## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA FRESNO DIVISION

MARIA G. HERRERA, an individual,

Plaintiff,

v.

THOMAS GIAMPIETRO, an individual; ROSEMARY MONTEMAYOR, an individual; MONSON-SULTANA JOINT UNION ELEMENTARY SCHOOL DISTRICT; and DOES 1-50, inclusive,

Defendants.

No. 1:09-cv-1466-OWW-GSA

ORDER GRANTING IN PART AND DENYING IN PART <u>DEFENDANTS</u>'
<u>MOTION TO DISMISS</u>

Judge: Hon. Oliver W. Wanger

Defendants' Motion to Dismiss and Motion to Strike Plaintiff's First Amended Complaint ("Motion") came on for hearing in this Court on May 3, 2010. The Court, having reviewed and considered the Motion, Plaintiff's opposition and Defendants' reply brief and arguments of counsel at the hearing, issued a Memorandum of Decision on Defendants' Motion to Dismiss and Motion to Strike the First Amended Complaint on May 10, 2010, which is attached hereto as Exhibit A. Based on this Memorandum of Decision, the Court

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## HEREBY ORDERS AS FOLLOWS:

- 1. Defendants' Motion to Dismiss Plaintiff's Fourth Claim for Relief for violation of 42 U.S.C. Section 1983 and Fifth Claim for Relief for violation of 42 U.S.C. Section 1986 is GRANTED without prejudice;
- 2. Defendants' Motion to Dismiss Plaintiff's First Claim for Relief for violation of the Americans with Disabilities Act is DENIED;
- 3. Defendants' Motion to Dismiss Plaintiff's Sixth Claim for Relief for violation of California Civil Code Section 51 is DENIED;
- 4. Defendant's Motion to Strike Plaintiff's prayer for declaratory and injunctive relief is GRANTED;
- 5. Defendants' Motion to Dismiss all Plaintiff's claims to the extent that they are based on allegations and injuries related to the transfer of D.H. and Defendants' Motion to Strike paragraphs 86-89 and references to the transfer from paragraphs 6, 100 and 136 are DENIED.

Plaintiff shall have fifteen (15) days from the filing of the order to file an amended complaint. Defendants shall file a response within fifteen (15) days of receipt of the amended complaint.

IT IS SO ORDERED.

Dated: May 19, 2010 /s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE