

1 MELINDA HAAG (CSBN 132612)
 United States Attorney
 2 JOANN M. SWANSON (CSBN 88143)
 Chief, Civil Division
 3 JAMES A. SCHARF (CSBN 152171)
 Assistant United States Attorney
 4
 5 150 Almaden Boulevard, Suite 900
 San Jose, CA 95113
 Telephone: (408) 535-5044
 6 FAX: (408) 535-5081
 James.Scharf@usdoj.gov

7 Attorneys for Defendant United States Department of Education¹

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

11 RANDY CHAPEL,
 12 Plaintiff,
 13 v.
 14 UNITED STATES DEPARTMENT
 15 OF EDUCATION,
 16 Defendant.

CASE NO. CV 11-04344 PSG

17
 18 CAROL NYE-WILSON,
 DALE WILSON
 19 Plaintiffs,
 20 v.
 21 UNITED STATES DEPARTMENT
 OF EDUCATION,
 22 Defendant.

CASE NO. CV 11-05678 HRL

**ADMINISTRATION MOTIONS TO
 CONSIDER WHETHER CASES
 SHOULD BE RELATED AND TO
 EXTEND TIME TO RESPOND TO
 COMPLAINT; SUPPORTING
 DECLARATION; [~~PROPOSED~~]
 ORDER**

24 PLEASE TAKE NOTICE that, pursuant to Civil L. R. 3-12 and Civil L. R. 7-11,
 25 Defendant United States Department of Education hereby moves the Court for an order finding

26 _____
 27 ¹Counsel for the defendant in Case No. CV 11-05678 HRL specially appears for the
 28 purposes of this motion only.

1 that the above-referenced cases are related.

2 These FOIA actions should be related because the actions concern substantially similar
3 FOIA requests. Litigating these cases before different judges would not be an efficient use of the
4 Court's resources and could result in inconsistent judgments. *See* Civil L.R. 3-12(a).

5 Accordingly, defendant requests that these cases be found to be related and that the later-filed
6 case, CV 11-05678 HRL, be reassigned to Magistrate Judge Grewal for future her handling.

7 Plaintiffs in both cases have consented in writing to having Magistrate Judge Grewal handle both
8 cases.

9 In addition, defendant hereby moves the Court for an order extending the time for
10 defendant to respond to the complaint in CV 11-05678 HRL, which is now due on January 3,
11 2012. Defendant intends to respond to plaintiffs' outstanding FOIA requests on or about
12 December 23, 2011. Defendant's response to the complaint in CV 11-05678 HRL is currently
13 due January 3, 2012. As it did in CV 11-04344, defendant intends to file a motion to dismiss
14 rather than an answer on the grounds that the lawsuit is moot. However, in order prepare that
15 motion, defendant would like to receive the Court's anticipated order on defendant's motion to
16 dismiss in CV 11-04344 PSG as said order may address the reasonableness of defendant's search
17 efforts and thus affect defendant's arguments.

18 In addition, defense counsel AUSA James A. Scharf will be on vacation during the week
19 of December 26, 2011 and agency counsel Jill Siegelbaum will be out of the office from
20 December 23 through December 29, 2011. Because of their unavailability during this period of
21 time, it will be very difficult for defendant to file a motion on January 3, 2012.

22 In addition, the requested extension would afford the parties additional time to meet and
23 confer regarding the sufficiency of December 23, 2011 response to plaintiffs' outstanding FOIA
24 requests prior to filing its motion.

25 Accordingly, defendant requests that the Court issue an order requiring defendant to
26 respond to plaintiffs' complaint in CV 11-05678 HRL within 30 days of the filing of its order on
27 defendant's motion to dismiss in CV 11-04344 PSG. Alternatively, defendant requests that the
28 Court grant defendant an additional thirty days to respond to the complaint to and including

1
2 ~~PROPOSED~~ ORDER

3 An Administrative Motion to Consider Whether Cases Should Be Related has been filed
4 stating that the following cases are related within the meaning of Civil L.R. 3-12: Chapel v.
5 United States Department of Education, CV 11-04344 PSG and Nye-Wilson, et al., v. United
6 States Department of Education, CV 11-05678 HRL.

7 On the basis of the material submitted to the Court and the Court's own files in the two
8 cases, as the Judge assigned to the earliest filed case, I find that the cases ARE RELATED as
9 defined by Civil L.R. 3-12. Accordingly, the Clerk of Court is ordered to reassign the later-filed
10 action to the undersigned. Counsel are instructed that all future filings are to bear the initials
11 PSG immediately after the case number. All case management dates and events presently
12 scheduled in the reassigned case are vacated.

13 Defendant's response to plaintiffs' complaint in CV 11-05678 HRL shall be due within
14 thirty days of the filing of the Court's order on defendant's motion to dismiss in CV 11-04344
15 PSG.

16 Good cause appearing, it is so ordered.

17 DATED: 1/2/2012, ~~2011~~



18 PAUL S. GREWAL
19 United States District Court Magistrate
20 Judge
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that she is an employee of the Office of the United States
3 Attorney for the Northern District of California and is a person of such age and discretion to be
4 competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

5 **ADMINISTRATION MOTIONS TO CONSIDER WHETHER CASES SHOULD BE RELATED
6 AND TO EXTEND TIME TO RESPOND TO COMPLAINT; SUPPORTING DECLARATION;
7 [PROPOSED] ORDER**

8 **RANDY CHAPEL v. UNITED STATES DEPARTMENT OF EDUCATION**

9 CV 11-04344 PSG

10 **CAROL NYE-WILSON; DALE WILSON v. UNITED STATES DEPARTMENT OF
11 EDUCATION**

12 CV 11-05678 HRL

13 to be served this date upon the party(ies) as follows:

14 **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the
15 designated area for outgoing U.S. mail in accordance with this office's practice.

16 to the parties addressed as follows:

17 **Randy Chapel**
18 **PO Box 1050**
19 **Boulder Creek, CA 95006**

20 **Carol Nye-Wilson**
21 **610 West Drive**
22 **Boulder Creek, CA 95006**

23 I declare under penalty of perjury under the laws of the United States of America that the
24 foregoing is true and correct.

25 Executed this 16th day of December 2011, at San Jose, California.

26 /s/

27 _____
28 Mimi Lam
Legal Assistant