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9 PETITIONERS AND PLAINTIFFS

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

12 CALIFORNIANS FOR JUSTICE)
13 EDUCATION FUND and the CALIFORNIA)
14 ASSOCIATION FOR COMMUNITY)
15 ORGANIZATIONS FOR REFORM NOW,)

16 Petitioners and Plaintiffs,)

17 v.)

18 CALIFORNIA STATE BOARD)
19 OF EDUCATION and CALIFORNIA)
20 DEPARTMENT OF EDUCATION,)

21 Respondents and Defendants.)
22)
23)
24)
25)
26)

Case No. _____

VERIFIED PETITION FOR WRIT OF
MANDATE and COMPLAINT FOR
DECLARATORY RELIEF

Cal. Civ. Proc. Code § 1085
Cal. Gov't Code § 11350

INTRODUCTION

1. Petitioners and Plaintiffs Californians for Justice Education Fund and the California Association of Community Organizations for Reform Now (hereinafter jointly referred to as “Petitioners”) seek to require the Respondents and Defendants California State Board of Education and the California Department of Education (“Respondents”) to follow the basic notice and public comment requirements of the *California Administrative Procedure Act* (“APA”), in its adoption of a definition for a “highly qualified” teacher as required pursuant to the sweeping new federal *No Child Left Behind Act of 2001* (“NCLB”), 20 U.S.C. § 6301, et seq. In order to

1 receive federal funds and implement the federal law, Respondents must establish an appropriate
2 definition of a “highly qualified” teacher according to California’s various certification laws and
3 within the parameters of NCLB. The definition that is adopted in California will determine the
4 minimum requirements necessary for every new teacher hired in schools receiving federal Title I
5 funds for low-income students beginning in Fall 2002, and for all core academic teachers beginning
6 with the 2005-06 academic year. Respondent State Board of Education has already once adopted,
7 and is now revising its adopted definition of a “highly qualified” teacher without subjecting its rule
8 to the public participation requirements of the APA as required by the APA and California
9 Supreme Court precedent. This case also seeks to require Respondents to establish and utilize the
10 committee of practitioners required by NCLB as a prerequisite for all state regulations
11 implementing Title I-related provisions of the new federal Act.

12 **BACKGROUND**

13
14 2. Improving teacher quality is an essential step towards improving student achievement
15 in California. A recent study of California schools found that among school resources, teacher
16 qualifications were the strongest predictors of student achievement. Exhibit 4, Public Policy
17 Institute of California, *Equal resources, equal outcomes? The distribution of school resources*
18 *and student achievement in California* (2000). California’s own Commission on Teacher
19 Credentialing has concluded that “the most powerful factor in student achievement is the quality of
20 the teacher.” Exhibit 5, Calif. Commission on Teacher Credentialing, *Teacher Education*
21 *Standards Become a Reality* (Sept. 2001).

22
23 3. California, however, is suffering from a serious shortage of qualified teachers in its
24 most disadvantaged schools. As acknowledged in a recent report issued by the Center for the
25 Future of Teaching and Learning, 14% of California teachers do not have even a preliminary
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1 teaching credential and as many as half of all new teachers are entering their classrooms without a
2 preliminary credential or having taught under the supervision of a veteran teacher. Exhibit 6, The
3 Center for the Future of Teaching and Learning, *California's Teaching Force* (2002).

4 4. In 2001-02, there were almost 42,000 underprepared teachers – teachers who had
5 not completed a teacher preparation program and did not have a preliminary credential issued by
6 the state and who possess, instead, emergency, intern, pre-intern credentials and other such
7 temporary and provisional certifications. Exhibit 6, at 2.

8 5. It is well documented that these under-qualified teachers are disproportionately
9 distributed in low-performing schools, which predominantly serve children of color and low-
10 income children. Exhibit 6, at 13 (in 2001-02, schools with the lowest Academic Performance
11 Index scores had an average of 21% underprepared teachers, while the highest-achieving schools
12 had only 5% underprepared teachers); *see also* The Center for the Future of Teaching and
13 Learning, *The Status of the Teaching Profession* (2001) (illustrating that schools serving the
14 greatest proportions of low-income students and students of color are 4-5 times more likely to hire
15 teachers without full certification).

16 6. Those who have studied the distribution of qualified teachers in California conclude
17 that “[t]hose students who most need a highly qualified teacher are the least likely to have one.”
18 Exhibit 6, at 11. Thus, in order to adequately address the educational needs of California’s diverse
19 student body, it is imperative that teacher quality in California be improved.

20 7. Indeed, numerous bodies including the Joint Legislative Committee for the Master
21 Plan for Education and the California Department of Education have recommended that
22 emergency and provisional credentials and waivers be phased out of California’s public school
23 system. Cal. Dept. of Ed. Prof. Dev. Task Force, *Learning... Teaching... Leading: Report of the*
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1 *Prof. Dev. Task Force (2001) at 22-24; Joint Comm. to Develop a Master Plan for Educ., Master*
2 *Plan for Education in California (2002) at 27-31.*

3 8. Upon enactment of the sweeping new federal No Child Left Behind Act (“NCLB”)
4 in January 2002, California is now required by federal law to address its teacher crisis. 20 U.S.C. §
5 6301, et seq. Among other mandates, NCLB requires states to satisfy minimum qualifications for
6 new and current teachers and to ensure equal access to quality teachers for poor students and
7 students of color. Beginning with the current (2002-03) school year, all new teachers hired in
8 schools with low-income students receiving federal Title I funds must be “highly qualified.” 20
9 U.S.C. § 6319(a)(1-2). As of this current school year, NCLB
10 also mandates that “timely notice” be given to parents of a child who has, for more than four
11 consecutive weeks, been taught by a teacher who is not highly qualified. *See* 20 U.S.C. §
12 6311(h)(6)(B)(ii).

13
14 9. NCLB defines a “highly qualified” teacher as follows:

15 (i) The teacher has obtained full State certification as a teacher (including
16 certification obtained through alternative routes to certification) or passed the State
17 teacher licensing examination, and holds a license to teach in such State, except that
18 when used with respect to any teacher teaching in a public charter school, the term
19 means that the teacher meets the requirements set forth in the State’s public charter
20 school law; and

(ii) The teacher has not had certification or licensure requirements waived on an
emergency, temporary, or provisional basis.

21 20 U.S.C. § 7801(23)(A).

22 10. In addition to the teacher qualifications that already have gone into effect,
23 NCLB requires states to ensure that all children have a “highly qualified” teacher in core
24 academic subjects by the 2005-06 school year. NCLB also requires all states seeking Title
25 I money to submit a detailed plan as to how the state will ensure that schools receiving
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1 Title I funding will provide “highly qualified” instructional staff. *See* 20 U.S.C. §§
2 6311(a)(1), 6311(b)(8).

3 11. As acknowledged by federal education officials, because NCLB specifically excludes
4 emergency, temporary, or provisional certification from its definition of a “highly qualified” teacher,
5 emergency credentialed teachers in California will not satisfy the new standards imposed by NCLB.
6 *See, e.g.,* Exhibit 2, Nanette Asimov, *California education funding imperiled: U.S. demands end to*
7 *hiring of uncredentialed teachers*, S.F. Chron., Aug. 6, 2002; Exhibit 3, Terry Hardy, *Emergency*
8 *credentials on way out*, Sac. Bee, Nov. 27, 2002.

9 12. On May 30, 2002, Respondent State Board of Education adopted a definition for a
10 “highly qualified” teacher in order to comply with the mandates of NCLB. The definition states that in
11 order to be recognized as a “highly qualified teacher” in California, only the following requirements
12 need be met: 1) possession of a bachelor’s degree, 2) successful passage of a state exam for reading,
13 writing, and mathematics (the CBEST), and 3) passage of state exams in subjects to be taught *or*
14 completion of 18 units of university coursework (or equivalent) in subjects to be taught. Exhibit 12,
15 California Consolidated State Application for NCLB, Addenda 1.

16 13. This definition is equivalent to and, in some respects, weaker than existing standards
17 for emergency credentialed teachers in California inasmuch as it does not require completion of subject
18 matter preparation and does not require completion or even enrollment in a teacher preparation
19 program or student teaching for pedagogical training.

20 14. Although the adoption of this definition amounted to a “regulation” subject to the
21 public notice and comment requirements of the APA, Respondents failed to include the public’s
22 participation in its promulgation as required by the APA. Cal. Gov. Code, §11340 *et seq.*
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1 15. Respondents' May 2002 regulation also violates the minimum standards for a "highly
2 qualified" teacher established by NCLB inasmuch as its definition would allow for California's
3 emergency credentialed and pre-intern teachers to be regarded as "highly qualified." Exhibit 13, Kara
4 Shire, *Education Board Ridiculed for Skirting Teacher Quality*, Contra Costa Times, Aug. 6, 2002;
5 Exhibit 14, *Scandalous Education Inequity: Board Used Deception to "Comply" with Highly*
6 *Qualified Teacher Requirement*, Mercury News, Aug. 8, 2002.

7 16. Respondents' actions led one of the key federal drafters of NCLB to write a critical letter
8 to the Board for "deliberately misrepresent[ing] the alarmingly high number of under-qualified teachers
9 in the State of California." Exhibit 7, *Letter from Congressman George Miller to Reed Hastings*,
10 dated Aug. 5, 2002, at 1.

11 17. In addition to the California APA, NCLB establishes an independent, pre-requisite
12 safeguard to ensure public participation in the promulgation of state regulations related to NCLB. The
13 federal Act itself requires states to establish a "committee of practitioners" to review all proposed and
14 final state regulations prior to their promulgation. 20 U.S.C. § 6573(a)(1)(A). Upon information and
15 belief, to date, Respondents have yet to establish a committee of practitioners that complies with the
16 NCLB mandates, and further, has failed to utilize this additional, federally mandated review process as
17 a pre-requisite to the State's promulgation of NCLB-related regulations, including its "highly
18 qualified" definition.
19

20 18. Petitioners therefore petition this Court for a writ of mandate, pursuant to section 1085
21 of the California Code of Civil Procedure, invalidating the May 2002 definition and directing
22 Respondents to comply with the APA in the adoption of a subsequent definition and all future
23 definitions. Petitioners also seek declaratory relief pursuant to section 11350 of the California
24 Government Code and, accordingly, by this verified petition allege:
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PARTIES

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2 19. Petitioner and Plaintiff Californians for Justice Education Fund (“CFJ”) is a non-
3 profit, grassroots membership organization dedicated to empowering youth, communities of color,
4 and poor people. Formed in 1996, CFJ has led large-scale community education efforts, trained a
5 new generation of grassroots civil rights leaders, and mobilized public support for major public
6 policy change in California.

- 7 a. Petitioner's membership includes five regional networks in Oakland, San Diego,
8 Long Beach, Fresno, and San Jose. Additionally, CFJ works with a network of 90
9 community and advocacy organizations statewide on educational equity issues.
- 10 b. Overall, CFJ has a total of 500 members statewide. Comprised primarily of youth
11 from poor communities and communities of color, CFJ’s members meet on a bi-
12 weekly basis to discuss educational issues that arise in their local communities, to
13 identify issues having a statewide impact, and to strategize for effective solutions.
- 14 c. CFJ's staff and members include citizens and taxpayers of California.
- 15 d. The current primary efforts of CFJ and its members are focused on improving the
16 educational opportunities in the public schools, including schools with under-
17 qualified teachers.
18

19 20. The national Association of Community Organizations for Reform Now is the nation’s
20 largest community organization of low- and moderate-income families, with over 120,000 member
21 families organized into 600 neighborhood chapters in 45 cities across the country. Since 1970,
22 ACORN’s priorities have included better housing for first time homebuyers and tenants, living
23 wages for low-wage workers, community reinvestment from banks and governments, and better
24 public schools. ACORN achieves these goals by building community organizations that have the
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1 power to win changes through direct action, negotiation, legislation, and public participation in the
2 democratic process.

3 a. Petitioner and Plaintiff California ACORN, the statewide affiliate of national ACORN,
4 was formed in 1986, and has more than 15,000 member households and offices in
5 Oakland, San Francisco, San Jose, Sacramento, Stockton, Los Angeles, San Diego,
6 and Long Beach. Petitioner California ACORN has primarily worked in the areas of
7 living wage; predatory lending; renter protections; affordable housing development and
8 preservation; smart growth and regional equity; home-based childcare organizing;
9 neighborhood infrastructure and amenities; voter participation; civic engagement;
10 leadership development; and education reform.

11 b. The officers and members of Petitioner California ACORN include citizens and
12 taxpayers of California and California ACORN itself pays California taxes.

13 c. Members of California ACORN are currently engaged in local education campaigns in
14 the Oakland Unified, Alum Rock Unified (in San Jose), and San Diego Unified School
15 Districts, focusing on teacher quality and equity issues. This work is a continuation of
16 the national ACORN's ongoing education work. California ACORN has also been
17 monitoring the implementation of NCLB in various school districts.
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19
20 21. Respondent and Defendant California State Board of Education and its members are
21 responsible for determining the policies governing California's schools and for adopting rules and
22 regulations for the supervision and administration of all local school districts. Pursuant to
23 California Education Code Sections 33030-33032, the SBE is required to supervise local school
24 districts to ensure that they comply with state and federal law requirements concerning educational
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1 services. The SBE has been formally designated the “State Educational Agency” for purposes of
2 implementing the federal *Elementary and Secondary Education Act*, of which NCLB is the current
3 re-authorization. Cal. Ed. Code § 12032. As such, the SBE is the state entity responsible for
4 administering and enforcing NCLB in California, including adopting a definition of “highly
5 qualified” teachers for NCLB purposes. Exhibit 1, *Final Minutes*, State Bd. of Education, Oct.
6 10, 2002 at 22.

7 22. Respondent and Defendant California Department of Education is the department of
8 State government responsible for administering and enforcing laws related to education. As such,
9 the California Department of Education (“CDE”) is the implementation arm of the policies
10 established by the State Board of Education, including its implementation of NCLB. Respondent
11 and Defendant California Department of Education is responsible for providing guidance to school
12 districts for the purposes of implementing NCLB in California. Since the enactment of NCLB, the
13 CDE has provided periodic direction to school districts on their federal obligations, state-level
14 decisions and timelines regarding this federal law and its implementation in California. *See*, Exhibit
15 10, 11.

16 **JURISDICTION and VENUE**

17 23. This Court has jurisdiction under sections 1060 and 1085 of the California Code of
18 Civil Procedure, and section 11350 of the California Government Code. Petitioner lacks "a plain,
19 speedy, and adequate remedy, in the ordinary course of law." Cal. Code Civ. Proc. § 1086.
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21 24. Because this action is brought against public officers and may be commenced in the
22 County of Sacramento where Respondents maintain their office and perform their functions, *see*
23 Cal. Code of Civ. Proc. § 393(1)(b); this action is properly brought in the City and County of San
24 Francisco where the Attorney General maintains an office. Cal. Code of Civ. Proc. § 401(1).
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FACTS

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2 25. As the state educational agency designated to carry out the purposes and provisions of
3 the *Elementary and Secondary Education Act*, Cal. Ed. Code § 12032, the State Board is responsible
4 for adopting a definition of “highly qualified” teachers for the purposes of implementing NCLB.
5 Exhibit 1, State Bd. of Education, *Final Minutes*, Oct. 10, 2002 at 22 (President Hastings noted that
6 the Board has the responsibility to define highly qualified teachers for NCLB purposes).

7 26. Respondent State Board of Education must adopt a definition of a “highly qualified
8 teacher” in order to implement, administer, and/or enforce the teacher quality requirements of
9 NCLB, some of which already went into effect in Fall 2002. 20 U.S.C. § 6319(a)(1) (beginning
10 this school year, all new teachers hired in schools with low-income students receiving Title I funds
11 must be “highly qualified”); 20 U.S.C. § 6311(h)(6)(B)(ii) (parental notice requirement in effect
12 for students who are taught for four consecutive weeks by an unqualified teacher); 20 U.S.C. §
13 6319(a)(2)(A) (states must ensure that all children have a “highly qualified” teacher in core
14 academic subjects by the 2005-06 school year); 20 U.S.C. § 6311 (b)(8)(C) (all states must submit
15 a state plan detailing the specific steps the State will take to ensure compliance with the teacher
16 quality requirements of NCLB and to ensure that poor students and students of color are not
17 taught at higher rates than other students unqualified teachers).

18
19 27. The definition that is adopted by Respondent State Board of Education will determine
20 how the various categories of California-certified teachers will be affected by the new standards
21 imposed by NCLB’s teacher quality requirements. The Board’s adopted definition of a “highly
22 qualified” teacher will apply to more than 1,000 school districts and more than 300,000 public
23 school teachers statewide.

24
25 28. Respondent’s adoption of a definition for a “highly qualified” teacher for NCLB
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1 purposes constitutes a “regulation” that is subject to the public participation requirements of the
2 APA, Cal. Gov. Code § 11342(g). In relevant part, the APA provides as follows:

3 No state agency shall issue, utilize, enforce, or attempt to enforce any guideline,
4 criterion, bulletin, manual, instruction, order, standard of general application, or
5 other rule, which is a regulation as defined in subdivision (g) of Section 11342,
6 unless the guideline, criterion, bulletin, manual, instruction, order, standard of
7 general application, or other rule has been adopted as a regulation and filed with the
8 Secretary of State pursuant to this chapter."

9 Cal. Gov. Code § 11340.5(a).

10 29. The APA defines a “regulation” as follows:

11 every rule, regulation, order, or standard of general application or the amendment,
12 supplement, or revision of any rule, regulation, order, or standard adopted by any
13 state agency to implement, interpret, or make specific the law enforced or
14 administered by it, or to govern its procedure....

15 Cal. Gov. Code § 11342(g).

16 30. Respondents’ adoption and implementation of a definition for “highly qualified”
17 teachers is a rule or standard of general application which is required in order for Respondents to
18 implement, interpret, and make specific the requirements of NCLB.

19 31. The APA provides for several procedural requirements that must be fulfilled by a
20 state agency prior to the adoption of any regulation: (1) it must provide notice to the public of its
21 proposed regulatory action, Cal. Gov. Code § 11346.4; (2) it must issue a complete text of the
22 proposed regulation with a statement of the reasons for it, Cal. Gov. Code § 11346.2; (3) it must
23 give interested parties an opportunity to comment on the proposed regulation, Cal. Gov. Code §
24 11346.8); (4) it must respond in writing to public comments, Cal. Gov. Code § 11346.8(a),
25 11346.9; (5) forward a file of all materials on which the agency relied in creating the proposed
26 regulation to the Office of Administrative Law, Cal. Gov. Code § 11347.3, which will review the
proposed regulation for consistency of the law, clarity and necessity, Cal. Gov. Code §§ 11349.1,
11349.3; and (6) it must file the proposed regulation with the Secretary of State, Cal. Gov. Code §

1 11343.

2 32. Respondent State Board of Education adopted a definition of a “highly qualified”
3 teacher at its board meeting on May 30, 2002 without complying with the public participation and
4 formal rulemaking requirements of the APA. Exhibit 9, *Final Minutes*, State Bd. of Education
5 (May 29-30, 2002) at 24-26; Declaration of Huang at 2.

6 33. The published agenda for this meeting fails to even indicate that the Board would
7 consider a definition for “highly qualified” teachers pursuant to NCLB. Exhibit 8, Agenda, State
8 Bd. of Education, May 29-30, 2002.

9 34. In August 2002, Respondent California Department of Education published the May
10 2002 definition in the first of its NCLB updates to school districts for the 2002-03 school year.
11 Exhibit 10, California Dept. of Ed. NCLB Update, no. 1 (2002-03) at 5.

12 35. As the only source of guidance to school districts as to how to implement the
13 provisions of NCLB that went into effect as of Fall 2002, the May 2002 definition was relied upon
14 by districts for determining what qualifications were required for teachers newly hired this school
15 year in schools with low-income students receiving Title I, 20 U.S.C. 6319(a), and for purposes of
16 determining which teachers trigger the requirement for parental notification. 20 U.S.C. §
17 6311(h)(6)(B)(ii).
18

19 36. Respondent State Board has indicated that it is proceeding to revise the definition
20 adopted in May 2002, Exhibit 1, *Final Minutes*, Cal. State Bd. of Educ. (Oct. 9-10, 2002) at 22,
21 without informing the public of its action or following the rulemaking requirements of the APA.
22 Declaration of Huang at 2.

23 37. Although Respondent State Board has not yet formally adopted a revised
24 definition, Respondent Department of Education has continued to implement the unlawfully
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1 adopted definition and appears, as well, to now be providing guidance to school districts based on
2 a modified definition again, without any formal amendments to the “highly qualified” definition as
3 required by the APA. Exhibit 11, California Dept. of Ed. NCLB Update, v. 2, no. 2 (October
4 2002) at 1; Declaration of Huang at 2.

5 38. Not only does Respondent Department of Education lack the authority to implement
6 a revised definition that has not been formally adopted by Respondent Board of Education, but the
7 Department has also failed to follow the APA prior to implementing any revised definition.
8 Declaration of Huang at 2.

9 39. On information and belief, Respondents adopted the May 2002 definition of a “highly
10 qualified” teacher and are proceeding to revise that definition without establishing and/or utilizing
11 the committee of practitioners as required under NCLB as a prerequisite to the promulgation of
12 state regulations adopted to implement Title I. 20 U.S.C. § 6573

13 40. Petitioners and their members are actively interested in providing input as to the
14 standards for teacher quality that will have a substantial impact on the achievement of California’s
15 diverse student body. The goals of Petitioners and their members have been hindered by
16 Respondents’ failure to allow public input on California’s definition of a “highly qualified” teacher
17 for NCLB purposes.

18 41. Petitioners’ right to comment on and to attempt to affect the impact of NCLB on
19 teacher quality in California has been denied by Respondents’ failure to promulgate and implement
20 regulations in accordance with the APA. Moreover, Petitioners’ right to see the APA followed in
21 the implementation of this critical aspect of NCLB and to have broader public participation in the
22 formulation of a definition of a “highly qualified” teacher has been thwarted by Respondents’
23 actions.
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FIRST COUNT:
A WRIT OF MANDATE PURSUANT TO CAL. CIV. PROC. CODE § 1085

1
2 42. Petitioners incorporate by reference the foregoing paragraphs of this Complaint as
3 though fully set forth herein.

4 43. Respondents have a ministerial duty to comply with the state APA, section 11340 et
5 seq. of the California Government Code, in its adoption of a definition for a “highly qualified”
6 teacher for NCLB purposes.

7
8 44. This petition for writ of mandate is timely filed following Respondent State Board’s
9 May 30, 2002 adoption of California’s definition of a “highly qualified” teacher, and its continuing
10 violation of refusing to comply with the APA in revising its definition.

11 45. No other plain, speedy, or adequate remedy is available to Petitioners in the ordinary
12 course of law. Respondents have ignored its duty to follow the APA in adopting a standard of
13 general application which seeks to "interpret or make specific the law... administered by [the
14 agency]". Cal. Gov. Code, § 11342(g) and in failing to obtain the necessary authority for
15 promulgation by first subjecting the proposed regulation to review by a committee of practitioners.
16 Issuance of a writ is needed so that, in a speedy and adequate manner, the APA will be followed
17 and Petitioners and the public at large will have the opportunity for public participation pursuant to
18 the APA.

19
20 46. Petitioners are entitled, under section 1085 of the Cal. Code of Civ. Proc., to a writ
21 of mandamus that invalidates the May 2002 definition that was adopted in violation of the APA
22 and that directs the Respondents to perform their present duty to follow the APA. Respondents
23 have failed in their duty to follow the APA in two independent respects: (1) Respondents have
24 failed to follow the formal notice, comment, and other procedural requirements of the APA in
25 promulgating the “highly qualified” definition; and (2) Respondents’ attempt to promulgate any
26

1 regulation implementing Title I-related provisions under NCLB lacks “authority” as required under
2 the APA, Cal. Gov. Code § 11349.1(a), unless and until Respondents have subjected the proposed
3 regulation to the NCLB-mandated practitioner review committee. 20 U.S.C. § 6573.

4 47. Petitioners will incur attorneys' fees and costs for the services of counsel to prosecute
5 this action and are entitled to recover such attorneys' fees and costs pursuant to Cal. Code of Civ.
6 Proc. §§ 1021 and 1021.5.

7 **SECOND COUNT:**
8 **DECLARATORY RELIEF PURSUANT TO CAL. GOV'T CODE § 11350**

9 48. Petitioners incorporate by reference the foregoing paragraphs of this Complaint as
10 though fully set forth herein.

11 49. An actual and continuing controversy exists between Petitioners and Respondents:
12 Petitioners contend and Respondents dispute that Respondents’ adoption of a “highly qualified”
13 definition constitutes a regulation under the APA and that Respondents did not adopt and are not
14 intending to revise the definition of a “highly qualified” teacher for NCLB purposes pursuant to the
15 requirements of the APA.

16 50. Petitioners are entitled to a judicial determination pursuant to section 11350 of the
17 California Government Code that Respondents’ adoption and implementation of California’s
18 definition of a “highly qualified” teacher for NCLB purposes is a regulation and, as such, is not
19 valid unless and until it is adopted in accord with the requirements of the APA, including the
20 “authority” requirement which, in this instance, mandates that all proposed Title I-related NCLB
21 regulations be reviewed by a committee of practitioners.
22

23 51. Petitioners have timely sought judicial review of Respondents' unlawful actions
24 pursuant to section 11350 of the California Government Code and section 1060 of the California
25 Code of Civil Procedure.
26

1 related regulations by a committee of practitioners.

2 57. That this Court award Petitioners preliminary and permanent injunctive relief;

3 58. That this Court award Petitioners their costs of this action, including reasonable
4 attorneys' fees and expenses; and

5 59. That this Court grant such other relief as the court deems just and proper.

6 Dated in San Francisco, California, on the 23rd day of January 2003.

7 Respectfully submitted,
8 PUBLIC ADVOCATES, INC.
9 JOHN AFFELDT
10 JENNY C. HUANG

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16 CALIFORNIANS FOR JUSTICE EDUCATION FUND
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