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13
14 UNITED STATES DISTRICT COURT
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 A.C. by and through his *guardian ad*
17 *litem* Gail Campos; A.H. by and
18 through his *guardian ad litem* Yvonne
19 Clark; D.H. by and through his
20 *guardian ad litem* Connie Watson; P.R.
by and through his *guardian ad litem*
Pamela Romano; and on behalf of
themselves and a class of those
similarly situated,

21 Plaintiffs,

22 vs.

23 ARNOLD SCHWARZENEGGER, in
24 his official capacity as Governor of the
State of California, CALIFORNIA
25 DEPARTMENT OF EDUCATION,
JACK O'CONNELL, in his official
26 capacity as California State
Superintendent of Public Instruction,
27 CALIFORNIA HEALTH AND
HUMAN SERVICES AGENCY,
28 KIMBERLY BELSHE, in her official

CASE NO.:

CLASS ACTION

**COMPLAINT FOR
INJUNCTIVE AND
DECLARATION RELIEF FOR
VIOLATIONS OF:**

1. The Individuals with Disabilities Education Improvement Act, 20 U.S.C. Sections 1400 *et seq.*
2. Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*
3. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

1 capacity as Secretary of California
2 Health and Human Services Agency,
3 CALIFORNIA DEPARTMENT OF
4 MENTAL HEALTH, STEPHEN
5 MAYBERG, in his official capacity as
6 Director of the California Department of
7 Mental Health, LOS ANGELES
8 UNIFIED SCHOOL DISTRICT,
9 RAMON CORTINES, in his official
10 capacity as Superintendent of Los
11 Angeles Unified School District,
12 TORRANCE UNIFIED SCHOOL
13 DISTRICT, GEORGE MANNON, in
14 his official capacity as Superintendent
15 of Torrance Unified School District,
16 LOS ANGELES COUNTY OFFICE
17 OF EDUCATION, JON GUNDRY, in
18 his official capacity as Interim
19 Superintendent of Schools of Los
20 Angeles County Office of Education,
21 LOS ANGELES COUNTY
22 DEPARTMENT OF MENTAL
23 HEALTH, and MARVIN SOUTHARD,
24 in his official capacity as Director of
25 Los Angeles County Department of
26 Mental Health,
27
28

Defendants.

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1 The following allegations are based on information and belief, unless otherwise
2 specified:

3 JURISDICTION AND VENUE

4 1. This court has jurisdiction over Plaintiffs' claims under 28 U.S.C.
5 § 1331, because those claims arise under the laws of the United States, specifically
6 the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C.
7 Sections 1400 *et seq.* and the Americans with Disabilities Act, 20 U.S.C. Sections
8 12131 *et seq.*

9 2. Venue is proper in the Central District of California under 28 U.S.C.
10 § 1391(b) because several Defendants are located in this District and many of the acts
11 and/or omissions complained of herein occurred or will occur in this District.

12 INTRODUCTION

13 3. Federal special education law requires that states provide children with
14 mental illness, such as the Plaintiffs here, with the services and supports they need to
15 benefit from their education. IDEA, 20 U.S.C. § 1401(26)(A). These educationally-
16 related mental health services must be based on the needs of the student, and may
17 include therapy and counseling, day treatment, medication management and, for the
18 children with the most severe problems, 24-hour therapeutic residential programs
19 with on-site schools. 34 C.F.R. § 300.34(c). For almost twenty five years, California
20 has required county mental health departments to provide these educationally-related
21 mental health services. Section 26.5 of Division 7 of Title 1 of the California
22 Government Code ("AB 3632").¹ Approximately twenty thousand California
23 students with mental illnesses currently depend on these lifesaving services.

24 4. On the evening of Friday, October, 8, 2010, Governor Schwarzenegger
25 vetoed all state funding for educationally-related mental health services provided
26

27 ¹ Established in 1986 through the passage of Assembly Bill 3632, this mental
28 health program is commonly known as AB 3632.

1 through AB 3632.

2 5. Accompanying this line-item veto was an assertion by the Governor that
3 he was unilaterally suspending the mandate on county mental health departments to
4 provide these educationally-related mental health services.

5 6. The Governor's actions have resulted in mass confusion of crisis
6 proportions throughout the state, causing irreparable harm and the likelihood of
7 additional irreparable harm to Class Representatives and Plaintiffs A.C., A.H., D.H.,
8 and P.R., as well as other, similarly situated member of the Plaintiff class.² All of the
9 named Plaintiff children and all other members of the Plaintiff Class, are eligible for
10 special education and have been or will be referred to, assessed for, found eligible for,
11 and/or provided educationally-related mental health services pursuant to AB 3632.

12 7. An official with one Defendant agency - the California Department of
13 Education - has stated that "the Governor's unconscionable cuts to mental health
14 services to students under the provisions of AB 3632 have created a state of chaos."

15 8. The vast majority of county departments of mental health, including Los
16 Angeles County Department of Mental Health, immediately responded to the
17 Governor's actions by delaying, reducing, denying and/or terminating AB 3632
18 services. Some county representatives stated county departments of mental health
19 are not required to or are in fact *prohibited* from serving any student awaiting
20 assessment or assistance with AB 3632 services, and that they will soon stop
21 providing services to existing child clients.

22 9. In the wake of the Governor's veto, Local Education Agencies,
23 primarily school districts and county offices of education, are confused about their
24 responsibilities, as they lack the capacity to provide all educationally-related mental
25 health services on their own. Some school representatives contend that the Governor

26
27 ² As used hereinafter, the term "Plaintiffs" refers to both the named plaintiffs
28 and other similarly situated class members.

1 lacks the authority to suspend the mandate on county mental health departments to
2 provide AB 3632 services and that the counties are still responsible. A week after the
3 veto, Defendant California Department of Education sent an email to Local
4 Educational Agencies, reminding them that federal law requires them to provide or
5 pay for educationally-related mental health services when other agencies fail to do so.
6 However, neither the California Department of Education nor Local Educational
7 Agencies have taken affirmative steps to ensure that AB 3632 services to students are
8 not disrupted, discontinued, or delayed.

9 10. In the chaos created by the line-item veto, Local Education Agencies,
10 such as Los Angeles County Office of Education, Los Angeles Unified School
11 District, and Torrance Unified School District, are cancelling, and refusing to
12 reschedule, individualized education program (“IEP”) team meetings at which AB
13 3632 will be discussed. These Local Education Agencies are also denying children
14 the educationally-related mental health services that the county departments of
15 mental health previously provided.

16 11. The Governor’s action also jeopardizes over \$100 million in federal
17 special education funding because IDEA requires California to maintain the same
18 level of state-funded support each year, in order to maintain its current federal
19 funding level.

20 12. Treating twenty-thousand youth with severe mental illness is not merely
21 a matter of funding: the system, process, and multi-agency agreement to fund AB
22 3632 county department of mental health-provided mental health services has been in
23 place for nearly a quarter century, thus few Local Education Agencies in California
24 now have staff qualified to assess, case manage, and treat these children, nor do most
25 Local Education Agencies have existing contracts with independent service providers
26 who can cover any gaps in their service plans.

27 13. The disputes between state officials and local agencies described above
28 have left students with mental illness in the lurch. Teenagers such as Plaintiff A.C.,

1 who are so suicidal that they cannot safely remain at home or in school, have already
2 been told that residential placement will not be provided, although there is not
3 dispute that he needs it desperately. Children like Plaintiff D.H., who experience
4 harrowing hallucinations and must cope with voices that command them to hurt
5 themselves and others, face a complete denial of therapy and medication support.
6 Children like Plaintiff P.R., who suffers from uncontrollable fits of rage and violence,
7 will not receive the intensive care and treatment that was recommended for him, prior
8 to the Governor's veto.

9 14. Due to the current lack of clarity in the law and the utter failure to have a
10 system in place to immediately serve these students, they are at imminent risk of
11 irreparable harm in the form of psychological deterioration, self-harm, loss of
12 educational progress, and unnecessary institutionalization.

13 15. Defendants are responsible, jointly and severally, for ensuring that these
14 services are provided to the children who depend on them. However, it is the
15 California Department of Education and the Governor who are ultimately responsible
16 for the education of all children in this state under the IDEA, the Americans with
17 Disabilities Act, and Section 504 of the Rehabilitation Act. Where, as here, the
18 funding and structure for the system of service delivery have been eviscerated,
19 leaving only chaos and confusion, the California Department of Education and the
20 Governor are legally required to take all necessary steps to solve the problem – since
21 only they can do so - and to ensure that these federally required mental health
22 services are not disrupted, discontinued or denied.

23 16. In the interim, because Plaintiffs and the Class are at imminent risk of
24 irreparable harm, all Defendants must maintain the status quo, by providing the
25 services and procedures in place pursuant to AB 3632 prior to the Governor's veto,
26 on October 8, 2010.

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PARTIES

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2 17. Class representative A.C. appears by and through his parent and
3 guardian *ad litem*, Gail Campos. A.C. was abused by his biological parents, removed
4 from their care, and neglected in foster care. His parents adopted him as a toddler
5 and have been devoted to him since that time. As a result of this early history and
6 fetal alcohol exposure, A.C. has required special education services since first grade.
7 His parents live in Torrance, California, and A.C. has attended schools in Torrance
8 Unified School District. He has seen a counselor, has taken different medications to
9 cope with depression and attention problems. When he was fourteen, he began
10 showing symptoms of suicidality and cutting himself, and also began having auditory
11 hallucinations. A.C. meets the eligibility requirements for educationally-related
12 mental health services through the AB 3632 program. A.C.'s family lacks the
13 resources to pay for the educationally-related mental health services that he needs on
14 their own.

15 18. A.C. is now seventeen years old. He has attempted suicide twice in the
16 past year, and was psychiatrically hospitalized multiple times during that same period.
17 He was unable to attend much of his junior year in high school due to his escalating
18 symptoms of mental illness. He has been in and out of psychiatric facilities for the
19 past six months, and has showed increasing signs of psychosis.

20 19. Torrance Unified School District referred A.C. to Los Angeles County
21 Mental Health for AB 3632 services in June 2010. However, he was not assessed
22 until September 2010. On September 20, 2010, he was released from a locked
23 psychiatric facility and returned to his parents but without in-home support services.
24 A.C. immediately ran away, and was soon picked up by the police and taken to
25 juvenile hall, where he remains. He attends juvenile court schools operated by Los
26 Angeles County Office of Education. An expanded IEP team found A.C. eligible for
27 residential placement on September 27, 2010 and he was accepted at a facility in
28 Devereux, Texas. A.C. was ready to be released from juvenile hall and go to the

1 Texas facility on October 13, 2010, but at a final court hearing on October 12, the
2 placement was canceled because of the Governor's veto.

3 20. But for the collective actions and inactions of the Defendants, centered
4 around the uncertainty created by the Governor, A.C. would be currently receiving
5 the 24-hour-a-day mental health treatment he needs in a residential placement.
6 Instead, A.C. languishes in juvenile hall, which is needlessly restrictive, lacks
7 appropriate treatment for his needs and this cannot provide him with a free
8 appropriate public education.

9 21. Class representative A.H. appears by and through his guardian *ad litem*,
10 Yvonne Clark. A.H. resides with his legal guardians in the jurisdictional boundaries
11 of Los Angeles Unified School District. A.H. is a fourteen-year-old student in the
12 eighth grade at a public charter school chartered by Los Angeles Unified School
13 District who has been eligible for special education since second grade. A.H. meets
14 the eligibility requirements for educationally-related mental health services through
15 the AB 3632 program. A.H.'s family lacks the resources to pay for the
16 educationally-related mental health services that he needs on their own.

17 22. A.H. began exhibiting symptoms of mental illness when he was twelve
18 years old, including manic episodes, separation anxiety, obsessive-compulsive
19 behaviors, and a substantial disconnect from reality. For example, A.H. has a
20 delusion that he teaches an imaginary class of students and most of his evening and
21 weekends are consumed with this fantasy world.

22 23. A.H. was assessed by employees of the Los Angeles County Department
23 of Mental Health and found eligible for a package of services including individual
24 therapy, family therapy, and medication management. An IEP meeting was
25 scheduled for October 14, 2010, to review and implement this recommendation, but
26 Ms. Clark was informed the night before that Los Angeles County Department of
27 Mental Health would not attend. Instead, Los Angeles Unified School District
28 conducted an informal meeting on October 14, 2010, where school staff informed the

1 family that they would not provide the needed services. Without this treatment, A.H.
2 will slip further from reality and threaten Ms. Clark's ability to care for him,
3 potentially forcing her to relinquish him into the foster care system.

4 24. Class representative D.H. appears by and through his guardian *ad litem*,
5 Connie Watson. D.H.'s education rights holder resides in the jurisdictional
6 boundaries of Los Angeles Unified School District and the last community school he
7 attended was in Los Angeles Unified School District. D.H. is a seventeen-year-old
8 student currently detained at Central Juvenile Hall in Los Angeles where Los
9 Angeles County Office of Education is responsible for his education. D.H. has been
10 eligible for special education since first grade and has exhibited symptoms of mental
11 illness since he was nine years old. D.H. meets the eligibility requirements for
12 educationally-related mental health services through the AB 3632 program. D.H.'s
13 family lacks the resources to pay for the educationally-related mental health services
14 that he needs on their own.

15 25. D.H. entered the foster care system at age ten and has lived in at least
16 forty placements in the last eight years, primarily due to the severity of the symptoms
17 of his mental illness. He has also been psychiatrically hospitalized at least five times.

18 26. D.H. experiences auditory hallucinations that he describes as voices in
19 his head asking questions that he can neither understand nor answer. He also
20 sometimes experiences command auditory hallucinations that compel him to harm
21 himself. He has engaged in multiple suicide attempts.

22 27. In January 2009, he was found eligible for residential placement by Los
23 Angeles County Department of Mental Health. In August 2010, he was again
24 assessed and recommended for residential placement. An IEP was scheduled to
25 implement this recommendation on October 18, 2010. On October 13, 2010, Los
26 Angeles County Office of Education informed Ms. Watson that Los Angeles County
27 Department of Mental Health refused to attend IEP. At the IEP, Los Angeles County
28 Office of Education refused to offer the residential placement that D.H. needs.

1 28. But for the collective actions and inactions of the Defendants, centered
2 around the uncertainty created by the Governor, D.H. would be currently receiving
3 the 24-hour-a-day mental health treatment he needs in a residential placement.
4 Instead, D.H. languishes in juvenile hall where he is not appropriately treated and is
5 denied a free appropriate public education.

6 29. Class representative P.R. appears by and through his parent and
7 guardian *ad litem*, Pamela Romano. P.R. lives with his parents within the
8 jurisdictional boundaries of Torrance Unified School District. P.R. is a thirteen-year-
9 old in the eighth grade. He has been eligible for special education since fifth grade
10 and has exhibited symptoms of mental illness since he was nine years old. He has
11 been unable to attend school for the last two months due to the severity of the
12 symptoms of his mental illness. P.R. meets the eligibility requirements for
13 educationally-related mental health services through the AB 3632 program. P.R.'s
14 family lacks the resources to pay for the educationally-related mental health services
15 that he needs on their own.

16 30. P.R. experiences extraordinary anxiety in public, which he finds
17 draining and frustrating to control. When he returns to the relative safety of his home,
18 P.R. threatens harm to himself and others. He is assaultive in the home and at school:
19 he destroys property and regularly attacks his parents and siblings without
20 provocation.

21 31. P.R. has seen a therapist since he was ten years old and has taken anti-
22 psychotic medications under the supervision of a psychiatrist for over a year.
23 Because these interventions alone were not enough to enable P.R. to access his
24 education, he was assessed and recommended for residential placement through AB
25 3632 in July 2010, but Torrance Unified School District did not schedule an IEP to
26 implement this recommendation until October 18, 2010. However, Los Angeles
27 County Department of Mental Health refused to attend his IEP.

28 //

1 32. But for the collective actions and inactions of the Defendants, centered
2 around the uncertainty created by the Governor, D.H. would be currently receiving
3 the 24-hour-a-day mental health treatment he needs in a residential placement.
4 Instead, P.R. is at imminent risk of harm to himself and others and is denied a free
5 appropriate public education.

6 33. Defendant Arnold Schwarzenegger is the Governor of the State of
7 California. He is sued in his official capacity.

8 34. Defendant California Department of Education is the governmental
9 entity created and required to oversee the operation of public schools in the State of
10 California. Defendant California Department of Education is a public agency duly
11 organized and existing under the laws of the State of California with headquarters in
12 Sacramento, California. As the state education agency, California Department of
13 Education bears the ultimate responsibility to ensure that all children in the State of
14 California receive a free appropriate public education in the least restrictive
15 environment as required by IDEA.

16 35. Defendant Jack O'Connell is California's State Superintendent of Public
17 Instruction. Defendant O'Connell is sued in his official capacity. It is Defendant
18 O'Connell's duty to oversee the operation of all public schools in the State of
19 California, to execute policies implementing federal and state laws regarding the
20 provision of education to all children with disabilities in California, to monitor
21 compliance of public schools with federal and state laws, and to ensure that
22 violations of such laws are promptly investigated and corrected.

23 36. Defendant Ramon Cortines is the Superintendent of defendant Los
24 Angeles Unified School District. He is sued in his official capacity.

25 37. Defendant Los Angeles Unified School District is a public school
26 district duly organized and existing under the laws of the State of California with
27 headquarters in Los Angeles, California. At all times relevant herein, Los Angeles
28 Unified School District was and is the Local Education Agency responsible for

1 providing a public education in compliance with state and federal law to all children
2 residing in Los Angeles Unified School District's jurisdictional borders, including by
3 funding and providing for federally required mental health services under the IDEA.
4 Los Angeles Unified School District received and continues to receive federal
5 funding to operate its special education programs.

6 38. Defendant George Mannon is the Superintendent of defendant Torrance
7 Unified School District. He is sued in his official capacity.

8 39. Defendant Torrance Unified School District is a public school district
9 duly organized and existing under the laws of the State of California with
10 headquarters in Torrance, California. At all times relevant herein, Torrance Unified
11 School District was and is the Local Education Agency responsible for providing a
12 public education in compliance with state and federal law to all children residing in
13 Torrance Unified School District's jurisdictional borders, including by funding and
14 providing for federally required mental health services under the IDEA. Torrance
15 Unified School District received and continues to receive federal funding to operate
16 its special education programs.

17 40. Defendant Jon Gundry is the Interim Superintendent of Schools of
18 defendant Los Angeles County Office of Education. He is sued in his official
19 capacity.

20 41. Defendant Los Angeles County Office of Education is a public agency
21 with headquarters in Downey, California. At all times relevant herein, Los Angeles
22 County Office of Education was and is the Local Education Agency responsible for
23 providing a public education in compliance with state and federal law to all children
24 in juvenile court schools, including by funding and providing for federally required
25 mental health services under the IDEA. Los Angeles County Office of Education
26 Defendant Gundry's official duties as Los Angeles County Office of Education
27 Interim Superintendent include direct supervisory responsibilities over Los Angeles
28 County Office of Education's Division of Juvenile Court Schools, which operates the

1 public schools at juvenile halls and camps throughout Los Angeles County, including
2 the school(s) that Plaintiffs attended while they were housed in Los Angeles juvenile
3 halls and camps. Los Angeles County Office of Education received and continues to
4 receive federal funding to operate its special education programs.

5 42. Defendants Los Angeles Unified School District, Torrance Unified
6 School District, and Los Angeles County Office of Education are all Local Education
7 Agencies within the meaning of IDEA. They are collectively referred to as
8 “Defendant Local Education Agencies.”

9 43. Defendant Kimberly Belshé is the Secretary of defendant California
10 Health and Human Services Agency. She is sued in her official capacity.

11 44. Defendant California Health and Human Services Agency is a public
12 agency duly organized and existing under the laws of the State of California with
13 headquarters in Sacramento, California. Defendant California Health and Human
14 Services Agency oversees twelve departments, including Defendant California
15 Department of Mental Health, and one board that provides a range of health care
16 services, social services, mental health services, alcohol and drug treatment services,
17 income assistance and public health services to people in California.

18 45. Defendant Stephen Mayberg is the Director of the California
19 Department of Mental Health. He is sued in his official capacity.

20 46. Defendant California Department of Mental Health is a public agency
21 duly organized and existing under the laws of the State of California with
22 headquarters in Sacramento, California. California Department of Mental Health is a
23 Department of the California Health and Human Services Agency. California
24 Department of Mental Health is responsible for the evaluation and monitoring of
25 county departments of mental health and the administration of federal funds for
26 mental health programs and services, including AB 3632.

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1 52. Defendants have acted and/or refused to act on grounds generally
2 applicable to the class, thereby making appropriate final declaratory and injunctive
3 relief with respect to the class as a whole.
4

5 **ALLEGATIONS**

6 **Statutory Scheme**

7 53. This Action is brought under the IDEA, the Americans with Disabilities
8 Act, and Section 504 of the Rehabilitation Act of 1973.
9

10 **A. The Individuals with Disabilities Education Improvement Act**

11 54. Congress passed the Education of the Handicapped Act in 1975, the
12 predecessor of the IDEA, because “the educational needs of millions of children with
13 disabilities were not being fully met because ... the children did not receive
14 appropriate educational services . . . [and] a lack of adequate resources within the
15 public school system forced families to find services outside the public school
16 system.” 20 U.S.C. § 1400 (c)(2) (internal numbering redacted).

17 55. In 2004, Congress reauthorized the title as the Individuals with
18 Disabilities Education Improvement Act, 20 U.S.C. Sections 1400 *et seq.* 20 U.S.C.
19 § 1400 (a). California receives approximately \$1.2 billion annually in federal special
20 education funds under IDEA, Part B, in return for accepting the responsibility to
21 provide all children with disabilities a free appropriate public education. 20 U.S.C. §
22 1401(26)(A).

23 56. A free appropriate public education consists of special education and
24 related services that are provided to a student at public expense, at no cost to the
25 parents, that meet appropriate state and federal education standards, and that conform
26 to the student’s IEP. 20 U.S.C. § 1401(9); 34 C.F.R. § 104.33. “Special education”
27 means instruction tailored to meet the unique needs of a child with a disability
28 provided at no cost to the parents. 20 U.S.C. § 1401(29).

1 57. “Related Services” must include mental health services when those
2 services are necessary for a student to benefit from his or her education. 20 U.S.C.
3 §1401(26)(A). Federally mandated mental health services include:

- 4 • counseling services by social workers, psychologists, counselors
5 and other qualified personnel, 34 C.F.R. § 300.34 (c)(2);
- 6 • parent counseling and training, 34 C.F.R. § 300.34 (c)(8);
- 7 • psychological services, including administering and interpreting
8 psychological tests, 34 C.F.R. § 300.34 (c)(10)(i)-(ii);
- 9 • planning and case management, 34 C.F.R. § 300.34 (c)(10)(v);
- 10 • rehabilitation counseling, 34 C.F.R. § 300.34 (c)(12);
- 11 • social work services, 34 C.F.R. § 300.34 (c)(14);
- 12 • transportation, 34 C.F.R. §§ 104.33(c)(2) and 300.34 (c)(16); and
- 13 • residential placement, 34 C.F.R. §§ 104.33(c)(3) and 300.104.

14 58. “If placement in a public or private residential program is necessary to
15 provide special education and related services to a child with a disability, the
16 program, including non-medical care and room and board, must be at no cost to the
17 parents of the child.” 34 C.F.R. § 300.104.

18 59. A Local Education Agency under IDEA is a “public authority legally
19 constituted within a State for either administrative control or direction of, or to
20 perform a service function for, public elementary or secondary schools in a ...
21 political subdivision of a State.” 20 U.S.C. § 1401(19). Under California law, school
22 districts, county offices of education, special education local plan areas, and non-
23 profit charter schools participating as part of a special education local plan area are
24 all Local Education Agencies. Cal. Educ. Code § 56026.3.

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1 60. A state may require a Local Education Agency to establish its eligibility
2 jointly with another Local Education Agency if the state determines that the Local
3 Education Agency will not be able to establish and maintain programs of sufficient
4 size and scope to effectively meet the needs of children with disabilities. 34 C.F.R. §
5 300.223.

6 61. Each county department of mental health is a “public authority legally
7 constituted within a State ... to perform a service function for, public elementary or
8 secondary schools in a ... political subdivision of a State” for purposes of 34 C.F.R.
9 section 300.28(a).

10 62. In California, the management and control of public education is a
11 matter of state care and supervision. “Local districts are the State’s agents for local
12 operation of the common school system, and the State’s ultimate responsibility for
13 public education cannot be delegated to any other entity.” *Butt v. State of California*,
14 842 P.2d 1240, 1248 (Cal. 1992).

15 63. State education agencies must ensure that all children with disabilities
16 are provided a free appropriate public education. 20 U.S.C. § 1412(a)(11); 34 C.F.R.
17 § 300.101(b). The statute, regulations, and legislative history all make clear that the
18 state educational agency has the ultimate responsibility for assuring that all children
19 with disabilities have the right to a free appropriate public education.

20 64. Further, the state is directly responsible for providing students a free
21 appropriate public education when Local Education Agencies are unable or unwilling
22 to maintain programs of free appropriate public education for handicapped students.

23

24 **B. AB 3632**

25 65. During the decade after the passage of the federal Education for All
26 Handicapped Children Act of 1975 (the predecessor to IDEA), California Local
27 Education Agencies proved that they were manifestly incapable of providing a free
28 appropriate public education to children with mental illness. *See Christopher T. v.*

1 *San Francisco Unified Sch. Dist.*, 553 F. Supp. 1107 (N.D. Cal. 1982) (it is unlawful
2 under the Education for All Handicapped Children Act and the Rehabilitation Act of
3 1973 to force parents to relinquish their children to court custody in order to obtain
4 residential placement that should have been provided as a part of the children's IEPs.)

5 66. Thus, in 1984, California Assembly Bill 3632 shifted responsibility for
6 mental health services to the county departments of mental health by creating what is
7 now Section 26.5 of Division 7 or Title 1 of the California Government Code,
8 commencing at Section 7570. A.B. 3632, 1984 Leg., Reg. Sess. (Cal. 1984).

9 67. The State Superintendent of Public Instruction and the Secretary of the
10 Health and Human Services Agency are jointly responsible for the designation of
11 responsibility for services under AB 3632. The Secretary of the Health and Human
12 Services Agency may designate a department of the state to carry out the Secretary's
13 responsibilities under AB 3632, and has designated California Department of Mental
14 Health to carry out this role. Cal. Gov't Code § 7571

15 68. The Secretary also designated the county departments of mental health
16 responsible for coordination of services within their respective counties. *Id.* These
17 departments' specific responsibilities are discussed *infra*.

18 69. California Department of Mental Health must also monitor county
19 departments of mental health and ensure compliance with AB 3632. Cal. Gov't Code
20 § 7576.2(a).

21 70. The Superintendent of Public Instruction must ensure that Local
22 Education Agencies provide special education and related services necessary for a
23 child to benefit from his or her education. Cal. Gov't Code § 7573.

24 71. A child's Local Education Agency must provide appropriate counseling,
25 psychological services, parent training, social work services, and/or behavioral
26 intervention services as necessary when a child in special education has a disabling
27 condition that impacts his or her social and emotional functioning. Cal. Gov't Code §
28 7576(b)(5).

1 72. The Local Education Agency’s IEP team, with parental consent, must
2 refer the child to the county department of mental health for assessment when a child
3 is still unable to benefit from their education after being provided school based
4 services or when the IEP team determines that such services would be clearly
5 inadequate or inappropriate to meet the educational needs of the pupil. Cal. Gov’t §§
6 7572(a), 7576(b), (c), (d), and (g).

7 73. Within five days of receipt of such a referral, the county department of
8 mental health must determine whether assessment is necessary. 2 Cal. Code Regs §
9 60045(a). If the county department of mental health determines no assessment is
10 necessary or that the referral is incomplete, it must notify the parent and Local
11 Education Agency in one business day. *Id.* If a referral is determined necessary, the
12 county department of mental health must provide the parent an assessment plan
13 within 15 days of receipt of the referral. 2 Cal. Code Regs § 60045(b).

14 74. The Local Education Agency must schedule an IEP within 50 days of
15 receipt of parental consent to the assessment. 2 Cal. Code Regs §§ 60045(d). The
16 Local Education Agency must also invite a county department of mental health
17 representative to the IEP meeting and if that representative is unable to attend, the
18 Local Education Agency “shall ensure that a qualified substitute is available to
19 explain and interpret the evaluation.” Cal. Gov’t Code § 7572(e).

20 75. The county department of mental health must complete the assessment
21 within sufficient time to ensure than an IEP meeting is held within 60 days from the
22 receipt of parental consent to the assessment. 2 Cal. Code Regs §§ 60045(e). The
23 county department of mental health assessor must provide a copy of the report to the
24 parent prior to the IEP meeting and must attend the meeting upon parent request. Cal.
25 Gov’t Code § 7572(d)(1). If a county department of mental health representative is
26 unable to attend the meeting, the representative must provide written input. Cal.
27 Gov’t Code § 7572(e).

28 //

1 76. A child with a disability is eligible for AB 3632 mental health services if
2 she has emotional or behavioral characteristics that: (1) are observed in the classroom
3 and other settings; (2) inhibit educational benefit; (3) are significant in terms of
4 frequency or intensity; and (4) are not solely a social maladjustment problem and
5 cannot be resolved with short-term counseling. Cal. Gov't Code § 7576(b).

6 77. At the IEP meeting, the recommendation of the person who conducted
7 the assessment shall be the recommendation of the IEP team members who are
8 attending on behalf of the Local Education Agency. Cal. Gov't Code § 7572(d)(1).
9 "In no case shall the inclusion of necessary related services in a pupil's individualized
10 education plan be contingent upon identifying the funding source." Cal. Gov't Code
11 § 7572(d).

12 78. Once the IEP is in place, the Local Education Agency and the county
13 department of mental health become jointly responsible for implementing the IEP.
14 Cal. Gov't Code §§ 7573 and 7576(a).

15 79. The Local Education Agency must fund and/or provide the educational
16 components of an AB 3632 IEP, *viz.* "those services provided by qualified personnel
17 whose employment standards are covered by the [California] Education Code and
18 implementing regulations." Cal. Gov't Code § 7573. Specifically, the Local
19 Education Agency must pay for special education instruction, non-mental health
20 related services, designated instruction and services, and transportation to and from
21 mental health services, including residential placement, even when those services are
22 at a non-public school, or at a public school in another special education local plan
23 area or Local Education Agency. 2 Cal. Code Regs § 60200(d).

24 80. When the state provides funds to a Local Education Agency to support
25 the costs of AB 3632 services, the Local Education Agency must transfer those funds
26 to the county department of mental health. Cal. Gov't Code § 7576.5. Such funds
27 must be used exclusively for AB 3632 services. *Id.*

28

1 81. The county department of mental health, on the other hand, “is
2 responsible for the provision of mental health services.” Cal. Gov’t Code § 7576(a).
3 “Mental health services” include psychotherapy (group or individual), collateral
4 services, medication monitoring, intensive day treatment, day rehabilitation, and case
5 management. 2 Cal. Code Regs § 60020(i). The county department of mental health
6 may provide these services directly or by contract. *Id.* The county is also responsible
7 for the cost of AB 3623 assessments. 2 Cal. Code Regs § 60020(c).

8 82. Some children’s mental health needs are so severe that they require
9 services in the most restrictive environment, 24-hour-a-day residential placement, in
10 order to benefit from their education. A representative of the county department of
11 mental health must join an IEP team whenever residential placement is being
12 considered; this is called “the expanded IEP team.” Cal. Gov’t Code § 7572.5(a).

13 83. The county department of mental health must act as lead case manager
14 for a child when the expanded IEP team determines that residential placement is
15 necessary. Cal. Gov’t Code § 7572.5(c)(1). As lead case manager, the county
16 department of mental health must identify a residential facility and convene an IEP
17 meeting every six months to review the ongoing necessity of residential placement.
18 Cal. Gov’t Code §§ 7572.5(c)(2) and (3).

19 84. When residential placement must be made out-of-state, the Local
20 Education Agency must document the alternatives that were considered and why they
21 were rejected. Cal. Gov’t Code § 7572.55(a). The placement must be in a school
22 certified by California Department of Education. Cal. Gov’t Code § 7572.55(b). The
23 Local Education Agency and county department of mental health must also develop a
24 plan for less restrictive alternatives to be implemented as soon as possible unless out-
25 of-state placement remains in the best interest of the child. Cal. Gov’t Code §
26 7572.55(c). This plan must be documented in the court record for wards and
27 dependents of the court. *Id.*

1 **C. Responsibility for services under IDEA and AB 3632**

2 85. Each Local Education Agency is responsible for providing for the
3 special education of children with disabilities within its respective jurisdiction. 34
4 C.F.R. § 300.201.

5 86. Local Education Agencies and the county departments of mental health
6 are jointly responsible for AB 3632 services, including assessment and referral. *E.g.*,
7 Cal. Gov't Code §§ 7572, 7573 and 7576(a).

8 87. When a county department of mental health fails or refuses to provide or
9 pay for special education and related services, the Local Education Agency must
10 provide and/or pay for such services. 20 U.S.C. § 1412(a)(12)(B)(ii). The Local
11 Education Agency may later claim reimbursement from the county department of
12 mental health. *Id.*

13 88. California Department of Education is directly responsible for providing
14 students a free appropriate public education when Local Education Agencies and
15 county departments of mental health are “unable or unwilling” to provide a free
16 appropriate public education.

17
18 **D. Federal IDEA Funding**

19 89. In return for its promise to comply with IDEA, California receives
20 approximately \$1.2 billion in federal Part B funds under IDEA. IDEA contemplates
21 three uses of Part B funds: state administration, state activities, and Local Education
22 Agency sub grants. These funds are subject to three key limitations: the prohibition
23 on supplanting, the state maintenance of support requirement, and the Local
24 Education Agency maintenance of effort requirement.

25 //

26 90. Each state may reserve a small portion of federal funds for
27 administration and coordination of activities under IDEA, so-called state
28

1 administration funds. 34 C.F.R. § 300.704(a). California reserves roughly \$1.8
2 million per year for state administration.

3 91. Each state may further reserve 9% to 10.5% of federal funds for state
4 activities. 34 C.F.R. § 300.704(b). State activity funds can be used “[t]o assist local
5 educational agencies in providing ... appropriate mental health services for children
6 with disabilities.” 34 C.F.R. § 300.704(b)(4)(iii). States have broad discretion in
7 determining how these funds are used, so long as they are used to carry out the
8 activities in section 300.704(b). *State-Level Activities (§ 300.704)*, 71 Fed. Reg.
9 46,739 (August 14, 2006).

10 92. The remaining federal funds, roughly 90% of the Part B grant and well
11 over \$1 billion per year for California, must be distributed in sub grants to Local
12 Education Agencies. 34 C.F.R. § 300.705.

13 93. A state may not use Part B funds to supplant the level of other Federal,
14 State and local funding for activities under Part B. 34 C.F.R. § 300.162(c).

15 94. The “maintenance of effort” requirement holds that Local Education
16 Agencies must not reduce the amount of local spending on special education below
17 the amount of the preceding year. 34 C.F.R. § 300.203(a).

18 95. Finally, the “maintenance of support” requirement holds that a state
19 must not reduce the amount of state financial support for special education below the
20 amount of the preceding year. 34 C.F.R. § 300.163(a). Waivers are allowed for
21 exceptional circumstances, but *only* if the state is able to *prove* that *all* children have
22 a free appropriate public education available to them. 34 C.F.R. § 300.163(c). A
23 state that fails to maintain support faces a reduction in Part B funds equal to the
24 amount by which the state failed to maintain. 34 C.F.R. § 300.163(b).

25 96. The Local Education Agency maintenance of effort and state
26 maintenance of support clauses and analyses are frequently confused. The federal
27 Office of Special Education Programs notes that “[t]he comparison, for [Local
28 Education Agency maintenance of effort] compliance, is expenditures from year to

1 year. For [state maintenance of support], the comparison is the amount of State
2 financial support provided (made available) for special education and related services
3 from year to year, regardless of the amount actually expended.” *OSEP Memorandum*
4 *to Chief State School Officers*, December 2, 2009, 53 IDELR 302.

5 97. The federal Office of Special Education Programs also explains that
6 “support” for state maintenance of support purposes includes all federal, state, and
7 local financial support of special education, not just support that is provided directly
8 through the state education agency. For example:

9 “if the State Department of Health provides psychological counseling or other
10 mental health services to children with disabilities pursuant to their IEPs, the
11 cost of such services would also be included in the calculation under 34 C.F.R.
12 § 300.163. In other words, a State needs to include in its calculation of 'State
13 financial support for special education and related services' funds other
14 agencies provide to the [state education agency] for such services, funds other
15 agencies provide directly to Local Education Agencies for the services, and
16 funds other agencies directly pay to staff or contractors for the delivery of the
17 services pursuant to an IEP.” *Id.*

18

19 **E. Proposition 1A**

20 98. AB 3632 imposes a mandate on county departments of mental health
21 within the meaning of the California Constitution. Cal. Const. art. XIII B § 6

22 99. Whenever California mandates a new program or higher level of service
23 on a local government, the state must provide sufficient funds to reimburse local
24 government agencies. Cal. Const. art. XIII B § 6 (a). Local government agencies,
25 including Local Education Agencies – like Defendants Los Angeles Unified School
26 District, Torrance Unified School District, and Los Angeles County Office of
27 Education – and county departments of mental health like defendant Los Angeles
28 County Department of Mental Health may file claims with the California

1 Commission on State Mandates for reimbursement of expenses incurred in
2 performing state mandated activities. Cal. Gov't. Code §§ 17500 *et seq.*

3 100. In 2004, California voters passed Proposition 1A which amended Article
4 XIIIIB to require that the *Legislature* must either appropriate the full cost of
5 outstanding mandate claims each year or suspend operation of a mandate for the
6 upcoming fiscal year. Cal. Const. art. XIIIIB § 6 (b)(1). “[T]he California
7 Legislature ... consists of the Senate and Assembly.” Cal Const, art. IV § 1.

8 101. When the Legislature removes funding from a mandated program, a
9 local government agency must file for declaratory relief in the California Superior
10 Court in Sacramento County to declare the mandate unenforceable and enjoin its
11 enforcement. Cal. Gov't. Code § 17612. Prior to so doing, the mandate remains in
12 full force and effect.

13 102. The exclusive avenues for relief from state mandates after Proposition
14 1A are: (1) a statement from the *Legislature* that the mandate is completely unfunded;
15 (2) the *Legislature's* failure to *appropriate* reimbursement for the previous year's
16 mandate claims combined with the *Legislature's* determination that the mandate is
17 suspended; or (3) a declaration by the Superior Court in the County of Sacramento
18 that program is an unfunded mandate.

19
20 **F. Federal Anti-Discrimination Laws**

21 103. Title II of the Americans with Disabilities Act provides that “no
22 qualified individual with a disability shall, by reason of disability, be excluded from
23 participation in or be denied the benefits of services, programs, or activities of a
24 public entity or be subjected to discrimination by such entity.” 42 U.S.C. § 12132.

25 104. In enacting the Americans with Disabilities Act, Congress found that
26 “discrimination against individuals with disabilities persists in such critical areas
27 as . . . education . . . [and] health services.” 42 U.S.C. § 12101(a)(3)

28 //

1 105. Section 504 of the Rehabilitation Act of 1973, on which the Americans
2 with Disabilities Act is modeled, sets forth similar protections against discrimination
3 by recipients of federal funds, such as Defendants herein. 29 U.S.C. §§ 794-794a.

4 106. Regulations implementing Title II of the Americans with Disabilities
5 Act provide that: “No qualified individual with a disability shall, on the basis of
6 disability, be excluded from participation in or be denied the benefits of the services,
7 programs, or activities of a public entity, or be subjected to discrimination by any
8 public entity.” 28 C.F.R. § 35.130 (a). Regulations implementing Section 504
9 parallel the Americans with Disabilities Act regulations for recipients of federal
10 funding. 34 C.F.R. § 104.4(b)(4); 45 C.F.R. § 84.4(b)(4).

11 107. Regulations implementing Title II of the Americans with Disabilities
12 Act further provide that: “A public entity, in providing any aid, benefit, or service,
13 may not, directly or through contractual, licensing, or other arrangements, on the
14 basis of disability— (i) Deny a qualified individual with a disability the opportunity
15 to participate in or benefit from the aid, benefit, or service; (ii) Afford a qualified
16 individual with a disability an opportunity to participate in or benefit from the aid,
17 benefit, or service that is not equal to that afforded others; (iii) Provide a qualified
18 individual with a disability with an aid, benefit, or service that is not as effective in
19 affording equal opportunity to obtain the same result, to gain the same benefit, or to
20 reach the same level of achievement as that provided to others; (iv) Provide different
21 or separate aids, benefits, or services to individuals with disabilities or to any class of
22 individuals with disabilities than is provided to others unless such action is necessary
23 to provide qualified individuals with disabilities with aids, benefits, or services that
24 are as effective as those provided to others. 28 C.F.R. § 35.130 (b)(1).

25 108. Regulations implementing Section 504 parallel the Americans with
26 Disabilities Act regulations for recipients of federal funding. 34 C.F.R. § 104.4(b)(4);
27 45 C.F.R. § 84.4(b)(4).

28 //

1 109. Regulations implementing Title II of the Americans with Disabilities
2 Act further provide: “A public entity may not, directly or through contractual or other
3 arrangements, utilize criteria or other methods of administration: (i) that have the
4 effect of subjecting qualified individuals with disabilities to discrimination on the
5 basis of disability; [or] (ii) that have the purpose or effect of defeating or
6 substantially impairing accomplishment of the objectives of the entity’s program with
7 respect to individuals with disabilities; [or] (iii) that perpetuate the discrimination of
8 another public entity if both public entities are subject to the same administrative
9 control or are agencies of the same State.” 28 C.F.R. § 35.130(b)(3).

10 110. Regulations implementing Section 504 parallel the Americans with
11 Disabilities Act regulations for recipients of federal funding. 34 C.F.R. § 104.4(b)(4);
12 45 C.F.R. § 84.4(b)(4).

13 111. Americans with Disabilities Act regulations further provide: “A public
14 entity shall make reasonable modifications in policies, practices, or procedures when
15 the modifications are necessary to avoid discrimination on the basis of disability,
16 unless the public entity can demonstrate that making the modifications would
17 fundamentally alter the nature of the service, program, or activity.” 28 C.F.R.
18 § 35.130(b)(7).

19 112. Americans with Disabilities Act regulations further provide: “A public
20 entity shall administer services, programs, and activities in the most integrated setting
21 appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R.
22 § 35.130(d).

23 113. Similar Section 504 regulations provide that services and benefits must
24 be provided “in the most integrated setting appropriate to the person’s needs.” 34
25 C.F.R. § 104.5(b)(2); 45 C.F.R. § 84.4(b)(2). In addition, Section 504 regulations
26 specify that recipients that operate public elementary or secondary education
27 programs and activities and that comply with the IDEA meet their obligations under
28 Section 504 as well. 34 C.F.R. Subpart D; 45 C.F.R. Subpart D.

1 **Allegations Common to All Class Members**

2 114. Plaintiffs and the Class, students with disabilities, are entitled to special
3 education services and related mental health services under the Individuals with
4 Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* In California, mental
5 health services necessary to enable a student with a severe mental health condition or
6 illness to benefit educationally are known as AB 3632 services.

7 115. California receives approximately \$1.2 billion annually in return for its
8 assurance to the federal Department of Education that it will comply with IDEA and
9 ensure that a free appropriate public education is available to every child with a
10 disability.

11 116. California has relied on AB 3632 to ensure that a free appropriate public
12 education is available to children with severe mental illness for almost 25 years.

13 117. While AB 3632 has not been perfect, it did establish a generally clear
14 assignment of responsibility between Local Education Agencies and county
15 departments of mental health regarding provision of AB 3632 services.

16 118. For several years, California has funded AB 3632 through four primary
17 funding streams: federal IDEA state activity money, social services foster care
18 money, California Department of Mental Health categorical money, and county
19 mandate reimbursements. The following table below summarizes the budget
20 allocations for the 2007-2008, 2008-2009, and 2009-2010 fiscal years:

21 **Table 1: AB 3632 Funding (in Millions)**

22

	2007-2008	2008-2009	2009-2010
23 Federal State Activity Funds	\$69	\$69	\$69
24 Social Services Foster Care Funds	\$48	\$51	\$59
25 California Department of Mental Health Categorical Funds	\$52	\$104	\$52

26
27
28

Mandate Reimbursements	\$82	\$36	n/a ³
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119. The fiscal year 2010-2011 budget was not passed until October 8, 2010, and was preceded by several months of revision and negotiation.

120. The Governor proposed suspending the AB 3632 mandate in May 2010, but this proposal was roundly rejected. Nonetheless, his May 2010 proposal would have retained a total of \$139 million to support AB 3632 services: \$69 million in state activity funds and \$70 million in social services foster care funds.

121. The California Legislative Analyst's Office reviewed the Governor's proposal in June 2010. The Legislative Analyst's Office determined that "Suspending AB 3632 would be temporary, confusing, and disruptive." They noted that the "[p]roposal does not address the significant transitional issues associated with the change" from AB 3632 mental health services to purely Local Education Agency provided services. Finally, the Office expressed concern that "Eliminating AB 3632 funding could violate federal special education spending maintenance-of-effort (MOE) [*sic.*] requirements."⁴ The Office proposed a work group be created that would function for at least one year in order to plan any transition of AB 3632 responsibilities to the Local Education Agencies.

122. The California Alliance of Child and Family Services represents more than 140 nonprofit agencies that provide services, including AB 3632 services, to vulnerable children and families throughout California. While the Alliance disagreed with the Legislative Analyst's Office's funding proposal, the Alliance supported the Office's proposal of a work group, but estimated that three years to plan and

³ The amount of mandate claims disbursed for fiscal year 2009-2010 is unknown to plaintiffs at the time of filing.

⁴ The Legislative Analyst's Office appears to have been referring to state maintenance of support, as described above.

1 implement any transition would be more realistic than the one year proposed by the
2 Office.

3 123. The California Council of Community Mental Health Agencies is a
4 statewide trade association for primary providers of mental health and substance
5 abuse services in California. The Council also opposed a shift of responsibility to
6 schools without comprehensive reform, and “a phase in period to make sure we get it
7 right.” The Council noted in a June 29, 2010 letter to the California Budget
8 Conference Committee that, prior to AB 3632, “California had the worst school-
9 based mental health system in the country.” It noted that less than ten percent of
10 students who needed Local Education Agency-based mental health services were
11 identified and receiving proper services. It noted that any transition of responsibility
12 must be done over time and should be “tested” in some jurisdictions before statewide
13 implementation.

14 124. The California Budget Conference Committee, a joint committee
15 consisting of members of both the Assembly and Senate budget committees
16 concurred that time was needed if any transition out of the AB 3632 model was to be
17 made. While the Committee reduced funding from the Legislature’s original
18 proposal, it still included \$272 million in support, including \$133 million to fully
19 reimburse outstanding mandate claims and a small appropriation to fund pilot
20 programs for Local Education Agencies that wanted to attempt to provide mental
21 health services without county department of mental health support.

22 125. The Legislature, on October 8, 2010, appropriated \$209 million for AB
23 3632 for the 2010-2011 fiscal year: \$76 million in federal state activity funds and
24 \$133 million to fully reimburse outstanding mandate claims to the county
25 departments of mental health.

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27 //
28 //

1 126. In spite of the months of negotiations, which had resulted in cuts of over
2 \$100 million for fiscal year 2010-2011 services, and regardless of whether he had
3 authority to do so, defendant Governor Schwarzenegger vetoed the \$133 million,
4 adding simply that “[t]his mandate is suspended.”

5 127. Defendant Governor Schwarzenegger’s veto and statement, made
6 without constitutional or statutory authority, eviscerated the former clarity in
7 responsibility for federally mandated mental health services; in the words of the
8 Special Education director for the California Department of Education: “the
9 Governor’s unconscionable cuts to mental health services to students under the
10 provisions of AB 3632 *have created a state of chaos.*” (*emphasis added*).

11 128. The California Mental Health Directors Association is a non-profit
12 advocacy association representing the directors of the county departments of mental
13 health. It is viewed as a leader for county departments of mental health, especially
14 when the California Department of Mental Health fails to provide guidance and
15 support.

16 129. On October 12, 2010 the California Mental Health Directors Association
17 issued an advisory letter to the county departments of mental health noting that “[t]he
18 Governor’s action three months into the current fiscal year *leaves many unanswered*
19 *questions* for counties, schools, community-based providers, parents and students
20 related to this special education program.” (*emphasis added*).

21 130. The California Mental Health Directors Association advised its member
22 county departments of mental health to consider one of three courses of action: (1)
23 stop accepting new referrals and only provide services to children outside the IEP
24 process; (2) identify children who are Medi-Cal eligible and continue to serve them
25 outside the IEP process while engaging special education local plan areas to
26 determine if they will reimburse county departments of mental health for services
27 provided during the transition of responsibility to Local Education Agencies; or (3)
28 immediately seek to enter into a memorandum of understanding with Local

1 Education Agencies and special education local plan areas on how to transition
2 services.

3 131. The California Mental Health Directors Association advises county
4 departments of mental health to “immediately” contact services providers regarding
5 the county department of mental health’s planned course of action. The Director’s
6 Association’s letter does not even contemplate notifying parents and children.

7 132. Defendant California Department of Education acknowledges that “the
8 Governor’s unconscionable cuts to mental health services to students under the
9 provisions of AB 3632 have created a state of chaos.”

10 133. Defendant California Department of Mental Health has done *nothing* to
11 address this crisis, and the only guidance provided to the county departments of
12 mental health has been the aforementioned letter from the California Mental Health
13 Director Association.

14 134. The majority of counties has stopped accepting new referrals and is
15 refusing to provide services to pending or new child clients in need. For existing
16 clients, they have reported that they may cut services at any time.

17 135. AB 3632 creates a joint service delivery model that imposes mutual
18 requirements on Local Education Agencies and county departments of mental health
19 to assess, plan for, deliver and fund special education mental health services.

20 136. Because defendant Los Angeles County Department of Mental Health
21 refuses to participate, provision of mental health services in Los Angeles County is at
22 a near-standstill. Defendants Los Angeles Unified School District and Los Angeles
23 County Office of Education have suspended any pending AB 3632 assessment IEPs,
24 cancelled AB 3632 review and implementation IEPs, and refused to implement AB
25 3632 services that were not in place prior to October 12, 2010.

26 137. Like all members of the class, class representative A.C.’s life has been
27 put on hold due to the Defendants’ collective failure to assume responsibility for the
28 mental health services to which he is entitled under IDEA. While A.C. should be

1 receiving the treatment he needs and to which he is federally entitled at a residential
2 placement in Devereux, Texas, he instead detrimentally languishes in juvenile hall
3 where he is not appropriately treated in accordance with his treating and other
4 professionals' recommendations, denied a free appropriate public education, and is at
5 risk of prosecution for an alleged manifestation of his untreated mental illness.

6 138. Defendants' actions and inactions toward class representative A.C., and
7 toward the class in general, all stem solely from the current dispute among the
8 Defendants over who is responsible for providing and funding services in the wake of
9 the defendant Governor's actions.

10 139. Further, as it is impossible for any residential placement to be made
11 without county department of mental health participation under California law, the
12 lack of current structure and the chaos created by the Governor's actions has halted
13 federally required residential placements for class members who require them.

14 140. By abruptly vetoing all funding for AB 3632 services and terminating
15 the mandate on county Mental Health Departments to provide these services, State
16 Defendants have discriminated against students with mental disabilities in violation
17 of the Americans with Disabilities Act and Section 504, and have denied these
18 students meaningful access to, and an opportunity to participate in, the educational
19 programs and activities offered to other students in California.

20 141. State Defendants' discriminatory actions include changing the method of
21 providing services without ensuring that adequate educationally-related mental health
22 services will be provided for Plaintiffs, including (a) terminating or failing to provide
23 timely and appropriate education services to Plaintiffs; (b) failing to allow a
24 transition period during which county departments of mental health and Local
25 Educational Agencies could develop the most appropriate means to restructure from
26 AB 3632 to another system without gaps in services; (c) failing to inform county
27 departments of mental health, local educational agencies, and students with
28 psychiatric disabilities, their parents and/or guardians in advance that responsibility

1 for the provision of related mental health services will change, so that students and
2 the agencies have sufficient time to consider, modify and update services and IEPs.

3 142. State Defendants' discriminatory actions are also reflected in their
4 funding allocations, which include (a) reducing overall state support for special
5 education services below the minimum required to receive matching federal funds
6 under IDEA, with the result that the necessary services and programs required to
7 provide students with psychiatric disabilities with nondiscriminatory access to
8 education will be further reduced or eliminated due to the loss of federal IDEA funds;
9 (b) failing provide sufficient funds to ensure that educationally-related mental health
10 services are actually available to students, and (c) terminating funding for AB 3632
11 services without ensuring that adequate educationally-related mental health services
12 still will be provided for Plaintiffs.

13 143. By failing to provide Plaintiffs with the educationally-related mental
14 health services that they require and to which they are entitled, Local Educational
15 Agencies and county departments of mental health - including Defendants Los
16 Angeles County Department of Mental Health, the Los Angeles County Office of
17 Education and the Los Angeles and Torrance Unified School Districts - have
18 discriminated against students with mental disabilities in violation of the Americans
19 with Disabilities Act and Section 504, and have denied these students meaningful
20 access to, and an opportunity to participate in, the educational programs and activities
21 offered to other students in California.

22 144. The discriminatory actions of the local Defendants include terminating
23 or failing to provide timely and appropriate education services to Plaintiffs.

24 145. As a result of Defendants' discriminatory actions, Plaintiffs will be
25 placed at risk of placement in a more restrictive, less integrated setting than the
26 placement to which they would have access if provided with adequate AB 3632
27 services in a timely manner.

28 //

1 146. Two weeks into this crisis, California Department of Education has done
2 nothing to meet its duty to ensure that a free appropriate public education is available
3 to every child. The only action California Department of Education has taken thus
4 far is to reissue a six-year-old memorandum on the ultimate responsibility of Local
5 Education Agencies to provide services. That substance of that memorandum was
6 already publicly available and has not resolved disputes regarding responsibility for
7 serving Plaintiffs.

8 147. Instead of ensuring that a free appropriate public education is available
9 to all children in the class, California Department of Education has elected to wait for
10 the Legislature to fix the problem. As the California Department of Education notes,
11 "this will not be a quick fix:" the Legislature will not reconvene until January 2011.
12 That is too long for these children with severe disabilities to wait.

13
14 **CAUSES OF ACTION**

15 **First Claim for Relief**

16 **[Against All Defendants other than Governor Schwarzenegger]**

17 **Violation of 20 U.S.C. Sections 1400 *et seq.***

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

20 149. Under the IDEA, Plaintiffs and the Class are entitled to receive a free
21 appropriate public education and to receive the related services and supports they
22 need to benefit from their education, including educationally-related mental health
23 services. 20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34(c); 300.104.

24 150. In direct contradiction of their joint and several duties to ensure that a
25 free appropriate public education is available to Plaintiffs and the Class, Defendants
26 have created a non-system that denies Plaintiffs and the Class the free appropriate
27 public education and the related services and supports they need to benefit from their
28

1 education. There is no structure or system currently in place to ensure that the
2 educationally-related mental services are provided as required by the IDEA.

3 151. Defendants California Health and Human Services Agency, California
4 Department of Mental Health and county Departments of Mental Health are denying
5 availability of a free appropriate public education to class members by failing to
6 comply with the IDEA responsibilities that have been assigned to them through AB
7 3632 to provide educationally-related mental health services.

8 152. Defendant Local Education Agencies, namely Los Angeles Unified
9 School District, Torrance Unified School District and Los Angeles County Office of
10 Education are denying class members a free appropriate public education by failing
11 and refusing to provide educationally-related mental health assessments and related
12 services necessary for class members to receive a free appropriate public education,
13 even though defendant Local Education Agencies retain responsibility for the
14 provision of free appropriate public education and to provide these services to
15 Plaintiffs and the Class at all times under the IDEA.

16 153. Defendant California Department of Education is ultimately responsible
17 for the education of Plaintiffs and the Class and is required to take all necessary steps
18 to solve the problem and ensure that these educationally-related mental health
19 services are not disrupted, discontinued or denied.

20 154. Yet California Department of Education has utterly failed its duty to
21 ensure that a free appropriate public education is available to Plaintiffs. Because
22 California Department of Education has failed to adequately to allocate responsibility
23 among local agencies and because California Department of Education is ultimately
24 responsible for the provision of free appropriate public education when a Local
25 Education Agency fails to provide it, California Department of Education is directly
26 responsible for providing a free appropriate public education to all class members.

27 //

28 //

1 155. As a result of the actions and inactions of these Defendants, Plaintiffs
2 are being denied vital services to which they are entitled under the law, and without
3 which they are incapable of receiving and benefiting from a free appropriate
4 education. Without access to these services the Plaintiffs will suffer or are at
5 imminent risk of suffering irreparable harm.

6
7 **Second Claim for Relief**
8 **[Against All Defendants]**

9 **Violation of the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq.**

10 156. The Plaintiffs incorporate by reference paragraphs 1 through 147 of this
11 Complaint as though fully set forth herein.

12 157. Each named Plaintiff and Class Member is a “qualified individual with a
13 disability” within the meaning of the Americans with Disabilities Act in that they
14 have a physical or mental impairment that substantially limits one or more major life
15 activities, have a record of such impairment, or are regarded as having such an
16 impairment. 42 U.S.C. § 12102; 28 C.F.R. § 35.104.

17 158. Defendants’ actions and omissions described in Paragraphs 140 to 145
18 above result in discrimination against all Plaintiffs by failing to comply with
19 Defendants’ statutory and regulatory obligations, as set forth above in Paragraphs
20 103-104, 106-107, 109 and 112 above.

21 159. Defendants’ actions and omissions violate Title II of the Americans with
22 Disabilities Act.

23 160. Plaintiffs are suffering or are at imminent risk of suffering irreparable
24 harm.

25 //
26 //
27 //
28 //

1 **Third Claim For Relief**

2 **[Against All Defendants]**

3 **Violation of Section 504 of the Rehabilitation Act**

4 161. Plaintiffs incorporate by reference paragraphs 1 through 147 of this
5 Complaint as though fully set forth herein.

6 162. Each Plaintiff and Class Member is a “qualified individual with a
7 disability” within the meaning of Section 504. 29 U.S.C. § 794(a); 29 U.S.C. §
8 705(20)(B); 45 C.F.R. § 84.3; 34 C.F.R. § 104.3

9 163. Defendants’ actions and omissions described in Paragraphs 140 to 145
10 above have discriminated against all Plaintiffs by failing to comply with their
11 statutory and regulatory obligations, as set forth above in Paragraphs 105, 108, 110,
12 and 113 above.

13 164. Defendants’ actions and omissions violate Section 504 of the
14 Rehabilitation Act.

15 165. Plaintiffs are suffering or are at imminent risk of suffering irreparable
16 harm.

17
18 **REQUEST FOR RELIEF**

19 Plaintiffs request relief as follows:

20 **A.** A temporary restraining order maintaining the status quo regarding the
21 provision of AB3632 services in effect prior to October 8, 2010.

22 **B.** An order enjoining Defendants, jointly and severally, from

23 a. failing to provide or pay for educationally-related mental health services
24 for Plaintiffs and other similarly situated students with mental
25 disabilities.

26 b. discriminating against Plaintiffs and other similarly situated students
27 with mental disabilities in the provision of educational services.

- 1 C. An order enjoining Defendant California Department of Education from failing
2 to carry out its duty to ensure that all Local Educational Agencies comply with
3 34 C.F.R. § 300.154(b)(2) and to monitor compliance with this requirement
4 and from failing to carry out its duty to ensure that all children in the state
5 receive a free and appropriate public education as required by IDEA.
- 6 D. A declaration that Defendants' actions violate Plaintiffs' rights under IDEA.
- 7 E. A declaration that Defendants' policies, practices, acts and omissions violate
8 Plaintiffs' rights under the American with Disabilities Act and Section 504 of
9 the Rehabilitation Act, by, *inter alia*: (i) Denying Plaintiffs their entitlement to
10 services under the IDEA, and thus violating the 504; and (ii) Discriminating
11 against Plaintiffs on the basis of disability for all of the reasons set forth above.
- 12 F. Costs of suit pursuant to 28 U.S.C. § 1920;
- 13 G. Attorneys' fees pursuant to 20 U.S.C. § 1415 and any other appropriate
14 statutory basis; and
- 15 H. Such other relief as this Court deems just and proper.

16
17 DATED: October 21, 2010

Respectfully submitted,

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