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12 **UNITED STATES DISTRICT COURT**  
 13 **CENTRAL DISTRICT OF CALIFORNIA**

15 DREW BALAGUER, REINA  
 16 ROBERTS, and MARK BALAGUER,

17 Plaintiff,

18 v.

19 SANTA MONICA-MALIBU UNIFIED  
 20 SCHOOL DISTRICT,

21 Defendant.

Case No.: CV 14-6823

**COMPLAINT FOR VIOLATIONS  
 OF:**

**(1) THE AMERICANS WITH  
 DISABILITIES ACT, 42 U.S.C. §§  
 12101 ET SEQ.**

**(2) SECTION 504 OF THE  
 REHABILITATION ACT, 29  
 U.S.C. §§ 794 ET SEQ.;**

**(3) THE INDIVIDUALS WITH  
 DISABILITIES EDUCATION  
 ACT, 20 U.S.C. §§ 1400 ET SEQ.**

**Demand for Jury Trial**

1 **JURISDICTION AND VENUE**

2 1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, because the  
3 claims herein arise under three federal statutes: the Individuals with Disabilities  
4 Education Act, 20 U.S.C. § 1400 *et seq.* (the “IDEA”), Section 504 of the  
5 Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.* (“Section 504”), and the  
6 Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, (the “ADA”). The court  
7 has supplemental jurisdiction over related state-law claims under 28 U.S.C § 1367.

8 2. Venue is proper in the Central District of California because the  
9 Plaintiff and the Defendant reside within, and the events or omissions giving rise to  
10 the claims asserted herein occurred within, the boundaries of the Central District.

11 **PARTIES**

12 3. Plaintiff Drew Balaguer (“Drew”) resides within the boundaries of the  
13 Santa Monica Unified School District. Drew reached the age of majority on  
14 February 16, 2014. At the time of each of the violations alleged herein, Drew  
15 qualified as an individual with a disability within the meaning of the IDEA, Section  
16 504, and the ADA. Plaintiff Reina Roberts is Drew’s mother. Ms. Roberts was a  
17 plaintiff in prior litigation referenced in this pleading, when Drew was a minor, and  
18 was jointly financially responsible for all educational expenses sought as remedies  
19 herein. Plaintiff Mark Balaguer is Drew’s father. Mr. Balaguer was a plaintiff in  
20 prior litigation referenced in this pleading, when Drew was a minor, and was jointly  
21 financially responsible for all educational expenses sought as remedies herein.

22 4. Defendant Santa Monica-Malibu Unified School District (hereinafter  
23 the “District”) is a public local educational agency under the laws of the State of  
24 California located in Los Angeles County. At all relevant times, the District was  
25 legally responsible for providing Drew a free and appropriate public education  
26 under the IDEA and Section 504. The District was also responsible for providing  
27 Drew full and equal access to its public education programs in compliance with the  
28

1 IDEA, Section 504, and the ADA. The District receives both state and federal  
2 funding.

3 **PROCEDURAL HISTORY**

4 5. This case arises simultaneously as an appeal of an IDEA due process  
5 decision issued by the California Office of Administrative Hearings (“OAH”) under  
6 20 U.S.C. § 1415(i)(3)(A) and as an original complaint under Section 504 and the  
7 ADA.

8 6. Drew filed the underlying request for due process hearing on May 24,  
9 2013, alleging the District failed to provide a procedurally and substantively  
10 appropriate educational program for all times since the summer of 2011, including  
11 extended school year sessions.<sup>1</sup> The complaint was amended by stipulation on  
12 October 29, 2013.

13 7. Administrative Law Judge (“ALJ”) Elsa Jones presided over an  
14 administrative hearing in April 2014. ALJ Jones issued an order (hereinafter the  
15 “Administrative Decision”) on June 2, 2014. The Administrative Decision is  
16 attached hereto as Exhibit 1.

17 8. The ALJ denied Drew’s request for relief and declared the District the  
18 prevailing party on all issues, holding that the District complied with the IDEA  
19 during the years at issue.

20 9. The Administrative Decision’s analysis of Drew’s IDEA claims made  
21 numerous errors of fact and law. In filing this Complaint, Drew appeals that  
22 Decision pursuant to 20 U.S.C. Section 1415(i)(3)(D). The District’s actions also  
23 constitute independently actionable violations of Section 504 and the ADA.

24 10. At the administrative hearing the Defendant persuaded OAH that it had  
25 no obligation to provide students who required specialized academic instruction

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<sup>1</sup> Drew asserted her Section 504 and ADA claims in the administrative hearing  
27 below, but the administrative law judge refused to hear them on jurisdictional  
28 grounds.

1 with “a-g credit” classes, even for students substantively capable of mastering “a-g  
2 credit” content. The ALJ reached this conclusion notwithstanding the fact that all  
3 non-disabled students within the District have access to core academic classes that  
4 provide “a-g credit.” Only for these non-disabled students does the District fulfill its  
5 promise to graduate students “with the most post-secondary options available to  
6 them.”

### 7 **EXHAUSTION AND TIMELINESS**

8 11. Drew raised claims under the IDEA, Section 504, and the ADA in her  
9 request for an administrative hearing. OAH refused to exercise jurisdiction over  
10 Section 504 and ADA claims, and finally decided her IDEA claims. Drew has  
11 therefore exhausted her administrative remedies.

12 12. The Administrative Decision was issued on June 2, 2014. This appeal  
13 is timely under the 90-day deadline established by California Education Code  
14 Section 56505(k).

### 15 **OVERVIEW**

16 13. Under the state’s Master Plan for Higher Education, California has  
17 developed three tiers of public post-secondary education leading to a college degree:  
18 a two-year community college system, a four-year California State University  
19 (“CSU”) system, and a four-year University of California (“UC”) system. Students  
20 may earn degrees in any of these tiers, but there are significant differences between  
21 the four-year UC and CSU institutions and the community college system.

22 14. Only students who complete college and obtain a four-year degree reap  
23 the substantial economic benefits of a college education.<sup>2</sup> Students who enroll in  
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25 <sup>2</sup> PEW RESEARCH CENTER, THE RISING COST OF NOT GOING TO COLLEGE (2014),  
26 *available at* <http://www.pewsocialtrends.org/2014/02/11/the-rising-cost-of-not-going-to-college/> (finding that holders of four-year degrees earn \$17,500 more than  
27 high school graduates, but holders of two-year community college degrees earn just  
28 \$2,000 more).

1 community colleges are also much less likely to graduate than students in four-year  
2 programs: according to the National Center for Education Statistics, 45% of  
3 community college students leave school before they obtain their degree or  
4 certificate, a dropout rate nearly three times that of students in four-year  
5 institutions.<sup>3</sup>

6 15. The public perception that students frequently transfer between  
7 community colleges and the UC/CSU system is belied by data showing that such  
8 transfers are relatively rare.<sup>4</sup> Even for students who successfully transfer from  
9 community college to a four-year campus, the graduation rate among transfer  
10 students is “significantly lower” than for students who begin their post-secondary  
11 education at a four-year college.<sup>5</sup> And even community college transfers who  
12 succeed in obtaining degrees at public four-year institutions generally take at least  
13 two years longer to do so.<sup>6</sup> Only 44% of these students receive their bachelor’s  
14 degree within six years.<sup>7</sup> This average two-year delay both increases the tuition  
15 costs of obtaining the degree and eliminates two years of wage earning potential.

16 16. Aside from the economic benefits that redound to four-year degree  
17 holders, there are qualitative differences in the educational experiences provided by  
18 community colleges and public four-year institutions. For example, faculty at  
19 community colleges are less likely to engage in scholarly publications and research.

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21 <sup>3</sup> U.S. DEP’T OF ED., NAT’L CTR. FOR ED. STATS., COMMUNITY COLLEGES: SPECIAL  
22 SUPPLEMENT TO THE CONDITION OF EDUCATION 22 (2008), *available at*  
<http://nces.ed.gov/pubs2008/2008033.pdf>.

23 <sup>4</sup> National Center for Education Statistics, 2003 Data.

24 <sup>5</sup> National Center for Education Statistics, 2003 Data.

25 <sup>6</sup> *Id.* (71 months for students who begin at 2-year colleges versus 55 months for  
26 students who begin at a four year public college); *see also*  
[http://www.breakthroughcollaborative.org/sites/default/files/BTRResearch-  
27 4yr\\_vs\\_2yr\\_colleges.pdf](http://www.breakthroughcollaborative.org/sites/default/files/BTRResearch-4yr_vs_2yr_colleges.pdf).

28 <sup>7</sup> *Id.*

1 Students at two-year colleges will have fewer (if any) opportunities to participate in  
2 research projects and scholarship. The lack of this experience places these students  
3 at a disadvantage when entering the job market for entire fields of study.

4 17. California’s four-year postsecondary systems have more rigorous  
5 admissions requirements than community colleges. The primary difference is that  
6 the four-year UC/CSU system requires all applicants to have completed high school  
7 coursework that meets certain baseline academic standards. High schools must  
8 submit the curricula for their courses to ensure that it meets these minimum  
9 academic standards.<sup>8</sup> Classes that do are known in California as offering “a-g  
10 credit.” High school graduates who earned “a-g credits” are eligible to apply and be  
11 admitted to a college in the UC/CSU system. A student who lacks “a-g credits”  
12 cannot apply to the UC/CSU system and must attend a community college.

13 18. The District freely acknowledges the differences between the three tiers  
14 of post-secondary educational placements, and advertises its commitment “to  
15 graduate students with the most post-secondary options available to them.”<sup>9</sup> The  
16 class graduated by the District in 2010 sent 589 Santa Monica Malibu High School  
17 (“SAMOHI”) students to college.<sup>10</sup> Of those 589 college-bound students, 89 went to  
18 a CSU campus and 108 went to a UC campus. Combined, roughly one-third of the  
19 2010 graduating class from SAMOHI matriculated directly into the UC/CSU  
20 system. Due to the way the District educates students with disabilities at SAMOHI,  
21 however, it was impossible for Drew to be among them.

22 19. The District has created a two-track educational system at SAMOHI,  
23 which excludes many students with a disability from completing courses offering a-  
24 g credit. The District requires disabled students like Drew, whose disabilities  
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26 <sup>8</sup> <http://www.ucop.edu/agguide/a-g-requirements/>

27 <sup>9</sup> <http://www.samohi.smmusd.org/advisors/pdf/ParentPresentation.pdf>

28 <sup>10</sup> <http://www.samohi.smmusd.org/Students/seniors/colleges10.htm>

1 prevent them from receiving instruction in general-education classrooms, to take  
2 special education courses designated “SAI classes.” SAI classes do not offer a-g  
3 credits—even though Drew and students like her are academically capable of a-g  
4 level work. The District thus precludes them as a matter of policy from  
5 matriculating directly to a four-year UC/CSU program. The District has refused to  
6 submit the curriculum for any of the courses designated as SAI classes for a-g credit  
7 approval. In contrast, the District has applied for and obtained approval for more  
8 than 150 of its general education courses to award a-g credit.

9       20. Drew is one of these students. Drew resides within the attendance  
10 boundaries of SAMOHI. She suffers from bilateral hearing loss, which prevented  
11 her from attending general education classes due largely to her inability to hear and  
12 interpret oral instruction accurately using her cochlear implants within the  
13 classrooms at SAMOHI. The District never offered general-education classes in any  
14 academic subjects as a part of Drew’s Individualized Educational Program (“IEP”).  
15 Instead, Drew’s IEP always required that she receive instruction in a small,  
16 acoustically appropriate classroom with approximately 15 other students.  
17 Unfortunately, no such structurally appropriate classroom existed at SAMOHI.

18       21. Many of the factors precluding Drew from receiving instruction in a  
19 general education class were “structural” in nature, meaning that they concerned  
20 issues such as class size, acoustics, and the logistics of converting and transferring  
21 auditory information into a form capable of use by a deaf student.

22       22. The District’s refusal to submit SAI courses for “a-g credit” approval  
23 reflects the fact that it ignored the distinction between students who are  
24 *substantively* unable to access the content of a general education curriculum and  
25 those who are *structurally* unable to do so. Unlike many disabled students for whom  
26 SAMOHI’s SAI classes are chiefly designed, Drew was fully capable of handling  
27 the substantive academic content of the general education curriculum once her  
28 structural impediments were addressed through reasonable accommodations.

1           23.     Instead, the District offered her substantively inappropriate courses that  
2 would have rendered her ineligible to attend a four-year public college because it  
3 was unwilling to reasonably accommodate her disability. Essentially, the District  
4 offered Drew a choice between a-g-certified regular-education classes in which she  
5 could not physically hear, or smaller SAI classes in which she could hear but had to  
6 forego the credits she needed to go to a four-year college. In doing so, the District  
7 both failed to offer Drew an individualized education based on her unique needs and  
8 discriminated against her by precluding her access to the same general education  
9 curriculum offered to every nondisabled student at SAMOHI.

10           24.     The District's actions violated the IDEA, Section 504, and the ADA.  
11 When the District refused to offer Drew an appropriate educational program, her  
12 family was forced to identify and enroll her in an appropriate educational setting at  
13 their own expense, and to seek reimbursement from the District for the costs they  
14 incurred.

15           25.     The District's actions also violated the IDEA, Section 504, and the  
16 ADA when it retaliated against the Plaintiffs for exercising their rights under these  
17 statutes. When the Plaintiffs rejected educational placements offered by the District  
18 at Drew's IEP meetings, the District unilaterally disenrolled her and refused to  
19 provide related services to which she was entitled.

20           26.     Drew attended a small, acoustically appropriate nonpublic high school  
21 that did not force her and her family to choose between the structural  
22 accommodations she required and access to an a-g-qualified general-education  
23 curricula that would prepare her for college. Drew obtained a diploma with the a-g  
24 credits she needed to apply to the UC/CSU system. She was admitted to the  
25 California State University at Northridge, where she enrolled in the fall of 2014.

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**FACTS APPLICABLE TO ALL CLAIMS**

**Drew’s Disabilities and Early Educational History**

27. After her diagnosis of bilateral hearing loss, Drew received a cochlear implant. Drew’s family hoped that the implant would allow her to communicate orally and aurally. After implantation Drew worked with certified auditory-verbal therapists to “map” the implants by learning how to decode the sonic data the devices delivered.

28. Drew qualified for special education and related services under the IDEA at the age of three. Her hearing loss makes her an individual with a disability under Section 504 and the ADA.

29. Drew attended preschool at Oralingua, a nonpublic school specializing in teaching students with cochlear implants. Following preschool Drew attended classes within the District part time until third grade, when she was placed in a segregated special day class. The District offered the same full-time special day class placements from third through sixth grades.

**Drew’s Middle School Placement**

30. When Drew entered middle school during the 2007–2008 school year, the District offered her placement in both special and general education classes. Her IEP provided for 60 minutes per week of auditory-verbal through state-certified private providers. Drew became frustrated with school as she struggled in her classes. Her bilateral hearing loss caused significant delays in her language abilities. She struggled to understand verbal instruction, and by eighth grade was below grade level in all academic areas.

31. Language delays also impacted Drew socially because she lacked the necessary vocabulary to interact fluidly with her peers. Her deafness also prevented her from tracking verbal exchanges in social situations. Teachers described her social interactions as awkward. In the classroom, the inability to track verbal

1 instruction meant Drew missed the point of lectures and misheard or misunderstood  
2 concepts. Drew often felt lost, ostracized, and excluded during middle school.

3 32. Drew fell further behind with each passing school year. In response to  
4 her parents' growing concerns, the District offered Drew a variety of  
5 accommodations and services. None of the accommodations attempted by the  
6 District during Drew's time in middle school proved effective. In fact, several of the  
7 accommodations made Drew feel more alienated and singled out from her peers. For  
8 example, Drew's one-to-one aide caused her such anxiety and humiliation that the  
9 District had to add emotional counseling to her IEP.

10 33. In light of these problems in middle school, Drew's parents were  
11 concerned about how the District planned to help her in high school. The District's  
12 middle school campus had been socially, structurally, and acoustically  
13 overwhelming for Drew. But the District's high school campuses were even larger  
14 and more chaotic. District personnel ignored the fact that no accommodations or  
15 services had been effective even on the smaller middle school campus. Some even  
16 lied to cover Drew's struggles.<sup>11</sup>

17 34. The family requested a high school placement in a small, acoustically  
18 appropriate nonpublic school. The District declined this request and offered Drew a  
19 ninth grade placement at SAMOHI. Drew's parents and their experts observed  
20 SAMOHI and concluded it was an inappropriate placement for Drew.

21 35. During a follow-up IEP meeting on May 4, 2010, Drew's parents again  
22 requested a nonpublic school placement for the 2010–2011 school year. The IEP  
23 team was unable to fully discuss the family's request and agreed to reconvene  
24 another IEP meeting on June 8, 2010. The family was unavailable and attempted to  
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26 <sup>11</sup> One District employee lied under oath, claiming she used American Sign  
27 Language with Drew about Drew being at school and having no issues. Because of  
28 her cochlear implants Drew never learned American Sign Language and this  
conversation would have been impossible.

1 reschedule the IEP meeting, but the District unlawfully proceeded without them. At  
2 the meeting, the District finalized Drew's IEP offer of placement at SAMOHI. Five  
3 of her six courses were in SAI classes that did not offer a-g credit, including all core  
4 academic subjects. The District offered Drew 60 minutes per week of auditory-  
5 verbal therapy through a nonpublic provider. Parents rejected the placement offer,  
6 and notified the District that they would provide Drew a substantively appropriate  
7 placement for the 2010–2011 school year.

8 36. The family enrolled Drew at Westview School, a state-certified  
9 nonpublic school, for ninth grade. They also provided Drew with auditory-verbal  
10 therapy from District-approved providers and speech therapy from a private  
11 provider.

12 **Prior Litigation Regarding the 2010-2011 School Year And Drew's Placement**  
13 **at Westview**

14 37. During ninth grade Drew got good grades and was finally able to  
15 develop meaningful social relationships. Drew received a-g credits for English 9AB  
16 and Painting 1AB, and excelled in elective classes. Citing this progress, the family  
17 continued to pursue reimbursement from the District for the cost of Westview.

18 38. The District continued to refuse reimbursement. It also retaliated  
19 against the family for seeking reimbursement by refusing to provide the auditory-  
20 verbal therapy and speech therapy to which Drew was entitled by her June 8, 2010  
21 IEP. The District told Drew's family that because parents had rejected the offer of  
22 placement at SAMOHI the District had unilaterally disenrolled her, making her  
23 ineligible for services.

24 39. Drew filed a request for a due process hearing with the Office of  
25 Administrative Hearings, alleging IDEA violations in the 2010–2011 school year.  
26 Drew alleged that her placement at SAMOHI was inappropriate. She also alleged  
27 the District breached the procedural requirements of the IDEA by excluding her  
28 parents from the June 8, 2010 IEP meeting.



1 month of psychological services. Despite the fact that Drew had expressly stated her  
2 goal of attending a UC or CSU college, the District never revealed that its SAI  
3 classes were not approved to offer a-g credits or that failing to obtain a-g credits  
4 would leave Drew unable to reach her college goal. The IEP also lacked the  
5 Individualized Transition Plan the law required.

6 44. The family requested placement at Westview for the 2011–2012 school  
7 year. To support their request, they cited Westview’s small campus and class sizes,  
8 the individualized attention Drew received from highly trained teachers, the acoustic  
9 appropriateness of the setting, and Drew’s social and emotional response to the  
10 placement. The District again refused the placement request, leaving Drew’s parents  
11 to continue funding the Westview placement at their own expense.

12 45. Drew again attempted to receive the auditory-verbal therapy and speech  
13 therapy offered and accepted in her IEP. But Darci Keleher, Special Education  
14 Coordinator for the District, notified Drew’s parents by letter that the District would  
15 not provide any related services unless they agreed to waive their right to  
16 reimbursement for Westview tuition. Ms. Keleher again asserted that Drew was not  
17 entitled to the related services offered in her IEP because the District had  
18 unilaterally disenrolled her due to her rejection of the District’s offer of SAI classes.

19 **Drew Received An Appropriate Educational Program During Tenth Grade**

20 46. Drew continued at Westview with privately funded auditory-verbal  
21 therapy and speech therapy for tenth grade. She received good grades in five a-g  
22 credit classes: World History, Culture & Geography; English 10AB; Algebra 1AB;  
23 Biology AB; and Drawing AB. She also took and excelled in non-a-g credit elective  
24 classes. The family shared Drew’s progress and grade reports with the District in  
25 hopes that it would reconsider its refusal to reimburse them for Westview, but the  
26 District continued to refuse reimbursement or to provide necessary related services  
27 during the 2011–2012 school year.

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**The District Offered An Inappropriate IEP  
for The 2012-2013 School Year**

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3 47. The District convened annual IEP meetings for Drew on March 8 and  
4 April 24, 2012 to discuss Drew’s eleventh grade academic program and her  
5 Individualized Transition Program. At these meetings ’Drew's parents emphasized  
6 that their primary concern was that Drew be enrolled “in a college track program” so  
7 that she could “go to college.” They expressed their concern that the SAMOHI SAI  
8 classes would not prepare Drew for college. (At this juncture, the District had not  
9 yet revealed that the SAI classes it was offering would in fact make her *ineligible* to  
10 attend a four-year college.) Nonetheless, the District again offered Drew placement  
11 at SAMOHI in SAI classes for all core academic classes. The District also offered  
12 the same related service as it had in previous years, except that it withdrew its offer  
13 of auditory-verbal therapy services.

14 48. As early as the June 8, 2010 IEP meeting, the District knew that  
15 placement in its SAI classes would foreclose Drew from even applying to a  
16 UC/CSU college. District representatives concealed this crucial fact until the 2012  
17 IEP meeting, when Drew’s parents asked explicitly if the IEP offer included college  
18 preparatory classes. A District representative replied, without further explanation,  
19 that *some* SAI classes were not a-g credit classes. In fact, *no* SAI class at SAMOHI  
20 offered a-g credits.

21 49. Further, as their questions regarding the nature of SAI classes became  
22 more pointed, District representatives intentionally misled Drew’s parents about the  
23 postsecondary implications of these classes. For example, at the IEP meeting the  
24 District established an Individualized Transition Plan goal that Drew would attend  
25 CSU Northridge upon completing high school. The District then identified SAI  
26 classes as the service that would allow Drew to achieve that goal—knowing full  
27 well that its SAI classes would in fact make achieving the goal impossible.

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1 The District offered Drew the same IEP placement and services as it had the year  
2 before.

3 54. Drew's parents again emphasized the importance of Drew's placement  
4 in a college-track program with a-g-qualified courses. Drew's mother specifically  
5 asked if the SAI classes offered provided a-g credits. The District continued to  
6 mislead the family by asserting that "some classes do meet the A-G requirements  
7 and some don't. It depends on how much the curriculum is modified." In fact, it  
8 remained the case that no SAI class at SAMOHI was approved for a-g credits.

9 55. Parents again disagreed with the offer of placement at SAMOHI and  
10 notified the District that they would continue to provide Drew an appropriate  
11 program at Westview and seek reimbursement.

#### 12 **Drew Received An Appropriate Educational Program Twelfth Grade**

13 56. Drew continued at Westview with privately funded speech therapy for  
14 twelfth grade. She earned good grades in seven a-g credit classes: Economics,  
15 Government, English Literature, Expository Composition, Algebra 2AB, Spanish  
16 2AB, and Drawing AB. The family continued to share Drew's progress and grade  
17 reports with the District in hopes that it would reconsider its refusal to reimburse  
18 them for Westview. The District continued to refuse reimbursement or to provide  
19 necessary related services during the 2013–2014 school year.

#### 20 **Drew Was Accepted to and Currently Attends CSU Northridge**

21 57. With the help of staff at Westview, Drew applied to CSU Northridge  
22 during her senior year. On February 2, 2014 she received a letter admitting her to  
23 the freshman class in the fall of 2014. Drew could not have been admitted to CSU  
24 Northridge had she accepted the District's SAMOHI placement. Nor would the  
25 programs offered by the District have prepared her socially, emotionally, or  
26 academically to attend college.

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**The Administrative Hearing Below**

58. Drew filed her request for administrative hearing in the instant matter in the spring of 2013. Drew submitted a Statement of Issues to be Decided narrowing her claims to seven concise questions relating to the substantive appropriateness of the District’s IEP and Individualized Transition Plan offers, the alleged procedural violations since the start of the 2011–2012 school year, and the illegality of the District’s two-track educational system. During a telephonic prehearing conference on March 24, 2014, ALJ Jones reformulated Drew’s seven questions into three issues, each with six separate sub-issues. Drew’s counsel objected to the ALJ’s reformulation for a number of reasons, including that the reformulation caused substantive changes to her claims and excluded one raising the question whether the Defendant’s refusal to provide agreed to related services violated the law.

59. The administrative hearing began on April 2, 2014. In order to facilitate Drew’s participation in the hearing it was held in a room that the District asserted was the most acoustically conducive option. Unlike the classrooms at SAMOHI, the hearing room was small and carpeted. However, like the classes at SAMOHI, the hearing room had high ceilings that created echoes. Even in a room specially selected by the District for its acoustics, Drew (and other hearing attendees) struggled to hear the proceedings.

**Procedural Errors During The Hearing**

60. Three days into the hearing, ALJ Jones raised two procedural issues. First, she reversed her earlier decision to exclude one of the questions raised in Drew’s Statement of Issues. The ALJ ruled that the previously excluded issue of the Defendant’s refusal to provide agreed-to related services would be decided as part of the Administrative Decision. The ALJ found that because the Defendant’s failure to provide related services was “essentially subsumed in the general gravamen of the

1 complaint,” the previously excluded issue must be determined “on the way to  
2 everything else.”

3 61. Second, the ALJ held that the transcript from the prior administrative  
4 proceeding between the parties was inadmissible. The transcript included testimony  
5 from experts, who were unavailable to testify in the second proceeding, regarding  
6 the respective appropriateness of the SAMOHI placement and Westview given  
7 Drew’s individual needs.

8 **Testimony Presented at Hearing Showed The District Violated The Law**

9 62. At the hearing Drew presented witnesses who testified that the  
10 District’s IEP documents were unclear about a-g credits, and that given Drew’s  
11 abilities and postsecondary goals the District’s offers of placement and services  
12 were inappropriate. District witnesses corroborated this testimony by  
13 acknowledging that students at Drew’s academic level could handle an a-g credit  
14 curriculum. One District witness even testified that since Drew had accessed “a-g  
15 credit” classes, and applied to and been accepted at CSU Northridge, she could not  
16 say whether the Defendant’s offer of SAI classes with no a-g credit was appropriate  
17 for her. Another District witness admitted that a school should “certainly inform”  
18 families if a class being offered lacks a-g credit.

19 63. The District’s Special Education Director, Dr. Sara Woolverton,  
20 initially testified that some of the SAI classes that had been offered to Drew  
21 provided a-g credit. She later admitted that none of the SAI classes at SAMOHI  
22 provided a-g credit and that there was nothing in the IEP documents that would have  
23 made the family aware of this fact. Dr. Woolverton also admitted there had been no  
24 Individualized Transition Plan in the May 25, 2011 IEP document. Dr. Woolverton  
25 also testified that even though the family had made clear at each IEP that they had  
26 accepted the related services offered, the District refused to provide the related  
27 services because parents rejected the SAMOHI placement and sought  
28 reimbursement for Westview.

1           64. Drew and her mother both testified about her educational history and  
2 experience in the District's SAI classes. Drew expressed frustration about the  
3 accommodations the District provided in its classes. She testified that using  
4 captioning services gave her a headache, the aides provided were unhelpful and  
5 socially ostracizing, and every accommodation the District attempted made her feel  
6 stigmatized. Drew contradicted District testimony that she had numerous friends and  
7 did fine socially with both special and general education peers. She described her  
8 difficulty making friends and the sadness and anxiety this caused. Drew testified  
9 that general-education students bullied her and made fun of her deafness, the fact  
10 that she had an aide, and for her other accommodations. Drew also testified that  
11 teachers in the District often made her feel that her academic difficulties were  
12 caused by a lack of intelligence or effort.

13           65. Drew spoke candidly about her life-changing experience at Westview.  
14 She began to make friends and felt like a normal member of her environment. She  
15 testified about how she learned much more and started to feel successful  
16 academically. Drew attributed much of her success to the way the teachers and  
17 students at Westview treated her. They expected her to do what everyone else did,  
18 which changed Drew's own opinions about her ability to be academically and  
19 socially successful.

20           66. In light this experience Drew began planning for college. During tenth  
21 grade she toured CSU Northridge and their Lighthouse program for hearing-  
22 impaired students. After the tour Drew resolved that she would attend CSU  
23 Northridge after graduation. Since she had been educated and grown up with  
24 hearing-unimpaired people, attending CSU Northridge was the only way that she  
25 would be able to join a hearing-impaired community. Drew testified that she was not  
26 especially interested in other colleges and only contemplated them as backup  
27 choices.

28



1 offering a-g credits, rather than equal access to a college-preparatory curriculum for  
2 qualified disabled students.

3 **FIRST CAUSE OF ACTION**

4 **Violation of the IDEA and California State Law and Appeal of Decision by**  
5 **California Office of Administrative Hearings**

6 72. Plaintiff incorporates by this reference the allegations contained in  
7 paragraphs 1 through 74 as though set forth in full herein.

8 73. At all relevant times, Drew has been eligible for special education  
9 services under the Individuals with Disabilities Education Act.

10 74. The District denied Plaintiff a free appropriate public education and an  
11 appropriate individualized transition plan at all times since the summer of 2011.

12 75. The District violated California Education Code Section 56346 by  
13 refusing to provide agreed-to elements of Drew’s educational program on the basis  
14 that the Plaintiffs had rejected other elements offered.

15 76. Plaintiff pursued her claims before the Office of Administrative  
16 Hearings pursuant to 20 U.S.C. Section 1415. The Administrative Decision erred in  
17 holding that the Defendant did not deny Drew a FAPE during any of the years at  
18 issue. Because the decision is neither “thorough” nor “careful” it is entitled to no  
19 deference by this Court.

20 77. The District has violated Plaintiff’s rights under the IDEA, and Plaintiff  
21 has been “aggrieved” by the Administrative Decision as that phrase is used in 20  
22 U.S.C. Section 1415(i)(2)(A) and California Education Code Section 56505(k).

23 78. Plaintiff is entitled to all of the remedies she sought in the  
24 administrative hearing.

25 **SECOND CAUSE OF ACTION**

26 **Violation of Section 504 of the Rehabilitation Act**

27 79. Plaintiff incorporates by this reference the allegations contained in  
28 paragraphs 1 through 78 as though set forth in full herein.





1 **On Plaintiff's First Claim For Relief:**

- 2 1. A declaration that the Defendant denied Drew a FAPE in violation of  
3 state and federal law during the 2011–2012, 2012–2013, and 2013–  
4 2014 school years;
- 5 2. A declaration that Plaintiff is the prevailing party on the  
6 aforementioned issues;
- 7 3. All of the remedies requested by Drew in the due process case;

8 **On Plaintiff's Second Claim For Relief:**

- 9 1. Permanent injunctive relief enjoining Defendant from discriminating in  
10 the future;
- 11 2. Compensatory damages in an amount to be proved at trial;

12 **On Plaintiff's Third Claim For Relief:**

- 13 1. Permanent injunctive relief enjoining Defendant from discriminating in  
14 the future;
- 15 2. Compensatory damages in an amount to be proved at trial;
- 16 3. Exemplary damages as permitted by statute;

17 **On All Claims for Relief:**

- 18 1. Reasonable attorneys' fees and costs;
- 19 2. Such other and further relief as the Court deems just and proper.

20  
21 DATED: September 2, 2014

NEWMAN AARONSON VANAMAN

22  
23  
24 By: \_\_\_\_\_/s/

ALEXIS CASILLAS

25 Attorneys for Plaintiffs Drew Balaguer, Reina  
26 Roberts, and Mark Balaguer