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 UNIFIED SCHOOL DISTRICT and ANGIE
 8 SHARBAUGH

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

11 T.M., a minor, by Guardian ad Litem
 LATANYA BENSON and LATANYA
 12 BENSON,
 13
 14 **Plaintiffs,**
 15
 16 **vs.**
 17 SAN FRANCISCO UNIFIED SCHOOL
 DISTRICT and ANGIE SHARBAUGH,
 18
 19 **Defendants.**

CASE NO. C09-01463 CW

**JOINT STIPULATION AND ~~PROPOSED~~
 ORDER TO REPLACE DEFENDANTS'
 ANSWER TO THIRD AMENDED
 COMPLAINT**

Trial Date: None

19 **SUBJECT TO THE APPROVAL OF THIS COURT, THE PARTIES HEREBY**
 20 **STIPULATE TO THE FOLLOWING:**

21 WHEREAS, the parties in the above-referenced matter participated in a Case Management
 22 Conference before the Hon. Claudia Wilkin on May 11, 2010;

23 WHEREAS, during the course of the Case Management Conference, counsel for Plaintiff
 24 pointed out that Defendants' Answer to the Third Amended Complaint, filed on March 1, 2010,
 25 Document No. 36 in the Court's docket ("Answer"), included Plaintiff minor's first name in several
 26 instances;

27 WHEREAS, following discussion in open court, and as evidenced in the Court's Minute
 28 Order and Case Management Order filed on May 11, 2010, it was agreed that Defendants would

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1 redact the Answer and prepare a stipulation and order regarding removing the Answer with the
2 Plaintiff minor's name and having a redacted copy filed "in its place;" and

3 WHEREAS, attached hereto as Exhibit A is a true and correct copy of the redacted copy of
4 Defendants' Answer to the Third Amended Complaint, Document No. 36, filed on March 1, 2010.

5 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the
6 parties, through their respective undersigned counsel, that the redacted copy of Defendants'
7 Answer to the Third Amended Complaint, attached hereto as Exhibit A, replace the Answer
8 currently in the Court's docket as Document No. 36, and request that the original Answer be
9 destroyed.

10 **IT IS SO STIPULATED.**

11 DATED: May 17, 2010

Respectfully submitted,

FAGEN FRIEDMAN & FULFROST, LLP

By: /s/ Joshua A. Stevens
Joshua A. Stevens
Attorneys for Defendants SAN FRANCISCO
UNIFIED SCHOOL DISTRICT and ANGIE
SHARBAUGH

18 DATED: May 17, 2010

Respectfully submitted,

ADAMS ESQ, A Professional Corporation

By: /s/ Jean Adams
Jean Adams
Attorneys for Plaintiffs T.M., a minor, by
Guardian ad Litem LATANYA BENSON and
LATANYA BENSON

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[PROPOSED] ORDER

IT IS HEREBY ORDERED, pursuant to the above Stipulation of the parties, that the redacted copy of Defendants' Answer to the Third Amended Complaint, attached hereto as Exhibit A, replace the Answer currently in the Court's docket as Document No. 36, and that the original Answer be destroyed.

DATED: 5/27/2010



Hon. Claudia Wilken
UNITED STATES DISTRICT JUDGE

00239.00157/202022.1

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EXHIBIT A

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8 SHARBAUGH

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

11
12 T.M., a minor, by Guardian ad Litem
LATANYA BENSON and LATANYA
13 BENSON,

14 Plaintiffs,

15 vs.

16 SAN FRANCISCO UNIFIED SCHOOL
DISTRICT and ANGIE SHARBAUGH,

17 Defendant.
18
19

CASE NO. C09-01463 CW

**DEFENDANTS' ANSWER TO THIRD
AMENDED COMPLAINT**

20 COMES NOW Defendants San Francisco Unified School ("District") and Angie
21 Sharbaugh (collectively referred to herein as "Defendants") who hereby answer the Third
22 Amended Complaint ("TAC") filed by Plaintiffs T.M., a minor, by Guardian ad Litem LaTanya
23 Benson and Lat Tanya Benson ("Plaintiffs") as follows:

24 **I. INTRODUCTION**

25 1. In response to the first sentence of paragraph 1 of the TAC, Defendants admit that
26 this is an appeal of a Special Education Administrative Hearing, but deny all other allegations
27 contained therein. In response to the second sentence of paragraph 1 of the TAC, Defendants deny
28 each and every allegation contained therein. In response to the third sentence of paragraph 1 of

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1 the TAC, Defendants are without sufficient knowledge or information to form a belief as to the
2 truth of the allegations therein and, on that basis, deny each and every allegation contained therein.
3 In response to the fourth sentence of paragraph 1 of the TAC, Defendants are without sufficient
4 knowledge or information to form a belief as to the truth of the allegations therein and, on that
5 basis, deny said allegation contained therein. In response to the fifth sentence of paragraph 1 of
6 the TAC, Defendants are without sufficient knowledge or information to form a belief as to the
7 truth of the allegations therein and, on that basis, deny each and every allegation contained therein.
8 In response to the sixth sentence of paragraph 1 of the TAC, Defendants are without sufficient
9 knowledge or information to form a belief as to the truth of the allegations therein and, on that
10 basis, deny each and every allegation contained therein.

11 2. In response to the first sentence of paragraph 2 of the TAC, Defendants admit that
12 Plaintiffs seek prospective injunctive relief for the reasons stated therein, but deny that Defendants
13 excluded Plaintiff T.M. from school, deprived her of appropriate special education services, or
14 unilaterally assigned her to a segregated classroom in whole or in part because of her race. In
15 response to the second sentence of paragraph 2 of the TAC, Defendants deny each and every
16 allegation contained therein. In response to the third sentence of paragraph 2 of the TAC,
17 Defendants deny each and every allegation contained therein. In response to the fourth sentence
18 of paragraph 2 of the TAC, Defendants admit that Plaintiffs seek compensatory relief for the
19 reasons stated therein, but deny that Defendants harmed Plaintiffs. In response to the fifth
20 sentence of paragraph 2 of the TAC, Defendants admit that Plaintiffs seek punitive relief against
21 Defendant Sharbaugh in her individual capacity, but deny that Defendant Sharbaugh acted in her
22 individual capacity, or that she acted recklessly or callously indifferent to Plaintiffs' federally
23 protected rights. In response to the sixth sentence of paragraph 2 of the TAC, Defendants deny
24 each and every allegation contained therein.

25 **II. JURISDICTION**

26 3. In response to paragraph 3 of the TAC, Defendants admit each and every allegation
27 contained therein.

28 4. In response to paragraph 4 of the TAC, Defendants deny they or either of them

1 violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the
2 United States ("Section 1983"), Title VI of the Civil Rights Act of 1964 ("Title VI"), California
3 Civil Code §51, et seq. ("Unruh Civil Rights Act") and California Education Code §220. With
4 respect to the other allegations contained in paragraph 4, Defendants admit each and every
5 allegation contained therein.

6 **III. VENUE**

7 5. In response to paragraph 5 of the TAC, Defendants admit each and every allegation
8 contained therein.

9 6. In response to paragraph 6 of the TAC, Defendants admit each and every allegation
10 contained therein.

11 **IV. PARTIES**

12 7. In response to paragraph 7 of the TAC, Defendants admit each and every allegation
13 contained therein except for the allegation regarding Plaintiff's T.M.'s hearing loss. Defendants
14 affirmatively assert that Plaintiff T.M.'s mild hearing loss was not found to impede her learning.

15 8. In response to the first sentence of paragraph 8 of the TAC, Defendants admit
16 Plaintiff Benson is the aunt and legal guardian of T.M., and admit that San Francisco is within the
17 District's boundaries, but are without sufficient knowledge or information to form a belief as to the
18 truth of the remaining allegations therein and on that basis deny each and every other allegation
19 therein. In response to the second sentence of paragraph 8 of the TAC, Defendants admit each and
20 every allegation contained therein. In response to the third sentence of paragraph 8 of the TAC,
21 Defendants admit that the Supreme Court's decision speaks for itself and deny all allegations
22 within paragraph 8 that attempt to characterize, paraphrase or expand on the language and
23 decisional law under the Supreme Court decision. In response to the fourth, fifth and sixth
24 sentences of paragraph 8 of the TAC, Defendants deny each and every allegation contained
25 therein.

26 9. In response to paragraph 9 of the TAC, Defendants admit each and every allegation
27 contained therein.

28 10. In response to paragraph 10 of the TAC, Defendants admit each and every

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1 allegation contained therein.

2 11. In response to paragraph 11 of the TAC, Defendants are without sufficient
3 knowledge or information to form a belief as to the truth of the allegations therein and, on that
4 basis, deny each and every allegation contained therein.

5 **V. PROCEDURAL HISTORY**

6 12. In response to the first sentence of paragraph 12 of the TAC, Defendants deny that
7 the special day class at El Dorado School was ever characterized as a class for students with
8 severe cognitive impairments or serious behavioral problems. With respect to all other allegations
9 contained in paragraph 12, Defendants admit each and every allegation contained therein.

10 13. In response to paragraph 13 of the TAC, Defendants admit each and every
11 allegation contained therein.

12 14. In response to the first sentence of paragraph 14 of the TAC, Defendants admit
13 each and every allegation contained therein. In response to the second sentence of paragraph 14 of
14 the TAC, Defendants admit that the ALJ disclosed that she had previously served as counsel for
15 CDE in connection with a case in which ADAMS ESQ represented the student but in which CDE
16 was not the real party in interest, and are without sufficient knowledge or information to form a
17 belief as to the truth of the remaining allegations therein and on that basis deny each and every
18 other allegation contained therein. In response to the third sentence of paragraph 14 of the TAC,
19 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
20 allegations therein and, on that basis, deny each and every allegation contained therein. In
21 response to the fourth sentence of paragraph 14 of the TAC, Defendants admit that Plaintiff T.M.'s
22 counsel informed the ALJ of her election to exercise her right to a preemptory challenge and
23 further informed the ALJ that the issue involved in the other case was almost identical to that in
24 the instant case; however, Defendants are without sufficient knowledge or information to form a
25 belief as to whether the issue involved in the other case was in fact almost identical to that in the
26 instant case and, on that basis, deny that the other case was almost identical to that in the instant
27 case. In response to the fifth sentence of paragraph 14 of the TAC, Defendants admit the ALJ did
28 not recuse herself and did not grant the preemptory challenge, and deny each and every other

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1 allegation therein. In response to the sixth, seventh and eighth sentences of paragraph 14 of the
2 TAC, Defendants admit each and every allegation contained therein.

3 15. In response to the first sentence of paragraph 15 of the TAC, Defendants admit
4 each and every allegation contained therein. In response to the second sentence of paragraph 15
5 of the TAC, Defendants admit that on December 11, 2008, Defendant Sharbaugh testified as
6 follows in response to the following question on direct examination: "Q: And do you think based
7 on your knowledge of the girls that are in the class and based on your knowledge of [REDACTED] how
8 you believe that match would be? A: Well, they look like [REDACTED] and the girls are really sweet.
9 There's some really sweet girls in the classroom and some of them have ADHD too. But, every
10 time I'm in there I really enjoy the girls. They're my favorite part of the classroom." Defendants
11 further admit that on cross-examination, Defendant Sharbaugh testified as follows in response to
12 the following question: "Q. Ms. Sharbaugh, earlier you said that you thought one of the reasons
13 why El Dorado would be a good fit for [REDACTED] is because of the other girls in the classroom and
14 they all looked like her. Is that because they're all black? A. Yeah. They're about her grade
15 level, too. So they're as tall as she is. They're also African-American. Yes." and deny each and
16 very other allegation contained in said second sentence of paragraph 15. In response to the third
17 sentence of paragraph 15 of the TAC, Defendants admit that on December 11, 2008, Defendant
18 Sharbaugh testified as follows in response to the following questions: "Q. How many kids in that
19 classroom are African American? A. I'm trying to think. I think nine students are African
20 American. Q. And the other one? A. Is Latino." and deny each and very other allegation in said
21 third sentence of paragraph 15. In response to the fourth sentence in paragraph 15 of the TAC,
22 Defendants admit that on December 11, 2008, Defendant Sharbaugh testified as follows in
23 response to the following question: "Q. Is it odd that there be all minority kids in special day
24 class? A. It's actually not odd at all. I would say 90 percent, and don't quote me on 90 percent,
25 but 90 percent of our special day classrooms are students of color." In response to the fifth
26 sentence in paragraph 15 of the TAC, Defendants admit that on December 11, 2008, Defendant
27 Sharbaugh testified as follows in response to the following questions: "Q. So it would seem to be
28 the norm that students of color are in special day class? A. Unfortunately, yes. Q. And you think

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1 that because [REDACTED] is with African American kids that's okay for her? She can not integrate
2 with kids of other color? A. No." In response to the sixth sentence of paragraph 15 of the TAC,
3 Defendants admit the District objected to this line of questioning but deny each and every other
4 allegation contained therein.

5 16. In response to the first sentence of paragraph 16 of the TAC, Defendants admit that
6 the ALJ took a break in the hearing to consider some information that had been elicited, and deny
7 each and every remaining allegation of said sentence in paragraph 16. In response to the second
8 sentence of paragraph 16 of the TAC, Defendants admit that after the break the ALJ disclosed that
9 she had served as the CDE attorney assigned to monitor the case of *NAACP v. San Francisco*
10 *Unified School District*, and Defendants are without sufficient knowledge or information to form a
11 belief as to the truth of the remaining allegations therein and, on that basis, deny each and every
12 remaining allegation contained therein. In response to footnote two of paragraph 16 of the TAC,
13 Defendants assert that the cited case speaks for itself and deny all allegations within footnote two
14 of paragraph 16 that attempt to characterize, paraphrase or expand on the language in said case. In
15 response to the third sentence of paragraph 16 of the TAC, Defendants admit that after the break
16 the ALJ stated: "[I]t is not relevant to this case of what the racial composition is of the special day
17 class that is being proposed. And there will be no more evidence taken concerning that."
18 Defendants deny each and every remaining allegation in said sentence of paragraph 16. In
19 response to the fourth sentence of paragraph 16 of the TAC, Defendants admit that the ALJ stated:
20 "I am familiar with the fact that the segregation and desegregation of San Francisco Unified
21 School District has been an ongoing issues for many, many, many years. But in terms of this
22 specific case, first of all, I don't believe that my involvement gives me any reason to recuse
23 myself. I am familiar with both the government code and the regulations that concern the
24 Administrative Practices Act. And so I am not going to recuse myself." Defendants deny each
25 and every remaining allegation of said sentence.

26 17. In response to paragraph 17 of the TAC, Defendants admit each and every
27 allegation contained therein.

28 18. In response to the first sentence of paragraph 18 of the TAC, Defendants admit

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1 each and every allegation contained therein. In response to footnote three of paragraph 18 of the
2 TAC, Defendants admit each and every allegation contained therein. In response to the second
3 sentence of paragraph 18 of the TAC, Defendants admit student never attended the special day
4 class and deny each and every other allegation contained therein. In response to the third sentence
5 of paragraph 18 of the TAC, Defendants admit that Benson removed T.M. from public school, but
6 are without sufficient knowledge or information to form a belief as to the truth of the allegations to
7 admit or deny whether Benson "is now forced to pay for her private education" and, on that basis,
8 deny that allegation.

9 19. In response to paragraph 19 of the TAC, deny that Benson is forced to either pay
10 for private education or allow the student to be placed in a segregated class. As to the allegations
11 therein regarding the meaning or effect of the Education Code, Defendants admit the cited
12 Education Code provisions speak for themselves and deny all allegations within paragraph 19 that
13 attempt to characterize, paraphrase or expand on the language or meaning of said provisions.
14 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
15 remaining allegations in said paragraph 19 and on that basis deny each and every allegation
16 contained therein.

17 20. In response to paragraph 20 of the TAC, Defendants deny that the ALJ erred for
18 any of the reasons alleged therein.

19 21. In response to paragraph 21 of the TAC, Defendants deny that the ALJ "directed"
20 Plaintiffs to proceed to Federal Court, and admit each and every other allegation contained therein.

21 **VI. CLAIMS FOR RELIEF**

22 **Count One – Appeal of Administrative Due Process Hearing Against the District**

23 22. In response to paragraph 22 of the TAC, the District realleges all preceding
24 paragraphs of this Answer as set forth above and incorporates the same as though fully set forth
25 herein.

26 23. In response to paragraph 23 of the TAC, the District admits the allegations
27 contained therein.

28 24. In response to paragraph 24 of the TAC, the District denies each and every

1 allegation contained therein.

2 25. In response to paragraph 25 of the TAC, the District denies each and every
3 allegation contained therein.

4 **Count Two – Violation of Plaintiffs Rights under the IDEA Against the District**

5 26. In response to paragraph 26 of the TAC, the District realleges all preceding
6 paragraphs of this Answer as set forth above and incorporates the same as though fully set forth
7 herein.

8 27. In response to paragraph 27 of the TAC, the District denies each and every
9 allegation contained therein. Moreover, the District asserts that the cited Education Code
10 provisions speak for themselves and deny all allegations within paragraph 27 that attempt to
11 characterize, paraphrase or expand on the language of said provisions.

12 28. In response to paragraph 28 of the TAC, the District denies each and every
13 allegation contained therein.

14 **Count Three – Violation of Title VI of the Civil Rights Act of 1964 against the District and**
15 **Sharbaugh in her official capacity**

16 29. In response to paragraph 29 of the TAC, Defendants reallege all preceding
17 paragraphs of this Answer as set forth above and incorporate the same as though fully set forth
18 herein.

19 30. In response to the first sentence of paragraph 30 of the TAC, Defendants assert that
20 Title VI speaks for itself and deny all allegations within paragraph 30 that attempt to characterize,
21 paraphrase or expand on the language in Title VI. In response to the second and third sentences of
22 paragraph 30 of the TAC, Defendants deny each and every allegation contained therein.

23 31. In response to paragraph 31 of the TAC, Defendants deny each and every allegation
24 contained therein.

25 32. In response to paragraph 32 of the TAC, Defendants admit that on December 11,
26 2008, Defendant Sharbaugh testified as follows in response to the following question on direct
27 examination: "Q: And do you think based on your knowledge of the girls that are in the class and
28 based on your knowledge of [REDACTED] how you believe that match would be? A: Well, they look

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1 like [REDACTED] and the girls are really sweet. There's some really sweet girls in the classroom and
2 some of them have ADHD too. But, every time I'm in there I really enjoy the girls. They're my
3 favorite part of the classroom." Defendants further admit that on cross-examination, Defendant
4 Sharbaugh testified as follows in response to the following question: "Q. Ms. Sharbaugh, earlier
5 you said that you thought one of the reasons why El Dorado would be a good fit for [REDACTED] is
6 because of the other girls in the classroom and they all looked like her. Is that because they're all
7 black? A. Yeah. They're about her grade level, too. So they're as tall as she is. They're also
8 African-American. Yes." and deny each and very other allegation contained in paragraph 32.

9 33. In response to paragraph 33 of the TAC, Defendants deny each and every allegation
10 contained therein.

11 34. In response to the first sentence of paragraph 34 of the TAC, Defendants admit that
12 Plaintiffs are minorities. Defendants are without sufficient knowledge or information to form a
13 belief as to the truth of the allegations regarding unspecified "protections" asserted in the
14 remainder of the first sentence of said paragraph and on that basis deny each and every allegation
15 contained therein. In response to the second sentence of paragraph 34 of the TAC, Defendants
16 deny each and every allegation contained therein.

17 35. In response to paragraph 35 of the TAC, Defendants deny each and every allegation
18 contained therein.

19 36. In response to paragraph 36 of the TAC, Defendants deny each and every allegation
20 contained therein.

21 37. In response to the first and second sentences of paragraph 37 of the TAC,
22 Defendants deny each and every allegation contained therein. In response to the third sentence of
23 paragraph 37 of the TAC, Defendants admit that Plaintiffs seek injunctive relief, but deny that
24 Defendants engaged in and enforced any unconstitutional and illegal policies, practices, conduct or
25 acts.

26 **Count Four – Violation of Section 1983 of Title 42 of the United States Code by Plaintiffs**

27 **T.M. and Benson against the District**

28 38. In response to paragraph 38 of the TAC, the District realleges all preceding

1 paragraphs of this Answer as set forth above and incorporates the same as though fully set forth
2 herein.

3 39. In response to paragraph 39 of the TAC, the District admits that the language and
4 decisional law under 42 U.S.C. § 1983 and the Fourteenth Amendment of the United States
5 Constitution speak for themselves and deny all allegations within paragraph 39 that attempt to
6 characterize, paraphrase or expand on the language and decisional law under 42 U.S.C. § 1983 or
7 the Fourteenth Amendment of the United States Constitution.

8 40. In response to paragraph 40 of the TAC, the District denies each and every
9 allegation contained therein.

10 41. In response to paragraph 41 of the TAC, the District admits that California is a
11 compulsory education state. The District asserts that the legal consequences of California being a
12 compulsory education state speak for themselves and so denies all allegations in paragraph 41 that
13 attempt to characterize, paraphrase or expand on said legal consequences. The District admits that
14 all parents in the District, regardless of minority status, are treated the same regarding sending
15 their children to public school. The District denies each and every remaining allegation contained
16 in said paragraph.

17 42. In response to paragraph 42 of the TAC, the District denies each and every
18 allegation contained therein.

19 43. In response to paragraph 43 of the TAC, the District denies each and every
20 allegation contained therein.

21 44. In response to paragraph 44 of the TAC, Defendants deny each and every allegation
22 contained therein.

23 **Count Five – Violation of Section 1983 of Title 42 of the United States Code by Plaintiffs**

24 **T.M. and Benson against Sharbaugh in her individual capacity**

25 45. In response to paragraph 45 of the TAC, Defendant Sharbaugh realleges all
26 preceding paragraphs of this Answer as set forth above and incorporates the same as though fully
27 set forth herein.

28 46. In response to the first and second sentences of paragraph 46 of the TAC,

1 Defendant Sharbaugh asserts that the language and decisional law under 42 U.S.C. § 1983 and the
2 Fourteenth Amendment of the United States Constitution speak for themselves and deny all
3 allegations within paragraph 46 that attempt to characterize, paraphrase or expand on the language
4 and decisional law under 42 U.S.C. § 1983 or the Fourteenth Amendment of the United States
5 Constitution. In response to the third sentence of paragraph 46 of the TAC, Defendant Sharbaugh
6 asserts that the unspecified "Federal law and regulations" cited therein speak for themselves and
7 denies all allegations within the third sentence of paragraph 46 that attempt to characterize,
8 paraphrase or expand on the language of said provisions.

9 47. In response to paragraph 47 of the TAC, Defendant Sharbaugh denies each and
10 every allegation contained therein.

11 48. In response to paragraph 48 of the TAC, Defendant Sharbaugh admits that
12 California is a compulsory education state. Defendant Sharbaugh asserts that the legal
13 consequences of California being a compulsory education state speak for themselves and so denies
14 all allegations in paragraph 48 that attempt to characterize, paraphrase or expand on said legal
15 consequences. Defendant Sharbaugh admits that all parents in the District, regardless of minority
16 status, are treated the same regarding sending their children to public school. Defendant
17 Sharbaugh denies each and every remaining allegation contained in said paragraph.

18 49. In response to paragraph 49 of the TAC, Defendant Sharbaugh denies each and
19 every allegation contained therein.

20 50. In response to paragraph 50 of the TAC, Defendant Sharbaugh denies each and
21 every allegation contained therein.

22 51. In response to the first, second and third sentences of paragraph 51 of the TAC,
23 Defendant Sharbaugh denies each and every allegation contained therein. In response to the
24 fourth sentence of paragraph 51 of the TAC, Defendant Sharbaugh denies that Benson was
25 "required to fund private school, supplies, transportation and special education and related services
26 to T.M. because of race," and admits that all parents in the District, regardless of minority status,
27 are treated the same regarding sending their children to public school. In response to the
28 remaining allegations of paragraph 51 of the TAC, Defendant Sharbaugh denies each and every

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1 allegation contained therein.

2 52. In response to paragraph 52 of the TAC, Defendant Sharbaugh denies each and
3 every allegation contained therein.

4 53. In response to paragraph 53 of the TAC, Defendant Sharbaugh denies each and
5 every allegation contained therein.

6 **Count Six – Violation of Unruh Civil Rights Act Against Sharbaugh in her**

7 **Individual Capacity**

8 54. In response to paragraph 54 of the TAC, Defendant Sharbaugh realleges all
9 preceding paragraphs of this Answer as set forth above and incorporates the same as though fully
10 set forth herein.

11 55. In response to the paragraph 55 of the TAC, Defendant Sharbaugh asserts that
12 California Civil Code section 51 *et seq.* (Unruh Civil Rights Act) and the decisional law under it
13 speaks for itself and denies all allegations in paragraph 55 that attempt to characterize, paraphrase
14 or expand on the language in California Civil Code section 51 *et seq.*, the decisional law under it.

15 56. In response to paragraph 56 of the TAC, Defendant Sharbaugh denies each and
16 every allegation contained therein.

17 57. In response to paragraph 57 of the TAC, Defendant Sharbaugh denies each and
18 every allegation contained therein.

19 58. In response to paragraph 58 of the TAC, Defendant Sharbaugh denies each and
20 every allegation contained therein.

21 59. In response to paragraph 59 of the TAC, Defendant Sharbaugh denies each and
22 every allegation contained therein.

23 60. In response to paragraph 60 of the TAC, Defendant Sharbaugh denies each and
24 every allegation contained therein.

25 **Count Seven – Racial Discrimination in Violation of California Education Code § 220**

26 **Against Sharbaugh in her Individual Capacity**

27 61. In response to paragraph 61 of the TAC, Defendant Sharbaugh realleges all
28 preceding paragraphs of this Answer as set forth above and incorporates the same as though fully

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1 set forth herein.

2 62. In response to paragraph 62 of the TAC, Defendant Sharbaugh asserts that
3 California Education Code section 220 speaks for itself and denies all allegations within paragraph
4 62 that attempt to characterize, paraphrase or expand on the language in California Education
5 Code section 220.

6 63. In response to paragraph 63 of the TAC, Defendant Sharbaugh denies each and
7 every allegation contained therein.

8 64. In response to paragraph 64 of the TAC, Defendant Sharbaugh denies each and
9 every allegation contained therein.

10 65. In response to paragraph 65 of the TAC, Defendant Sharbaugh denies each and
11 every allegation contained therein.

12 66. In response to paragraph 66 of the TAC, Defendant Sharbaugh denies each and
13 every allegation contained therein.

14 **AFFIRMATIVE DEFENSES**

15 As separate affirmative defenses, Defendants allege as follows:

16 **FIRST AFFIRMATIVE DEFENSE**

17 (Failure to State a Claim)

18 Plaintiffs' First Cause of Action appealing the administrative due process hearing against
19 the District fails to state a claim upon which relief may be granted against the District.

20 **SECOND AFFIRMATIVE DEFENSE**

21 (Failure to State a Claim)

22 Plaintiffs' Second Cause of Action for relief under the IDEA against the District fails to
23 state a claim upon which relief may be granted against the District.

24 **THIRD AFFIRMATIVE DEFENSE**

25 (Failure to State a Claim)

26 Plaintiffs' Third Cause of Action for relief under Title VI of the Civil Rights Act of 1964
27 against the District and Sharbaugh in her official capacity fails to state a claim upon which relief
28 may be granted against Defendants.

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FOURTH AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiffs' Fourth Cause of Action for relief regarding alleged deprivation of Fourteenth Amendment rights under 42 U.S.C. § 1983 against the District fails to state a claim upon which relief may be granted against the District.

FIFTH AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiffs' Fifth Cause of Action for relief regarding alleged deprivation of Fourteenth Amendment rights under 42 U.S.C. § 1983 against Defendant Sharbaugh in her individual capacity fails to state a claim upon which relief may be granted against Sharbaugh.

SIXTH AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiffs' Sixth Cause of Action for relief under the Unruh Civil Right Act against Defendant Sharbaugh in her individual capacity fails to state a claim upon which relief may be granted against Sharbaugh.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiffs' Seventh Cause of Action for relief under California Education Code section 220 against Defendant Sharbaugh in her individual capacity fails to state a claim upon which relief may be granted against Sharbaugh.

EIGHTH AFFIRMATIVE DEFENSE

(Statute of Limitations Bar)

Plaintiffs' claims under the TAC are barred from relief by operation of any applicable statute[s] of limitations.

NINTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

Plaintiffs are barred from relief under the Complaint as to any claim which was not

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1 addressed by the administrative law judge, based on their failure to fully exhaust administrative
2 remedies.

3 **TENTH AFFIRMATIVE DEFENSE**

4 **(Discharge of Obligations)**

5 Plaintiffs are barred from relief under the TAC because, prior to the commencement of this
6 action, Defendants satisfied or otherwise discharged all duties and obligations owed to Plaintiffs.

7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 **(Laches)**

9 Plaintiffs are barred from relief under the TAC by the equitable doctrine of laches from
10 asserting the claims alleged in the TAC against Defendants.

11 **TWELFTH AFFIRMATIVE DEFENSE**

12 **(Unclean Hands)**

13 Plaintiffs are barred from relief under the TAC by the equitable doctrine of unclean hands
14 from asserting the claims alleged in the TAC against Defendants.

15 **THIRTEENTH AFFIRMATIVE DEFENSE**

16 **(Waiver)**

17 Plaintiffs are barred from relief under the TAC by the equitable doctrine of waiver from
18 asserting the claims alleged in the TAC against Defendants.

19 **FOURTEENTH AFFIRMATIVE DEFENSE**

20 **(Comparative Fault)**

21 Plaintiffs are completely barred from recovery under the TAC as alleged damages, if any,
22 were caused or contributed to by the acts, omissions, fault and misconduct of Plaintiffs, their
23 agents, representatives or attorneys (whose acts, conduct and/or omissions are chargeable to
24 Plaintiffs) or, in the alternative, any recovery of damages by Plaintiffs must be reduced by the
25 amount of damages so caused by the aforesaid acts and/or omissions of Plaintiffs and/or their
26 agents, representatives or attorneys.

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FIFTEENTH AFFIRMATIVE DEFENSE

(Immunity)

Plaintiffs are barred from seeking relief under the TAC because under the Eleventh Amendment of the U.S. Constitution, Defendants are entitled to immunity from suit, for all damages.

SIXTEENTH AFFIRMATIVE DEFENSE

(Immunity and Privilege)

Plaintiffs are barred from asserting the claims alleged in the Complaint against the Defendants as their actions were, at all times, privileged, immune, justified, made in good faith, were done with good cause and/or otherwise lawful.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Business Judgment)

Plaintiffs are barred from seeking relief under the TAC because any and all acts taken by Defendants affecting Plaintiffs were done in good faith and motivated by legitimate, non-retaliatory and non-discriminatory reasons and/or as a result of business necessity and/or business judgment exercised in good faith upon reasonable information provided to Defendants, and in an effort to comply with legal requirements.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Lawful Actions)

Plaintiffs are barred from seeking relief under the TAC because Defendants' actions were and are privileged, justifiable, based solely on good faith and otherwise lawful.

NINETEENTH AFFIRMATIVE DEFENSE

(Compliance with State and Federal Law)

At all times relevant to the TAC, Defendants have complied with California and federal law.

TWENTIETH AFFIRMATIVE DEFENSE

(Other Defenses)

Defendants presently have insufficient knowledge or insufficient information upon which

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1 to form a belief as to whether they may have additional, yet unasserted, affirmative defenses.
2 Defendants therefore reserve the right to assert additional affirmative defenses in the event
3 discovery indicates it would be appropriate.

4 **PRAYER**

5 WHEREFORE, Defendants pray that judgment be rendered in favor of Defendants and
6 against Plaintiffs as follows:

- 7 1. Dismiss Plaintiffs' TAC with prejudice;
- 8 2. Deny all forms of relief sought by Plaintiffs against Defendants;
- 9 3. Order that Plaintiffs take nothing from the TAC;
- 10 4. Order costs of suit in favor of Defendants and against Plaintiffs; and
- 11 5. Order such other relief as the Court deems appropriate.

12 DATED: March 1, 2010

Respectfully submitted,

FAGEN FRIEDMAN & FULFROST, LLP

By: /s/ Douglas N. Freifeld

Douglas N. Freifeld
Attorneys for Defendants SAN FRANCISCO
UNIFIED SCHOOL DISTRICT and ANGIE
SHARBAUGH

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