

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

Z.F, a minor, by and through his  
parents M.A.F and J.F. and  
M.A.F. and J.F. individually;  
L.H., and J.H., minors, by and  
through their parents J.A. and  
J.R.H. and J.A. and J.R.H.  
individually; A.N., a minor, by  
and through his parents, G.N.  
and M.R., and G.N. and M.R.  
individually,

Plaintiffs, on behalf  
of themselves and all  
others similarly  
situated,

v.

RIPON UNIFIED SCHOOL DISTRICT  
(RUSD); RIPON UNIFIED SCHOOL  
DISTRICT BOARD OF TRUSTEES; SAN  
JOAQUIN COUNTY OFFICE OF  
EDUCATION; VALLEY MOUNTAIN  
REGIONAL CENTER (VMRC), MODESTO  
CITY SCHOOLS, MODESTO CITY  
SCHOOLS BOARD OF EDUCATION,  
RICHARD JACOBS, Executive  
Director of VMRC, in his  
official and individual  
capacity, TARA SISEMORE-HESTER,  
Coordinator for Autism Services  
for VMRC, in her official and  
individual capacity; VIRGINIA  
JOHNSON, Director of Modesto  
City Schools SELPA, in her  
official and individual  
capacity; SUE SWARTZLANDER,  
Program Director for Modesto  
City Schools, in her official  
and individual capacity and Does  
1 - 200.,

Defendants.

2:10-cv-00523-GEB-JFM

ORDER DENYING MODESTO CITY  
SCHOOLS' MOTION TO DISMISS  
THE J.H. PLAINTIFFS' CLAIMS  
ALLEGED UNDER SECTION 504 AND  
TITLE II OF THE ADA; DENYING  
THE RIPON DEFENDANTS' MOTION  
TO DISMISS THE Z.F. AND A.N.  
PLAINTIFFS' CLAIMS ALLEGED  
UNDER SECTION 504 AND TITLE  
II OF THE ADA; GRANTING  
VMRC'S MOTION TO DISMISS  
PLAINTIFFS' CLAIM ALLEGED  
UNDER TITLE III OF THE ADA,  
AND DENYING VMRC'S MOTION TO  
DISMISS PLAINTIFFS' CLAIM  
ALLEGED UNDER THE UNRUH ACT;  
AND GRANTING JOHNSON,  
SWARTZLANDER, VMRC, SISEMORE-  
HESTER, AND JACOBS' MOTION TO  
DISMISS THE J.H. PLAINTIFFS'  
§ 1983 CLAIM

1 VALLEY MOUNTAIN REGIONAL )  
 2 CENTER, RICHARD JACOBS and TARA )  
 SISEMORE-HESTER )  
 3 Counterclaimants, )  
 4 v. )  
 5 M.A.F. and J.A., SPECIAL NEEDS )  
 6 ADVOCATES FOR UNDERSTANDING, )  
 and AUTISM REFORM CALIFORNIA, )  
 7 Counterdefendants. )  
 8 \_\_\_\_\_ )  
 9

10 Pending are three separate dismissal motions seeking dismissal  
 11 of all claims against each movant in Plaintiffs' First Amended  
 12 Complaint. Each motion is brought under Federal Rule of Civil Procedure  
 13 ("Rule") 12(b)(6). Defendants are local school districts, local boards  
 14 of education, a county office of education, a regional center, and four  
 15 individuals. Plaintiffs are four minors diagnosed with an Autism  
 16 Spectrum Disorder, and their parents. (Pls.' First Am. Compl. ("FAC") ¶¶  
 17 20-23.)

18 Plaintiffs allege: "Defendants have implemented a system under  
 19 [the Early Intensive Behavioral Treatment Program Procedures and  
 20 Guidelines ('EIBT/PPG')], which has unlawfully restricted access to  
 21 intensive [Applied Behavior Analysis ('ABA')] services for Plaintiffs,  
 22 as well as those similarly situated, in contravention of federal and  
 23 state law." (FAC ¶ 34.)

24 **I. Legal Standard**

25 To avoid dismissal under Rule 12(b)(6), a plaintiff must have  
 26 alleged "enough facts to state a claim to relief that is plausible on  
 27 its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A  
 28 claim has facial plausibility when the plaintiff pleads factual content

1 that allows the court to draw the reasonable inference that the  
2 defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, ---  
3 U.S. ----, 129 S. Ct. 1937, 1949 (2009). "The plausibility standard is  
4 not akin to a 'probability requirement,' but it asks for more than a  
5 sheer possibility that a defendant has acted unlawfully." Moss v. United  
6 States Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009) (quoting Iqbal,  
7 129 S. Ct. at 1951).

8 In analyzing whether a claim has facial plausibility, "[w]e  
9 accept as true all well-pleaded allegations of material fact, and  
10 construe them in the light most favorable to the non-moving party."  
11 Daniels-Hall v. Nat'l Educ. Ass'n, --- F.3d ----, 2010 WL 5141247, at \*3  
12 (9th Cir. 2010). However, "the tenet that a court must accept as true  
13 all of the allegations contained in a complaint is inapplicable to legal  
14 conclusions." Iqbal, 129 S. Ct. at 1949. "A pleading that offers 'labels  
15 and conclusions' or 'a formulaic recitation of the elements of a cause  
16 of action will not do.' Nor does a complaint suffice if it tenders  
17 'naked assertion[s]' devoid of 'further factual enhancement.'" Id.  
18 (quoting Twombly, 550 U.S. at 555, 557).

19 "In sum, for a complaint to survive a motion to dismiss, the  
20 non-conclusory 'factual content,' and reasonable inferences from that  
21 content, must be plausibly suggestive of a claim entitling the plaintiff  
22 to relief." Moss, 572 F.3d at 969 (quoting Twombly, 550 U.S. at 557).

## 23 **II. Background**

### 24 **A. J.H. Plaintiffs**

25 Plaintiffs J.H. and L.H., and their parents, Plaintiffs J.A.  
26 and J.R.H (collectively referred to as the "J.H. Plaintiffs"), "moved  
27 from the Santa Cruz area to Modesto" in or about August of 2007. (FAC ¶  
28 51.) Upon moving to Modesto, parent J.A. "was interested in obtaining an

1 EIBT placement for J.H. and L.H.” Id. J.H. and L.H. were placed on a  
2 waiting list for “services” in an educational program under the EIBT/PPG  
3 “based upon the date they moved to Modesto.” Id. ¶ 103.

4 Parents J.A. and J.R.H. subsequently filed requests for an  
5 administrative due process hearing before the California Office of  
6 Administrative Hearings (“OAH”) on March 18, 2008. Id. ¶ 68. The  
7 requests were filed against Defendant Modesto City Schools and alleged  
8 that the EIBT/PPG “denied them a [Free Appropriate Public Education  
9 (‘FAPE’)].” Id. ¶¶ 67, 68. In August of 2008, “the OAH issued decisions  
10 finding that [Modesto City Schools] had denied [J.H. and L.H.] a [FAPE].  
11 Modesto City Schools did not appeal these decisions.” Id. ¶ 68.

12 **B. Z.F. Plaintiffs**

13 Plaintiff Z.F. and his parents, Plaintiffs M.A.F. and J.F.  
14 (collectively referred to as the “Z.F. Plaintiffs”), reside in Ripon,  
15 California. Id. ¶ 20. On November 9, 2007, parents M.A.F. and J.F. filed  
16 a request for an administrative due process hearing before the OAH,  
17 against Defendant Ripon Unified School District (“RUSD”), Defendant San  
18 Joaquin County Office of Education (“SJCOE”), and San Joaquin Special  
19 Education Local Plan Area. Id. ¶¶ 49-50. The request alleged that the  
20 EIBT/PPG denied Z.F. a FAPE. Id. “On June 6, 2008, the parties entered  
21 into a settlement agreement that resolved all pending educational  
22 issues.” Id. ¶ 50. The agreement states in part:

23 Student and his Parents are named plaintiffs in a  
24 pending class action in federal court and  
25 acknowledge that this settlement does not settle  
26 the claims asserted in the federal action, to the  
27 extent that the federal claims rely on a different  
cause of action and seek relief that is not  
available at OAH or under the [Individuals with  
Disabilities Education Act (‘IDEA’), or is not  
compensable at OAH or under the IDEA.

28 Id.

1  
2 **C. A.N. Plaintiffs**

3 Plaintiff A.N. and his parents, Plaintiffs M.R. and G.N.  
4 (collectively referred to as the "A.N. Plaintiffs"), reside in Ripon,  
5 California. Id. ¶ 23. On March 24, 2009, parents M.R. and G.N. filed a  
6 request for an administrative due process hearing before the OAH,  
7 against RUSD and SJCOE. The request alleged that A.N. was not provided  
8 "with an appropriate educational program" through implementation of the  
9 EIBT/PPG. Id. ¶¶ 72-74. On April 30, 2009, the parties entered into a  
10 settlement agreement containing the same above-quoted provision in the  
11 Z.F. Plaintiffs' settlement agreement. Id. ¶¶ 74-75.

12 **D. Federal Court Lawsuits**

13 Prior to filing the instant federal court lawsuit, Plaintiffs  
14 (and three other students and their parents) filed a complaint in this  
15 federal district court on April 18, 2008 ("2008 lawsuit"). Id. ¶ 6. The  
16 2008 lawsuit "alleg[ed] essentially the same issues raised" in the  
17 instant federal court lawsuit. Id. The federal claims in the 2008  
18 lawsuit were dismissed for lack of subject matter jurisdiction because  
19 Plaintiffs had not exhausted administrative remedies under IDEA, and the  
20 district court declined to continue exercising supplemental jurisdiction  
21 over the remaining state claims. Z.F. v. Ripon Unified Sch. Dist., et  
22 al., ECF No. 75, 2:08-cv-00855, at 12-13 (E.D. Cal. Nov. 7, 2008).  
23 Plaintiffs appealed the dismissal to the Ninth Circuit, and on February  
24 10, 2010, the Ninth Circuit affirmed the dismissal. (FAC ¶ 6.)  
25 Plaintiffs commenced the instant federal court lawsuit on March 3, 2010.

26 **III. Discussion**

27 **A. Modesto City Schools' Motion to Dismiss**

1 Defendants Modesto City Schools and Modesto City Schools  
2 Board of Education (collectively referred to as "Modesto City Schools")  
3 seek dismissal of the J.H. Plaintiffs' claims alleged under Section 504  
4 of the Rehabilitation Act of 1973 ("Section 504") and Title II of the  
5 Americans with Disabilities Act ("ADA"). Modesto City Schools argues  
6 these claims are barred by both the applicable statute of limitations  
7 and a claim preclusion doctrine.

8 **1. Statute of Limitations**

9 Since Section 504 and the ADA do not contain a statute of  
10 limitations, "the controlling statute of limitations is the most  
11 appropriate one provided by state law." J.W. ex rel. J.E.W. v. Fresno  
12 Unified Sch. Dist., 570 F. Supp. 2d 1212, 1222 (E.D. Cal. 2008) (citing  
13 Donoghue v. Cnty. of Orange, 848 F.2d 926, 930 (9th Cir. 1987)).  
14 Further, "the court borrows the state's equitable tolling rules, absent  
15 a reason not to do so." Daviton v. Columbia/HCA Healthcare Corp., 241  
16 F.3d 1131, 1135 (9th Cir. 2001). Although state law is used to determine  
17 the statute of limitations period and equitable tolling, "federal law  
18 determines when a cause of action accrues." Alexopoulos By and Through  
19 Alexopoulos v. San Francisco Unified Sch. Dist., 817 F.2d 551, 555 (9th  
20 Cir. 1987). "Under federal law a cause of action accrues, and the  
21 statute of limitations begins to run, when a plaintiff knows or has  
22 reason to know of the injury that is the basis of the action." Id.

23 The parties agree that California's two-year statute of  
24 limitations for personal injury claims is applicable to the J.H.  
25 Plaintiffs' Section 504 and ADA claims. See CAL. CIV. PROC. CODE § 335.1  
26 ("Within two years: An action for assault, battery, or injury to, or for  
27 the death of, an individual caused by the wrongful act or neglect of  
28 another."). Modesto City Schools argues that the J.H. Plaintiffs'

1 Section 504 and ADA claims accrued no later than November 9, 2007, when  
2 the J.H, Plaintiffs allege that parents J.A. and J.R.H "filed a [j]oint  
3 [request for an administrative due process hearing] along with several  
4 other parents and students [before the OAH]," which the "OAH refused to  
5 open." (FAC ¶ 67.) Modesto City Schools argues the accrual date is more  
6 than two years before the instant federal court lawsuit was commenced,  
7 and, therefore, the claims are time barred.

8 The J.H. Plaintiffs counter these claims are not time barred  
9 because they were equitably tolled during the pendency of proceedings  
10 commenced in the OAH on March 18, 2008, and during the pendency of the  
11 2008 lawsuit. Equitable tolling is a "judicially created, nonstatutory  
12 doctrine" that is "'designed to prevent unjust and technical forfeitures  
13 of the right to a trial on the merits when the purpose of the statute of  
14 limitations--timely notice to the defendant of the plaintiff's claims--  
15 has been satisfied.'" McDonald v. Antelope Valley Cmty. Coll. Dist., 45  
16 Cal. 4th 88, 99 (2008) (quoting Appalachian Ins. Co. v. McDonnell  
17 Douglas Corp., 214 Cal. App. 3d 1, 38 (1989). Equitable tolling "may  
18 apply . . . where administrative remedies must be exhausted before a  
19 second action can proceed; or where a first action, embarked upon in  
20 good faith, is found to be defective for some reason." Id. at 100.

21 Since the OAH proceedings were commenced within two years of  
22 the date on which the J.H. Plaintiffs' Section 504 and ADA claims  
23 accrued, and involved claims factually similar to the Section 504 and  
24 ADA claims, the Section 504 and ADA claims were tolled beginning on  
25 March 18, 2008, when the OAH proceedings were commenced. While the OAH  
26 proceedings were pending, the J.H. Plaintiffs filed the 2008 lawsuit.  
27 (FAC ¶ 6.) The district court dismissed the claims in the 2008 lawsuit  
28 for lack of subject matter jurisdiction since Plaintiffs failed to

1 exhaust their administrative remedies under the IDEA; the Ninth Circuit  
2 affirmed this dismissal on February 10, 2010. Id. Therefore, the last  
3 day of the tolling period was February 10, 2010. Since the J.H.  
4 Plaintiffs' Section 504 and ADA claims were tolled from March 18, 2008,  
5 through February 10, 2010, these claims are not time barred.

## 6 **2. Claim Preclusion**

7 Modesto City Schools also argues that the J.H. Plaintiffs'  
8 Section 504 and ADA claims are barred by a claim preclusion doctrine  
9 since the OAH already issued decisions on parents J.A. and J.R.H.'s  
10 requests for an administrative due process hearing. "Claim preclusion  
11 bars from a second action a claim *that could have been*, but was not,  
12 brought in the first action." Gospel Missions of Am. v. City of Los  
13 Angeles, 328 F.3d 548, 555 (9th Cir. 2003) (emphasis added). However, "a  
14 litigant should not be penalized for failing to seek unified disposition  
15 of matters that could not have been combined in a single proceeding."  
16 CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 4412 (2d ed. 2002)  
17 Here, J.A. and J.R.H. could not present Section 504 and ADA claims to  
18 the OAH since the OAH lacks jurisdiction to hear those claims. See CAL  
19 EDUC. CODE § 56501(a)(1)-(4) (stating the OAH's jurisdiction is limited  
20 to considering a proposal or refusal to "initiate or change the  
21 identification, assessment, or educational placement of the child or the  
22 provision of a [FAPE] to the child;" and to considering the refusal of  
23 a parent or guardian to consent to an assessment of a child, or "a  
24 disagreement between a parent or guardian and a local educational agency  
25 regarding the availability of a program appropriate for the child").  
26 Since the Section 504 and ADA claims could not be presented to the OAH,  
27 the J.H. Plaintiffs are not precluded from bringing those claims in the  
28

1 instant federal court lawsuit. Therefore, this portion of the motion is  
2 denied.

3  
4 **B. Ripon Defendants' Motion to Dismiss**

5 Defendants RUSD, RUSD Board of Trustees, and SJCOE  
6 (collectively referred to as the "Ripon Defendants") seek dismissal of  
7 the Z.F. and A.N. Plaintiffs claims alleged against them under Section  
8 504 and Title II of the ADA. The Ripon Defendants argue these claims are  
9 barred by settlement agreements, the applicable statute of limitations,  
10 and "contradictory information contained in the attachments" to the  
11 First Amended Complaint. (Ripon Defs.' Mem. of P. & A. in Supp. of Mot.  
12 to Dismiss 4:12-14.)

13 **1. Settlement Agreement**

14 After commencing their respective OAH proceedings, the Z.F.  
15 and A.N. Plaintiffs allege they each entered into a separate settlement  
16 agreement with RUSD and SJCOE, which contain the following provision:

17 Student and his Parents are named plaintiffs in a  
18 pending class action in federal court and  
19 acknowledge that this settlement does not settle  
20 the claims asserted in the federal action, to the  
21 extent that the federal claims rely on a different  
22 cause of action and seek relief that is not  
23 available at OAH or under the IDEA, or is not  
24 compensable at OAH or under the IDEA.

25 (FAC ¶¶ 50, 75.)

26 The Ripon Defendants argue this provision bars the Z.F. and  
27 A.N. Plaintiffs' Section 504 and ADA claims in the instant federal court  
28 lawsuit, because the relief sought is "available" or "compensable at OAH  
or under the IDEA." However, since the Ripon Defendants have not shown  
what these terms mean in the settlement agreement, this portion of the  
motion is denied.

1           **2. Statute of Limitations**

2           The Ripon Defendants next argue that the Z.F. and A.N.  
3 Plaintiffs' Section 504 and ADA claims against them are barred by the  
4 applicable two-year statute of limitations. The Ripon Defendants argue  
5 that the Z.F. Plaintiffs' claims accrued in May of 2006, when the Z.F.  
6 Plaintiffs allege Z.F. was "denied the benefit of [an intensive ABA  
7 program]." (FAC ¶ 48.) The Ripon Defendants argue the A.N. Plaintiffs'  
8 claims in the instant federal court lawsuit accrued on September 27,  
9 2007, when "A.N. was denied access to an intensive ABA program." Id. ¶  
10 72. The Ripon Defendants also argue the Z.F. and A.N. Plaintiffs' claims  
11 are time barred since they accrued more than two years before the  
12 instant federal court lawsuit was commenced.

13           However, the Z.F. Plaintiffs' Section 504 and ADA claims were  
14 equitably tolled beginning on January 30, 2008, when parents M.A.F. and  
15 J.F. commenced a due process hearing at the OAH. Id. ¶ 50. This OAH  
16 proceeding was commenced approximately twenty months after their Section  
17 504 and ADA claims accrued. The last day of the equitable tolling period  
18 was February 10, 2010, the date on which the Ninth Circuit affirmed  
19 dismissal of the 2008 lawsuit. Since the instant federal court lawsuit  
20 was commenced less than one month after the Ninth Circuit affirmed  
21 dismissal of the 2008 lawsuit, the Z.F. Plaintiffs' Section 504 and ADA  
22 claims in the instant federal court lawsuit are not barred by the two-  
23 year statute of limitations.

24           Further, the A.N. Plaintiffs' Section 504 and ADA claims were  
25 equitably tolled beginning on April 18, 2008, when the 2008 lawsuit was  
26 filed. Id. ¶ 6. This was approximately seven months after the claims  
27 accrued. The last day of the tolling period was February 10, 2010, when  
28 the Ninth Circuit issued its decision. Since the instant federal court

1 lawsuit was brought less than one month after the Ninth Circuit's  
2 decision, the A.N. Plaintiffs' Section 504 and ADA claims are not barred  
3 by the two-year statute of limitations.

### 4 **3. Contradictory Exhibits**

5 The Ripon Defendants also argue that the Z.F. and A.N.  
6 Plaintiffs' claims against them should be dismissed because the copy of  
7 the EIBT/PPG attached as an exhibit to the First Amended Complaint  
8 contradicts the claims alleged against them in the First Amended  
9 Complaint. This portion of the motion is denied since the Ripon  
10 Defendants have not sufficiently explained a contradiction justifying  
11 dismissal.

### 12 **C. VMRC's Motion to Dismiss**

13 Defendant Valley Mountain Regional Center ("VMRC") seeks  
14 dismissal of Plaintiffs' claims alleged under Title III of the ADA and  
15 California's Unruh Civil Rights Act prescribed in California Civil Code  
16 51 ("Unruh Act").

#### 17 **1. Title III of the ADA**

18 VMRC argues Plaintiffs fail to state a claim for relief under  
19 Title III of the ADA. Plaintiffs allege that VMRC violated Title III by  
20 denying Plaintiffs "access to intensive ABA services" through  
21 implementation of the EIBT/PPG. (FAC ¶ 95.) Title III prescribes: "No  
22 individual shall be discriminated against on the basis of disability in  
23 the full and equal enjoyment of the goods, services, facilities,  
24 privileges, advantages, or accommodations of any place of public  
25 accommodation by any person who owns, leases (or leases to), or operates  
26 a place of public accommodation." 42 U.S.C. § 12182(a). Public  
27 accommodations "are actual, physical places where goods or services are  
28 open to the public, and places where the public gets those goods or

1 services." Weyer v. Twentieth Century Fox Film Corp., 198 F.3d 1104,  
2 1114 (9th Cir. 2000).

3 Plaintiffs' allegations fail to satisfy Twombly's plausibility  
4 standard, since they do not plausibly suggest that an intensive ABA  
5 service is an "actual, physical place[]." Weyer, 198 F.3d at 1114.  
6 Therefore, Plaintiffs' Title III claim is dismissed.

## 7 **2. Unruh Act**

8 VMRC also argues that Plaintiffs fail to state a claim under  
9 the Unruh Act since Plaintiffs have not sufficiently alleged that VMRC  
10 is a "business establishment" under the Unruh Act. Plaintiffs allege in  
11 the First Amended Complaint that VMRC is a "private non-profit agency"  
12 that "is to provide services and supports to persons with developmental  
13 disabilities, including Autism." (FAC ¶ 26.) VMRC contends this  
14 allegation does not sufficiently allege that VMRC is a "business  
15 establishment" as required by the Unruh Act. The Unruh Act prescribes:

16 All persons within the jurisdiction of this state  
17 are free and equal, and no matter what their sex,  
18 race, color, religion, ancestry, national origin,  
19 disability, medical condition, marital status, or  
20 sexual orientation are entitled to the full and  
equal accommodations, advantages, facilities,  
privileges, or services in all business  
establishments of every kind whatsoever.

21 CAL. CIV. CODE § 51(b). However, "[a]n organization is not excluded from  
22 the scope of [the Unruh Act] simply because it is nonprofit." Doe v.  
23 California Lutheran High Schl. Ass'n, 170 Cal. App. 4th 828, 836 (2009).  
24 Therefore, this portion of the motion is denied.

### 25 **D. Johnson, Swartzlander, VMRC, Sisemore-Hester, and Jacobs' Motion to** 26 **Dismiss the J.H. Plaintiffs' claim under 42 U.S.C. § 1983**

27 Johnson, Swartzlander, VMRC, Sisemore-Hester, and Jacobs seek  
28 dismissal of the J.H. Plaintiffs' claim alleged under 42 U.S.C. § 1983  
("§ 1983"), in which Plaintiffs allege a violation of the right of

1 intrastate travel under the Equal Protection Clause of the Fourteenth  
2 Amendment of the United States Constitution. These Defendants argue that  
3 the right of intrastate travel is not a right secured by the  
4 Constitution.

5 The J.H. Plaintiffs allege in this claim:

6 The Supreme Court has been clear that it is  
7 'constitutionally impermissible' for a State to  
8 enact durational residency requirements for the  
9 purpose of inhibiting the migration of needy  
10 persons into the State. . . . Defendant VMRC, a  
11 private entity, through its employee  
12 Tara-Sisemore-Hester, implemented the EIBT/PPG with  
13 Modesto City Schools, through its employees  
14 Virginia Johnson and Sue Swartzlander. The  
15 individuals and entities implemented the EIBT/PPG  
16 to deny JH. and L.H. access to an intensive ABA  
17 program by placing them on a waiting list for these  
18 services based upon the date they moved to Modesto.  
19 Richard Jacobs, Executive Director of VMRC, was  
20 aware of the implementation of the EIBT/PPG by Ms.  
21 Sisemore-Hester and failed to take any action to  
22 end this practice. As VMRC and Ms. Sisemore-Hester  
23 implemented the EIBT/PPG with Modesto City Schools  
24 and its employees, they are liable as joint actors.

25 Id. ¶¶ 102-103 (citations omitted). The question of whether the right of  
26 intrastate travel is guaranteed by the Constitution need not be reached,  
27 since even assuming arguendo that the right exists, the J.H. Plaintiffs  
28 have failed to allege facts plausibly showing a violation of this right.  
Therefore, this claim is dismissed.

#### 29 **IV. Conclusion**

30 For the reasons stated herein, Defendants' dismissal motions  
31 are granted and denied as follows:

- 32 1. Modesto City Schools' motion to dismiss the J.H.  
33 Plaintiffs' claims under Section 504 and Title II of the ADA is denied.
- 34 2. The Ripon Defendants' motion to dismiss the Z.F. and A.N.  
35 Plaintiffs' claims under Section 504 and Title II of the ADA is denied.

