



CALIFORNIA
DEPARTMENT OF
EDUCATION

JACK O'CONNELL
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

May 7, 2008

Dear County and District Superintendents and Charter School Administrators:

A tentative settlement agreement has been reached in *Kidd v. California Department of Education*, a lawsuit filed in 2002 challenging the California High School Exit Examination (CAHSEE) for those students with an Individualized Education Program (IEP) and/or Section 504 Education Plan (504 Plan). The proposed settlement was tentatively approved on May 2, 2008, 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 for all students. Most importantly, it will ensure that students in the Class of 2008 and beyond will have the opportunity to continue to get the assistance they need to learn the critical skills measured on the CAHSEE.

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. I have asked all county and district superintendents, charter school administrators, and high school principals to display the Notice in a prominent location in each county and district office and at each high school that contains or teaches students in grades ten, eleven, twelve, or higher. (Higher means schools of the district that serve students beyond grade twelve.) 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 Friday, May 30, 2008, at 2 p.m. in Alameda County Superior Court.

The settlement proposal requires the California Department of Education to contract with an external consultant to conduct a study on grade twelve students who have taken the CAHSEE with modifications and accommodations specified in their respective IEP or 504 Plans, but who have not passed the CAHSEE, and who have satisfied or will satisfy all other requirements for graduation from high school.

I appreciate your help in the dissemination of this vital information to students who need additional support in passing the CAHSEE by gaining the requisite skills for success.

Sincerely,

A handwritten signature in blue ink that reads "Jack O'Connell".

JACK O'CONNELL

JO:ds
Enclosure

cc: High School Principals via United States Postal Service
California High School Exit Examination District Coordinators via e-mail

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

COURTNEY KIDD et. al., on behalf of themselves and all other similarly situated,
Plaintiffs

v.

CALIFORNIA DEPARTMENT OF EDUCATION et. al,
Defendants.

Case No. 2002049636

CLASS ACTION

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

**TO: ALL PUBLIC HIGH SCHOOL STUDENTS FROM THE CLASSES OF
2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, AND 2011 WHO
ARE OR WERE ELIGIBLE FOR AN INDIVIDUALIZED EDUCATION
PROGRAM (“IEP”) AND/OR SECTION 504 EDUCATION PLAN (“504
PLAN”) AND THEIR PARENTS OR LEGAL GUARDIANS.**

**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 MAY 30, 2008
COURT HEARING REGARDING FINAL APPROVAL OF THE
SETTLEMENT, YOU MUST FOLLOW THE DIRECTIONS IN THIS
NOTICE.**

Purpose of Notice

This notice sets for the basic terms of the proposed settlement reached in *Kidd v. California Department of Education* and advises class members of their procedural rights relating to the settlement. The certified class in this lawsuit is defined as follows:

All students eligible for an Individualized Education Program (“IEP”) pursuant to the Individuals with Disabilities in Education Act (“IDEA”) or a Section 504

Education Plan (“504 Plan”) pursuant to the Rehabilitation Act of 1973 who have taken or will be required to take the California High School Exit Exam.

Description of the Case

This class action lawsuit was brought in 2002 against the California Department of Education, the California State Board of Education, and Jack O’Connell, the Superintendent of Public Instruction in California. Plaintiffs allege that, for several reasons, the application of the CAHSEE graduation requirement to public high school students with disabilities constitutes a violation of California statutory and constitutional law. Defendants deny the allegations made by 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 approximately seven years of litigation, the parties in the case reached a Settlement Agreement in March of 2008. On May 2, 2008, Alameda Superior Court Judge Robert Freedman granted preliminary approval of the Settlement Agreement and approved this Notice.

The parties’ Settlement Agreement provides for the following:

- Defendants will commission an independent study on the CAHSEE, and will request and affirmatively seek up to \$500,000 to retain and compensate an external consultant for that purpose.
- The study will examine twelfth graders (and possibly others) who have taken the CAHSEE with modifications and accommodations specified in their respective IEP or 504 plans, but who have not passed the CAHSEE, and who have satisfied or will satisfy all other requirements for graduation from high school. The study will examine why such students have not passed the CAHSEE. Among other things, the study shall determine whether some group of students have learned the material being tested, but are unable to demonstrate their mastery of that knowledge through the CAHSEE, despite the students’ use of permissible modifications and/or accommodations.
- Based on the results of the study, the consultant will issue a report, setting forth the consultant’s determinations for addressing any issues identified in the study.
- If the study determines that some students have learned the CAHSEE material but are unable to demonstrate that knowledge through the CAHSEE despite the students’ use of permissible accommodations and/or modifications, the report shall set forth recommendations as to whether

such students could demonstrate their knowledge of the CAHSEE standards through alternative means. If the final report makes such determinations, it shall also identify and set forth an analysis of such possible alternative means.

- The report will be disseminated to: the Superintendent of Public Instruction, the California Department of Education, the members of the California Board of Education, the Clerk of the Assembly, the Secretary of the Senate, Chairs of the Senate Education and Fiscal Committees, Chairs of the Assembly Education and Fiscal Committees, the Legislative Analyst's Office, the California Department of Finance, and Plaintiffs' counsel in the case.
- Within five months of the final report being delivered, Defendants will consider the report and make recommendations, if any, to the Legislature regarding the issues addressed in the report. Defendants may also independently implement policies responsive to the report that do not require legislation.

Release

If the Settlement Agreement receives final approval from the Court and the Court enters final judgment, then the claims raised by Plaintiffs in this case will be deemed released by all members of the certified class in the Classes of 2001 through 2011 against any state entity.

Attorneys' Fees and Costs

The Settlement Agreement provides that Plaintiffs and their attorneys may move the Court for reasonable attorneys fees and costs within 60 to 120 days after the Court grants final approval of the Settlement Agreement and enters final Judgment dismissing Plaintiffs' claims.

Final Approval Hearing and Comment/Objection Procedure

The hearing for final approval of the settlement has been scheduled for May 30, 2008, at 2:00 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 on or before May 23, 2008; or (2) filing a Notice of Intent to Appear at the final approval hearing on or before May 23, 2008. 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 name and case number (*Kidd v. California Department of Education*, Case No. 2002049636), 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 of Intent 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

Julia Pinover
Disability Rights Advocates
2001 Center Street, 3rd Floor
Berkeley, CA 94704

To be considered and valid, the above recipients must receive any comments, objections, and/or Notice(s) of Intent to Appear by no later than May 23, 2008.

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 Agreement. 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; (b) in person at Room 109 at the Rene C.

Davidson Courthouse, 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 Julia Pinover, Disability Rights Advocates, 2001 Center Street, Third Floor, Berkeley, California 94704.