
3 **Learners**

4 38. The California Constitution guarantees all students in California basic educational
5 equality. A constitutional violation of basic educational equality occurs where a public educational
6 program "falls fundamentally below prevailing statewide standards" that effects disparate treatment
7 upon a group of students. *Butt v. California* (1992) 4 Cal. 4th 668, 685-87. This right is fundamental,
8 so any action that has a real and appreciable impact upon such right is subject to strict scrutiny. *Serrano*
9 *v. Priest* (1976) 18 Cal. 3d 728, 761, 767-768.

10 39. California bears the non-delegable responsibility and the ultimate authority to ensure that
11 public schools are providing basic educational equality to all students, as guaranteed by the Constitution.
12 Cal. Const. Art. IX, § 5; Cal. Const. Art. I, § 7. Public education is an obligation which the State
13 assumed by the adoption of the Constitution. *Butt*, 4 Cal. 4th at 680 & 685; *see also Kennedy v. Miller*
14 (1893) 97 Cal. 429, 431. The Constitution prohibits the State from maintaining and operating the
15 common public school system in a way that denies educational equality to the students and requires the
16 State to intervene when a local district's policies or practices "deny its students basic educational
17 equality, unless the State can demonstrate a compelling reason for failing to do so." *Butt*, 4 Cal. 4th at
18 680, 685 & 692. Although the State is ultimately responsible for delivering California's promise of
19 access to educational opportunity and "the State's ultimate responsibility for public education cannot be
20 delegated to any other entity," *id.* at 681, local school districts, as agencies of the State, also have a duty
21 to provide basic educational equality to all children enrolled in their schools.

22 40. In addition, under federal law, the Equal Educational Opportunities Act of 1974,
23 ("EEOA"), 20 U.S.C §§ 1701, *et seq.*, requires that both state and local educational agencies take
24 appropriate action to ensure that ELL students overcome language barriers that impede their equal
25 participation in a regular instructional program. *See* 20 U.S.C. § 1703(f). Where inability to speak and
26 understand the English language excludes national origin-minority group children from effective
27 participation in the educational program offered by a school district, the district must take affirmative
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1 steps to rectify the language deficiency in order to open its instructional program to these students. *See*
2 *generally Lau v. Nichols* (1974) 414 U.S. 568. To determine whether state and local educational
3 agencies are fulfilling their duties, courts consider whether an ELL educational program is based on a
4 sound educational theory, whether the programs and practices are reasonably calculated to effectively
5 implement the educational theory, and after a reasonable implementation period, whether the program
6 has demonstrated results in overcoming language barriers. *Castaneda v. Pickard* (5th Cir. Unit A 1981)
7 648 F.2d 989, 1009-10; *see also Valeria G. v. Wilson* (N.D. Cal. 1998) 12 F. Supp. 2d 1007, 1017.

8 **Plaintiffs and Other ELL Students in Dinuba Unified Are Being Denied Equal Educational**
9 **Opportunity as a Result of Defendants' Implementation of SLADI**

10 41. Dinuba Unified serves the City of Dinuba, which is located in Tulare County, about 30
11 miles southeast of Fresno in the San Joaquin Valley. In 2010, Dinuba had 21,453 citizens. Its
12 population is steadily increasing, with a 27 percent increase between 2000 and 2010. Dinuba also has a
13 disproportionate number of children, compared to the State, with 35 percent of the population under 18
14 years of age, compared to 25 percent of the population statewide. The majority of Dinuba's population
15 is Hispanic (84 percent), with 64 percent speaking Spanish as the primary language in the home.

16 42. Dinuba Unified has been struggling with student achievement for years, particularly for
17 ELL students. Dinuba Unified has been in Program Improvement ("PI") since 2006, and ELL students
18 have been identified as a particularly low-performing subgroup in the district.

19 43. In August 2009, Dinuba Unified implemented the SLADI program for all EL students
20 from Kindergarten through twelfth grade. SLADI focuses on English grammar lessons that require
21 students to parse words in sentences into parts of speech, such as "subject," "verb," "noun," and "past
22 progressive" in lieu of academic content. In fact, Dinuba states in its "Description of Services to be
23 Offered for English Language Learners Grades K-12" that "[c]ontent learning is deferred to learning
24 foundational English for students at the lowest levels of English proficiency," and documents from
25 Dinuba Unified affirm that children in first- through fifth-grade who are placed in the 2.5 hour SEI
26 SLADI program receive "no [English Language Arts instruction] from August through December." The
27 SLADI curriculum does not change substantially for different grade levels, which forces ELL students
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1 with extremely limited English language ability to struggle and stalls the learning of nearly Fully
2 English Proficient (“FEP”) ELL students. For example, at Grand View and Roosevelt Elementary
3 Schools, there is a single program for all ELL students. This curriculum withholds appropriate content
4 at every grade level and impedes English acquisition progress for all levels of ELL students.

5 44. Although this method of teaching English language acquisition is problematic for anyone,
6 SLADI is particularly harmful for first- and second-grade students because they do not have the
7 developmental capacity to acquire a language through instruction that focuses on de-contextualized
8 principles of grammar in isolation from reading and writing in the English language. As one expert
9 observed, SLADI is like teaching a child how to swim without ever letting her near the water. This
10 approach to language acquisition assumes that young children possess skills they do not have, such as
11 first language literacy and advanced knowledge of grammar and formal language structure. To make
12 matters worse, elementary school students who receive 2.5 hours of SLADI per day are placed in
13 isolated classrooms for the entire day where they are given little opportunity to interact with native
14 English-speaking peers. Research has demonstrated that integration with peers who speak English is an
15 important element in language acquisition for ELL students. Thus, SLADI does not teach young
16 children to read and understand written English, denies them opportunities to learn English through
17 interaction with their English-speaking peers, and creates confusion and insecurities about language.

18 45. First- and second-grade ELL students are further harmed because they are deprived of
19 reading instruction during the first semester of each school year that they are enrolled in SEI. While
20 their peers are taught how to read using the MacMillan/McGraw-Hill “Treasures” reading language arts
21 curriculum, ELL students are subjected to SLADI instruction. SLADI teachers are not given any
22 reading curriculum and many have been specifically instructed that they may not teach children reading
23 during the first semester of the school year. Although the Treasures reading language arts program has
24 an ELD component designed for ELL students, Dinuba Unified does not use this component and
25 chooses instead to implement a program that forces young children to parse grammar devoid of content.

26 46. Dinuba Unified takes no measures to mitigate the loss of reading instruction incurred by
27 first- and second-grade ELL students during the first semester of their school year. Although ELL
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1 students are deprived of reading instruction for the first semester of the school year, Dinuba Unified
2 requires them to be placed into the Treasures reading curriculum mid-year. For example, ELL children
3 in first grade at Grand View Elementary School have entered the Treasures curriculum at Unit 3, Week
4 3, even though they have not been taught any of the lessons in Units 1 or 2, or Weeks 1-2 in Unit 3,
5 which their non-ELL students learned. First- and second-grade ELL students are expected to catch up
6 on foundational reading instruction on their own. Thus, SLADI works a double harm on young ELL
7 students by failing to teach them English and also depriving them of reading instruction, which is the
8 basis for the acquisition of all future academic content.

9 47. Moreover, ELL students are enrolled in SEI SLADI during elementary school for the
10 entire period of time that their peers are in ELA classes. Not only does SLADI fail to teach ELL
11 students to read, but it specifically requires that ELL students *not* receive any ELA instruction.
12 Moreover, Dinuba Unified takes no measures to ensure that students have an opportunity to make up for
13 the loss of ELA instruction time. Because they miss out on the standard ELA curriculum for half of the
14 year, and then are simply placed into an ELA class mid-year with no official program or plan to
15 remediate ELL students for what they have missed, young ELL students in Dinuba Unified are
16 profoundly harmed by SLADI and denied a meaningful opportunity to learn critical, foundational skills
17 necessary to their ability to succeed in later grades.

18 48. In sum, the SLADI program denies ELL students basic educational equality because it
19 fails to teach them English and deprives them of foundational reading instruction. As structured, it
20 imposes severe restrictions on the amount of time that children have access to critical curriculum and
21 eliminates the common practice of reinforcing core instruction during ELD. From 2009 until the
22 present, first- and second-grade ELL students have been deprived of between 100 and 200 hours of
23 reading instruction per year. This deprivation has life-long consequences because the first and second
24 grade years are critical school years in which children learn how to read English. “In the higher grades,
25 it is generally presumed that students have the ability to read and write with the high levels of
26 comprehension and fluency necessary for coursework without explicit literacy instruction.” Alliance for
27 Excellent Education, *From No Child Left Behind to Every Child a Graduate*, at p. 34 (2008), *available*
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1 at <http://www.all4ed.org/files/ECAG.pdf> (last visited May 1, 2012).

2 49. Given the fundamental flaws in the SLADI program, it is not surprising that young ELL
3 students in Dinuba perform worse on the English proficiency exam than other ELL students in
4 California. The California English Language Development Test (“CELDT”) is a standardized statewide
5 assessment that ELL students must pass to exit a district’s ELL program. The CELDT was designed to
6 assess the progress of limited English-proficient students in acquiring the skills of listening, speaking,
7 reading, and writing in English. In 2011, the percentage of ELL first graders in Dinuba Unified scoring
8 at the early advanced or higher level on the CELDT fell from 22 percent to 20 percent. Both of these
9 figures are well below state averages.

10 50. Because the SLADI program requires excessive time focusing on explicit grammar
11 instruction rather than language acquisition and usage, many ELL students are regressing. According to
12 the 2010 DUSD English Learner Subgroup Self-Assessment (“ELSSA”), over 20 percent of ELL
13 students continue to be classified as ELL students even after 6 years in the district.

14 51. Annual Measurable Achievement Objectives (“AMAO”) are specific achievement goals
15 required by the federal government and chosen by the State that are designed to track improvement in
16 ELL student achievement. Since 2009, Dinuba Unified has failed to meet minimum state-established
17 targets for AMAO 2(b), which measures whether students enrolled in California schools for 5 years or
18 more are making annual progress in attaining proficiency in English. Additionally, before Dinuba
19 Unified adopted SLADI, a majority of its schools passed AMAO 1, which measures whether ELL
20 students meet academic growth targets set by the State. However, last year all but one school failed
21 AMAO 1.

22 52. The experiences of the student Plaintiffs demonstrate how SLADI denies equal
23 educational opportunity and inflicts educational harm on ELL students in Dinuba Unified. For example,
24 Doe 1’s reading scores demonstrate that she has regressed since she was subjected to SLADI, with her
25 reading scores dropping from the Early Intermediate level in 2010-11 to a very low Beginning score in
26 2011-12. Similarly, Doe 2’s reading scores have stagnated at the Beginning level during that same time
27 period. Their writing scores have been similarly affected, making it clear that SLADI is not teaching
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1 them to read and write in English.

2 53. The SLADI program is so inconsistent with sound educational theory and professional
3 standards that the teachers who work with ELL students daily and have been forced to use the SLADI
4 curriculum have repeatedly questioned the program’s legality and effectiveness. In September 2011, the
5 Dinuba Teachers Association Executive Board filed a statement with Dinuba Unified lodging their
6 strong disagreement with SLADI, stating that “[t]eachers within our association have determined that
7 this program is ineffective and have determined that SLADI does not address all of the ELD standards.”
8 The statement also stated that “[m]any teachers have ethical and moral issues with this program and are
9 very concerned about the legal ramifications [of] this program.” Teachers have also objected that
10 SLADI presumes that ELL students have already developed reading and vocabulary skills, which is not
11 the case for young ELL students, that SLADI lesson plans do not reflect or cover content tested by state
12 assessments, that the lessons are not differentiated from year to year, *i.e.*, that students may be required
13 to repeat the exact same lessons in consecutive years, and that the diversion of ELL students from
14 classes in which they will learn how to read into a program that is not based on research is
15 unconscionable. Dinuba failed to respond to these pleas for change and did not respond to the teachers’
16 request for information regarding the person or entity responsible for implementing the program. In
17 April 2012, the Dinuba Teachers Association formally took the position that it was unforgivable that
18 Dinuba Unified adopted a program that defies accepted research and common sense, stating, “[F]or our
19 K-2 students this is a backwards model that could prove detrimental to their futures. Teachers cannot
20 reconcile this in their minds and hearts”

21 54. Despite SLADI’s documented failure to improve academic achievement for ELL
22 students, its incompatibility with sound educational theory, and the outspoken objections of the
23 professional and caring teachers who work with Dinuba Unified’s ELL students on a daily basis, Dinuba
24 Unified has persisted, with the repeated blessing of the State Defendants, to subject its ELL students to
25 the program. As a result, Plaintiffs and other ELL students enrolled in Dinuba Unified have been denied
26 equal educational opportunity and continue to suffer educational deficits as a result of the lack of an
27 effective educational program designed to overcome the language barriers that impede their education.

The State Defendants Have Contributed to the Denial of Equal Educational Opportunity
Experienced by Plaintiffs and Their ELL Peers in Dinuba Unified

55. The State has failed to comply with its obligation to ensure that, through oversight and intervention, Dinuba Unified and other districts are complying with state and federal constitutional, statutory, and regulatory mandates regarding the education of ELL children.

56. Under federal law, the State is required to establish and provide a statewide system of intensive and sustained support and technical assistance for local educational entities that are in PI status as a result of failing to meet achievement standards. Cal. Educ. Code § 52059. The State has established a list of District Assistance and Intervention Team (“DAIT”) consultants to acts as its agents and to provide intervention recommendations to districts in PI, which the district must then adopt.

57. Dinuba has been in PI since the 2006-07 school year and has worked with Pivot Learning Partners (which was previously known as Springboard Schools) as its DAIT provider since 2008. In its DAIT Needs Assessment on March 9, 2009, Pivot found that, although ELL students are a low-performing subgroup, Dinuba Unified set no goals that are specific to ELL students’ performance on the CELDT in the school site Single Plans for Student Achievement. Further, it found that State-recommended instructional minutes for core instruction in ELA and mathematics are not fully and consistently implemented throughout the district.

58. Pivot, as an agent of the State, then assisted Dinuba Unified in revising its educational plan and approved that revised plan in August 2009. The revised plan included Dinuba Unified’s decision to implement SLADI. Although SLADI is not based on sound educational theory and is not designed for young students who lack literacy in their primary language, Pivot—the entity sent by the State to monitor and intervene in Dinuba Unified’s underperforming educational program—authorized SLADI’s implementation without making any formal findings or citing any supportive research regarding its effectiveness or alignment with sound educational theory, or even requiring that the district demonstrate that the program would address the deficiencies identified in the Needs Assessment.

59. From SLADI’s inception, the State or its agencies have approved plans prepared by Dinuba Unified indicating that it would use SLADI as its program for all ELL students, including very

1 young students. The approval of SLADI by the State, or agencies acting on its behalf, is evidenced by,
2 among other things, the following:

- 3 • On January 11, 2011, the DAIT team sent a monitoring report to CDE informing CDE that
4 SLADI was being used and that state and federal funds were being used to train Dinuba Unified
5 staff in SLADI methods. Nancy Newsome, DAIT Lead, “Dinuba Unified School District CDE
6 DAIT Provider Questions Monitoring Tool,” (Jan. 11, 2011) at 2 (noting that “staff has been
7 participating in SLADI training”); *id.* at 3 (“The District utilized state and federal funds to
8 support specific training in ELD strategies and effective SLADI methodologies. . . . Dinuba’s
9 theory of action is [if] K-12 teachers have a deep understanding of the Language STAR and
10 effective SLADI strategies are implemented in all ELD classrooms, then the achievement gap for
11 English Learners in Dinuba Unified will be eliminated.”); *id.* at 8 (noting that implementation of
12 SLADI in EL classrooms will be enforced and that an English Language Development Academic
13 Program Improvement Coach was hired to “assist in full implementation of SLADI strategies in
14 ELD classrooms”).
- 15 • A progress report from Dinuba Unified to CDE extensively discusses SLADI implementation as
16 part of the 2010-2011 Instructional Action Plan. *See* Dinuba Unified School District Monthly
17 Report for California Department of Education, Progress of Implementation of 2010-2011
18 Instructional Action Plan Based on Corrective Six and DUSD LEA Plan (updated June 26,
19 2011). For example, the report states that SLADI is the ELD instructional “component” for ELL
20 students, *id.* at 4, and that SEI classroom instruction will be a minimum of 150 minutes, *id.* at 5.
- 21 • The Annual Report of Progress 2010-2011, authored by Pivot, noted that SLADI is the “ELD
22 instruction” to be used in SEI and transitional classrooms and that SLADI focuses upon
23 phonology, morphology, syntax, lexicon, and semantics. Nancy Newsome and Dr. Celeste
24 Cusumano, Pivot Learning Partners, “Annual Report of Progress 2010-2011, Dinuba Unified
25 School District” 7. The report also specifies that during trimester reviews of implementation of
26 the District Action Plan, monitors walk through classrooms to ensure that SLADI strategies are
27 being increasingly and consistently used by teachers. *Id.*

- A monitoring report from Pivot to CDE regarding Dinuba Unified’s plans for the 2009-2010 school year confirms that Pivot was aware that K-6 teachers would be trained in SLADI for SEI and Transitional ELL classes beginning in the first quarter of the school year. “Pivot Learning Partners Monitoring Report to California Department of Education, Summary of DAIT Recommendations of Priority Actions, Dinuba Unified School District (2009-2010 School Year)” at 3.

Although the State should have flagged Dinuba Unified’s program for young ELL students as an extreme outlier, it instead repeatedly and uncritically provided Dinuba Unified approval to experiment with a program unsupported by any sound educational theory.

60. By approving the use of a program for ELL students that is not based on any sound educational theory, by failing to appropriately intervene where Dinuba has clearly failed to provide ELL students language instructional services founded on sound educational theory, and by not taking proper action to stop an ELL program that prevents ELL first- and second-graders from learning to read, the State has abdicated its responsibility to provide ELL students equal educational opportunities.

The State Defendants’ Repeated Failure to Correct the Constitutional and Statutory Violations Created by Dinuba Unified’s Adoption of SLADI Are Representative of Its Broader Failure to Respond to Violations of ELL Students’ Constitutional and Statutory Rights

61. The State Defendants’ abdication of their legal responsibilities to the student Plaintiffs and their ELL peers in Dinuba Unified—and their affirmative approval of an ELL program that is unsupported by sound educational theory—is representative of the State Defendants’ broader failure to monitor and intervene when school districts fail to provide equal educational opportunity to ELL students. First, the State has failed to provide sufficient guidance to districts on the requirements for ELL programs. Although a 2006 study commissioned by CDE acknowledged that districts lack guidance in what the law requires in the implementation of SEI for ELL students, *see* Tom Parrish, et al., *Effects of the Implementation of Proposition 227 on the Education of English Learners, K-12: Findings from a Five-Year Evaluation* 8 (American Institutes for Research 2006), the State Defendants have done nothing to ensure that school districts like Dinuba Unified do not implement SEI programs

1 that are inconsistent with legal requirements. Second, as demonstrated in Dinuba Unified, the State has
2 failed to ensure that districts implement research-based programs that arise out of sound pedagogical
3 theories, even when the State is directly involved in a district's selection and adoption of ELL programs
4 for districts in PI status. Consequently, each school district, and to a certain extent each school,
5 develops its own approach for instruction of its ELL population.

6 62. The State's failure is all the more indefensible because it has repeatedly acknowledged
7 the shortcomings in educational opportunity for ELL students across the state. For example:

- 8 • CDE has acknowledged that "[ELL students] fall further behind the longer they are in California
9 schools The curriculum and teaching supports currently in place are not preparing these
10 students for the higher-order skills expected in high school and beyond. A new approach to
11 literacy development and learning in the content areas is needed." Transitions Advisory Team,
12 Cal. Dept. of Educ., A Blueprint for Great Schools, August 9, 2011, *available at*
13 <http://www.cde.ca.gov/eo/in/bp/bpstrategy2.asp> (last visited May 28, 2012).
- 14 • As noted, a 2006 study commissioned by CDE acknowledged that districts lack guidance in what
15 the law requires in the implementation of SEI. *See* Parrish et al., at 8.
- 16 • As part of "Getting Down to Facts," a state-commissioned research project of more than 20
17 studies designed to provide California's citizens with comprehensive information about the
18 status of the state's school finance and governance systems, one study identified numerous
19 structural flaws in the statewide implementation of ELL programs. *See generally* Patricia
20 Gándara and Russell Rumberger, Resource Needs for California's English Learners (2007).
- 21 • In a June 2005 report commissioned by the Joint Legislative Audit Committee, the California
22 State Auditor concluded that "the approach [CDE] and the school districts use to manage and
23 monitor [state and federal supplemental ELL] programs is inadequate, allowing for funding
24 variances, a lack of comparability in performance results between school districts, and the use of
25 funds for unallowable and questionable purposes." California State Auditor Report 2004-120, p.
26 1, *available at* <http://www.bsa.ca.gov/pdfs/reports/2004-120.pdf> (last visited May 27, 2012).

27 63. Numerous experts and non-governmental groups have also issued reports documenting
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the alarming failures in ELL programs across California and specifically identifying failures in the State’s ELL oversight. For example:

- A recent report evaluating the circumstances of ELL students across California concluded that California, “the state with the largest number of English Learners in the nation, is silent in policy on the existence of [ELL students who have been in ELL programs for extended periods of time but have not been demonstrated English mastery sufficient to be reclassified], has no plan for addressing the needs of this group of Long Term English Learners, and has no approach for adjusting the conditions that have resulted in so many students spending so many years in our schools without being adequately served.” Laurie Olsen, Ph.D, *Reparable Harm: Fulfilling the Unkept Promise of Educational Opportunity for California’s Long Term English Learners* 7 (Californians Together 2010).
- A 2010 independent evaluation of ELL programs across California concluded that, “[b]ecause California allows districts to set their own criteria for reclassifying English Learners as ‘fluent’ and no longer in need of special instruction, it was not surprising . . . to find that districts’ approaches to the instruction of English Learners vary—to a degree that lacks coherence.” Aida Walqui, et al, *What Are We Doing to Middle School English Learners? Findings and Recommendations for Change from a Study of California EL Programs* (WestEd May 2010).

64. The State Defendants’ longstanding failure to fulfill their constitutional and statutory duties to ELL students falls substantially below the prevailing statewide standards that the State itself set for educating ELL students. The English Language Development standards adopted by CDE call for students in grades Kindergarten through second grade to learn how to read. *See English Language Development Standards for California Public Schools: Kindergarten Through Grade Twelve* (1998). Specifically, the State has recognized through its standards that English Language Development must be taught concurrently with content. *See California Department of Education, English Language Development Standards for California Public Schools, Kindergarten Through Grade Twelve* (California Department of Education, July 1999, Reposed July 9, 2009), *available at* <http://www.cde.ca.gov/be/st/ss/documents/englangudevstnd.pdf> (last visited May 28, 2012).

65. As demonstrated in Dinuba Unified, districts are not held to these standards. In fact, state-imposed PI interventions required or approved by DAIT providers abandon these standards in favor of programs like SLADI that have not been demonstrated to address the educational needs of ELL children. The result is that there is no effective statewide mechanism for ensuring that schools and school districts are providing an equal education to ELL students and taking appropriate steps to ensure equal educational opportunity.

FIRST CAUSE OF ACTION

Violation of the Equal Protection Clauses of the California Constitution, Article I, Section 7(a) & Article IV, Section 16(a)

66. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

67. Defendants have violated the rights of Plaintiffs and other ELL students to receive equal protection of the laws, pursuant to article I, section 7(a) and article IV, section 16(a) of the California Constitution, by failing to provide them with basic educational opportunities equal to those of non-ELL students in Dinuba Unified.

68. Unless enjoined, Defendants will continue to violate the right to receive equal protection of the laws under the California Constitution, and Plaintiffs and the general public will suffer irreparable harm.

69. Declaratory relief is proper here because Plaintiffs are informed and believe that Defendants will deny that they have violated and continue to violate the right to receive equal protection of the laws under the California Constitution.

SECOND CAUSE OF ACTION

Violation of Article IX, Sections 1 and 5 of the California Constitution

70. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

71. Defendants have violated the rights of Plaintiffs and other ELL students pursuant to article IX, sections 1 and 5 of the California Constitution, to learn in a “system of common schools” that

1 are “kept up and supported” such that students may learn and receive the “diffusion of knowledge and
2 intelligence essential to the preservation of the[ir] rights and liberties.”

3 72. Unless enjoined, Defendants will continue to violate the right to receive equal protection
4 of the laws under the California Constitution, and Plaintiffs and the general public will suffer irreparable
5 harm.

6 73. Declaratory relief is proper here because Plaintiffs are informed and believe that
7 Defendants will deny that they have violated and continue to violate the right to receive equal protection
8 of the laws under the California Constitution.

9 **THIRD CAUSE OF ACTION**

10 **Violation of the Equal Education Opportunities Act of 1974 (20 U.S.C. § 1703)**

11 74. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though
12 fully set forth herein.

13 75. Defendants have approved, authorized, and used the SLADI program in Dinuba Unified
14 despite the fact that it has no basis in either empirical research or any sound educational theory. The
15 refusal to teach young students how to read is not based on any sound pedagogical program.

16 76. Dinuba Unified’s practices, including providing inadequate resources, inappropriate and
17 excessive segregation of ELL students, the failure to provide instructional services to enable access to
18 the core curriculum, the disregard of any component of SLADI that would allow for reading instruction,
19 prohibiting teachers from teaching young students how to read, and the State’s practices, approving and
20 authorizing Dinuba Unified’s program without appropriate monitoring and intervention, are not
21 reasonably calculated to implement effectively the educational theory adopted.

22 77. After being employed for a period of time sufficient to give the plan a legitimate trial,
23 Dinuba Unified’s SLADI program is a demonstrated failure and has produced results indicating that the
24 language barriers confronting students persist, are not being overcome, and are getting worse.

25 78. Plaintiffs are informed and believe that the State Defendants have similarly approved,
26 authorized and mandated instructional programs for ELL students in other districts that likewise fail to
27 provide adequate resources, result in inappropriate and excessive segregation of ELL students, and fail
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1 to provide instructional services to enable access to the core curriculum. The State's practices,
2 approving and authorizing such programs without appropriate monitoring and intervention, are not
3 reasonably calculated to implement effectively the educational theory adopted.

4 79. Defendants have violated the rights of Plaintiffs and other ELL students by failing to take
5 appropriate action to overcome language barriers that impede equal participation by ELL students in
6 instructional programs.

7 80. Unless enjoined, Defendants will continue to violate the right to receive equal
8 educational opportunity under the EEOA, and Plaintiffs and the general public will suffer irreparable
9 harm.

10 81. Declaratory relief is proper here because Plaintiffs are informed and believe that
11 Defendants will deny that they have violated and continue to violate the right to equal educational
12 opportunity under the EEOA.

13 **FOURTH CAUSE OF ACTION**

14 **Illegal Expenditure of Taxpayer Funds (Cal. Code Civ. Proc. § 526a)**

15 82. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though
16 fully set forth herein.

17 83. Within the last year, the taxpayer Plaintiffs have each been assessed for and are liable to
18 pay taxes in the counties in which they reside, and are also liable to pay income taxes to the State of
19 California and the United States of America.

20 84. Defendants, and each of them, through the actions of their agents, have expended tax
21 moneys and threaten to continue and will continue to expend tax moneys in an illegal manner in
22 violation of state law as alleged herein.

23 85. Defendants received state and federal funds which have been appropriated and allocated
24 for the purpose of complying with state and federal mandates regarding specialized education programs
25 for ELL students, including monitoring and oversight mandates as alleged herein.

26 86. By failing to implement adequate monitoring and oversight of these programs and
27 otherwise failing to take steps to ensure equal educational access for ELL students, as alleged herein,
28

1 Defendants have unlawfully diverted money intended for monitoring and oversight to other uses in
2 violation of state and federal law.

3 87. Plaintiffs, as taxpayers, have suffered and continue to suffer irreparable injury such that
4 money damages would be difficult to ascertain; and money damages would not adequately compensate
5 taxpayers for unlawful governmental activity.

6 88. The acts and omissions as outlined in this Complaint were committed by Defendants,
7 either personally or through the actions of their agents, acting pursuant to policies set by Defendants.

8 **FIFTH CAUSE OF ACTION**

9 **Writ of Mandate (Cal. Code Civ. Proc. § 1085)**

10 89. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though
11 fully set forth herein.

12 90. Defendants each have a clear and present ministerial duty to provide for equal access to
13 educational opportunity for all children enrolled in the schools and school districts they oversee, to take
14 appropriate action to overcome language barriers that impede equal participation by its students in its
15 instructional programs, and to monitor and ensure that the schools and/or school districts are in
16 compliance with state and federal statutory and regulatory requirements and the underlying purposes and
17 specific provisions of the California Constitution, the EEOA, and state laws applicable to the provision
18 of equal education to ELL children. Defendants, as alleged herein, have failed and are continuing to fail
19 to comply with those duties and obligations.

20 91. As a result of the Defendants' failure to comply with their constitutional, statutory and
21 regulatory duties, ELL students enrolled in Dinuba Unified and other California public schools have
22 been denied equal educational opportunity and continue to suffer educational deficits as a result of the
23 lack of an effective educational program designed to overcome the language barriers that impede their
24 education.

25 92. Plaintiffs have suffered and continue to suffer irreparable injury and are without a plain,
26 speedy, and adequate remedy in the ordinary course of the law to compel Defendants to comply with the
27 legal obligations alleged in this Complaint.

REQUEST FOR RELIEF

93. Plaintiffs respectfully request the following relief:

94. Issue an order enjoining the Defendants, and each of them, their agents, servants and employees, from using, or directing or approving the use of the SLADI program, from failing to comply with state and federal mandates related to educational services for ELL students, and from diverting funds for those programs previously allocated for implementation, monitoring, and oversight of ELL programs to uses that do not meet the requirements of those program mandates.

95. Issue a peremptory writ of mandate commanding that the Dinuba Unified School District, upon service of the writ:

- a. Cease using the SLADI program or its materials or methods of instruction;
- b. Develop and implement a comprehensive education plan for Dinuba Unified's ELL students that ensures equal educational opportunity, takes appropriate action to overcome language barriers that impede equal participation by ELL students, includes compensatory services to teach ELL students how to read, speak, and write English, and permits ELL students access to the academic core curriculum;
- c. Develop and implement a program to assess and remediate English and literacy concepts and content that children were not taught because of their inclusion in SLADI.

96. Issue a peremptory writ of mandate commanding that the State of California, the State Board of Education, the California Department of Education, and the Superintendent of Public Instruction, upon service of the writ:

- a. Develop and implement a program for ELL instruction in California schools that ensures equal educational opportunity and takes appropriate action to overcome language barriers that impede equal participation by ELL students; and
- b. Develop and implement a process that reviews, monitors and approves ELL programs provided by schools and school districts to ensure that they provide compensatory services to teach ELL students how to read, speak, and write English, and permit ELL students access to the academic core curriculum.

1 97. Issue a declaratory judgment that Defendants' actions complained of herein:

2 a. Violate Article I, Section 7(a) & Article IV, Section 16(a) of the California Constitution;

3 b. Violate Article IX, Sections 1 and 5 of the California Constitution;

4 c. Violate the Equal Educational Opportunities Act of 1974 (20 U.S.C. §§ 1701, *et seq.*);

5 and

6 d. Constitute an illegal expenditure of taxpayer funds.

7 98. Award Plaintiffs their costs of suit generally, and pursuant to Code Civ. Proc. § 1032(b)
8 and any other applicable provision of law.

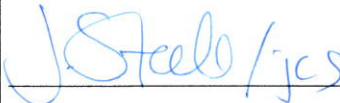
9 99. Award reasonable attorneys' fees pursuant to Code Civ. Proc. § 1021.5, 42 U.S.C. §
10 1988, and any other applicable provision of law.

11 100. Award such other relief as this Court may deem just and proper.

12
13 DATED: May 30, 2012

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VERIFICATION

I, Jory Steele, being first duly sworn, depose and say:

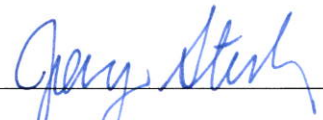
I am the attorney for all Plaintiffs in the above-entitled action, and as such, make this verification for and on behalf of the Plaintiffs in this action. I have read the foregoing verified petition for writ of mandate and complaint for injunctive and declaratory relief and the facts alleged therein are within my knowledge and I know them to be true, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

The reason that the foregoing is verified by me and not by Plaintiffs in this matter is that they are absent from the County of San Francisco, where I have my office. Additionally, the facts contained in the foregoing verified petition for a writ of mandate and complaint for injunctive and declaratory relief are within my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated:

May 29, 2012


Jory Steele