

1 SID WOLINSKY (Bar No. 33716)
 JOSHUA KONECKY (Bar No. 182897)
 2 RHODA BENEDETTI (Bar No. 192606)
 ALISON M. AUBRY (Bar No. 194107)
 3 DISABILITY RIGHTS ADVOCATES
 449 15th Street, Suite 303
 4 Oakland, California 94612
 Telephone: (510) 451-8644
 5 Facsimile: (510) 451-8511
 TTY: (510) 451-8716
 6 Email: general@dralegal.org

7 ELIZABETH J. CABRASER (Bar No. 83151)
 MORRIS A. RATNER (Bar No. 157554)
 8 EVE H. CERVANTEZ (Bar No. 164709)
 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
 9 Embarcadero Center West
 275 Battery Street, 30th Floor
 10 San Francisco, CA 94111
 Telephone: (415) 956-1000
 11 Facsimile: (415) 956-1008
 Email: mratner@lchb.com

12 Attorneys for Plaintiffs

13
 14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA

16 JULEUS CHAPMAN, by his guardian ad litem
 17 MONIQUE CHAPMAN; RYAN SMILEY, by
 his guardian ad litem KRISTA SMILEY;
 18 JENNIFER LYONS, by her guardian ad litem
 SUSAN LYONS, on behalf of themselves and
 19 all individuals similarly situated, LEARNING
 DISABILITIES ASSOCIATION OF
 20 CALIFORNIA,

CASE NO.
COMPLAINT
CLASS ACTION
DEMAND FOR JURY TRIAL

21 Plaintiffs,

22 v.

23 CALIFORNIA DEPARTMENT OF
 EDUCATION; DELAINE EASTIN,
 Superintendent of Public Education;
 24 FREMONT UNIFIED SCHOOL DISTRICT;
 SHARON JONES, Superintendent of Fremont
 25 Unified School District,

26 Defendants.

27 _____/

28 **Complaint**

Juleus Chapman et al. v. California Department of Education et al.

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 449 Fifteenth Street, Suite 303
 Oakland, CA 94612-2821
 (510) 451-8644

INTRODUCTION

- 1
2 1. This action arises out of Defendant CALIFORNIA DEPARTMENT OF EDUCATION’S
3 intentional discrimination against hundreds of thousands of students with disabilities in
4 the California public school system. Defendants are, without adequate preparation or
5 safeguards, hastily forcing the California High School Exit Exam (sometimes hereafter
6 referred to as the “Exit Exam” or “HSEE”) upon these students, destroying and ignoring
7 their educational attainments and self esteem, flagrantly violating their rights, and
8 damaging their academic, professional and employment opportunities forever.
- 9 2. In formulating and administering the High School Exit Exam, Defendants failed and
10 refused to take into account the needs of children with disabilities. As a result, the new
11 exams discriminate against children with disabilities in numerous ways.
- 12 3. For example, Defendants are required under federal law to provide an “alternate
13 assessment” to the California High School Exit Exam. In flagrant violation of that
14 requirement, Defendants have stated that they will not develop an alternate assessment,
15 and instead are requiring all students to take the High School Exit Exam, regardless of
16 whether an alternate assessment would be a more appropriate measure of the students’
17 knowledge, skills and abilities. Defendants are fully aware of their legal obligation to
18 provide an alternate assessment to disabled students. Many students with disabilities
19 should participate in an alternate assessment rather than the California High School Exit
20 Exam because an alternate assessment is the only method by which to provide an accurate
21 measure of the students’ abilities and skills.
- 22 4. In addition, Defendants have failed to establish any procedure for students with
23 disabilities to request accommodations on the High School Exit Exam. As a result,
24 students, parents, and school administrators do not know what process should be
25 followed to request accommodations, and there are no uniform standards for
26 consideration of, or granting of, accommodation requests.
- 27 5. Defendants have also failed to establish any procedure to review denials of
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1 accommodation requests. Thus, students who are denied accommodations that they need
2 on the Exit Exam are unable to appeal these decisions, regardless of how incorrect or
3 arbitrary the denials may be.

4 6. The High School Exit Exam further discriminates against students with disabilities
5 because these children have not been prepared by their administrators or teachers to take
6 the Exit Exam. Throughout their educations, many of these children have studied an
7 individualized curriculum set forth in their Individualized Education Programs (IEPs) or
8 "Section 504" education plans. Now, on the High School Exit Exam these children are
9 tested on material that they have never been taught. As noted by an independent
10 consultant hired by Defendants to evaluate the Exit Exam, the process of aligning
11 students' IEPs or Section 504 plans to match the curriculum tested on the Exit Exam is a
12 lengthy one that requires a lead time of at least several years. Despite the independent
13 consultant's recommendation that Defendants institute measures to modify disabled
14 students' IEPs and Section 504 Plans to align with the curriculum tested on the Exit
15 Exam, Defendants have taken no such steps.

16 7. The High School Exit Exam has two parts: English and mathematics. The English
17 portion of the test, which includes multiple choice questions and two essays, addresses
18 State Board of Education standards through grade ten. The mathematics test covers
19 arithmetic, statistics, data analysis and probability, number sense, measurement and
20 geometry, mathematical reasoning, and algebra. Students may take the test in ninth grade,
21 and will be required to take the test in tenth grade, and then every year thereafter (up to
22 three times per year) until they pass both portions of the test.

23 8. The consequences to students of failing to pass the High School Exit Exam are profound.
24 Defendants will require all public school students in the Class of 2004 to pass the High
25 School Exit Exam in order to graduate from high school. Regardless of how bright and
26 talented students are, how hard they work, or how high achieving they may be, students
27 who do not pass the exam will not graduate from high school, will not receive a regular
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1 diploma, and will be severely disadvantaged in applying for employment and for college
2 admission.

3 9. Without the proper accommodations (or alternative assessments, if appropriate), and
4 without modification of their specialized curriculum to include the subject matter being
5 tested, it is likely that a great majority of California students with disabilities will not be
6 able ever to pass the Exit Exam, no matter how many times the test is given to them, and
7 therefore will not be able to graduate from high school. Instead, these students will
8 receive an inferior “Certificate of Attendance” or “Certificate of Completion” that is not
9 equivalent to a high school diploma.

10 10. By requiring children with disabilities to take discriminatory and unfair tests with high
11 stakes consequences and no alternate assessments, Defendants have created a dual track
12 system of public education in which otherwise qualified students with disabilities will be
13 relegated to the lower tier and prevented from pursuing academic, professional and
14 employment opportunities simply because of their disabilities.

15 11. In sum, the High School Exit Exam discriminates against students with disabilities
16 because, among other problems, (1) there is no alternate assessment, (2) there is no
17 procedure for requesting accommodations on the Exam, (3) there is no procedure for
18 appealing denials of accommodation requests, and (4) the Exam tests disabled students on
19 material they have never been taught.

20 12. Fully aware of the defects of the High School Exit Exam as it affects students with
21 disabilities, Defendants have nevertheless chosen to proceed with the test, and already
22 administered the exam in March 2001. In contrast, other states such as Oregon and
23 Massachusetts, have taken and are taking extensive steps to ensure that their statewide
24 assessment systems do not discriminate against students with disabilities.

25 13. For example, Oregon recently settled a lawsuit and agreed to adopt the recommendations
26 of an expert panel commissioned to study Oregon’s testing system to evaluate whether a
27 similar high stakes testing system implemented there discriminated against students with
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1 disabilities. Under the settlement, Oregon will (a) develop alternate assessments for
2 disabled students, (b) allow extensive accommodations for disabled students, (c) provide
3 comprehensive information and training to parents, teachers, administrators, and IEP and
4 504 Plan team members regarding the assessment system and participation options for
5 students with disabilities, (d) ensure that the IEP and 504 teams individually assess every
6 disabled student to determine how that student should participate in the assessment
7 system, (e) institute a problem resolution and appeals process by which students can
8 appeal decisions regarding accommodation requests and participation in an alternate
9 assessment, and (f) conduct ongoing research regarding accommodations and the validity
10 and reliability of the assessment system for students with disabilities.

11 14. Similarly, Massachusetts recently revised its regulations concerning its high school exit
12 exam, the Massachusetts Comprehensive Assessment System (“MCAS”), in response to
13 concerns raised by disability advocacy groups that the test discriminated against disabled
14 students. These new regulations provide that IEP and 504 teams will determine whether a
15 disabled student should participate in an alternate assessment or a standard assessment,
16 and, if a student takes the standard assessment, what accommodations he or she should
17 use on the tests. The list of accommodations available on the test is extensive. The
18 regulations provide specific guidance to IEP and 504 teams regarding the factors to be
19 considered when making decisions about how disabled students participate in the MCAS.
20 The regulations also explicitly note that disabled students who do not have an IEP or 504
21 Plan may request accommodations.

22 15. Unlike Oregon and Massachusetts, Defendants have knowingly disregarded the concerns
23 that have been raised by their own expert consultant that the Exit Exam discriminates
24 against disabled students. Additionally, Plaintiffs have on numerous occasions contacted
25 the Governor’s office to inform the State of the multiple deficiencies in the High School
26 Exit Exam, and to seek a constructive resolution to the problem. Defendants have never
27 provided a substantive response to Plaintiffs, and as a result, Plaintiffs are forced to file
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1 this lawsuit in order to protect the rights of students with disabilities.

2 16. Without immediate relief from the Court, Plaintiff students will be irreparably harmed in
3 that they will be denied numerous academic, professional and employment opportunities,
4 may not graduate from high school, and will experience severe damage to their self-
5 esteem and emotional well-being.

6 **JURISDICTION**

7 17. The Court has subject matter jurisdiction over Plaintiffs’ federal law claims under 28
8 U.S.C. §§ 1331 and 1343.

9 18. The Court has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201
10 and 2202.

11 19. Plaintiffs are not required to exhaust the administrative procedures set forth in the
12 Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq., because
13 they are challenging policies and practices of general applicability that are contrary to
14 numerous federal laws (including IDEA) and because Plaintiffs cannot obtain adequate
15 relief through administrative remedies.

16 20. Venue is proper in this Court under 28 U.S.C. § 1391(b). All Defendants reside in the
17 State of California, and Defendants FREMONT UNIFIED SCHOOL DISTRICT and
18 SHARON JONES reside in the Northern District of California. Moreover, a substantial
19 part of the events giving rise to this action occurred in the Northern District of California.

20 **INTRADISTRICT ASSIGNMENT**

21 21. Assignment of this action to either the San Francisco or Oakland Divisions is proper
22 because a substantial part of the events or omissions which give rise to Plaintiffs’ claims
23 occurred in Alameda County.

24 **THE PARTIES**

25 22. Plaintiff Juleus Chapman is a thirteen year old boy with severe dyslexia. Juleus attends
26 Hopkins Jr. High School in Fremont, California and will take the High School Exit Exam
27 during the 2001-2002 school year when he will be in the ninth grade. Juleus’ mother,
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1 Monique Chapman, has filed simultaneously with this Complaint a petition with the
2 Court to act as his guardian ad litem.

3 23. Plaintiff RYAN SMILEY is a fourteen year old boy with dyslexia and dysgraphia. Ryan
4 attends Crescenta Valley High School in La Crescenta, California, and took the High
5 School Exit Exam in March 2001. Ryan's mother, Krista Smiley, has filed
6 simultaneously with this Complaint a petition with the Court to act as his guardian ad
7 litem.

8 24. Plaintiff JENNIFER LYONS is a thirteen year old girl with dyslexia. Jennifer attends
9 Mountain Ridge Middle School in Magalia, California, and will take the High School
10 Exit Exam during the 2001-2002 school year when she will be in ninth grade. Jennifer's
11 mother, Susan Lyons, has filed simultaneously with this Complaint a petition with the
12 Court to act as her guardian ad litem.

13 25. Plaintiff LEARNING DISABILITIES ASSOCIATION OF CALIFORNIA ("LDA-CA")
14 is a 501(c)(3) non-profit volunteer organization founded in 1960. The purpose of LDA-
15 CA is to promote awareness, increase knowledge, and support education in a manner that
16 optimizes fulfillment of the individual potential of children and adults with learning
17 disabilities. This is accomplished through outreach, advocacy, referrals, and
18 collaboration. LDA-CA currently serves over 2,000 parent, professional, and adult
19 members with learning disabilities through publications, conferences, and 12 regional
20 locations and a State office in Sacramento. The membership of LDA-CA includes
21 parents of Plaintiff students, including MONIQUE CHAPMAN, KRISTA SMILEY, and
22 SUSAN LYONS. LDA-CA sues on its on behalf and on behalf of its members.

23 26. Defendant CALIFORNIA DEPARTMENT OF EDUCATION is the department of state
24 government responsible for administering and enforcing laws related to education. The
25 CALIFORNIA DEPARTMENT OF EDUCATION is a public entity within the meaning
26 of Title II of the Americans with Disabilities Act and other applicable laws. The
27 CALIFORNIA DEPARTMENT OF EDUCATION receives federal financial assistance
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1 from the United States Department of Education and is therefore covered by the
 2 requirements of Section 504 of the Rehabilitation Act of 1973. The CALIFORNIA
 3 DEPARTMENT OF EDUCATION is a state educational agency and is therefore covered
 4 by the requirements of the Individuals with Disabilities Education Act.

5 27. Defendant DELAINE EASTIN, sued in her official capacity, is the State Superintendent
 6 of Public Instruction in California and the Chief Executive Officer of the CALIFORNIA
 7 DEPARTMENT OF EDUCATION.

8 28. Defendant FREMONT UNIFIED SCHOOL DISTRICT is a local government entity
 9 within the meaning of Title II of the ADA, a recipient of federal financial assistance
 10 within the meaning of Section 504 of the Rehabilitation Act, and a local educational
 11 agency covered by the Individuals with Disabilities Education Act. FREMONT
 12 UNIFIED SCHOOL DISTRICT has at least fifty employees.

13 29. Defendant SHARON JONES is Superintendent of FREMONT UNIFIED SCHOOL
 14 DISTRICT. She is being sued in her official capacity.

15 30. References in this Complaint to Defendants, unless otherwise stated, shall be deemed to
 16 refer to all defendants, and to each of them.

17 CLASS ALLEGATIONS

18 31. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), Plaintiffs bring this
 19 action on their own behalf and on behalf of all persons similarly situated. The class
 20 which these Plaintiffs represent is composed of all students with disabilities who are or
 21 will in the future be required to take the California High School Exit Exam. The class is
 22 sometimes hereafter referred to as "Plaintiff students" or "Plaintiff children."

23 32. The persons in the class are so numerous that joinder of all such persons is impracticable.

24 33. There are numerous issues of fact and questions of law common to the class. These
 25 common factual issues include, but are not limited to, the following:

- 26 a. Defendants' failure to develop an alternate assessment to the California High
 27 School Exit Exam.

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- 1 b. Defendants' development and administration of the High School Exit Exam,
2 which all public high school students are required to pass to graduate from high
3 school.
- 4 c. Defendants' failure to adopt regulations specifying either a process for requesting
5 accommodations or a standard for consideration of, and granting of, such requests.
- 6 d. Defendants' failure to establish an appeals process by which students can appeal
7 denials of accommodations requests.
- 8 d. Defendants' failure to provide training and guidance to teachers, administrators,
9 and IEP and 504 Plan team members regarding the High School Exit Exam and
10 participation options for students with disabilities.
- 11 e. Defendants' failure to modify the IEPs or 504 Plans of disabled students to align
12 with the curriculum tested on the Exit Exam.
- 13 34. The common questions of law include, but are not limited to, the following:
- 14 a. Does Defendants' failure and refusal to provide an alternate assessment to the
15 California High School Exit Exam discriminate against Plaintiffs in violation of
16 federal law?
- 17 b. Does Defendants' failure to modify disabled students' IEPs and Section 504 plans
18 to align with the curriculum tested on the Exit Exam violate federal law?
- 19 c. Does Defendants' failure to establish any procedure for consideration of, or
20 granting of, requests for reasonable accommodations on the Exit Exam violate
21 federal law?
- 22 d. Does Defendants' failure to establish any procedure for appealing denials of
23 requests for reasonable accommodations violate federal law?
- 24 e. Is the High School Exit Exam an invalid test for assessing the knowledge, skills
25 and abilities of students with disabilities, in violation of the due process
26 protections of the United States Constitution?
- 27 f. Have students with disabilities been provided with an adequate opportunity to
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1 learn the material tested on the Exit Exam, as required by the due process
2 protections of the United States Constitution?

3 35. The claims of the named Plaintiffs are typical of those of the class, and named Plaintiffs
4 will fairly and adequately represent the interests of the class. Plaintiffs have engaged
5 competent counsel to assist them in prosecuting their claims.

6 36. Defendants have acted and refused to act on grounds generally applicable to the class,
7 thereby making appropriate final injunctive relief and/or corresponding declaratory relief
8 with respect to the class as a whole.

9 37. References to Plaintiffs shall be deemed to include the named plaintiffs and each member
10 of the class.

11 **FACTUAL ALLEGATIONS**

12 38. Plaintiffs, who attend public schools throughout California, are students with disabilities
13 protected by federal law. There are hundreds of thousands of disabled children who
14 attend California's public schools and who will be required to take the High School Exit
15 Exam and pass it in order to graduate from high school.

16 39. By virtue of their disabilities, many students with disabilities have either a legally
17 mandated Individualized Education Program ("IEP") pursuant to IDEA, or a Section 504
18 Education Plan ("504 Plan") pursuant to Section 504 of the Rehabilitation Act of 1973.
19 These plans are required by law to be created through an interactive process between
20 educators, parents and their children, and are supposed to specify a child's individual
21 needs, including whether and how a student will participate on statewide assessments
22 such as the High School Exit Exam. Some students with disabilities do not have either an
23 IEP or a Section 504 Plan.

24 40. People with learning disabilities span the intelligence spectrum and many children with
25 learning disabilities are of very high intelligence. Learning disabilities are the result of
26 permanent neurological dysfunction or information processing disruptions that result in
27 limited, unexpected, and usually intractable impediments in the ability to learn one or
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1 more basic skills taught through traditional formal education. Many people with learning
2 disabilities work far harder than others in order to compensate for their disabilities.

3 41. There are several types of learning disabilities. Dyslexia, a particular learning disability,
4 results from a neurological difference in processing phonemes, the basic unit of language,
5 and can be seen in brain scans as early as infancy. Dyslexia impairs the ability to process
6 language. A dyslexic individual may have difficulty reading, developing age/grade
7 appropriate vocabulary, handwriting, spelling, taking notes, and memorizing rote and
8 sequential facts, steps and information. Dysgraphia, another specific learning disability,
9 is a neurocognitive, neuromotor language-based processing disorder often, but not always
10 associated with dyslexia. Dysgraphia impairs an individual's ability to write legibly in a
11 defined space over a normal timeframe. Dyscalculia is a mathematical learning disability
12 in which a person has significant difficulty grasping math concepts and acquiring and
13 retaining math computation and problem solving skills.

14 42. Plaintiff Juleus Chapman is a thirteen year old with dyslexia, a specific type of learning
15 disability. Juleus lives in Fremont, California, and he attends public schools in that city.

16 43. Juleus will take the High School Exit Exam during the 2001-2002 school year, when he
17 will be in ninth grade. Juleus has an Individualized Education Program that specifies he
18 is allowed to use certain testing accommodations due to his dyslexia. These testing
19 accommodations include, *inter alia*, extended time, use of a lap top computer, use of a
20 calculator, and audio presentation of test items. Juleus requires these accommodations to
21 minimize the effect of his dyslexia and to demonstrate his skills and abilities.

22 44. Juleus was told by a Fremont school official that when he takes the High School Exit
23 Exam during the 2001-2002 school year he will not be allowed to use any
24 accommodations on the tests. Juleus and his parents have not been provided any
25 information about how to request an accommodation for the Exit Exam, or how to appeal
26 a denial of an accommodation request.

27 45. Juleus' IEP has not been modified to align with the curriculum tested on the High School
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1 Exit Exam.

2 46. Juleus requires an individual assessment by his IEP team to determine whether he should
3 participate in the High School Exit Exam with accommodations, or whether an alternate
4 assessment would be more appropriate.

5 47. Plaintiff Ryan Smiley is a fourteen year old with dyslexia and dysgraphia. Ryan lives in
6 Montrose, California, and he attends public schools in La Crescenta, California.

7 48. Ryan, who is in ninth grade, took the High School Exit Exam in March 2001. Ryan has
8 an Individualized Education Program that specifies he is allowed to use certain testing
9 accommodations due to his learning disabilities. These testing accommodations include,
10 *inter alia*, extended time, use of a specialized lap top computer called an “Alphasmart,”
11 use of a calculator, and audio presentation of test items. Ryan requires these
12 accommodations to minimize the effect of his learning disabilities and to demonstrate his
13 skills and abilities.

14 49. During Ryan’s IEP meeting in the fall of 2000, Ryan’s mother, Krista Smiley, was told
15 that Ryan would be allowed to use full accommodations on all tests. Mrs. Smiley
16 understood this to mean that Ryan would be allowed to use the accommodations he
17 needed on the Exit Exam.

18 50. Prior to the administration of the Exit Exam in March 2001, Ryan and his parents were
19 not been provided any information about how to request an accommodation for the Exit
20 Exam, or how to appeal a denial of an accommodation request. The only information
21 Ryan received about the Exit Exam was that he was told, along with the other learning
22 disabled students in his special education class, that he and the other learning disabled
23 students would take the Exit Exam in a separate room and be allowed to have extra time
24 on the test.

25 51. When Ryan took the Exit Exam in March 2001, he was not allowed to use all of the
26 testing accommodations specified in his IEP. Although he normally has exams read to
27 him, a reader was not provided for the English portion of the Exit Exam. In addition,
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- 1 Ryan was allowed to use his Alphasmart word processor on only one of the two essays.
- 2 52. Ryan had not studied much of the content that was tested on the math portion of the Exit
- 3 Exam. Ryan is currently enrolled in pre-Algebra, and has not studied Algebra or
- 4 Geometry, both of which are tested on the Exit Exam.
- 5 53. Ryan's IEP has not been modified to align with the curriculum tested on the High School
- 6 Exit Exam.
- 7 54. Ryan requires an individual assessment by his IEP team to determine whether he should
- 8 participate in the High School Exit Exam with accommodations, or whether an alternate
- 9 assessment would be more appropriate.
- 10 55. Plaintiff Jennifer Lyons is a thirteen year old with dyslexia. Jennifer lives in Magalia,
- 11 California, and attends public schools in Paradise, California.
- 12 56. Jennifer will take the High School Exit Exam during the 2001-2002 school year, when
- 13 she will be in ninth grade. Jennifer has an Individualized Education Program that
- 14 specifies she is allowed to use certain testing accommodations due to her learning
- 15 disability. These testing accommodations include, *inter alia*, use of an electronic spell
- 16 checker, use of a calculator, use of a computer, scanner, and cassette recorder. Jennifer
- 17 requires these accommodations to minimize the effect of her dyslexia. These
- 18 accommodations are probably not sufficient, however, to allow her to fully demonstrate
- 19 her knowledge, skills and abilities on the Exit Exam, and Jennifer most likely requires an
- 20 alternate assessment.
- 21 57. Jennifer's mother, Susan Lyons, was told by a Paradise Unified School District official
- 22 that it is unclear whether the use of accommodations that Jennifer needs on the High
- 23 School Exit Exam will be permitted. The school official told Mrs. Lyons that although he
- 24 would recommend that Jennifer be allowed to use accommodations on the Exit Exam, he
- 25 did not know if the use of accommodations would invalidate her score.
- 26 58. Jennifer and her parents have not been provided any information about how to request an
- 27 accommodation for the Exit Exam, or how to appeal a denial of an accommodation
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1 request. In April 2001, Jennifer's mother contacted the Standards and Assessment
2 Division of the CALIFORNIA DEPARTMENT OF EDUCATION to ask how decisions
3 about accommodations on the Exit Exam would be made; she was told that the
4 CALIFORNIA DEPARTMENT OF EDUCATION was in the process of working on
5 guidelines regarding accommodations and that those guidelines were expected to be
6 presented to the State Board of Education in June 2001.

7 59. Jennifer's IEP has not been modified to align with the curriculum tested on the High
8 School Exit Exam.

9 60. In 1999 the California legislature passed legislation directing the Superintendent of Public
10 Instruction to develop a high school exit examination in language arts and mathematics.
11 Pursuant to that legislation, Defendants hired a contractor to develop and field test the
12 High School Exit Exam over a period of several months in 2000.

13 61. As required by law, Defendants hired an independent consultant to evaluate the High
14 School Exit Exam. The independent evaluator concluded that the High School Exit
15 Exam should be delayed by at least one to two years because key components of the
16 testing system were not properly developed.

17 62. Specifically, the independent evaluator found that students with disabilities had not been
18 adequately prepared for the tests. The independent consultant found that students with
19 disabilities had not had their IEPs or Section 504 Plans modified to align with the
20 curriculum tested on the High School Exit Exam, and that therefore these students were
21 tested on material that they had never been taught. The consultant also found that
22 Defendants had gathered insufficient information regarding the use of accommodations
23 on the High School Exit Exam, and recommended that Defendants gather, review and
24 discuss more information on the appropriateness and effectiveness of testing
25 accommodations for students with disabilities, as well as the differential impact of the
26 Exit Exam on students with disabilities. The evaluator also noted that a greater
27 percentage of students with disabilities are likely to fail the Exit Exam than the student
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1 population as a whole. The independent evaluator's report is publicly available on the
2 Department of Education's website at www.cde.ca.gov.

3 63. In the face of compelling evidence that the California High School Exit Exam is invalid
4 and discriminatory, and despite the recommendation by the expert independent consultant
5 to delay the implementation of the Exit Exam, Defendants nevertheless decided to
6 proceed with implementation of the High School Exit Exam and has already administered
7 the exam in March 2001 to ninth grade students. These students, who are members of the
8 Class of 2004, will be required to pass the High School Exit Exam to graduate from high
9 school.

10 64. Based on experience with other states, unless the Court intervenes, it is likely that over
11 eighty percent (80%) of otherwise qualified students with disabilities will fail the Exit
12 Exam with devastating effects on their lives.

13 65. The defects in the High School Exit Exam are due, at least in part, to the fact that
14 Defendants hastily developed and implemented the High School Exit Exam.

15 66. The entire test was developed and field tested over a period of just several months.

16 67. It is impossible to adequately design a high school graduation test in such a limited
17 amount of time. As noted by the independent consultant hired by Defendants to evaluate
18 the High School Exit Exam, tests like the High School Exit Exam are generally
19 developed over a period of years before they are implemented.

20 68. With regard to students with disabilities, this lead time is necessary in order to conduct
21 the essential groundwork that must be done to ensure that, at a minimum, (a) the test is
22 psychometrically valid and reliable for disabled students, (b) disabled students have been
23 taught the material tested on the exam, (c) alternate assessments have been developed for
24 students with disabilities, (d) students, parents, teachers and administrators are aware of
25 the requirements of the test and the participation options for students with disabilities, (e)
26 an accommodations policy has been developed and disseminated to students, parents,
27 teachers, administrators, and IEP and 504 Plan team members, (f) IEP and 504 forms
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1 have been modified to include a checklist of options for participation in the test, and (g)
2 an appeals process has been set up by which students can appeal denials of
3 accommodations requests and other aspects of the assessment system.

4 69. None of these essential steps were taken with the California High School Exit Exam, and
5 Defendants are fully aware that the failure to take such steps has resulted in an Exit Exam
6 that discriminates against students with disabilities. The Exit Exam discriminates against
7 students with disabilities in at least the following multiple ways.

8 70. Defendants failed to develop an “alternate assessment” to the California High School Exit
9 Exam as is specifically required by IDEA.

10 71. IDEA was amended in 1997 to require all states to develop and implement “alternate
11 assessments” for any statewide assessment administered by the State. Under the 1997
12 amendments, these alternate assessments were to be in place by July of 2000. See 20
13 U.S.C. § 1412(a)(17)(A); 34 C.F.R. § 300.138. Defendants have been and remain fully
14 aware of their legal obligation to develop alternate assessments to the California High
15 School Exit Exam.

16 72. However, Defendants ignored this legal obligation and refused to develop any alternate
17 assessment to the California High School Exit Exam. Instead, Defendants require all
18 students to take the California High School Exit Exam, and do not allow any students to
19 opt out or be exempted from the Exam.

20 73. The requirement to provide an alternate assessment is essential to allowing students with
21 disabilities an equal opportunity with respect to statewide assessments such as the
22 California High School Exit Exam. Alternate assessments are required for any student
23 with a disability who is unable to participate in the standard assessment by virtue of his or
24 her disability.

25 74. By failing and refusing to develop and provide an alternate assessment to the California
26 High School Exit Exam, Defendants are intentionally discriminating against thousands of
27 students with disabilities for whom an alternate assessment, rather than the standard
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1 California High School Exit Exam, is appropriate. These students will not be properly
2 assessed by the High School Exit Exam, and will not be able to accurately demonstrate
3 their knowledge, skills and abilities.

4 75. Plaintiff students require and are guaranteed under federal law reasonable
5 accommodations on the California High School Exit Exam to minimize the effects of
6 their disabilities.

7 76. Without such accommodations, Plaintiff students are subjected to discrimination on the
8 basis of their disabilities. Without reasonable accommodations on the Exam, Plaintiffs
9 will be unable to pass the Exam and therefore will be unable to graduate from high
10 school.

11 77. Defendants have created chaos and confusion by failing to formulate clear policies and
12 procedures regarding the provision of reasonable accommodations on the California High
13 School Exit Exam. This failure has led to ad hoc policymaking by Defendants, resulting
14 in innumerable different “policies” and “procedures.”

15 78. At the time of the administration of the Exam in March 2001, Defendant CALIFORNIA
16 DEPARTMENT OF EDUCATION still had not issued final regulations regarding the
17 policies and procedures for obtaining reasonable accommodations on the Exam.

18 79. Instead, Plaintiffs, their parents, and school administrators were either provided with no
19 information or guidance about the use of accommodations on the March 2001 Exam, or
20 were provided with conflicting, misleading, and confusing information about
21 accommodations.

22 80. Defendants adopted final regulations regarding accommodations for the High School Exit
23 Exam after the tests were administered in March 2001.

24 81. These final regulations are deficient and discriminatory in numerous ways, and have
25 continued to cause confusion among students, parents and administrators.

26 82. The regulations are deficient and discriminatory because they do not allow for students
27 with disabilities to use an accommodation on the Exit Exam that they may need, but that
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1 is not listed in their IEP or 504 Plan, or that they have not used regularly during
 2 instruction and classroom assessments. Many students with disabilities may require
 3 accommodations on the Exit Exam that they have not previously required for classroom
 4 assessments because of the different nature of the Exit Exam.

5 83. The regulations are also discriminatory because they do not allow for a disabled student
 6 who does not have an IEP or 504 Plan to use accommodations on the Exit Exam. While
 7 the majority of students eligible for accommodations are those with an IEP or 504 Plan,
 8 there are students with disabilities who do not have either an IEP or 504 Plan who will
 9 need accommodations on the Exit Exam. Other states, such as Massachusetts, have
 10 recognized this and explicitly provide in their regulations that disabled students who do
 11 not have IEPs or 504 Plans may request accommodations on statewide assessments.

12 84. In addition, the regulations do not provide for any procedure for students to request
 13 accommodations on the Exit Exam, and therefore students, parents, and administrators do
 14 not know what process is available for requesting accommodations, or what standards are
 15 used in reviewing and granting these accommodation requests.

16 85. Similarly, the regulations do not provide for any appeals of denials of accommodation
 17 requests. Thus, regardless of how arbitrary or incorrect a denial of an accommodation
 18 request is, a student has no avenue to appeal that denial.

19 86. Defendants have failed to provide mechanisms, procedures, policies or personnel to
 20 engage in the legally required interactive process with parents and students for the
 21 fashioning of reasonable accommodations. Defendants have not provided adequate
 22 training or information to schools and school districts regarding the individualized
 23 assessment necessary to determine what accommodations a disabled student will require
 24 on the Exit Exam.

25 87. Due to the lack of clear policies and procedures regarding obtaining accommodations on
 26 the Exit Exam, Plaintiffs and their parents have received conflicting, confusing and
 27 misleading information. As a result, parents of Plaintiff students (a) have been unable to
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1 make informed decisions about how their child should approach or take the tests, (b) have
2 been misled about the procedures and consequences, (c) have been forced to make
3 decisions which may be unnecessarily damaging to their children's future and/or (d) have
4 been discouraged from requesting the reasonable accommodations and alternate
5 assessments to which they are entitled as a matter of law.

6 88. As another consequence of the lack of policies and procedures for providing reasonable
7 accommodations on the California High School Exit Exam, Plaintiffs and their parents
8 have been unable to participate meaningfully in designing Plaintiffs' Individualized
9 Education Programs or Section 504 Education Plans.

10 89. Although Defendants have stated that students will be provided reasonable
11 accommodations in accordance with their IEPs or 504 Plans, this simply has not occurred.
12 In many instances, the issue of reasonable accommodations on the California High
13 School Exit Exam was not even addressed at the student's IEP or Section 504 meeting.
14 In other instances, although the issue of reasonable accommodations on the Exit Exam
15 may have been discussed at a student's IEP or 504 Plan meeting, parents of Plaintiff
16 children were nevertheless unable to make informed choices regarding their child's
17 education because school officials did not know what the policies and procedures were
18 regarding reasonable accommodations on the Exit Exam.

19 90. At various times, various school officials have made the following representations to
20 parents of Plaintiff children:

21 a. Plaintiff JULEUS CHAPMAN was told by a school official that he would not be
22 allowed to use any accommodations on the HSEE, despite the fact that he has an
23 Individualized Education Program that lists specific accommodations for him to
24 use on tests. Juleus was not provided any information about the procedure for
25 requesting reasonable accommodations for the Exit Exam, or about an appeals
26 process to appeal denials of accommodations requests. In addition, Juleus was not
27 given any information about an alternate assessment, although an alternate
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1 assessment may be more appropriate for him than the High School Exit Exam.

2 b. Plaintiff RYAN SMILEY's mother was told during his fall 2000 IEP meeting that
3 Ryan would be allowed full accommodations on all tests. KRISTA SMILEY
4 understood this statement to mean that Ryan would be provided with full
5 accommodations on the Exit Exam. However, when Ryan took the Exit Exam in
6 March 2001, he was provided only partial accommodations, and was denied
7 accommodations that he required for the Exit Exam. Prior to taking the Exit
8 Exam in March 2001, Ryan was not provided any information about the procedure
9 for requesting reasonable accommodations for the Exit Exam, or about an appeals
10 process to appeal denials of accommodations requests. In addition, Ryan was not
11 given any information about an alternate assessment, although an alternate
12 assessment may be more appropriate for him than the High School Exit Exam.

13 c. Plaintiff JENNIFER LYONS' mother was told by school officials that it was
14 unclear whether Jennifer would be allowed to take the Exit Exam with the
15 accommodations specified in her IEP. The school officials told SUSAN LYONS
16 that although they would recommend that Jennifer be allowed to take the Exit
17 Exam with accommodations, they thought that the State might determine that the
18 accommodations invalidated the test. Jennifer's mother then contacted the
19 CALIFORNIA DEPARTMENT OF EDUCATION to inquire about what
20 accommodations would be allowed on the Exit Exam. SUSAN LYONS was told
21 by that the CALIFORNIA DEPARTMENT OF EDUCATION was currently
22 working on guidelines regarding accommodations, and that those guidelines
23 would be presented to the State Board of Education in June 2001. Jennifer has
24 not been provided with any information about the procedure for requesting
25 accommodations, or any process for appealing denials of accommodation
26 requests. Jennifer believes that she requires an alternate assessment in order to
27 demonstrate her knowledge, skills, and abilities.
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1 91. Due to the premature implementation of the California High School Exit Exam, students
 2 with disabilities have not been given adequate time and notice to prepare for these new
 3 testing requirements. Throughout their educations, Plaintiff children have been provided
 4 with specific curriculum in accordance with their IEPs or 504 Plans that in many cases
 5 deviates from the general curriculum. These IEPs and 504 Plans have not been modified
 6 to be aligned with the subject matter tested on the California High School Exit Exam. As
 7 noted by the independent consultant hired by Defendants to audit the High School Exit
 8 Exam, the process of modifying IEPs and Section 504 Plans to align with the curriculum
 9 tested on the High School Exit Exam can be lengthy and may require a lead time of many
 10 years. Despite the fact that Defendants have already implemented the High School Exit
 11 Exam, Defendants have not taken any steps whatsoever to ensure that Plaintiffs' IEPs and
 12 Section 504 Plans are modified to align with the Exam. In addition, Defendants have not
 13 created any materials or programs for teaching children with disabilities what they need to
 14 know to pass the California High School Exit Exam.

15 92. Defendants have not taken any steps to ensure appropriate remediation for disabled
 16 students who do not pass the Exit Exam on their first attempt.

17 93. Without immediate relief from the Court, Plaintiffs will be irreparably harmed in that
 18 they will be denied numerous academic, employment and professional opportunities, may
 19 not graduate from high school, and will experience severe damage to their self-esteem
 20 and emotional well-being.

FIRST CLAIM

(Violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.)

21
 22 94. Plaintiffs incorporate by reference herein the allegations in paragraphs 1 through 93
 23 inclusive.

24 95. Defendants' acts and omissions alleged herein are in violation of the Americans with
 25 Disabilities Act, 42 U.S.C. § 12101, et seq., ("ADA") and the regulations promulgated
 26 thereunder, 28 C.F.R. Part 35, et seq.

27 96. Plaintiffs are qualified individuals with disabilities within the meaning of the ADA. 42
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- 1 U.S.C. § 12131(2).
- 2 97. Defendants CALIFORNIA DEPARTMENT OF EDUCATION and FREMONT
3 UNIFIED SCHOOL DISTRICT are public entities within the meaning of Title II of the
4 ADA and the regulations promulgated thereunder. 42 U.S.C. § 12131(1)(B).
- 5 98. In violation of the ADA, Defendants have failed to evaluate their policies and practices to
6 ensure that these policies and procedures do not exclude or limit the participation of
7 individuals with disabilities in their programs and activities. 28 C.F.R. § 35.105.
- 8 99. In violation of the ADA, Defendants have refused to develop and provide alternate
9 assessments to those Plaintiffs who require an alternate assessment by virtue of their
10 disability. 28 C.F.R. § 35.130.
- 11 100. In violation of the ADA, Defendants have excluded Plaintiff children from participation
12 in and denied them the benefits of the services, programs or activities of a public entity
13 solely on the basis of disability. Defendants have further violated the ADA by otherwise
14 subjecting Plaintiff children to discrimination based upon disability. 42 U.S.C. § 12132;
15 28 C.F.R. § 35.130(a).
- 16 101. Defendants have violated the ADA by denying Plaintiff children the opportunity to
17 participate in or benefit from aids, benefits and services provided by the public entities,
18 and by providing Plaintiff children with the opportunity to participate in or benefit from
19 aids, benefits or services that are not equal to those afforded non-disabled children who
20 attend California's public schools. 28 C.F.R. § 35.130(b)(1)(i)-(ii).
- 21 102. Defendants have violated the ADA by providing Plaintiff children with benefits that are
22 different and/or not as effective in affording equal opportunity to obtain the same results,
23 to gain the same benefits, or to reach the same levels of achievement as that provided to
24 others. 28 C.F.R. § 35.130(b)(1)(iii)(iv).
- 25 103. Defendants have violated the ADA by utilizing criteria or methods of administration that
26 have the effect of subjecting Plaintiff children to discrimination on the basis of disability
27 or that have the purpose or effect of defeating or substantially impairing accomplishment
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1 of the objectives of the public entity’s program with respect to individuals with
2 disabilities. 28 C.F.R. § 35.130(b)(3).

3 104. Defendants have violated the ADA by administering a certification program in a manner
4 that subjects Plaintiff children to discrimination on the basis of disability. 28 C.F.R. §
5 35.130(b)(6).

6 105. Defendants have violated the ADA by failing to make reasonable modifications in
7 policies, practices or procedures when the modifications are necessary to avoid
8 discrimination on the basis of disability. 28 C.F.R. § 35.130(7).

9 106. Defendants have violated the ADA by imposing eligibility requirements that screen out or
10 tends to screen out an individual with a disability or any class of individuals with
11 disabilities from fully and equally enjoying any service, program, or activity offered by
12 Defendants. 28 C.F.R. § 130.(b)(8).

13 107. WHEREFORE, Plaintiffs request relief as set forth below.

14 **SECOND CLAIM**

(Violation of the Rehabilitation Act of 1973, 29 U.S.C. § 794, et seq.)

15 108. Plaintiffs incorporate by reference herein the allegations in paragraphs 1 through 107
16 inclusive.

17 109. Plaintiffs are qualified individuals with disabilities within the meaning the Rehabilitation
18 Act of 1973.

19 110. Defendants CALIFORNIA DEPARTMENT OF EDUCATION and FREMONT
20 UNIFIED SCHOOL DISTRICT are the recipients of federal funds sufficient to invoke the
21 coverage of the Rehabilitation Act of 1973.

22 111. Defendants have intentionally discriminated against Plaintiffs on the basis of their
23 disabilities in violation of the Rehabilitation Act. 29 U.S.C. § 794.

24 112. Solely by reason of their disabilities, Plaintiffs have been, and continue to be, excluded
25 from participation in, denied the benefits of, and subjected to discrimination in their
26 attempts to receive, full and equal access to the programs, services and activities offered
27 by Defendants in violation of the Rehabilitation Act. 29 U.S.C. § 794.
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(510) 451-8644

1 113. WHEREFORE, Plaintiffs request relief as set forth below.

2 **THIRD CLAIM**

(Violation of Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq.)

3 114. Plaintiffs incorporate by reference herein the allegations in paragraphs 1 through 113
4 inclusive.

5 115. Defendants have violated IDEA by failing to develop adequate regulations for the
6 provision of appropriate accommodations to students with disabilities on the High School
7 Exit Exam. 20 U.S.C. § 1412(a)(17)(A).

8 116. Defendants have violated IDEA by failing to develop guidelines for the participation of
9 children with disabilities in alternate assessments for those disabled students who cannot
10 participate in the High School Exit Exam. 20 U.S.C. § 1412(a)(17)(A)(I).

11 117. Defendants have violated IDEA by not ensuring that the High School Exit Exam has been
12 validated for the specific purpose for which it is used. 20 U.S.C. § 1414(b)(3)(B)(I).

13 118. Defendants have adopted a policy of discrimination based solely upon the disabilities of
14 school children, resulting in severe interference with and deprivation of Plaintiffs'
15 fundamental right to a free and appropriate public education which is secured to them by
16 the laws of the United States and specifically pursuant to IDEA. 20 U.S.C. § 1401(8).

17 119. No administrative remedy exists under IDEA to address these wholesale violations by the
18 CALIFORNIA DEPARTMENT OF EDUCATION. Accordingly, Plaintiffs are not
19 required to exhaust the administrative procedures set forth in IDEA.

20 120. WHEREFORE, Plaintiffs request relief as set forth below.

21 **FOURTH CLAIM**

(Violation of Due Process Clause of United States Constitution)

22 121. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 120 inclusive.

23 122. The actions of Defendants have violated and continue to violate the Fourteenth
24 Amendment to the United States Constitution in that Defendants have failed to provide
25 Plaintiffs and their parents with adequate notice of the testing requirements for the
26 California High School Exit Exam. Due to the lack of adequate notice, parents and
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Oakland, CA 94612-2821
(510) 451-8644

1 educators have not had sufficient time to consider and determine whether and how the
 2 skills tested on the statewide tests should be addressed in a child's IEP or Section 504
 3 Plan. California schools have never taught or trained children with disabilities many of
 4 the skills and content currently being tested on the California High School Exit Exam.
 5 Defendants have taken no steps to ensure that disabled students' IEPs or Section 504
 6 Plans are modified to align with the curriculum and skills tested on the Exit Exam.
 7 Instead, Defendants have embarked upon a one-test-fits-all, test-first-provide-education-
 8 later procedure without conducting adequate research into the far reaching consequences
 9 for students with disabilities, which effectively makes it impossible for these students to
 10 pass the required exams.

11 123. The actions of Defendants have violated and continue to violate the Fourteenth
 12 Amendment to the United States Constitution because the Exit Exam, as currently
 13 formulated and administered, lacks both instructional and curricular validity, and has not
 14 been shown to be valid for students with disabilities.

15 124. Defendants have violated and continue to violate the Fourteenth Amendment to the
 16 United States Constitution by failing to create and implement clear, consistent and
 17 understandable policies and procedures regarding provision of reasonable
 18 accommodations on the Exit Exam.

19 125. Defendants have violated and continue to violate the Fourteenth Amendment to the
 20 United States Constitution by failing to establish a procedure for parents and students to
 21 challenge even the most arbitrary conduct with regard to the denials of reasonable
 22 accommodations on the California High School Exit Exam.

23 126. The actions of Defendants have violated and continue to violate the Fourteenth
 24 Amendment to the United States Constitution in that the California High School Exit
 25 Exam is fundamentally unfair because many students with disabilities will not be
 26 accurately assessed by the Exit Exam because they require an alternate assessment.
 27 Defendants have refused, in violation of federal law, to develop alternate assessments to
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1 the California High School Exit Exam.

2 127. WHEREFORE, Plaintiffs request relief as set forth below.

3 **FIFTH CLAIM**

4 (Declaratory Relief, 28 U.S.C. §§ 2201, 2202)

5 128. Plaintiffs incorporate by reference herein the allegations in paragraphs 1 through 127
6 inclusive.

7 129. Plaintiffs contend, and are informed and believe that Defendants deny that the
8 CALIFORNIA DEPARTMENT OF EDUCATION has failed to comply with applicable
9 law prohibiting discrimination against persons with disabilities and is in violation of the
10 Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.; Section 504 of the
11 Rehabilitation Act of 1973, 29 U.S.C. § 794, et seq.; the Individuals with Disabilities
12 Education Act, and the United States Constitution.

13 130. A judicial declaration is necessary and appropriate at this time in order that each of the
14 parties may know his or her respective rights and duties and act accordingly.

15 131. WHEREFORE, Plaintiffs request relief as set forth below.

16 **RELIEF REQUESTED**

17 WHEREFORE, Plaintiffs pray for relief as follows:

- 18 1. A determination by this Court that this action may be maintained as a class action.
- 19 2. The issuance of a declaratory judgment that Defendants have violated the Individuals
20 with Disabilities Education Act; the Americans with Disabilities Act; the Rehabilitation
21 Act of 1973; and the United States Constitution.
- 22 3. The issuance of an injunction ordering Defendants to: develop and provide alternate
23 assessments to all disabled students who require such an assessment; issue regulations
24 and establish a procedure by which students and their parents can request reasonable
25 accommodations on the Exit Exam, as well as a standard for consideration and granting
26 of such requests; establish an appeals process by which students can appeal denials of
27 accommodations requests; and take all steps necessary to ensure that the High School
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Oakland, CA 94612-2821
(510) 451-8644

- 1 Exit Exam is valid and reliable for students with disabilities.
- 2 4. Retention of jurisdiction by this Court until such time as the Court is satisfied that
- 3 Defendants' unlawful policies, practices, acts, and omissions complained of herein have
- 4 been remedied and will not recur.
- 5 5. An award of reasonable attorneys' fees and costs.
- 6 6. Such other and further relief as the Court deems just and proper.

7 DATE: May 8, 2001

8 Respectfully submitted,

9
10 By:

11 SID WOLINSKY
 12 DISABILITY RIGHTS ADVOCATES
 13 449 15th Street, Suite 303
 14 Oakland, California 94612
 15 Telephone: (510) 451-8644
 16 Facsimile: (510) 451-8511
 17 TTY: (510) 451-8716
 18 Attorney for Plaintiffs

19
20 By:

21 MORRIS RATNER
 22 LIEFF, CABRASER, HEIMANN &
 23 BERNSTEIN, LLP
 24 Embarcadero Center West
 25 275 Battery Street, 30th Floor
 26 San Francisco, CA 94111
 27 Telephone: (415) 956-1000
 28 Facsimile: (415) 956-1008
 Attorney for Plaintiffs

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DISABILITY RIGHTS ADVOCATES
 449 Fifteenth Street, Suite 303
 Oakland, CA 94612-2821
 (510) 451-8644

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATE: May 8, 2001

By:

SID WOLINSKY
DISABILITY RIGHTS ADVOCATES
449 15th Street, Suite 303
Oakland, California 94612
Telephone: (510) 451-8644
Facsimile: (510) 451-8511
TTY: (510) 451-8716
Attorneys for Plaintiffs

By:

MORRIS RATNER
LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
Embarcadero Center West
275 Battery Street, 30th Floor
San Francisco, CA 94111
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
Attorney for Plaintiffs

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certify that as of this date, other than the named parties, there is no such interest to report.

By:

SID WOLINSKY
DISABILITY RIGHTS ADVOCATES
449 15th Street, Suite 303
Oakland, California 94612
Telephone: (510) 451-8644
Facsimile: (510) 451-8511
TTY: (510) 451-8716
Attorney for Plaintiffs

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DISABILITY RIGHTS ADVOCATES
449 Fifteenth Street, Suite 303
Oakland, CA 94612-2821
(510) 451-8644

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By: _____
MORRIS RATNER
LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
Embarcadero Center West
275 Battery Street, 30th Floor
San Francisco, CA 94111
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
Attorney for Plaintiffs

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DISABILITY RIGHTS ADVOCATES
449 Fifteenth Street, Suite 303
Oakland, CA 94612-2821
(510) 451-8644