

United States District Court

For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JULEUS CHAPMAN, et al.,

No. C 01-01780 CRB

Plaintiffs,

**SUPPLEMENTAL ORDER RE:  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

v.

CALIFORNIA DEPARTMENT OF  
EDUCATION, et al.,

Defendants.

On March 12, 2003, this Court signed an order dismissing as unripe all of plaintiffs' claims with the exception of plaintiffs' challenges under the IDEA, the ADA, and the Declaratory Judgment Act to the process for obtaining a waiver of the exit exam requirement. The Court requested additional briefing in connection with those claims. Subsequently, the Court's briefing schedule was extended to permit the parties to address the implications of the Board of Education's expected decision as to whether to delay the effective date of the exit exam requirement.

On July 9, 2003, the nine members of the state Board of Education voted unanimously to eliminate the exit exam as a graduation requirement for the class of 2004 but to reinstate it for the class of 2006. The issue now before the Court is what effect that decision has on the remaining claims in this litigation.

1 **I. Standing**

2 In order to invoke federal court jurisdiction, a plaintiff “must himself [have] suffered  
3 some threatened or actual injury resulting from the putatively illegal action.” City of Tahoe  
4 Regional Planning Agency v. California Tahoe Regional Planning Agency, 625 F.2d 231,  
5 234 (9th Cir. 1980). Accordingly, only individuals who face some risk of injury as a result of  
6 the exit exam requirement have standing to assert a challenge in federal court. By virtue of  
7 the Board of Education’s decision to delay the requirement, only students who anticipate  
8 graduating in 2006 or later have standing to bring such a challenge.

9 All of the named individual plaintiffs in the second amended complaint are in the  
10 class of 2004 or 2005. None of these plaintiffs will be required to pass the exit exam in order  
11 to graduate. As such, they do not have standing to sue.

12 The only other plaintiff in this litigation is the Learning Disabilities Association of  
13 California, a volunteer organization serving individuals with learning disabilities. As the  
14 Court noted in its March 12, 2003 order, plaintiffs do not claim that any of the Association’s  
15 members have taken the CAHSEE or will be subject to the CAHSEE requirement.  
16 Accordingly, the Association will not suffer any “injury in fact” as a result of the exit  
17 requirement and thus does not have standing to bring this action on its own. See Lujan v.  
18 Defenders of Wildlife, 504 U.S. 555, 560 & n.1 (1992) (“injury must affect the plaintiff in a  
19 personal and individual way”); id. at 563 (plaintiffs must be directly affected “apart from  
20 their ‘special interest in the subject’”) (citation omitted).

21 In the absence of a named plaintiff with standing to bring this action, the case must  
22 and will be dismissed.

23 **II. Status of Challenge to Waiver Process**

24 Under section 60851(c) of the California Education Code, as revised in January 2003,  
25 the governing board of a local school district “*may* waive the requirement to successfully  
26 pass one or both subject matter parts of the high school exit examination for a pupil with a  
27 disability” provided that three conditions are met: (1) the student has an IEP or section 504  
28 plan that requires particular accommodations or modifications for taking the exam; (2) the

1 student has completed or is progressing toward the completion of sufficient high school level  
 2 coursework to have attained the skills and knowledge otherwise needed to pass the exit  
 3 exam; and (3) the student has received the equivalent of a passing score on the exit exam  
 4 using a modification. See Cal. Educ. Code § 60851(c) (emphasis added).

5 In December 2002, the Ninth Circuit found that plaintiffs' claims regarding access to  
 6 the CAHSEE were ripe because section 60851(c) forced learning disabled students who were  
 7 subject to the exit exam requirement to make a Hobson's choice between taking the  
 8 CAHSEE with modifications and risking denial of a waiver, or taking it without  
 9 modifications and risking failure. As this Court noted in its March 12, 2003 order, it was  
 10 "the discretionary nature of the waiver process"—the fact that a student who meets the three  
 11 specified conditions *may* be granted a waiver—that gave rise to this dilemma. Slip op. at 6.  
 12 By implication, a waiver process that is less discretionary—one in which students who met  
 13 certain conditions *will* be granted waivers—would obviate the "real and immediate injury"  
 14 identified by the Ninth Circuit. See Smiley v. Calif. Dep't of Educ., 2002 WL 31856343, at  
 15 \*1 (9th Cir. Dec. 19, 2002).

16 Since the Ninth Circuit issued its ruling, and subsequent to this Court's March 12,  
 17 2003 order, the state has clarified its position regarding the availability of waivers. In  
 18 supplemental pleadings filed with this Court, the state has taken the position that section  
 19 60851(c) vests no discretion in local school boards to grant or deny waivers to students who  
 20 satisfy the statutory criteria. Rather, according to the state, "[i]f a student meets the  
 21 [statutory] requirements for obtaining a waiver, a waiver *will be granted.*" Defs.' Supp. Br.  
 22 at 11 (emphasis added). As such, the only discretion left for school boards to exercise is the  
 23 discretion "to decide whether the requirements have been met." Id. Thus, "when a student  
 24 has taken the CAHSEE in a fundamentally altered form (i.e., with the help of calculators,  
 25 readers, corrective devices, and other assistance that non-disabled students cannot use), but  
 26 has otherwise demonstrated sufficient high school proficiency as required by the statute, a  
 27 waiver will be granted." Id.

28



UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JULEUS CHAPMAN,  
Plaintiff,

Case Number: CV01-01780 CRB

**CERTIFICATE OF SERVICE**

v.

CA DEPT OF EDUCATION,  
Defendant.

---

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 8, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Mary Bondy Reiten  
Lief Cabraser Heimann & Bernstein LLP  
275 Battery Street 30<sup>th</sup> Floor  
San Francisco, CA 94111-3339

Dated: September 8, 2003

Richard W. Wieking, Clerk  
By: Barbara Espinoza, Deputy Clerk