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U.S. DISTRICT COURT
DISTRICT OF ALASKA

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

ALEXANDER NOON, ET AL.,

Plaintiffs,

vs.

ALASKA STATE BOARD OF EDUCATION
AND EARLY DEVELOPMENT; ET AL.,

Defendants.

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CLASS ACTION

Case No. A04-0057 CV (JKS)

JOINT STIPULATION &

[Proposed] ORDER REGARDING

CLASS CERTIFICATION AND

USE OF HSGQE TEST RESULTS

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1 **I. INTRODUCTION**

2 This is a putative class action disability discrimination case brought on
3 behalf of approximately 18,000 students with disabilities in Alaska public schools who
4 have taken or must take the High School Graduation Qualifying Exam ("HSGQE") in
5 order to receive a high school diploma. The complaint in this action was filed on March
6 16, 2004, alleging violations of the Individuals with Disabilities Education Act
7 ("IDEA"), the Rehabilitation Act of 1973 ("Rehab Act"), the Americans with
8 Disabilities Act ("ADA"), the Federal and Alaska State Constitutions, and various state
9 laws. Plaintiffs also filed a class certification motion on March 17, 2004, seeking
10 certification of a class of all students eligible for an Individualized Education Program
11 ("IEP") pursuant to the IDEA or a Section 504 Education Plan ("504 plan") pursuant to
12 the Rehab Act, who have taken or will be required to take the HSGQE.
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16 The undersigned Parties, by and through their counsel of record, have
17 agreed to limited interim relief to (1) protect students with IEPs or 504 plans in the class
18 of 2004 who would otherwise be denied high school diplomas this spring due to their
19 failure to fully fulfill the HSGQE graduation requirement and (2) provide additional
20 opportunity for pursuit of a complete resolution of these claims through negotiation.
21 Counsel for the parties met on March 22, 2004 in Anchorage, Alaska to discuss these
22 issues.
23

24 This Stipulation shall in no way be construed as an admission of liability
25 by the Defendants or as a limitation on claims that Plaintiffs may assert. This

1 Stipulation is without prejudice to any Party's right to assert any claim or defense, or to
2 the ultimate determination of the Parties' legal rights before this Court. Except as
3 explicitly set forth herein, this Stipulation shall in no way be interpreted to otherwise
4 impair Defendants' discretion to administer the HSGQE to Alaska public school
5 students, set educational standards, or determine graduation requirements.
6

7 **II. STIPULATION**

8 **A. Class Certification**

9
10 1. The Parties agree and hereby stipulate that Plaintiffs have alleged
11 sufficient underlying facts such that the purported class, as defined in this stipulation,
12 meets the requirements of both Federal Rules of Civil Procedure 23(a) and (b)(2). The
13 Parties agree that it would be impracticable to join every student with an IEP or 504
14 plan who would ultimately be required to take the HSGQE to obtain a high school
15 diploma. *See* Fed. R. Civ. Proc. 23(a)(1). The Parties further agree that Plaintiffs'
16 challenge to the HSGQE implicates numerous questions of law and fact that are
17 common to every putative class member. *See* Fed. R. Civ. Proc. 23(a)(2). Additionally,
18 the Parties agree that the named student Plaintiffs' claims are typical of the rest of the
19 class members, and that the named student Plaintiffs will provide adequate and fair
20 representation of the rights of the entire class. *See* Fed. R. Civ. Proc. 23(a)(3)-(4).
21 Finally, the Parties agree that Defendants' alleged conduct is based upon grounds
22 generally applicable to the class, and that the most appropriate remedy for the alleged
23
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1 conduct, if any, would be final injunctive relief or corresponding declaratory relief with
2 respect to the class as a whole. *See* Fed. R. Civ. Proc. 23(b)(2).

3 2. Accordingly, the Parties agree that the following class definition would be
4 appropriate for purposes of this case at this time, should the Court find that Plaintiffs'
5 purported class meets the standards set forth in Federal Rule of Civil Procedure 23:
6

7 All students who have an Individualized Education Program
8 ("IEP") pursuant to the Individuals with Disabilities Education Act
9 or a Section 504 Education Plan ("504 Plan") pursuant to the
10 Rehabilitation Act of 1973, and who have taken or will be required
to take the Alaska High School Graduation Qualifying Examination
("HSGQE").

11 The agreements contained herein are applicable only to students with disabilities in the
12 Plaintiff class. The Parties have not reached an agreement at this time concerning the
13 appropriateness of organizational Plaintiff, Learning Disabilities Association of Alaska,
14 serving as a class representative; the Parties reserve their rights to advance any
15 argument concerning this issue hereafter in this litigation.
16

17 **B. Limited Interim Relief**
18

19 3. The Parties agree and hereby stipulate that HSGQE test results will not be
20 used to deny any class member a diploma in spring 2004 provided that the class
21 member meets all other criteria for graduation and a diploma.
22

23 4. Specific notice of the above will be sent by the state to all high school
24 principals and special education directors on or before April 13, 2004. The notice shall
25 instruct districts to send notice to parents and special education teachers of class

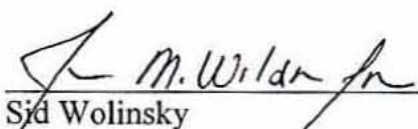
1 members affected by this order. Both the plaintiffs and the State shall take steps to
2 facilitate compliance with the court's order.

3 **C. Suspension of Requirements of Civil Rules**

4
5 5. The parties agree and hereby stipulate that they will enter into negotiations
6 regarding matters raised in this case, with the intent that proposals will be prepared for
7 presentation to the Alaska Board of Education and Early Development. During this
8 time of negotiation, the parties agree that all time deadlines and requirements in the
9 Federal Rules of Civil Procedure, including the requirement of a responsive pleading
10 and the initiation of discovery, shall be suspended. The Parties shall hold their first
11 negotiation session on or before May 18, 2004, unless otherwise agreed to by all Parties.
12 The parties shall report back to the court no later than July 9 regarding the progress of
13 negotiations. If negotiations are not successful regarding all issues in this matter, the
14 parties will stipulate to, or ask the court to set, a timeline for further proceedings in this
15 case; the Parties also agree to cooperate in providing for expedited discovery.
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19 DISABILITY LAW ADVOCATES
20 Attorneys for Plaintiffs

21 Date: 4/6/04

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17 Roger Sampson and Richard Smiley

18 Date: 4/6/04
19

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22 Assistant Attorney General
23 Alaska Bar No. 9011113

24 Date: 4/6/04
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29 Alaska Bar No. 9406053

30 JERMAIN, DUNNAGAN & OWENS, PC
31 Attorneys for Anchorage School District

32 Date: 4/6/04

33 By: Howard S. Trickey
34 Howard S. Trickey
35 Alaska Bar No. 7610138

1
2 [Proposed] ORDER

3 Good cause appearing, the Court ORDERS that the Plaintiff class be
4 certified. The class shall consist of all students (a) who have an Individualized
5 Education Program pursuant to the Individuals with Disabilities Education Act or a
6 Section 504 Education Plan pursuant to the Rehabilitation Act of 1973, and (b) who
7 have taken or will be required to take the Alaska High School Graduation Qualifying
8 Examination. The Court further ORDERS the interim relief and suspension of rules as
9 described in the Parties' Joint Stipulation.
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13 IT IS SO ORDERED.

14 DATED:

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The Honorable James K. Singleton
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