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SID WOLINSKY (Bar No. 33716)  
LAURENCE W. PARADIS (State Bar No. 122336)  
RHODA BENEDETTI (State Bar No. 192606)  
DISABILITY RIGHTS ADVOCATES  
449 15th Street, Suite 303  
Oakland, CA 94612  
Telephone: 501-451-8644  
Facsimile: 510-451-8511

Attorneys for the Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JASON SPIELER by his guardian ad litem,  
ALISON J. SPIELER, and ADVOCATES  
FOR SPECIAL KIDS,

CASE NO. C 98-00951 CW MEJ  
CLASS ACTION

Plaintiffs,

v.

**CONSENT DECREE**

MT. DIABLO UNIFIED SCHOOL  
DISTRICT; Gary L. Eberhart, Eric E. Lane,  
Richard W. Allen, E. William Leal, and  
Linda K. Mayo in their official capacities as  
members of the BOARD OF EDUCATION;  
Paul E. Allen, in his official capacity as  
SUPERINTENDENT OF MT. DIABLO  
UNIFIED SCHOOL DISTRICT; Diana  
Wells, in her official capacity as Director of  
Student Services/ Special Education,

Defendants.

\_\_\_\_\_ /

**RECITALS**

1. Defendant Mt. Diablo Unified School District, a local government entity, the Board of Education, the Superintendent, and the Director of Student Services/Special Education are collectively referred to herein as the "District" and/or "Defendants."
2. Jason Spieler, by his guardian ad litem, Alison J. Spieler, on behalf of himself and all others similarly situated, and Advocates for Special Kids, Named Plaintiffs, have instituted a

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449 Fifteenth Street, Suite 303  
Oakland, CA 94612-2821  
(510) 451-8644

1 suit against the District on behalf of children with disabilities in the District who have allegedly  
2 been denied their right to full and equal access to, and use and enjoyment of, the facilities and  
3 programs of the District because of architectural and programmatic access violations.

4 3. The parties stipulate to certification of a settlement class as set forth in Section VII  
5 below, conditioned on Final Approval being granted by the Court of this Consent Decree.

6 4. The District denies any and all liabilities to the Named Plaintiffs and the Class,  
7 and denies that they have violated any laws—federal, state or local—pertaining to access for  
8 children with disabilities at the District Facilities.

9 5. The Parties now desire to resolve their differences and disputes included in this  
10 lawsuit, identified as Spieler v. Mt. Diablo Unified School District, filed in the U.S. District  
11 Court, Northern District of California, Case No. C 98-00951 (the “Action”), by settling the suit  
12 in such a manner as to:

13 a. Achieve improvements to access at the District Facilities in a manner that  
14 satisfies the District’s obligations to children with disabilities under Title II of the Americans  
15 with Disabilities Act (“ADA”) with respect to architectural and programmatic access;

16 b. Assure that the Named Plaintiffs and the Class will not attempt to enforce,  
17 and the District will not thereby be subject to, conflicting standards regarding compliance with  
18 the ADA concerning the District Facilities; and

19 c. Avoid the uncertainties and costs of further or future litigation for all  
20 Parties.

21  
22 **I. GENERAL PROVISIONS**

23 **A. Conditions**

24 This Consent Decree shall be conditioned upon and shall be effective only upon the  
25 occurrence of all of the following events:

26 1. The Parties move for an order granting Preliminary Approval in  
27 accordance with Paragraph VII. B., and such motion is granted by the Court;

28 2. Commencing at the time of Preliminary Approval of the Consent Decree,

1 the District provides Notice in accordance with Paragraph VIII.;

2 3. The Fairness Hearing is held in accordance with Paragraph VII. D.; and

3 4. The Court approves the settlement and enters judgement in accordance  
4 with the terms of the Consent Decree after the conduct of the Fairness Hearing.

5 **B. Non-Determination**

6 1. The Court has made no findings concerning alleged violations of the ADA  
7 or any other federal, state, or local law, regulation, order, or rule at this time, and the Parties  
8 expressly reserve the right to litigate these issues. If, for any reason, settlement is not effectuated,  
9 no evidence of this proposed Consent Decree shall be admissible for any purpose in this Action.

10 **C. Entire Consent Decree**

11 The terms of this Consent Decree and its Exhibits are the exclusive and final expression  
12 of all agreements by the Parties with respect to any and all claims by the Class Members and the  
13 Named Plaintiffs. The Parties accept entry of this Consent Decree based solely upon its terms  
14 and not in reliance upon any representation or promises other than those contained in this  
15 Consent Decree.

16 **II. DEFINITIONS**

17 **A. District Facilities**

18 “District Facilities” means and refers to all District facilities which are owned and  
19 operated by the District. (A list of the District Facilities is attached hereto as Exhibit A).

20 **B. Named Plaintiffs**

21 “Named Plaintiffs” means and refers to Jason Spieler, an individual, and Advocates for  
22 Special Kids (“ASK”), an organization comprised of District children with disabilities and their  
23 parents.

24 **C. ADA**

25 “ADA” means and refers to Title II of the Americans with Disabilities Act as contained at  
26 42 U.S.C. Section 12101 et seq. in effect as of the date hereof.

27 **D. Class or Class Members**

28 “Class” or “Class Members” shall mean and refer to the class of persons described in

1 Paragraph VII. A. below.

2 **E. Class Counsel**

3 “Class Counsel” shall mean and refer to the law offices of Disability Rights Advocates  
4 and the attorneys practicing therein.

5 **F. Consent Decree**

6 “Consent Decree” shall mean and refer to this document.

7 **G. Defendants**

8 “Defendants” shall mean and refer to Defendants Mt. Diablo Unified School District, the  
9 members of the Board of Education, the Superintendent, and the Director of Student  
10 Services/Special Education of the Mt. Diablo Unified School District (collectively, the  
11 “District” and/or “Defendants”).

12 **H. Fairness Hearing**

13 “Fairness Hearing” shall mean and refer to the hearing described in Paragraph VII. D.

14 **I. Final Approval**

15 “Final Approval” shall mean and refer to entry of an order approving this class action  
16 Consent Decree after Notice to the Class and the holding of a Fairness Hearing.

17 **J. Objection**

18 “Objection” shall mean and refer to any written objection submitted by any Class  
19 Members described in Paragraph VII. C.

20 **K. Parties**

21 “Parties” shall mean and refer to Defendants, Named Plaintiffs and Class Members.

22 **L. Children with Disabilities**

23 “Children with Disabilities” shall mean and refer to children with disabilities as defined  
24 under the ADA, the Individuals with Disabilities Act, and/or Section 504 of the Rehabilitation  
25 Act of 1973.

26 **M. Preliminary Approval**

27 “Preliminary Approval” means and refers to the preliminary approval by the Court of the  
28 terms of this Consent Decree which shall occur prior to any Notice being provided in accordance

1 with Paragraph VIII.

2 **N. Released Claims**

3 “Released Claims” shall mean and refer to those described in Paragraph XII.

4 **O. Released Parties**

5 “Released Parties” shall mean and refer to those described in Paragraph XII.

6 **P. Transition Plan**

7 “Transition Plan” shall mean and refer to the transition plan required pursuant to Title II  
8 of the Americans with Disabilities Act.

9 **Q. Self-Evaluation**

10 “Self-Evaluation” shall mean and refer to the self-evaluation required pursuant to Title II  
11 of the Americans with Disabilities Act.

12 **R. Notice**

13 “Notice” shall mean and refer to the notice described in Paragraph VIII.

14 **S. Implementation Plan**

15 “Implementation Plan” shall mean and refer to the implementation plans described in  
16 Paragraph III.B.

17  
18 **III. INJUNCTIVE RELIEF**

19 The Parties agree that an injunction may be entered by the Court as part of its entering  
20 Final Approval in this matter. The injunction shall remain in effect until the earlier of: (a) 10  
21 years after the date of Final Approval or (b) the obligations set forth herein in Paragraph III. A.  
22 (regarding Architectural Barriers issues), Paragraph III. B. (regarding Policy, Practice, and  
23 Procedure issues), Paragraph III C. (regarding the Model Augmentative Communication  
24 Program), Paragraph III D. (regarding the Model Aide Training Program), and Paragraph III E.  
25 (regarding the Parent Liaison) have been satisfied, and until the reports, monitoring and  
26 enforcement required by Paragraph IV. A., B., and C. have been completed.

27 The injunction shall require that the District accomplish the following specified access  
28 modifications in all District Facilities:

1           **A. Architectural Barriers**

2           1. The Parties have agreed that Priority Level 1 barriers shall consist of the  
3 Priority Level 1 barriers as described in the District's Draft ADA Transition Plan (attached hereto  
4 as Exhibit B) as revised by the recommendations listed on pages 7 and 8 of the Logan Hopper  
5 Report (see Exhibit C, Logan Hopper Report of January 1999).

6           2. The Parties agree that Priority 1 barriers include the list of "minimum  
7 accessibility features" listed on page 7 of the Logan Hopper Report(see Exhibit C).

8           3. The Parties agree that all playboxes shall be made minimally accessible by  
9 providing new surfacing under the "use zone" of the playboxes at a cost of approximately  
10 \$10,000 per site as Priority 1 work. Exceptions would be Gregory Gardens, Shadelands, and  
11 Sunrise Center for which the entire playbox will be made accessible as Priority 1 work. The  
12 Parties further agree that the remainder of the costs currently designated as "playbox access"  
13 shall be included as Priority 2 work. Should new regulations pertaining to playbox access be  
14 issued, the parties will meet and confer regarding any changes necessary in this agreement.

15           4. The Parties agree that at least one drinking fountain per facility shall be  
16 Priority 1 work.

17           5. The Parties agree that each site shall be provided with one readily  
18 available TDD as Priority 1 work.

19           6. The Parties agree that the Loma Vista Adult Center and Pleasant Hill  
20 Education Center should have a higher degree of accessibility for Priority Level 1 improvements  
21 than other regular education sites, because of a higher likelihood that short-term students would  
22 require accessibility without prior notice. All classroom doorways and a greater percentage of  
23 restrooms shall be made accessible under Priority 1.

24           7. The Parties have agreed that the estimated cost of Priority Level 1 work is  
25 \$2,350,000. Priority Level 1 work is to be completed within the timelines set forth in Paragraphs  
26 III. A. 8. and III. A. 9. below regardless of this estimate.

27           8. The Parties have agreed that the "minimum accessibility" barriers listed on  
28 page 7 of the Logan Hopper Report (see Exhibit C) shall be removed on or before September

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1 2002.

2 9. The Parties have agreed that the balance of the Priority 1 barriers shall be  
3 removed on or before September 2003.

4 10. The Parties agree that the removal of Priority 1 barriers is an interim first  
5 step toward making all sites fully accessible. In addition to removing Priority 1 barriers, the  
6 district will also remove all Priority 2 and 3 barriers in the Transition Plan, unless either (a)  
7 removal of a barrier is deemed unnecessary, as approved by Logan Hopper, or (b) provision of a  
8 different remedy is deemed appropriate, as approved by Logan Hopper, and fully implemented by  
9 the District. Class Counsel will be informed in writing of any proposed change to the Transition  
10 Plan upon preliminary approval of the change by Logan Hopper.

11 11. The Parties agree that the District shall use its best efforts to make all  
12 programs, services, and activities programmatically accessible during the interim period while all  
13 sites are made fully accessible by the removal of all barriers listed in the Transition Plan.

14 12. The Parties agree that the District shall produce a detailed list of barriers  
15 (Priority 1, 2, and 3) which they propose to remove each year as set forth in Paragraph III A 10  
16 above. The list will provide the following: (a) the site, (b) the barrier, (c) the fix, and (d) the  
17 estimated cost of the fix.

18 13. The Parties agree that Logan Hopper will review the list and perform spot-  
19 checks at the sites to confirm its accuracy and comprehensiveness.

20 14. The Parties agree that the District will report to Class Counsel quarterly  
21 regarding access work performed.

22 15. The Parties agree that Logan Hopper will check the District's quarterly  
23 reports and perform spot-checks at the sites to confirm the accuracy and comprehensiveness of  
24 the reports.

25 16. The comments in Paragraphs III A 1 through 11 above are not contingent  
26 upon funding contingencies such as future bond funds, modernization funds, or sale of surplus  
27 school property. The District agrees to use its best efforts to sell its surplus property at Willow  
28 Pass, and to use its best efforts to obtain bond funds and modernization funds to complete all

1 Transition Plan work. All proceeds from the sale of Willow Pass, if any, shall be used to  
2 complete the Transition Plan work if that work has not already been funded by other sources.  
3 With respect to any future bonds which can be used for ADA work, the District will assure that  
4 the bond will at least cover completion of all Transition Plan work. Plaintiffs agree to use their  
5 best efforts to cooperate with District bond measures to cover completion of Transition Plan  
6 work.

7           17. The District agrees to provide Class Counsel with quarterly reports  
8 regarding its efforts to obtain funds for Transition Plan work.

9           18. The District shall complete the drafting of its ADA Transition Plan in  
10 accord with these agreements.

11           **B. Policies, Practices and Procedures**

12           1. The District agrees to maintain its policies, practices and procedures in  
13 compliance with IDEA, Section 504, and the ADA.

14           2. The Parties agree that a mutually acceptable, neutral expert shall be  
15 appointed to perform the following duties:

16           a. Review the recommendations of Logan Hopper and Dr. Louis S.  
17 Barber with District personnel. (The recommendations of Logan Hopper are contained in the  
18 "Draft Self-Evaluation of the Mt. Diablo Unified School District," dated February 1999, which  
19 is attached hereto as Exhibit D. The recommendations of Dr. Barber are contained in the report,  
20 "An Independent Study Concerning the Mount Diablo Unified School District's Special  
21 Education Program and Services Educational Environment," dated March 1999, hereinafter  
22 referred to as "the Barber Report" which is attached hereto as Exhibit E.)

23           b. Create a timeline for the preparation of Implementation Plans as set  
24 forth in Paragraph III B 5 below.

25           c. Prepare Implementation Plans as set forth in Paragraph III B 4  
26 below.

27           d. Prepare a schedule for performance of the Implementation Plans.

28           e. Review the District's quarterly reports, as set forth in Paragraph III



1 B 8 below.

2 f. Review and approve the District's Self-Evaluation.

3 3. The Parties agree that Louis S. Barber, Ph.D. will be appointed as the  
4 neutral expert. The Parties agree that the District shall complete the drafting of its Self-  
5 Evaluation incorporating the Draft Self-Evaluation completed by Logan Hopper (Exhibit D) and  
6 the substance of the Barber Report (Exhibit E).

7 4. An Implementation Plan for each of the District's programs will be drafted  
8 by the District and the neutral expert.

9 5. The District shall draft the timeline for preparation of the Implementation  
10 Plans. The timeline shall be subject to review and approval by the neutral expert.

11 6. The District shall use its best efforts to implement each Implementation  
12 Plan.

13 7. The District will report to plaintiffs quarterly regarding its performance of  
14 the Implementation Plans.

15 8. The neutral expert will review the District's quarterly reports and perform  
16 spot-checks at the sites to confirm the accuracy and comprehensiveness of the reports.

17 **C. Model Augmentative Communication Program**

18 The Parties agree that a Model Augmentative Communication Program will be  
19 established in the District as follows:

20 1. The District will hire three experts: (i.) Dr. Marilyn Buzolich (augmentative  
21 communication expert); (ii.) Center for Assistive Technology (assistive technology expert); and  
22 (iii.) Spectrum Center (inclusion expert) to form an Augmentative Communication Panel ("the  
23 Panel").

24 2. Dr. Lou Barber and Dr. Mildred Browne will assist the Panel.

25 3. The Panel will perform four duties:

26 a. Assess the District's current augmentative and assistive technology  
27 offerings to students with disabilities;

28 b. Design a preliminary assessment tool to determine the need for

1 augmentative communication and/or assistive technology equipment and/or services;

2 c. Prepare a joint report of findings and recommendations;

3 d. Provide training to district staff.

4 4. The Panel will provide oversight of the Model Augmentative  
5 Communication Program for two to three years after the initial implementation is completed, as  
6 the experts see fit.

7 5. Any obligations that the District may have to provide assistive technology  
8 and/or augmentative communication devices are to be determined on an individual student basis  
9 pursuant to the Individuals with Disabilities Education Act (IDEA) or Section 504 of the  
10 Rehabilitation Act of 1973.

11 6. Should one of the experts become unavailable to perform the functions set  
12 forth above, the parties will agree to a substitute person to perform such functions. If the parties  
13 cannot agree on a substitute person, the parties shall proceed pursuant to the Dispute Resolution  
14 procedures set forth in Paragraph V.B.

15 **D. Model Aide Training Program**

16 1. The Parties agree that the Model Aide Training Program is intended to  
17 remedy ongoing problems concerning aides in the special education program, including the lack  
18 of aide training on physical care, inclusion techniques, and communication devices.

19 2. The Parties agree the District will establish a Model Aide Training Panel  
20 consisting of: (i.) a representative of Spectrum Center, (ii.) Dr. Louis S. Barber, and (iii.) a  
21 District representative, to jointly perform the following:

22 a. Examine the current aide training program to assess its strengths  
23 and weaknesses;

24 b. Examine the individualized needs of children who require one-to-  
25 one aides;

26 c. Design a model training program for special education aides which  
27 will include but is not limited to the following training:

28 (1.) Training on inclusion techniques for children with

1 disabilities;

2 (2.) Training on physical care which is specific to the particular  
3 child the aide will assist;

4 (3.) Training on the communication devices and/or assistive  
5 technology used by the particular child the aide will assist.

6 (4.) Ongoing training of aides and training of new aides as they  
7 are hired.

8 d. Oversee the implementation of the model training program.

9 3. Should one of the experts become unavailable to perform the functions set  
10 forth above, the parties will agree to a substitute person to perform such functions. If the parties  
11 cannot agree on a substitute person, the parties shall proceed pursuant to the Dispute Resolution  
12 procedures set forth in Paragraph V.B.

13 **E. Parent Liaison**

14 1. The Parties agree that the District will hire and maintain a full-time Parent  
15 Liaison pursuant to the Parent Liaison Job Description attached hereto as Exhibit F.

16 2. The Parties agree that the person selected as the Parent Liaison will be  
17 mutually acceptable to the Parties pursuant to the following selection process:

18 a. The District and Dr. Louis S. Barber will jointly screen candidates'  
19 resumes and application materials to identify qualified candidates for the Parent Liaison position.

20 b. A confidential interview panel will interview all qualified  
21 candidates and select the final candidates for the Parent Liaison position. The confidential  
22 interview panel shall consist of five persons selected by the District and five persons selected by  
23 Plaintiffs. The five persons selected by Plaintiffs shall include: (i) Two Plaintiffs's  
24 representatives; (ii) Two members of the Community Advisory Committee, and (iii) One parent  
25 at large. All members of the panel will be asked to confirm their availability for specific dates  
26 and times in order to conduct the interviews. Should a member of the panel subsequently  
27 become unavailable after having confirmed his or her availability to attend a scheduled interview,  
28 the scheduled interview will proceed in the member's absence.

1 c. The Superintendent and Assistant Superintendent for Special  
2 Education will interview the final candidates.

3 d. The School Board will approve the final candidate.

4 **IV. REPORTS, MONITORING AND ENFORCEMENT**

5 The following reports comprise all of the reports required pursuant to this Consent  
6 Decree.

7 **A. Architectural Barriers Reports**

8 1. The District shall complete its ADA Transition Plan in accordance with  
9 Paragraph III. A.

10 2. The District shall produce a detailed list of barriers (Priority 1, 2 and 3)  
11 which they propose to remove each year. The list will provide the following: (a) the site, (b) the  
12 barrier, (c) the fix, and (d) the estimated cost of the fix.

13 3. Logan Hopper shall review the list and perform spot-checks at the sites to  
14 confirm its accuracy and comprehensiveness.

15 4. The District shall report to Class Counsel quarterly regarding access work  
16 performed.

17 5. Logan Hopper shall check the District's quarterly reports and perform  
18 spot-checks at the sites to confirm the accuracy and comprehensiveness of the reports.

19 6. The District shall provide Class Counsel with quarterly reports regarding  
20 its efforts to obtain funds for Transition Plan work.

21 **B. Policies, Practices and Procedures Reports**

22 1. The District shall complete the drafting of its Self-Evaluation  
23 incorporating the Draft Self-Evaluation completed by Logan Hopper (see Exhibit D) and the  
24 substance of the Barber Report (see Exhibit E) .

25 2. Dr. Louis S. Barber will review and approve the District's Self-Evaluation.

26 3. An Implementation Plan for each of the District's programs will be drafted  
27 by the District and Dr. Louis S. Barber.

28 4. The District shall draft a timeline for the preparation of Implementation

1 Plans. This timeline shall be subject to review and approval by Dr. Louis S. Barber.

2           5.     Dr. Louis S. Barber will prepare a schedule for performance of the  
3 Implementation Plans.

4           6.     The District shall provide Class Counsel with quarterly reports regarding  
5 its progress in performing the Implementation Plans.

6           7.     Dr. Louis S. Barber will review the District's quarterly reports and  
7 perform spot-checks at the sites to confirm the accuracy and comprehensiveness of the reports.

8           **C.     Monitoring**

9           1.     The District agrees to pay Class Counsel reasonable fees and costs of up to  
10 \$10,000.00 per year commencing on the date of Final Approval and continuing during the term  
11 of the injunction in connection with the monitoring process. Class Counsel will submit records  
12 of fees and costs quarterly.

13          2.     In the event that Class Counsel concludes that there has been a significant  
14 pattern of violation of the terms of the Consent Decree, Class Counsel is not precluded from  
15 seeking additional fees and costs for increased monitoring by motion to the Court.

16 **V.     DISPUTE RESOLUTION**

17           **A.     Class Member Complaints**

18           All complaints by class members concerning the implementation of the terms and  
19 conditions agreed to in the injunction shall be resolved as follows:

20          1.     Disputes concerning architectural barriers will be brought to the District's  
21 attention by contacting the assistant superintendent for administrative services.

22           a.     The assistant superintendent for administrative services and the  
23 complaining party shall meet and confer to agree on a resolution of  
24 the dispute within five working days.

25           b.     If the assistant superintendent and complaining party fail to agree  
26 on a resolution within five working days, the complaining party  
27 may appeal directly to either (1) the superintendent or (2) the Board  
28 of Education.

- 1 c. In the event that the complaining party appeals directly to the
- 2 Board of Education, the matter will be placed for hearing on the
- 3 next posted Agenda of the Board. The Board will then render its
- 4 decision within five working days of the hearing.
- 5 d. In the alternative event that the complaining party appeals directly
- 6 to the superintendent, the superintendent may, at his discretion,
- 7 refer the matter within two working days to the Board of Education
- 8 for resolution pursuant to section c. above. If the superintendent
- 9 does not elect within two days to refer the matter to the Board of
- 10 Education, then the superintendent and complaining party shall
- 11 agree to a resolution of the dispute within five working days.
- 12 e. In the event that the complaining party is not satisfied with the
- 13 resolution set forth by either (1) the superintendent or (2) the Board
- 14 of Education, Class Counsel and attorneys for the District will
- 15 immediately be contacted to negotiate a resolution pursuant to
- 16 Paragraph V.B.

17 2. Disputes concerning policies, practices and procedures will be brought to the  
18 District's attention by contacting the assistant superintendent for special education. The  
19 procedures set forth in V.A.1.(a.) through (e.) above will then apply.

20 **B. Other Dispute Resolution**

21 All disputes concerning compliance with the injunction (other than Class Member  
22 Complaints resolved under Paragraph V.A., above) shall be resolved as follows: Step One: Meet  
23 and confer between counsel (if this has not already occurred). Step Two: Submit the matter to  
24 the Magistrate Judge for mediation. Step Three: Submit the matter to the Court for formal  
25 resolution. Fees and costs incurred by any party in connection with resolution of such disputes  
26 may be claimed and recovered pursuant to applicable law.

27  
28 **VI. COOPERATION OF PARTIES**

1 The Parties agree to cooperate fully with each other to give effect to this agreement.

2 **VII. APPROVAL AND CLASS CERTIFICATION**

3 **A. Certification of a Settlement Class**

4 The parties stipulate to certification at the time of the Fairness Hearing of a settlement  
5 class as follows:

6 All children with disabilities in the Mt. Diablo Unified School  
7 District who have allegedly been denied their right to full and equal  
8 access to, and use and enjoyment of, the facilities and programs of  
9 the District.

10 This stipulation is contingent upon the Court granting Final Approval of the Consent  
11 Decree.

12 **B. Joint Approval Action**

13 The parties shall jointly move for an order tentatively approving this Consent Decree,  
14 directing Notice to the Class as described in VIII. below, and setting a hearing for Final Approval  
15 allowing for at least 30 days notice.

16 **C. Objection**

17 Any Class Member may object to the proposed Consent Decree by filing with the Clerk  
18 of the Court a written objection (each an "Objection") filed or postmarked no later than a date set  
19 by the Court in this case after Preliminary Approval of the Consent Decree.

20 **D. Fairness Hearing**

21 The Court shall hold a hearing to establish the fairness of the final settlement of the  
22 claims of the Class against Defendants and to decide whether there will be Final Approval of the  
23 Consent Decree and certification of the settlement Class. This hearing shall take place at a date  
24 allowing for a period of notice to the Class as the Court may direct.

25 **E. Final Approval**

26 Upon entry of Final Approval, the action shall be dismissed with prejudice except that the  
27 Court shall retain jurisdiction to enforce the Consent Decree, the Dispute Resolution provisions  
28 set forth in Paragraph V. and to resolve any issues concerning attorneys fees and costs.

**VIII. NOTICE TO THE CLASS**

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1 The District will bear the costs of Notice to the Class. Notice shall include: (a) a one-  
2 time, one-quarter page publication in the Contra Costa Times and the San Francisco Chronicle;  
3 (b) posting at the entrance doors of each District Facility for 30 days; and (c) mailing of Notices  
4 to all Class Members. (The Notice shall be in the form which will be attached hereto as Exhibit  
5 G.)

6 **IX. CLASS DAMAGES**

7 The Parties agree that the District shall provide the following three programs in resolution  
8 of class damages claims:

9 A. The District shall provide a Model Augmentative Communication Program as set  
10 forth in Paragraph III. C.

11 B. The District shall provide a Model Aide Training Program as set forth in  
12 Paragraph III. D.

13 C. The District shall provide a full-time, permanent Parent Liaison as set forth in  
14 Paragraph III. E.

15 **X. OPT-OUT RIGHT**

16 Whether or not this Consent Decree is finally approved, all members of the Class may  
17 elect to opt out of the portion of this Consent Decree providing for damages for the Class. To opt  
18 out, a Class Member must file a written request for exclusion with the Clerk of the Court. Such  
19 request must be filed or postmarked no later than such date set by the Court following  
20 Preliminary Approval of this Consent Decree. All members of the Class who do not timely opt  
21 out of that portion of the action shall be bound by any resolution of Court-approved Class  
22 damages claims under this Consent Decree regarding the District.

23 Upon Final Approval of this Consent Decree, all Class Members shall be bound by all  
24 equitable relief provisions of this Consent Decree and orders issued pursuant thereto.

25 **XI. PAYMENT TO THE NAMED PLAINTIFFS**

26 The District shall pay Named Plaintiff Jason Spieler \$7,500 in damages. The District  
27 shall pay Named Plaintiff Advocates for Special Kids \$7,500 in damages. The payments set  
28 forth above shall be made within 30 days after Final Approval by the Court of this Consent



1 Decree.

2 **XII. RELEASES**

3 **A. Releases**

4 In return for the consideration provided for in this Consent Decree, on the date of Final  
5 Approval, the Named Plaintiffs, Jason Spieler and Advocates for Special Kids, and all Class  
6 Members both individually and as a Class shall release the District and its officers, board  
7 members, trustees, directors, employees, representatives, attorneys, agents, and insurers (the  
8 “Released Parties”) from any and all claims, liabilities, obligations, demands, actions, and causes  
9 of action which were or could have been brought in the Action, including but not limited to those  
10 brought under the ADA, Section 504 of the Rehabilitation Act of 1973, and/or California  
11 disability access laws for injunctive or declaratory relief relating to and limited to class-wide  
12 architectural and/or programmatic access for children with disabilities at the District Facilities  
13 and from any damage claims made under the ADA, the Individuals with Disabilities Education  
14 Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and/or California disability access  
15 laws relating to and limited to class-wide architectural and/or programmatic access for children  
16 with disabilities at the District Facilities for all Class Members who do not opt out of the  
17 damages provisions of this Consent Decree for claims regarding denial of equal access in  
18 existence up to the date of the opt-out deadline.

19 This release does not apply to any individualized obligations that the District may have to  
20 specific students under the Individuals with Disabilities Education Act (IDEA) or Section 504 of  
21 the Rehabilitation Act of 1973.

22 **B. Unknown Claims Regarding Access Compliance**

23 The Named Plaintiffs, Jason Spieler and Advocates for Special Kids, and all Class  
24 Members both individually and as a Class understand and agree that this Consent Decree and  
25 release extends to all claims of every nature and kind whatsoever relating to architectural and/or  
26 programmatic barriers which are the subject matter of the action, known or unknown, suspected  
27 or unsuspected, past or present, which existed before the date of Final Approval, and to any and  
28 all rights under any federal or California statute or common law principle that would otherwise

1 limit the effect of this Consent Decree to claims known or suspected on the date of Final  
2 Approval. The Named Plaintiffs and Class Members specifically waive the provisions of Section  
3 1542 of the California Civil Code, which reads as follows:

4 A general release does not extend to claims which the creditor does not know or suspect  
5 to exist in his favor at the time of executing the release, which if known by him must have  
6 materially affected his settlement with the debtor.

7 This release does not apply to any individualized obligations that the District may have to  
8 specific students under the Individuals with Disabilities Education Act (IDEA) or Section 504 of  
9 the Rehabilitation Act of 1973.

10 **XIII. ATTORNEYS' FEES AND COSTS**

11 The District agrees to pay the reasonable attorneys' fees and costs incurred through the  
12 date of Final Approval. The District agrees to pay \$148,620.08 for work performed through  
13 December 15, 1999. Within 10 days after entry of Final Approval, Class Counsel shall submit to  
14 the District records of its reasonable attorneys' fees and costs incurred from December 15, 1999  
15 through the date of Final Approval. Counsel for the Parties shall meet and confer within 30 days  
16 of the submission in an effort to reach agreement on reasonable fees and costs. In the event that  
17 the Parties reach agreement, Class Counsel shall not seek a multiplier. In the event a dispute  
18 occurs, Class Counsel shall make a motion to the Court for an award of reasonable attorneys'  
19 fees and costs and reserve the right to also request fees on fees and a multiplier.

20 **XIV. FURTHER RELIEF**

21 Any Party may petition the Court for relief from the provisions hereunder upon a showing  
22 of good cause which shall include without limitation events of force majeure which may preclude  
23 the timely compliance with the injunctive relief provisions of Paragraph III. above.

24 **XV. JOINT PRESS RELEASE**

25 The Parties intend to proceed constructively with the implementation of the Consent  
26 Decree. The Parties agree to release a joint press release which is attached hereto as Exhibit H.  
27 The Parties are free to comment after the press release is issued.

28 **XVI. DUPLICATE ORIGINALS**

This Consent Decree shall be signed in duplicate originals.

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APPROVED AS TO FORM:

DATED:

DISABILITY RIGHTS ADVOCATES

By: \_\_\_\_\_  
RHODA BENEDETTI  
Attorneys for Plaintiffs

APPROVED AS TO FORM:

DATED:

MILLER BROWN & DANNIS

5/24/00

By: \_\_\_\_\_  
KATHRYN LUHE  
Attorneys for Defendants

APPROVED:

DATED:

\_\_\_\_\_  
JASON SPIELER by his guardian  
ad litem, ALISON SPIELER

APPROVED:

DATED:

ADVOCATES FOR SPECIAL KIDS

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DISABILITY RIGHTS ADVOCATES  
449 Fifteenth Street, Suite 303  
Oakland, CA 94612-2821  
(510) 451-8644

This Consent Decree shall be signed in duplicate originals.

APPROVED AS TO FORM:

DATED: *May 22, 2000*

DISABILITY RIGHTS ADVOCATES

By: *Rhoda Benedetti*  
RHODA BENEDETTI  
Attorneys for Plaintiffs

APPROVED AS TO FORM:

DATED:

MILLER BROWN & DANNIS

By: *Kathryn Luhe*  
KATHRYN LUHE  
Attorneys for Defendants

APPROVED:

DATED: *May 22, 2000*

*Jason Spielker*  
JASON SPIELKER by his guardian  
ad litem, ALISON SPIELER

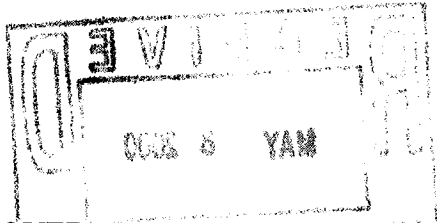
APPROVED:

DATED: *May 22, 2000*

ADVOCATES FOR SPECIAL KIDS

By: *Debbie Hoppel*  
*Gailly H. Carroll*  
*Matthew D. Brophy*  
*Shirley A. Randolph*  
*Cecilia Ng*

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APPROVED:

DATED: May 16, 2000

MT. DIABLO UNIFIED SCHOOL DISTRICT

By: Richard W. Allen

Richard W. Allen  
President of the Board  
of Education for the  
Mt. Diablo Unified School  
District

DISABILITY RIGHTS ADVOCATES  
449 Fifteenth Street, Suite 303  
Oakland, CA 94612-2821  
(510) 451-8644

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