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DEPARTMENT OF
EDUCATION

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George McKenna
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JACK O'CONNELL

State Superintendent of
Public Instruction

PHONE: (916) 319-0800

July 26, 2007

Dear County and District Superintendents and Charter School Administrators:

TENTATIVE SETTLEMENT AGREEMENT IN VALENZUELA V. O'CONNELL ET AL.

As you may know, a tentative settlement agreement has been reached in Valenzuela v. O'Connell et al., a lawsuit filed in February 2006 challenging the California High School Exit Examination (CAHSEE). The proposed settlement was tentatively approved on July 19 by Alameda County Superior Court Judge Robert Freedman. Final agreement to this proposed settlement will put to rest this challenge, leaving the exit exam in place. Most importantly, it will ensure that students in the class of 2006 and beyond will have the opportunity to continue to get the assistance they need to learn the critical skills measured on the CAHSEE.

I am asking for your cooperation in helping us to comply with the terms of the settlement, so that all interested parties are aware of its terms. Enclosed with this letter is a court-approved Notice of Certification of Settlement Class (Notice). This Notice fully informs all interested parties of the terms of the settlement and how it may affect them. We ask that you post this Notice in a prominent location in your district or county office and at each of your schools that contains or teaches students in grades ten, eleven, twelve, or higher. (Higher means schools of your district that serve students beyond twelfth grade.)

In addition to the terms of the settlement, this Notice also advises interested parties that a hearing to give final approval to the proposed settlement has been scheduled for August 13, 2007, at 1:30 p.m. in Alameda County Superior Court.

A copy of this letter and the enclosed Notice is being sent by electronic mail to all District CAHSEE Coordinators and by regular mail to all public high schools. Even though we are sending this Notice to all District Coordinators and high schools directly, we ask that you specifically request that all schools in your district that contain students in grades ten, eleven, twelve, or higher post the Notice in a prominent location.

The settlement proposal requires passage by the Legislature and approval by the Governor of Assembly Bill 347, authored by Assembly Member Pedro Nava. This bill would ensure that students who fail to pass the CAHSEE and graduate may receive up to an additional two years of academic assistance from their school districts. The bill is currently pending approval on the floor of the Senate.

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I appreciate your help in making students, teachers, and members of your community aware of this proposed settlement, and thank you for all you do to prepare California's students to succeed in high school and beyond.

Sincerely,

A handwritten signature in black ink that reads "Jack O'Connell". The signature is written in a cursive style with a large, prominent "J" and "O".

JACK O'CONNELL

JO:mg
Enclosure

cc: High School Principals via United States Mail
CAHSEE Coordinators via electronic mail

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

LILIANA VALENZUELA, and her parents, et al.,)
individually and on behalf of plaintiffs and all)
others similarly situated)

Case No. RG06288707

CLASS ACTION

Petitioners/Plaintiffs)

v.)

JACK O'CONNELL, in his official capacity as)
Superintendent of Public Instruction in)
California, et. al.)

Respondents/Defendants)

**NOTICE OF CERTIFICATION OF SETTLEMENT CLASS, PROPOSED SETTLEMENT,
PRELIMINARY COURT APPROVAL OF SETTLEMENT, AND HEARING DATE FOR FINAL
COURT APPROVAL**

- TO: (1) ALL PUBLIC SCHOOL STUDENTS AND THEIR PARENTS OR LEGAL GUARDIANS;
AND
(2) ALL FORMER STUDENTS FROM THE CLASSES OF 2006 AND 2007 WHO HAVE NOT
GRADUATED AND RECEIVED A DIPLOMA BECAUSE THEY HAVE NOT PASSED THE
CALIFORNIA HIGH SCHOOL EXIT EXAMINATION (CAHSEE)**

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.

Specifically, it may affect your ability to bring a lawsuit in the future regarding the adequacy of your public school education and the adequacy of options available to students who have not passed the California High School Exit Examination (CAHSEE).

**IF YOU WISH TO COMMENT IN FAVOR OF THE SETTLEMENT, OBJECT TO THE
SETTLEMENT, OR APPEAR AT THE AUGUST 13, 2007 COURT HEARING REGARDING FINAL
APPROVAL OF THE SETTLEMENT, YOU MUST FOLLOW THE DIRECTIONS IN THIS NOTICE.**

Purpose of Notice

This notice sets forth the basic terms of the proposed settlement reached in *Valenzuela v. O'Connell* and advises class members of their procedural rights relating to the settlement. The class in this lawsuit has been defined as follows:

All past, present, and future public high school students in the State of California who were, are, or will be unable to graduate, and/or who were, are, or will be denied diplomas, as a result of

failing to pass one or both sections of the CAHSEE. However, the class shall exclude all past, present, and future members of the class certified in *Kidd v. California Department of Education*, Case No. JCCP 4468, pending in Alameda Superior Court.

Description of the Case

This class action lawsuit was brought against Jack O'Connell, the Superintendent of Public Instruction, the State of California, the California Department of Education, and the California State Board of Education, in 2006. Petitioners/plaintiffs alleged that the State has failed to provide some or all of the members of the class with an equal and reasonable opportunity to pass the CAHSEE. Accordingly, petitioners/plaintiffs contended that denying a diploma to students who had not passed one or both sections of the CAHSEE would violate their constitutional rights to due process and equal protection. Respondents/defendants deny all of the allegations made by petitioners/plaintiffs. Detailed information regarding this case, including all court papers, may be found on the court's website, www.alameda.courts.ca.gov/courts.

Terms of Settlement Agreement

After more than a year of intense litigation, the parties in the case reached a Settlement Agreement on July 18, 2007. On July 19, 2007, Alameda Superior Court Judge Robert Freedman granted preliminary approval of the Settlement Agreement and approved this Notice.

The parties' Settlement Agreement provides for a package of legislative proposals to ensure that all students who do not pass the CAHSEE as of their intended graduation date will be able to continue to study the material tested on the CAHSEE for up to two more years at no charge to them through their school district. This will be in addition to other options that may be available to such students who wish to continue their studies and/or obtain a high school diploma, which include enrolling in community colleges, or adult schools; being redesignated as a senior for an additional year of high school; and passing the GED in order to receive a diploma equivalent.

The proposed legislation, AB 347, is presently in bill form. If it is not enacted, then the Settlement Agreement will be considered null and void. The full text of the bill, and legislative analysis regarding the bill, may be found at <http://www.leginfo.ca.gov>. If enacted, the bill would require districts that receive specified state funding to prepare students for the CAHSEE to do the following:

- Provide each pupil with the opportunity to receive intensive instruction and services regarding the CAHSEE, based on an appropriate diagnostic assessment and prior results on the exam, for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.
- Provide English learners who have not passed the CAHSEE by the end of grade 12 with the opportunity to receive intensive instruction and services to improve English proficiency as needed to pass both parts of the CAHSEE, for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.

- Notify pupils of the availability of intensive instruction and services after grade 12 and their right to file a complaint if they are denied such services.
- Use the school district's uniform complaint process to help identify and resolve any deficiencies related to intensive instruction and services provided to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12.
- Districts participating in the Middle and High School Supplemental Counseling Program shall be required to provide information to pupils in grade 12 about the availability of intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the exit examination is passed, whichever comes first.

Release

If the legislation is enacted, and the court finally approves this Settlement Agreement, then the following claims will be deemed released on behalf of the class.

- Any and all claims by any Class Member against any State Entity concerning the adequacy of options available to students who have not passed the CAHSEE as of their intended graduation date to continue to study and/or attend classes in order to learn the material tested by the CAHSEE.
- Any and all claims by any Class Member, who is or formerly was a member of the Class of 2006, against any State Entity that was or could have been raised in the lawsuit including, but not limited to, that denial of a diploma and/or graduation as a result of the requirement that they pass the CAHSEE (currently codified in Education Code section 60851, subdivision (a)) violates the constitutional or statutory rights of students.

However, the Settlement Agreement does not limit the rights of any class member to bring any action directly against any school district based on its alleged failure to follow any applicable law.

Attorneys' Fees and Costs

The Settlement Agreement provides that there shall be no application for or actual award of attorneys' fees to be paid by any party. Respondents/defendants agree to pay plaintiffs'/petitioners' costs in an amount not to exceed \$87,000, in accordance with standard State approval processes.

Final Approval Hearing and Comment/Objection Procedure

The hearing for final approval of the settlement has been scheduled for August 13, 2007, at 1:30 p.m. in front of Alameda Superior Court Judge Robert Freedman, Department 20, 1221 Oak Street, 4th floor, Oakland, California, 94612. It is not necessary for class members to appear at the hearing. Only class members who file a Notice of Intent to Appear, as described below, will be allowed to appear and offer oral comments about the settlement at this hearing, subject to the court's discretion. Class members may enter an appearance through counsel. The hearing may be postponed without further notice to the Class. **DO NOT TELEPHONE THE**

COURT.

Class members who wish to comment or object to the parties' Settlement Agreement may do so only by (1) filing a written comment or objection, or (2) filing a Notice of Intent to Appear at the final approval hearing, on or before August 9, 2007. A parent or legal guardian may file these documents on behalf of any class member who is under 18 years of age. Comments, objections, and/or Notice(s) of Intent to Appear must clearly identify the case and number (*Valenzuela v. O'Connell*, Case No. RG06288707), and must state the class member's full name and address; where the class member attends (or attended) public high school and the date(s) of the class member's attendance; whether the class member has received a high school diploma; the relationship of the person filing the objection, comment or Notice to Appear to the class member (e.g., parent, legal guardian, or counsel); and each specific reason in support of the comment or objection and any legal support for each comment or objection. Comments, objections and/or Notice(s) of Intent to Appear must be submitted by mailing them to **BOTH** of the following addresses:

Clerk of the Court
Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse
1225 Fallon Street
Oakland, CA 94612

Arturo J. González
Valenzuela Class Action
Morrison & Foerster
425 Market Street
San Francisco, California 94105-2482.

To be considered and valid, the Court and Counsel must receive any comments or objections, and Notices of Intent to Appear, no later than August 9, 2007.

A class member who fails to file and serve an objection in the manner described above and by the specific deadline will be deemed to have waived any objections and will be foreclosed from making any objection (whether by appeal or otherwise) to the settlement. A class member who fails to file a Notice of Intent to Appear in the manner described above and by the specific deadline will be deemed to have waived any right to appear to comment or object at the hearing.

Getting More Information

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which will be on file with the Clerk of the Court. The pleadings and other records in this litigation including the Settlement Agreement, may be examined (a) online on the Alameda County Superior Court's website, www.alameda.courts.ca.gov/courts, or (b) in person at Room 109 at the Rene C. Davidson Courthouse at 1225 Fallon Street, Oakland, California 94612, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays, or (c) you may contact Class Counsel, Arturo J. González, Morrison & Foerster LLP, 415-268-7000, 425 Market Street, San Francisco, California 94105-2482.