EDMUND G. BROWN JR.
Attorney General of the State of California
THOMAS R. YANGER
Senior Assistant Attorney General
DOUGLAS M. PRESS, State Bar No. 168740
Supervising Deputy Attorney General
KARIN S. SCHWARTZ, State Bar No. 209455
Supervising Deputy Attorney General
KARA READ-SPANGLER, State Bar No. 167532
Deputy Attorney General
HADARA R. STANTON, State Bar No. 227040
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5540, 1382, 5561
Fax: (415) 703-5480

Attorneys for Respondents the Superintendent of Public Instruction, Department of Education, State Board of Education, and State of California

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ENDORSED
FILED
ALAMEDA COUNTY
JAN 29 2007
CLERK OF THE SUPERIOR COURT
By HOLLIE M. ADAMIC
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

Coordination Proceeding Special Title (Rule 1550(b)) **CALIFORNIA HIGH SCHOOL EXIT EXAM CASES**	Judicial Council Coordination Proceeding No. 4468
This document relates to: **LILIANA VALENZUELA, et al., each individually and on behalf of plaintiffs and all others similarly situated,** Petitioners, **v.** **JACK O' CONNELL, in his official capacity as Superintendent of Public Instruction in California, et al.,** Respondents.	Superior Court of California County of Alameda Case No. RG06288707 **STIPULATION RE NOTICE TO DISTRICTS AND CERTAIN FORMER MEMBERS OF THE CLASS OF 2006 RE: REMEDIATION OPPORTUNITIES; ORDER** Date: January 26, 2007 Time: 3:00 p.m. Dept: 20 Judge: Robert Freedman Trial Date: N/A Action Filed: February 8, 2006

The California Department of Education (CDE), the Superintendent of Public Instruction (SPI), and the State Board of Education (SBE) (collectively, respondents), and the named petitioners in the above-captioned case (collectively, the Parties) stipulate and agree as follows:

Background

1. On or about February 8, 2006, petitioners filed this lawsuit in superior court. Petitioners contended that denial of a diploma and the right to graduate due to their failure to pass one or both sections of the CAHSEE, as required by Education Code section 60851, would, among other things, violate equal protection and due process because of inequalities in access to educational resources. Respondents deny these allegations.

2. On May 12, 2006, this Court granted petitioners' motion for preliminary injunction, thereby enjoining state respondents from denying diplomas to students in the class of 2006 who had not passed one or both sections of the CAHSEE. This Court explained that "[t]here is evidence in the record that shows that students in economically challenged communities have not had an equal opportunity to learn the materials tested on the CAHSEE, that some schools have yet to fully align their curriculums to the State's content standards, and that demonstrates that the negative effects of scarcity of resources continue to fall disproportionately on English language learners, particularly with respect to the shortage of teachers who are qualified to teach these students."

3. On August 11, 2006, the court of appeal reversed this Court's injunction on the ground that petitioners had not demonstrated that the interim harms favored their position, and that the relief sought by petitioners (issuance of diplomas) was unavailable as a matter of law. However, the court of appeal also said: "Given the standard of review and our normal deference to trial court findings of fact, we accept the trial court's conclusion that plaintiffs established a likelihood of success on the merits as to the denial of their fundamental right to equal educational opportunity." (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1464-1465.)

4. It is estimated that over 10,000 former members of the Class of 2006 were denied diplomas and the ability to graduate solely because of their inability to pass one or both sections of the CAHSEE. A recent survey conducted by respondents in connection with this lawsuit

found that 2.85% of students in a sampling of districts (that represented 49% of total grade 12 enrollment during the last academic year) were denied diplomas and were unable to graduate solely on this basis. Extrapolating from this statistic suggests that approximately 12,000 students state-wide (i.e., 2.85% x 423,289 total enrollment) were denied diplomas solely on this basis.

Access to Remediation for the Class of 2006

5. The State provides funds to school districts for use in providing targeted instruction, or remediation, in material tested by the CAHSEE, for the benefit of students who have not passed one or both sections of the CAHSEE. (Ed. Code, § 37254.) The law is clear that school districts may spend funds allocated for such purposes during the 2006-2007 fiscal year for the benefit of members of the Class of 2006 who were unable to graduate as a result of their inability to pass one or both parts of the CAHSEE. (*Id.*, § 37252, subd. (c).)

6. A recent survey conducted by respondents in connection with this lawsuit found that 159 (i.e., 78.7%) of the 202 responding districts had decided to allow former members of the Class of 2006 to participate in targeted CAHSEE remediation as provided in section 37254 during the current academic year, and that 149 (i.e., 93.7%) of those districts had notified those students that they would be allowed to participate in this specific type of program.

7. Petitioners are concerned that some districts are not permitting former members of the Class of 2006 to participate in targeted CAHSEE remediation and/or that such students may not be aware of remediation that may be available to them. Respondents contend that available resources are adequate to serve those students who want to continue to learn the material tested by the CAHSEE, including but not limited to targeted CAHSEE remediation programs available at comprehensive high schools as provided in section 37254; enrollment in adult and continuation schools; and enrollment in community colleges.

Notice to Districts, Class of 2006

8. CDE agrees to undertake the following steps as requested by petitioners.

9. CDE and/or the SPI agrees to send a letter, no later than January 31, 2007, to all districts that shall: (1) explain how important it is for school districts to continue to reach out and serve former members of the Class of 2006 who were unable to graduate solely as a result of

not passing one or both sections of the exam; (2) remind them of the availability of CAHSEE remediation funds for the benefit of such students; and (3) request that such districts immediately notify all such students of the availability of remediation programs offered by the district. While the wording of this letter shall be subject to CDE's sole discretion, CDE shall solicit petitioners' input and attempt in good faith to address any concerns expressed by petitioners. Petitioners agree to provide such input within one business day of receiving any draft.

10. All school districts in California are strongly encouraged to comply with this request.

11. CDE also agrees to contact telephonically 30 districts that petitioners have separately identified by email on or about January 22, 2007 to CDE's counsel. In these telephone calls, CDE will (a) draw the districts' attention to the letter described above in paragraph 9; (b) encourage the districts to offer remediation to the Class of 2006 as described in the letter; and (c) ask the districts for current information regarding (i) existing opportunities for students in the Class of 2006 to continue to learn the material taught by the CAHSEE, whether by CAHSEE-targeted remediation programs or other means and (ii) any efforts to notify members of the Class of 2006 regarding options available to them this academic year to continue to learn the material taught by the CAHSEE. CDE will provide petitioners' counsel with a written summary of the contents of these telephone calls by February 16, 2007.

12. In consideration of respondents' voluntary agreement to contact districts and follow up with certain districts as described above, petitioners shall not seek further relief for the current (2006-2007) academic year for former members of the Class of 2006 who have not passed the CAHSEE from respondents or any state entity. This Stipulation and Order is without prejudice to any rights petitioners, or any other former member of the Class of 2006, may have to seek relief from a school district.

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13. Except as provided in Paragraph 12, this Stipulation and Order shall be without prejudice to any argument, claim, or defense in this or any other action or proceeding, and shall not be deemed to have adjudicated any issue of fact or law in this or any other proceeding. This Stipulation and Order shall have no collateral estoppel effect.

So stipulated.

MORRISON & FOERSTER LLP

1/29/07
Dated

ARTURO J. GONZALEZ
For: Plaintiffs and Petitioners, individually and on behalf of all others similarly situated

EDMUND G. BROWN JR.
Attorney General of the State of California

DOUGLAS M. PRESS
Supervising Deputy Attorney General

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Deputy Attorney General

HADARA R. STANTON
Deputy Attorney General

1/29/07
Dated

KARIN S. SCHWARTZ
Supervising Deputy Attorney General

For: Defendant and Respondents Superintendent of Public Instruction, California Department of Education, and California State Board of Education

The Court approves this Stipulation. The Parties are ordered to comply with its terms.

Dated: January 29, 2007

Robert Freedman
Judge of the Superior Court