


1 Harold J. Kwalwasser, State Bar No. 050946
2 L. Michael Russell, State Bar No. 056061
3 Allyn O. Kreps, State Bar No. 029256
4 Office of the General Counsel
5 Los Angeles Unified School District
6 333 South Beaudry Avenue, 24th Floor
7 Los Angeles, CA 90017
8 Telephone: (213) 241-6601
9 Facsimile: (213) 241-8444

10 Attorneys for Defendants

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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION
16

17 CHANDA SMITH, et al.,)
18)
19 Plaintiffs,)
20)
21 vs.)
22)
23 LOS ANGELES UNIFIED SCHOOL)
24 DISTRICT, et al.,)
25)
26 Defendants.)
27)
28)

29  CASE NO. CV 93-7044-LEW(GHKx)
30 **MODIFIED CONSENT DECREE**

MODIFIED CONSENT DECREE

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1 Plaintiffs and defendants, by and through their counsel of record, hereby stipulate to
2 and enter into this Modified Consent Decree as follows:

3
4 **Section 1. Introduction.**

5 1. The parties to this Modified Consent Decree recognize that federal and state law
6 mandate that children with disabilities have access to a free and appropriate public education.
7 This Modified Consent Decree represents the commitment of the Board of Education of the
8 Los Angeles Unified School District (“District”) that the District’s special education program
9 will be in compliance with all applicable federal laws. Therefore, the purpose of this
10 Modified Consent Decree is to complete the undertaking of bringing the District into
11 compliance with the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400
12 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794. This
13 Modified Consent Decree replaces and supplants the Consent Decree (“prior Consent Decree”)
14 in this case which was entered on April 26, 1996 by this Court.

15 2. In entering into this prior Consent Decree, the parties acknowledged that federal
16 and state law mandate that children with disabilities have access to a free and appropriate
17 public education in the least restrictive environment. The prior Consent Decree established
18 the following objectives:

19 a. Parents will be provided with timely information concerning services so
20 that they can be full participants in the educational decisions affecting their children.

21 b. Obstacles to children with disabilities being educated on general
22 education campuses will be eliminated.

23 c. Children with disabilities will have access to appropriate education
24 services and supports.

25 d. All timelines established by law for conducting assessments and
26 delivering services will be met.

27 e. A full continuum of special education programs will be provided and each
28 child with a disability will have access to education in the least restrictive environment.

1 f. The Individualized Education Programs of children with disabilities will
2 be implemented in a timely manner.

3 g. All appropriate District officers and employees will be knowledgeable
4 concerning their obligations under the law.

5 3. Progress toward achieving these objectives has been complex. The District, with
6 the dedicated work of Consent Decree Administrators Dr. Louis Barber and Dr. Mary
7 Margaret Kerr, has significantly increased institutional capacity to deliver compliant special
8 education services. However, the objective of compliance has not yet been fully achieved, and
9 this Modified Consent Decree establishes specific outcomes that the District must achieve.

10 4. In August of 2001, the District filed a motion, *inter alia*, which sought to modify
11 certain portions of the Consent Decree of April 26, 1996 and/or to stay that Consent Decree.
12 The motion was denied by this Court on September 24, 2001. On October 17, 2001, the
13 District appealed this ruling to the United States Court of Appeals for the Ninth Circuit on all
14 issues.

15 5. The parties have been engaged, since June 2002, in a special Ninth Circuit
16 Mediation process in connection with defendants' appeal from that Order of this Court.
17 Pursuant to agreement of the parties and Ms. Ann Julius, Esq., the assigned Ninth Circuit
18 Mediator, this special mediation process has been conducted by an expert in special education,
19 Dr. Thomas Hehir of Harvard University. All issues which resulted in the Modified Consent
20 Decree have been addressed in this mediation.

21 6. Through the skillful guidance of Dr. Hehir, the parties have agreed that the basic
22 concept of the Modified Consent Decree is a change to an outcomes-based consent decree.
23 This change involves the parties agreeing to outcomes which are objective and measurable
24 that the District must achieve by June 30, 2006. The District's academic and fiscal year starts
25 on July 1 and ends on June 30 of the following year.

26 7. The parties have also agreed that an independent monitor, Dr. Carl Cohn,
27 currently a Professor at the University of Southern California, will have the responsibility for
28 determining whether the District has complied with the agreed-upon outcomes.

1 8. Pursuant to Section XII of the prior Consent Decree, both parties are in
2 agreement with this Modified Consent Decree and both parties request that this Court approve
3 and enter the Modified Consent Decree.
4

5 **Section 2. Independent Monitor.**

6 9. In light of the outcomes established in Section 6 of this Modified Consent
7 Decree, the parties have agreed that an Independent Monitor should be established with
8 substantially different responsibilities from those exercised by the Consent Decree
9 Administrators under the prior Consent Decree. Accordingly, the Consent Decree
10 Administrators appointed pursuant to Section IV of the prior Consent Decree are discharged
11 of their duties. The Consent Decree Administrators faithfully performed their duties under
12 the prior Consent Decree and made substantial contributions toward achieving the objectives
13 of the prior Consent Decree.

14 10. The parties hereby agree that Dr. Carl Cohn shall be appointed as Independent
15 Monitor. Dr. Thomas Hehir shall be a consultant to the Independent Monitor.

16 11. In the event that the Independent Monitor resigns or is unable to continue to
17 carry out his duties under this Modified Consent Decree because of illness or any other
18 incapacity, a replacement Independent Monitor shall be selected as follows:

19 a. The parties shall have 30 days to mutually agree on a replacement
20 Independent Monitor, who shall possess the following minimum qualifications:

21 (1) Familiarity with the relevant federal and California statutes and
22 regulations concerning the identification and provision of special education services to
23 students with disabilities.

24 (2) Substantial practical or field experience as a special education
25 expert in designing and implementing programs or systems for the identification and provision
26 of special education instruction and/or services to students with disabilities.

27 (3) Have a regular office in Los Angeles County or agree to move to
28 Los Angeles County.

1 If the parties mutually agree on a replacement of the Independent Monitor, he or she shall
2 become the Independent Monitor.

3 b. In the event the parties are unable to mutually agree upon a replacement
4 Independent Monitor, the parties shall jointly petition the Court to appoint a replacement
5 Independent Monitor from among the nominations of the parties. Plaintiffs and defendants
6 shall each nominate two candidates for the position of Independent Monitor who shall meet
7 the qualifications of Paragraph 11(a) above. The Court shall select one of the candidates so
8 nominated.

9 12. The parties agree that the Independent Monitor may be removed for cause upon the
10 mutual written agreement of counsel for the District and counsel for plaintiffs. The written
11 agreement shall set forth the “cause” constituting the basis for such removal. Absent mutual
12 agreement, either party may move the Court for removal of the Independent Monitor. The
13 party making such a motion must demonstrate by clear and convincing evidence (a) a material
14 failure or refusal to perform duties required of the Independent Monitor under the terms and
15 conditions of this Modified Consent Decree; or (b) misconduct on the part of the Independent
16 Monitor. In the event the Independent Monitor is removed pursuant to the provisions of this
17 Section, his or her replacement shall be selected pursuant to the replacement provisions set
18 forth in Paragraph 11 above.

19
20 **Section 3. Independent Monitor’s Powers and Duties.**

21 13. The Independent Monitor is hereby authorized, after consultation with the
22 District, to retain such consultants, experts and other personnel as may be reasonably required
23 by him to assist in his duties under this Modified Consent Decree. The District shall in
24 accordance with a professional services agreement: (a) compensate the Independent Monitor
25 for professional services; (b) reimburse the Independent Monitor for all expenses incurred by
26 the Independent Monitor in performing his duties under this Modified Consent Decree; and
27 (c) compensate and reimburse the expenses of any consultants, experts or other personnel
28 retained to assist the Independent Monitor. The Independent Monitor shall submit monthly

1 invoices to the District and the District shall pay the Independent Monitor's monthly invoices
2 within a reasonable time period.

3 14. In performing their duties under this Modified Consent Decree, the Independent
4 Monitor and Dr. Hehir shall be deemed agents of the Los Angeles Unified School District and
5 shall be entitled to all immunities applicable to the conduct of school district officials or
6 personnel. The District shall defend, indemnify and hold harmless the Independent Monitor
7 and Dr. Hehir from and against any and all liability, action or proceeding arising from or
8 related to the performance of any act, obligation or duty performed in connection with this
9 Modified Consent Decree. Notwithstanding the above, the District shall have no obligation
10 or duty under this Paragraph 14 with respect to any matter that involves or results from willful
11 misconduct.

12 15. The Independent Monitor shall, in his relations with and conduct toward the
13 District and plaintiffs, be impartial, neutral and independent of either party. In carrying out
14 his duties under this Modified Consent Decree, the Independent Monitor shall act upon and
15 otherwise exercise his independent professional judgment.

16 16. The Independent Monitor shall be entitled to access to all District records and data,
17 including student records. Notwithstanding the foregoing, the Independent Monitor shall not
18 be entitled to access to materials protected by the attorney-client privilege or attorney work
19 product doctrine from either party. The Independent Monitor shall maintain the confidentiality
20 of all confidential and privileged materials and shall not disclose their contents to any party
21 or person.

22 17. The Independent Monitor shall have full and final authority to work with and,
23 if necessary, order the District to comply with this Modified Consent Decree and the Annual
24 Plan adopted in accordance with Section 5 of this Modified Consent Decree.

25 18. In fulfilling his obligations under the Modified Consent Decree, the Independent
26 Monitor shall verify the accuracy of the District's data required to measure the District's
27 performance and shall make determinations only on data that the Independent Monitor finds
28 to be accurate.

1 19. The Independent Monitor shall periodically meet with the parties to review
2 progress toward achieving outcomes, share information, and avoid disputes.

3 20. The Independent Monitor shall have the following additional duties:

4 a. Prior to June 30, 2006, the Independent Monitor shall make a
5 determination concerning whether the District’s Least Restrictive Environment materials for
6 parents are adequate.

7 b. Determine whether the District’s Office of Transition Services is
8 adequately staffed following the submission of the results of a staffing study conducted by the
9 District no later than June 30, 2005.

10 c. Select parents of children with disabilities eligible to be employed or
11 retained by the District as members of the District Validation Review teams.

12
13 **Section 4. Parents’ Council.**

14 21. A Parents’ Council (“Council”) shall replace the committees established by the
15 prior Consent Decree. The initial membership of the Council shall consist of the following:

16 a. All members of the Class Member Review Committee established by
17 Section IV.B.5 of the prior Consent Decree.

18 b. All members of the Executive Committee established by Section IV.B.4.c
19 of the prior Consent Decree who were appointed to such Committee as a parent of a child with
20 disabilities.

21 c. Any member of the Executive Committee established by Section IV.B.4.c
22 of the prior Consent Decree who was appointed to such Committee in a capacity other than
23 as a parent of a child with disabilities and who has attended at least one meeting of the
24 Executive Committee in the twelve month period preceding approval of this Modified Consent
25 Decree. Such persons shall be non-voting *ex officio* members.

26 22. To be eligible for continued parent membership on the Council, a parent must
27 have a child with a disability eligible to receive services from the District with the following
28 exceptions:

1 a. If the parent's child has died, the parent's membership shall continue until
2 the student would have aged out of school attendance.

3 b. If a child exits from the District or is no longer eligible for special education
4 services, a parent's membership will continue for 1 year.

5 23. The membership of the Council shall consist of 30 parents of a child with
6 disabilities ("parent members") and not more than 10 *ex officio* members. However, the initial
7 membership of the Council may exceed these numbers if necessary to allow participation by
8 all individuals automatically appointed to the Council as provided for in Paragraph 21 above.
9 In the event the initial membership of the Council does not consist of 30 parent members,
10 additional members shall be appointed as provided in Paragraph 24 below.

11 24. Any vacancies that arise in the parent membership of the Council shall be filled
12 by the remaining members of the Council in accordance with the following procedure:

13 a. The Council and Independent Monitor shall jointly agree upon a standard
14 form to be used for applications for the Council.

15 b. The Independent Monitor shall cause to be made such announcements as
16 he deems appropriate concerning the acceptance of applications for the Council.

17 c. Applications shall be filed with the Independent Monitor's office and
18 provided to the Council.

19 d. The Council shall review applications in an open meeting. The Council
20 may delegate to a subcommittee the task of ranking applications or conducting interviews of
21 applicants. The Independent Monitor or his designee shall be in attendance at Council or
22 subcommittee meetings when such applications are being reviewed.

23 e. The Council shall nominate for appointment one individual for each
24 parent vacancy on the Council. The Independent Monitor shall accept or reject the
25 nomination. The Independent Monitor may only reject a nomination if he finds one of the
26 following:

27 (1) The applicant is not a parent of a child with disabilities residing
28 within the District.

1 (2) Appointment of the applicant would result in the Committee not
2 reflecting the diversity of the District (*i.e.*, District geography, range of disabilities, student
3 placement options).

4 f. If the Independent Monitor rejects the Council's nomination, he must
5 provide a written explanation of the reason that the nominee was rejected.

6 25. The Council shall have the following duties:

7 a. Review the District's implementation of the Modified Consent Decree.

8 b. Periodically meet with the Independent Monitor to discuss the District's
9 efforts with respect to implementing the Modified Consent Decree and to share with the
10 Independent Monitor any information bearing on the District's obligations under the Modified
11 Consent Decree.

12 c. Regularly meet with counsel for the plaintiffs in either open or closed
13 session to receive reports on implementation of the Modified Consent Decree.

14 d. Periodically meet with representatives of the District to receive reports
15 on implementation of the Modified Consent Decree.

16 e. Provide comments to the Independent Monitor on the Annual Plan.

17 26. The Council may establish from time to time subcommittees consisting of some
18 of its members tasked with one or more of the responsibilities set forth in this Section 4.

19 27. If requested by the Council, counsel for plaintiffs shall file objections to the
20 proposed Annual Plan pursuant to Section 5 of this Modified Consent Decree or initiate
21 enforcement complaints pursuant to Section 14 of this Modified Consent Decree.

22 28. The Council shall hold such meetings as it deems necessary to fulfill its
23 obligations as described above. To support the meetings of the Council, the Independent
24 Monitor's office shall provide meeting space, interpreters and interpretation equipment,
25 transportation, meals, and child care at its meetings.

26 29. Counsel for the plaintiffs may incur reasonable expenses to support the work of
27 the Council. The District acknowledges that expenses in the amount of \$45,000.00 per year
28 shall be deemed reasonable to support the work of the Council.

1 **Section 5. Annual Plan.**

2 30. The District shall prepare and the Independent Monitor shall approve an Annual
3 Plan to make progress toward the achievement of the outcomes required by this Modified
4 Consent Decree.

5 31. The Annual Plan shall include the following information for each outcome:

- 6 a. Benchmarks to be achieved by the conclusion of the plan year when
7 appropriate.
- 8 b. Action steps to be taken to achieve the outcome.
- 9 c. Responsible staff for implementing the action steps.
- 10 d. The evidence that will be maintained to establish that the action step has
11 been completed.
- 12 e. The approximate date by which the action step will be completed.

13 32. The Annual Plan shall be submitted to and approved by the Independent Monitor
14 in accordance with the following procedure:

15 a. The District shall submit its proposed Annual Plan to the Independent
16 Monitor, with a copy to plaintiffs' counsel for review, on or before April 1 of each year. The
17 Annual Plan for the 2003-2004 school year shall be submitted by the District within 10 days
18 from the Court's approval of this Modified Consent Decree. The proposed Annual Plan shall
19 be posted on the District's website, and the website shall provide information on how to
20 submit written comments to the Independent Monitor.

21 b. Plaintiffs' counsel shall review the Annual Plan and, within 30 days of
22 its receipt from the District, file any written objections with the Independent Monitor.
23 Within the same 30 day period, any member of the public may submit written comments to
24 the Independent Monitor.

25 c. The District may respond in writing, with a copy to counsel for the
26 plaintiffs, to any objections or comments within 15 days of the close of the objection period.

27 d. The Independent Monitor shall adopt the Annual Plan with such
28 additions, deletions, or revisions as he deems appropriate. The Independent Monitor shall

1 adopt the Annual Plan within the following time period:

2 (1) If no objections or comments are filed, within 30 days of the close
3 of the objection period.

4 (2) If objections or comments are filed, within 30 days of the date of the
5 District's response to such objections or comments.

6 e. At any time, the District may request that the Independent Monitor
7 approve a revision to the Annual Plan using the same procedures for the adoption of the
8 Annual Plan.

9 33. In adopting the Annual Plan, the Independent Monitor shall take into account
10 the need to ensure that interim benchmarks and final outcomes are achieved and shall be
11 guided by his independent review of the District's progress.

12 34. The decision of the Independent Monitor shall be final and not subject to further
13 review.

14
15 **Section 6. Outcomes.**

16 The District shall achieve the following outcomes, including outcomes to be established
17 by the Independent Monitor, by June 30, 2006:

18 **A. Progress in the General Education Curriculum.**

19 35. Outcome No. 1: Participation in the Statewide Assessment Program. By June 30,
20 2006, 75% of students with disabilities in state-identified grade levels will participate in the
21 statewide assessment program with no accommodations or standard accommodations. The
22 percentage of students with disabilities participating in the statewide assessment program will
23 be comparable to the percentage of nondisabled students participating in the statewide
24 assessment program.

25 36. The Individualized Education Program ("IEP") for every student with disabilities
26 shall identify how the student will participate in the statewide assessment program: (a) no
27 accommodations or standard accommodations; (b) nonstandard accommodations; or
28 (c) alternate assessment.

1 37. Outcome No. 2: Performance in the Statewide Assessment Program. The
2 Independent Monitor shall develop an outcome measure to require that the performance of
3 students with disabilities increases on the statewide assessment program and that the disparity
4 with general education performance on the statewide assessment program is reduced. The
5 outcome measure shall be based on the key performance indices.

6 **B. Graduation, Completion and Dropout Rates.**

7 38. Outcome No. 3: Graduation Rate. The District shall increase the number of
8 grade 12 students with disabilities that receive diplomas based on the 2001-02 data by at least
9 5% (no less than 42.01% of grade 12 students with disabilities) during the 2003-04 school
10 year, at least 5% (no less than 44.11% of grade 12 students with disabilities) during the 2004-
11 05 school year, and at least 5% (no less than 46.32% of grade 12 students with disabilities)
12 during the 2005-06 school year. This outcome is based on State diploma requirements in
13 effect on the date of this Modified Consent Decree. If the State's diploma requirements
14 change, the Independent Monitor shall meet with the parties to discuss the impact of the
15 change and may revise this outcome if appropriate.

16 39. Outcome No. 4: Completion Rate. The District's completion rate shall increase
17 based on an increase in the number of students that graduate with a diploma, receive a
18 certificate of completion, or age out, as compared to the total number of students with
19 disabilities that graduate with a diploma, receive a certificate of completion, age out, or drop
20 out (grades 7-12).

21 **C. Suspensions.**

22 40. Outcome No. 5: Reduction of Long-Term Suspensions. By June 30, 2006, the
23 District will reduce the percent of students with disabilities suspended 6 or more cumulative
24 days from 9.14% of the total suspensions of students with disabilities occurring in the 2001-
25 2002 school year to 2% of the total suspensions of students with disabilities.

26 41. The Division of Special Education shall review all suspensions of six or more
27 cumulative days for compliance with District policy. The Division of Special Education shall
28 report to the Independent Monitor all cumulative suspensions of 10 or more days with its

1 analysis of the legality of such suspensions. The Independent Monitor shall review the report
2 from the Division of Special Education regarding cumulative suspensions of 10 or more days
3 to determine if the suspensions are lawful and, if not, direct the District to take corrective
4 action.

5 42. Other Suspensions. The Independent Monitor shall review suspension data to
6 determine whether students with disabilities are subject to suspensions at a greater statistically
7 significant rate than nondisabled children and, where appropriate, take action to address such
8 disproportionality, which could include the establishment of a performance outcome.

9 **D. Home School Placement/Least Restrictive Environment.**

10 43. Outcome No. 6: Placement of Students with Disabilities (ages 6-22) with
11 Eligibilities of Specific Learning Disabilities (SLD) and Speech and Language Impaired (SLI).
12 By June 30, 2006, the District will demonstrate a ratio of not less than 73% of students placed
13 in the combined categories of 0-20% and 21-60% and not more than 27% students placed in
14 the 61-100% category according to federal placement reporting requirements. In determining
15 whether the District has achieved this outcome, any fractional percentage of .51 or above shall
16 be rounded up to its nearest whole number.

17 44. Outcome No. 7: Placement of Students with Disabilities (ages 6-22) with all
18 Other Eligibilities. By June 30, 2006, the District will demonstrate a ratio of not less than 52%
19 of students placed in the combined categories of 0-20% and 21-60% and not more than 48%
20 students placed in the 61-100% category according to federal placement reporting
21 requirements. In determining whether the District has achieved this outcome, any fractional
22 percentage of .51 or above shall be rounded up to its nearest whole number.

23 45. Outcome No. 8: Home School. The Independent Monitor shall establish an
24 outcome regarding home school placement with the objective to ensure that the District is
25 meeting the Least Restrictive Environment requirement of federal law. "Home school" means
26 any school a student with disabilities may attend if the student were not disabled.

27 46. For purposes of Outcome No. 6 and Outcome No. 7, the 0-21% and 21-60%
28 categories shall have the same meaning as used in federal placement reporting requirements.

1 The 61-100% category shall include the combined totals of the following categories as used
2 in federal placement reporting requirements: (a) outside regular class more than 60%;
3 (b) placed in a public separate facility; (c) placed in a private separate facility; (d) placed in
4 a public residential facility; (e) placed in a private residential facility; and (f) placed in a home
5 or hospital environment.

6 47. The parties agree that special education centers are part of the continuum of
7 program options for a full continuum of special education and related services in the least
8 restrictive environment.

9 **E. Transition Planning.**

10 48. Outcome No. 9: Individual Transition Plan. By June 30, 2006, 98% of all
11 students with disabilities as defined in IDEA age 14 and over shall have an Individual
12 Transition Plan developed in accordance with federal law.

13 **F. Evaluations.**

14 49. Outcome No. 10: Timely Completion of Evaluations. By June 30, 2006:

- 15 a. 90% of all initial evaluations shall be completed within 50 days.
- 16 b. 95% of all initial evaluations shall be completed within 65 days.
- 17 c. 98% of all initial evaluations shall be completed within 80 days.

18 50. An initial evaluation is any evaluation other than a District initiated three-year
19 reevaluation.

20 51. Completion means that the evaluation has been completed and an IEP meeting
21 convened consistent with applicable federal and state law. If the evaluation or IEP meeting
22 is delayed because of a parent request or the child is unavailable for testing, the completion
23 period shall be extended by the period of such parental request or unavailability.

24 52. Beginning with the 2003-2004 school year, initial evaluations not completed
25 within 80 days shall be reported promptly to the Independent Monitor for review and
26 appropriate action.

27 **G. Disproportionality.**

28 53. During the 2003-2004 school year, the District shall provide to the Independent

1 Monitor data and analysis concerning whether African-American students are
2 disproportionally identified as emotionally disturbed. The Independent Monitor shall review
3 the data and the District's analysis, and such other information as the Independent Monitor
4 deems appropriate, to determine whether a performance outcome should be established. In
5 the event a performance outcome is established, the District shall within 60 days of the
6 Independent Monitor's action request modification to its 2004-2005 Annual Plan to address
7 such outcome in the event that it is not already included in such plan.

8 **H. Complaints, Disputes, and Informal Dispute Resolution.**

9 54. Outcome No. 11: Complaint Response Time. The District will provide lawful
10 responses to parents filing complaints in accordance with the following performance
11 standards:

- 12 a. 25% of complaints will be responded to within 5 working days.
- 13 b. 50% of complaints will be responded to within 10 working days.
- 14 c. 75% of complaints will be responded to within 20 working days.
- 15 d. 90% of complaints will be responded to within 30 working days.
- 16 e. The District will be required to report to the Independent Monitor on the
17 status of each complaint not resolved within 30 working days, at 5 working day intervals, until
18 the complaint is resolved.

19 f. "Complaint" means the allegation of a perceived violation of (1) the
20 Individuals with Disabilities Education Act and implementing regulations; (2) the California
21 State Education Code related to special education and implementing regulations; or (3) the
22 District's Special Education Compliance Guide.

23 g. "Lawful response" means that a parent is provided with a written
24 response that satisfies the District's legal obligations and may be one of the following: (1) a
25 remedy and, where appropriate, the date by which the remedy shall be implemented;
26 (2) information that an appropriate referral has been made; (3) suggested action the
27 complainant may wish to take; or (4) a determination that the complaint has been investigated
28 and determined to be unfounded.

1 55. Review of Due Process Filings. The parties anticipate that the outcomes set
2 forth in this Modified Consent Decree will improve the quality of special education services
3 to children with disabilities and that as a result the number of due process filings will be
4 reduced. The Independent Monitor shall analyze the number of due process filings and, if
5 necessary, take appropriate actions to address problems in this area.

6 56. Outcome No. 12: Informal Dispute Resolution. By June 30, 2006, the District
7 will increase reliance on informal dispute resolution of disputes by increasing its ability to
8 timely resolve disputes by concluding its informal dispute resolution process within 20
9 working days in 60% of cases.

10 **I. Services.**

11 57. Outcome No. 13: Delivery of Services. The Independent Monitor, in
12 consultation with the parties, shall establish a performance outcome to measure the District's
13 delivery of services in accordance with a child's Individualized Education Programs. The
14 performance outcome will seek to determine whether the District is implementing
15 Individualized Education Programs in substantial compliance with the law. In order to
16 establish and monitor this outcome measure, the following shall occur:

17 a. The baseline criteria and subsequent benchmarks shall be based on
18 scientific sampling techniques that gather data representative of the disability population in
19 the District.

20 b. The Independent Monitor shall, with the assistance of one or more entities
21 and with input from the District's Program Evaluation and Research Branch, design the
22 sampling methodology to establish criteria and subsequent benchmarks. The chosen entity
23 will also verify the validity of the sampling technique as well as the accuracy of the findings
24 during the first year. Such entity shall be chosen by the Independent Monitor.

25 c. In subsequent years, the District shall conduct these studies in accordance
26 with the design. The Independent Monitor shall verify the accuracy of the findings. Any
27 modifications to the study design must be approved by the Independent Monitor.

28

1 **J. Parent Participation at Individualized Education Program Meetings.**

2 58. Outcome No. 14: Increased Parent Participation. The Independent Monitor shall
3 establish one or more outcomes to determine if parents are participating in IEP meetings in
4 accordance with law. The District shall provide data to the Independent Monitor by January
5 2004 and the Independent Monitor shall consider such data in establishing the baseline and
6 outcomes in this area in time to be included in the 2004-2005 Annual Plan.

7 59. The District shall provide an annual report to the Independent Monitor
8 concerning the results of the IEP meeting “Parent Input Surveys.” The Independent Monitor
9 shall consider such survey results in establishing and reviewing Outcome No. 14.

10 **K. Individualized Education Program Translations.**

11 60. Outcome No. 15: Timely Completion of Future Translations. By June 30, 2006,
12 the District shall complete IEP translations requested since July 2003 in the District’s seven
13 primary languages as follows:

- 14 a. 85% within 30 days.
- 15 b. 95% within 45 days.
- 16 c. 98% within 60 days.

17 Beginning on July 1, 2003, any IEP translations not completed within 60 days will be reported
18 to the Independent Monitor for review and appropriate resolution. Any request for translation
19 in other than the seven primary languages shall be referred to the Division of Special
20 Education for appropriate action.

21 61. Outstanding Translations. The District shall identify the students for whom an
22 IEP translation has been requested between July 1, 2002, and January 31, 2003. The District
23 shall mail a letter to all of these parents for whom the translation has not been completed to
24 determine if they want their current IEP translated. The letter will include a return form for
25 mailing back to the District with postage prepaid. For those parents who respond that they
26 would like the IEP translated, the District shall complete the translations according to the
27 standards in Paragraph 60 above. IEP translations requested between February 1, 2003, and
28 June 30, 2003 will be translated by the District without sending the above referenced letter to

1 the parents.

2 **L. Qualified Providers.**

3 62. Outcome No. 16: Increase in Qualified Providers. By June 30, 2006, the
4 disparity between qualified regular education teachers and qualified special education teachers
5 will decrease from 10.4%, which is the disparity in 2002-2003, to 3.4%.

6 **M. Behavioral Interventions.**

7 63. Outcome No. 17: IEP Team Consideration of Special Factors – Behavioral
8 Interventions, Strategies, and Supports. The Independent Monitor shall review the District's
9 implementation of IDEA's requirement that, in the case of children whose behavior impedes
10 their learning, IEP teams are appropriately considering strategies, including positive
11 behavioral interventions and supports, to address such behavior and, if appropriate, establish
12 an outcome.

13 64. Prior to establishing any outcome as provided for in this Section 6, the
14 Independent Monitor shall meet and confer with the parties. The Independent Monitor shall
15 review relevant data with the parties and attempt to establish an outcome by mutual agreement
16 of the parties. In the event that the parties agree upon an outcome, the Independent Monitor
17 shall establish the outcome so agreed upon. In the event an outcome cannot be established by
18 mutual agreement, the Independent Monitor shall establish an outcome. In establishing the
19 outcome, the Independent Monitor shall take into account whether the outcome is achievable
20 by June 30, 2006. Any outcome shall achieve substantial compliance with IDEA.

21
22 **Section 7. Measuring and Achievement of Section 6 Outcomes.**

23 65. The outcomes set forth in Section 6 of this Modified Consent Decree establish
24 performance measures for the District to achieve by June 30, 2006. The Independent Monitor
25 shall review the District's progress toward achieving such outcomes and independently
26 determine whether they have been met.

27 66. In the event that an outcome in Section 6 of this Modified Consent Decree is
28 obtained prior to June 30, 2006, the District need not include action steps in its Annual Plan.

1 However, the Independent Monitor shall continue to monitor whether the District is
2 maintaining satisfaction of the outcome. All outcomes have to continue to be achieved on the
3 date the Independent Monitor certifies that all outcomes have been met.

4 67. In the event that an outcome in Section 6 of this Modified Consent Decree is not
5 obtained prior to June 30, 2006 and achievement of the outcome will be delayed by more than
6 six months, the Independent Monitor may increase the outcome measure to take into account
7 such delay.

8 68. The District shall not adopt any policy or procedure that violates federal or state
9 special education laws.

10
11 **Section 8. Chief Administrator of Special Education.**

12 69. The chief administrator of special education, as designated by the superintendent
13 of schools, shall have the authority to direct District staff as necessary to correct any non-
14 compliance with special education laws and regulations or prevent any such non-compliance.

15
16 **Section 9. Complaint Response Unit.**

17 70. A Complaint Response Unit shall be established under the oversight of the
18 Office of the Senior Deputy Superintendent, Educational Services. All current employees of
19 the Parent Resource Network will be transferred to the Complaint Response Unit. The
20 purpose of the Complaint Response Unit is to give the District an opportunity to resolve parent
21 complaints without the need for parents to resort to external complaint and due process
22 mechanisms. The Complaint Response Unit shall accurately record all parent inquiries and
23 complaints and the District's response thereto and shall provide complete and accurate
24 information to parents who contact it. The District shall ensure that information materials
25 inform parents of the availability of the Complaint Response Unit. On June 30, 2004, the
26 District shall submit a report to the Independent Monitor demonstrating its compliance with
27 this Section 9.

28 71. The District shall establish procedures and protocols for the processing of

1 complaints which shall be approved by the Independent Monitor.

2 72. The District shall establish procedures and protocols for the retention of data
3 concerning complaint filings and dispositions which shall be approved by the Independent
4 Monitor.

5 73. With the exception of the administration of the Complaint Response Unit, all
6 persons employed to respond to complaints shall be parents and every effort shall be made to
7 ensure that a majority are parents, as defined in IDEA, of children with disabilities.

8 74. The District shall prepare a staffing plan for the Complaint Response Unit with
9 adequate capacity to timely respond to complaints in the seven primary languages of the
10 District. The staffing plan shall be approved by the Independent Monitor.

11 75. The District shall consult with the Independent Monitor prior to the hiring or
12 termination of any employee of the Complaint Response Unit.

13
14 **Section 10. Facilities.**

15 76. All new construction and renovation or repairs by the District shall comply with
16 Section 504 and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*

17 77. The District shall within 5 years enter into binding commitments to expend at
18 least \$67.5 million dollars on accessibility renovations or repairs to existing school sites
19 consistent with Section 504 and the Americans with Disabilities Act.

20 78. Within 30 days of the approval of this Modified Consent Decree, the District
21 shall establish a unit within the Division of Special Education to address “on-demand”
22 requests related to accessibility. The unit shall be staffed by a special education professional
23 and a facilities professional and will have at its disposal “task order” procedures to rapidly
24 provide minor renovations where necessary to provide access for individual students seeking
25 placement in currently inaccessible programs. The District shall appropriate, make available,
26 and expend up to \$20 million dollars from the Measure K Board’s leveling fund for task orders
27 related to requests for program accessibility under IDEA and Section 504. This confirms the
28 commitment made by the Board of Education on January 28, 2003.

1 **Section 11. Integrated Student Information System.**

2 79. A stipulation concerning the Integrated Student Information System (“ISIS”),
3 with a Request for Proposals (“RFP”) as Exhibit A, was entered by the Court on June 20,
4 2002, and the parties agreed that this stipulation and the RFP set forth requirements of the
5 ISIS. Notwithstanding any other provision of this Modified Consent Decree, it is agreed that
6 the parties shall be bound by paragraphs 3, 4, and 5 of such stipulation. The timelines set forth
7 in such stipulation may be extended by mutual agreement of the parties. In the event that this
8 Modified Consent Decree is terminated pursuant to Section 17 of this Modified Consent
9 Decree prior to the completion of the ISIS, the parties agree that the District shall remain
10 bound by this Paragraph 79 hereof and it may be enforced by plaintiffs.

11 80. The members of the District committees involved in implementation of ISIS
12 shall include appropriate ITD staff, the chair of the Management Information System
13 Subcommittee established under the prior Consent Decree, and any other staff deemed
14 necessary by the District. These committees must be notified of and provide their advisory
15 comments to any variance from the initial RFP or contract, including but not limited to cost,
16 timeline, and deliverables.

17
18 **Section 12. Maintenance of Effort Under IDEA.**

19 81. All plans approved in accordance with Section IV of the prior Consent Decree and
20 on file with this Court are repealed.

21 82. The parties acknowledge that the District has made progress and developed
22 institutional capacity as a result of activities undertaken by the District since the approval of
23 the prior Consent Decree. To achieve the outcomes set forth in Section 6 of this Modified
24 Consent Decree, the District shall perform the maintenance of effort commitments contained
25 in the document entitled “District’s Maintenance of Effort Activities Under IDEA to
26 Implement Modified Consent Decree” and on file in the Division of Special Education. The
27 District shall perform the commitments contained therein until the Independent Monitor makes
28 the certification provided for in Paragraph 88 of this Modified Consent Decree. At the

1 District's election, one or more of these commitments may be published in the District's
2 special education policy and procedure manual, included in the Annual Plan required by this
3 Modified Consent Decree, or published in some other District document or publication.
4

5 **Section 13. Annual Hearing.**

6 83. The Independent Monitor shall conduct at least one hearing each year to hear from
7 parents and other interested persons about the District's compliance with special education
8 laws. Following the hearing, the Independent Monitor shall present a written report to the
9 Superintendent and Board of Education concerning the progress and effectiveness of the
10 implementation of the terms and conditions of this Modified Consent Decree.
11

12 **Section 14. Complaint Process.**

13 84. In the event that either party has failed to comply with this Modified Consent
14 Decree, the following complaint process shall be used:

15 a. For purposes of this Paragraph, "initiating party" means counsel for the
16 plaintiffs if the complaint concerns failure of the District to comply with this Modified
17 Consent Decree and the District if the complaint concerns failure of the plaintiffs to comply
18 with this Modified Consent Decree. For purposes of this Paragraph, "responding party" means
19 the party against whom the complaint is directed.

20 b. The initiating party shall provide the responding party with written notice
21 of intent to file a complaint with the Independent Monitor. The parties shall meet and confer
22 informally in an attempt to resolve the matter by mutual agreement. If there is no resolution
23 within 4 working days, the initiating party may file a written complaint with the Independent
24 Monitor, with a copy to the responding party.

25 c. Within 15 days of filing of the complaint, the responding party may
26 submit opposition papers to the Independent Monitor in writing with a copy to the initiating
27 party.

28 d. The parties shall meet and confer with the Independent Monitor within

1 25 days of the filing of a complaint. The purpose of the conference with the Independent
2 Monitor shall be to attempt to secure a resolution of the complaint by mutual agreement.

3 e. In the event the parties do not resolve the complaint by mutual agreement,
4 the Independent Monitor shall issue a decision within 15 days of the conference described in
5 subparagraph d above. The Independent Monitor shall order the responding party to take such
6 action as the Independent Monitor deems necessary to secure compliance with the Modified
7 Consent Decree. In event the complaint concerns the failure of the District to provide any
8 record under Paragraph 16 of this Modified Consent Decree, the Independent Monitor shall
9 secure an independent legal opinion at District expense prior to rendering a decision on the
10 complaint.

11 f. In the event of the need for urgent action on a complaint filed after
12 meeting and conferring pursuant to subdivision b above, the Independent Monitor may order
13 the responding party to cease and desist from taking any action pending a final decision of the
14 Independent Monitor. Prior to issuing such an order, the responding party shall be given
15 notice and a 48 hour period to respond to any request that the Independent Monitor issue such
16 an order.

17 g. The decision of the Independent Monitor shall be final and binding on the
18 parties.

19 h. In the event that the responding party does not comply with any specific
20 order contained in a decision of the Independent Monitor, counsel for the initiating party may
21 move the Court to enforce the order. In enforcing such order, neither party shall be deemed
22 to represent the Independent Monitor.

23 i. Any time period provided in this Paragraph may be extended or shortened
24 by mutual agreement of the parties.

25 j. The Independent Monitor may extend or shorten any time period set forth
26 in this Paragraph upon his finding of good cause.

27 k. This complaint process shall not be used to resolve individual complaints
28 concerning the application of the law to an individually-specific fact situation.

1 **Section 15. Modifications.**

2 85. In the event that either party notifies the Independent Monitor and the other party
3 in writing of the amendment or repeal of any law or regulation upon which any outcome or
4 obligation set forth in this Modified Consent Decree is based, the Independent Monitor shall
5 consider the extent to which any outcome or obligation should be modified to ensure the
6 District's compliance with all applicable special education regulations and laws. In the event
7 the Independent Monitor so determines that any outcome or obligation should be modified,
8 the Independent Monitor shall notify the parties of this determination in writing. Upon such
9 notification, the outcome or obligation so affected shall be modified under this Modified
10 Consent Decree. The Independent Monitor's determination shall be effective 45 days after the
11 date of such notification unless counsel for plaintiffs or counsel for the District petitions the
12 Court within the 45 day time period, in which event such determination shall be effective on
13 the date it is upheld by the Court.

14 86. The District may seek to modify a continuing commitment set forth in Section
15 12 of this Modified Consent Decree in accordance with the following procedure:

16 a. The District shall notify counsel for the plaintiffs of its desire to modify
17 one of its continuing commitments. The parties shall meet and confer informally in an attempt
18 to resolve the issue by mutual agreement. If there is no resolution within a reasonable time
19 period, the parties shall prepare a joint document setting forth their respective positions and
20 submit it the Independent Monitor for resolution.

21 b. The parties shall meet and confer with the Independent Monitor within
22 15 days of submitting the joint document. The purpose of the conference with the Independent
23 Monitor shall be to attempt to secure a resolution of the issue by mutual agreement.

24 c. In the event the parties do not resolve the issue by mutual agreement, the
25 Independent Monitor shall grant or deny the District's request for modification of the
26 commitment. In order to grant the District's request, the Independent Monitor must find in
27 writing that granting the modification will not interfere with the objectives of this Modified
28 Consent Decree to return the District to compliance with federal special education laws and

1 regulations.

2
3 **Section 16. Disengagement of Outcomes.**

4 87. On June 30, 2006, the Independent Monitor shall determine which outcomes
5 have been achieved by the District. In connection with any outcome that has been achieved,
6 the Independent Monitor shall issue a determination that the District is disengaged from such
7 outcome and such outcome shall no longer be a part of this Modified Consent Decree. If all
8 outcomes have not been met on June 30, 2006, the Independent Monitor shall periodically
9 review the remaining outcomes to determine whether they have been achieved by the District.

10 88. Upon the Independent Monitor's certification that the District has achieved each
11 of the outcomes in accordance with Paragraph 87 above and, in the Independent Monitor's
12 judgment, the District's special education program has no systemic problems that prevent
13 substantial compliance with applicable federal special education laws and regulations, then
14 Sections 5, 6, 7, 8, 9, 12, 13, and 18 of this Modified Consent Decree shall automatically
15 terminate and have no further force or effect. The parties shall file a joint report informing the
16 Court of the termination of these sections.

17
18 **Section 17. Termination of Modified Consent Decree.**

19 89. This Modified Consent Decree shall terminate upon the occurrence of the
20 following events:

21 a. The Independent Monitor has made the certification provided for in
22 Paragraph 88 of this Modified Consent Decree.

23 b. The Independent Monitor has certified that the District has entered into
24 binding commitments to expend the \$67.5 million dollars required by Section 10 of this
25 Modified Consent Decree and, in the Independent Monitor's judgment, the District has no
26 systemic program accessibility problems that prevent substantial compliance with the program
27 accessibility requirements of federal special education laws and regulations.

28 Upon such certification by the Independent Monitor, the Modified Consent Decree shall

1 automatically terminate. The parties shall file a joint report informing the Court of the
2 automatic termination of the Consent Decree.

3 90. In the event plaintiffs' counsel disagrees with any determination of the
4 Independent Monitor concerning disengagement or certification under either Section 16 or
5 Section 17 of this Modified Consent Decree, they may move the Court to set aside such
6 determination. On such a motion plaintiffs' counsel shall have the burden of proving that the
7 Independent Monitor's determination or certification is not supported by substantial evidence.

8 91. In the event the District disagrees with any determination of the Independent
9 Monitor concerning disengagement or certification under either Section 16 or Section 17 of
10 this Modified Consent Decree, the District may move the Court to set aside such determination
11 and enter an order finding that the standard for disengagement or decertification has been met.
12 On such a motion the District shall have the burden of proving that the Independent Monitor's
13 determination is not supported by substantial evidence.

14
15 **Section 18. Binding Effect.**

16 92. This Modified Consent Decree shall have preclusive effect on any class member
17 bringing any class action claim (or any other representative claim on behalf of someone other
18 than the plaintiff's or class member's child) concerning the District's compliance with IDEA
19 or Section 504 concerning the provision of a free appropriate public school education.
20 Notwithstanding the preceding sentence, a class member may bring a class action claim (or
21 any other representative claim) if all of the following apply:

22 a. The claim or cause of action in which the District is named as a defendant
23 is a claim or cause of action asserted against another governmental agency based upon the
24 failure of that other governmental agency to provide services to children with disabilities
25 receiving special education or related services from the District and the failure of such agency
26 to meet its legal obligations results in the child not receiving services mandated by IDEA or
27 Section 504. The only claims that may be asserted against the District in such complaint are
28 those that are factually and legally related to the failure of a governmental agency other than

1 the District to provide services to children with disabilities receiving special education or
2 related services from the District. Any relief, declaration, action or injunction sought from or
3 ordered against the District shall be subject to and not inconsistent with the provisions of this
4 Modified Consent Decree.

5 b. Before bringing such a claim in which the District is joined as a
6 defendant, the class member(s) shall provide the District with a draft of the lawsuit. Within
7 60 days of receiving a draft of the lawsuit, the District may take action it deems appropriate.
8 The complaint may be filed 61 days or more after the District received the draft.

9 93. This Modified Consent Decree shall not have preclusive effect with respect to
10 the following claims by members of the class:

11 a. A claim for monetary damages.

12 b. The initiation of any proceeding, including any proceeding authorized by
13 20 U.S.C. § 1415, to review the District's compliance with its obligation to provide a free
14 appropriate public education to an individual student.

15 c. Any claim arising from transactions or occurrences outside the scope of
16 IDEA or Section 504.

17 d. Any claim, including a class action or other representative claim, arising
18 from transactions or occurrences taking place after the termination of this Modified Consent
19 Decree.

20 94. This Modified Consent Decree shall be binding on any school district or other
21 entity that is created as the result of any reorganization of the Los Angeles Unified School
22 District. Education Code Section 35730.1(f) requires that any reorganization of a school
23 district with more than 500,000 pupils in average daily attendance shall require that each new
24 district created meets compliance with IDEA. This Modified Consent Decree is necessary to
25 protect the rights of each class member as guaranteed by IDEA as well as rights protected by
26 Section 504 and the Fourteenth Amendment. In order to protect the rights of each class
27 member as guaranteed by IDEA, this Modified Consent Decree shall be binding on any school
28 district that encompasses any portion of the current geographical area served by the Los

1 Angeles Unified School District. In any proceeding that considers the reorganization of the
2 Los Angeles Unified School District, the District shall apprise the parties to the proceeding
3 that this Modified Consent Decree is binding on any school district or other entity created as
4 a result of the reorganization.

5 95. This Modified Consent Decree shall be binding on all public schools in the
6 District, including, but not limited to, charter schools, alternative schools, charter complexes,
7 magnet schools and to any schools formed or approved in the future by the District.

8

9 **Section 19. Attorneys' Fees and Expenses to Plaintiffs' Counsel.**

10 96. Counsel for plaintiffs are entitled to recover reasonable attorneys' fees and other
11 expenses pursuant to 42 U.S.C. § 1988, 20 U.S.C. § 1415, and 29 U.S.C. § 794a(b) for work
12 reasonably performed on behalf of the class during the pendency of this Modified Consent
13 Decree. Reasonable fees and expenses shall be awarded in amounts agreed to by the parties
14 or, absent agreement, as determined by the Court upon plaintiffs' noticed motions. Counsel
15 for plaintiffs shall submit an itemized statement to counsel for the District for intervals of not
16 less than 90 day periods. The District shall, within 45 days of receipt of the itemized
17 statement, pay such amount of the statement as is reasonable as determined under the
18 standards and practices of the local professional community. Any claim for attorneys' fees
19 and expenses can be resolved by mutual agreement of the parties. In the event that the District
20 does not pay all or any portion of the itemized statement, counsel for plaintiffs may move the
21 Court for an order requiring payment.

22

23 **Section 20. Amendment of Modified Consent Decree.**

24 97. Upon agreement by both parties and with prior approval by the Court, the parties
25 may modify any term of this Modified Consent Decree.

26

27 **Section 21. No Admission of Liability.**

28 98. Nothing in this Modified Consent Decree shall be construed as an admission of

1 liability on the part of the District in this or any other proceeding.

2
3 **Section 22. Reimbursement.**

4 99. The parties hereby agree that implementation of the terms and conditions of this
5 Modified Consent Decree may cause the District to incur additional costs mandated by
6 applicable special education laws and regulations and that nothing in this Modified Consent
7 Decree shall be deemed as limiting the right or ability of the District to obtain reimbursement
8 for such costs from the State of California or the United States Government. Counsel for the
9 parties agree to cooperate in reasonable efforts to obtain such reimbursement, or additional
10 monies, in order to maximize funding to serve students with disabilities in the District.

11
12 **Section 23. District Personnel.**

13 100. Any employment of personnel required by this Modified Consent Decree shall
14 comply with all applicable laws.

15
16 **Section 24. Dismissal of Appeal.**

17 101. Within 10 days of the approval of this Modified Consent Decree by the Court,
18 the District shall take such action as is necessary to dismiss its appeal pending in the United
19 States Court of Appeals for the Ninth Circuit, No. 01-56966.

20
21 Dated: May 14, 2003

HAROLD J. KWALWASSER
LOS ANGELES UNIFIED SCHOOL DISTRICT
Attorney for Defendants

22
23
24 Dated: May 14, 2003

ROBERT M. MYERS
NEWMAN.AARONSON.VANAMAN
Attorney for Plaintiffs

25
26
27 Dated: May 14, 2003

CATHERINE BLAKEMORE
PROTECTION & ADVOCACY, INC.
Attorney for Plaintiffs

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Dated: May 14, 2003

MARK ROSENBAUM
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
Attorney for Plaintiffs