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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

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11 J.S., a minor, by and with her parents,
ALBERTO SOLORIO and ALICIA SOLORIO,

12 Plaintiffs,

13 vs.

14 CLOVIS UNIFIED SCHOOL DISTRICT

15 Defendant.

Case No. 1:16-cv-01319-LJO-BAM

**STIPULATION RE: DISMISSAL OF
PLAINTIFFS' SECOND CLAIM FOR
RELIEF IN THE PLAINTIFFS' FIRST
AMENDED COMPLAINT; AND ORDER**

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20 Plaintiffs J.S., a minor, by and with her parents, ALBERTO SOLORIO and ALICIA SOLORIO
21 (“Plaintiffs”) and Defendant CLOVIS UNIFIED SCHOOL DISTRICT (“District”) (collectively, the
22 “Parties”), by and through their respective counsel, stipulate as follows:

23 1. On September 7, 2016, Plaintiffs filed their Complaint in this matter, asserting two claims
24 for relief. The first claim for relief, entitled “Count One,” was asserted under the Individuals with
25 Disabilities Education Act (20 U.S.C. §§ 1400 *et seq.*, 1415) (“IDEA”), for the review and reversal of
26 the special education administrative due process decision, rendered by the California Office of
27 Administrative Hearings (“OAH”) in OAH Case No. 2016060036. The second claim for relief, entitled
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1 “Count Two,” was for the alleged denial of civil rights under Section 504 of the Rehabilitation Act of
2 1973 (29 U.S.C. § 794).

3 2. On November 7, 2016, the District filed its Answer to the Complaint.

4 3. On November 26, 2016, Plaintiffs filed their First Amended Complaint (“FAC”), in
5 which they asserted the same claims for relief as in the Complaint. In addition to the second claim for
6 relief under section 504, the FAC also references “Section 504” or “29 U.S.C. § 794” in the caption,
7 paragraph 1, and paragraph 37 of the Prayer. The FAC also references in paragraph 42 U.S.C. § 12101,
8 a provision of the Americans with Disabilities Act (“ADA”).

9 4. In advance of the Parties’ December 15, 2016 Scheduling Conference, the Parties met
10 and conferred regarding Plaintiffs’ FAC and the second claim for relief, asserted under Section 504.
11 Plaintiffs confirmed their intent to no longer proceed on or prosecute the second claim for relief in the
12 FAC, and that they intend only to proceed and prosecute the first claim for relief in the FAC, which
13 again is asserted under the IDEA for the review and reversal of OAH’s decision in OAH Case No.
14 2016060036. The Parties Joint Rule 26(f) Report (ECF Docket No. 8), filed on December 12, 2016,
15 memorialized this understanding and agreement.

16 5. At the Parties’ December 15, 2016 Scheduling Conference before Honorable Magistrate
17 Judge McAuliffe, the Parties confirmed their understanding and agreement as set forth in paragraph 4
18 above, as well as the Parties’ desire to stipulate to dismissal of the second claim for relief in the FAC.
19 Judge McAuliffe directed the Parties to file a stipulation and proposed order with the Court for such
20 purposes.

21 6. On December 15, 2016, the District filed its Answer to the FAC.

22 NOW, THEREFORE, IT IS HEREBY STIPULATED AND REQUESTED by the Parties that:

23 1. The Court order dismissed pursuant to the agreement, Plaintiffs’ second claim for relief
24 in the FAC, asserted under Section 504, at paragraphs 28 through 35, page 6:10 through 7:19; and

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1 2. The Court order stricken from the FAC all references to Section 504 and the ADA,
2 including the reference to “29 U.S.C. § 794” in the caption and paragraph 1, reference to “42 U.S.C. §
3 12010 in paragraph 1, and paragraph 37 within the FAC’s Prayer.

4 Dated: December 19, 2016

Respectfully submitted,

STUDENT RIGHTS ATTORNEYS

6 /s/ Deborah L. Pepaj
7 DEBORAH L. PEPAJ
8 Attorney for Plaintiffs
 J.S., a minor, by and with her parents,
 ALBERTO SOLORIO and ALICIA SOLORIO

9 Dated: December 19, 2016

Respectfully submitted,

LOZANO SMITH

11 /s/ Sloan R. Simmons
12 SLOAN R. SIMMONS
13 Attorneys for Defendant
14 CLOVIS UNIFIED SCHOOL DISTRICT

15 ***Attestation: The filer of this document attests that the concurrence of the other**
16 **signatories thereto has been obtained.**

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[PROPOSED] ORDER

Based upon the foregoing Stipulation of Plaintiffs J.S., a minor, by and with her parents, ALBERTO SOLORIO and ALICIA SOLORIO and Defendant CLOVIS UNIFIED SCHOOL DISTRICT, by and through their respective counsel, and GOOD CAUSE APPEARING THEREFORE:

1. The Court dismisses, with prejudice, Plaintiffs’ second claim for relief in the First Amended Complaint, asserted at paragraphs 28 through 35, page 6:10 through 7:19 of the FAC. Upon said dismissal, the only remaining claim for relief in the First Amended Complaint is that asserted under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., for the review reversal of the special education administrative due process decision issued by the California Office of Administrative Hearings in OAH Case No. 2016060036

2. Consistent with the Court’s dismissal of the second claim for relief and that the only remaining claim for relief is asserted under the IDEA, the Court orders stricken from the First Amended Complaint, the following:

- a. Reference to “20 U.S.C. § 794” in the caption;
- b. Reference to “29 U.S.C. § 794” in paragraph 1;
- c. Reference to “42 U.S.C. § 12101” in paragraph 1; and
- d. Paragraph 37 in the Prayer.

IT IS SO ORDERED.

Dated: December 20, 2016 /s/ Lawrence J. O’Neill
UNITED STATES CHIEF DISTRICT JUDGE