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16 UNITED STATES DISTRICT COURT
17 DISTRICT OF ALASKA

18 ALEXANDER NOON, a minor, by his
guardian ad litem TRACY BARBEE, et al.,

19 Plaintiffs,

20 v.

21 ALASKA STATE BOARD OF EDUCATION
22 AND EARLY DEVELOPMENT; ROGER
SAMPSON, Commissioner of Education &
23 Early Development, sued in his official
capacity; ANCHORAGE SCHOOL
24 DISTRICT; RICHARD SMILEY,
Administrator, Standards and Assessment,
25 Alaska Department of Education & Early
Development, sued in his official capacity,

26 Defendants.
27
28

Case No. A04-0057 CV (JKS)

CLASS ACTION

SETTLEMENT AGREEMENT

Before The Hon. James K. Singleton

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RECITALS

1
2 1. Defendants are the Alaska State Board of Education and Early Development; Roger
3 Sampson, in his official capacity as the Commissioner of Education & Early Development;
4 Richard Smiley, in his official capacity, the Alaska Department of Education & Early
5 Development (collectively, “the Department”); and the Anchorage School District.

6 2. On or about March 16, 2004, Named Plaintiffs Alexander Noon, Kendall Leibach,
7 Douglas Mate, Tiana Lupie, Irene Takak, and Learning Disabilities Association of Alaska
8 commenced a civil action in the United States District Court for the District of Alaska, Case No.
9 A04-0057 CV (JKS) (“Lawsuit”), against Defendants, alleging discrimination in violation of the
10 Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”), Individuals with
11 Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (“IDEA”), Section 504 of the Rehabilitation
12 Act of 1973, 29 U.S.C. § 794, *et seq.* (“Section 504”), AS 14.03.075 and AS 18.80.200 *et seq.*
13 (“state statutes”), and the federal and Alaska Constitutions regarding access to the Alaska High
14 School Graduation Qualifying Exam (“HSGQE”) for students with disabilities in Alaska public
15 schools.

16 3. On or about April 7, 2004, the Court in the Lawsuit entered an Order granting the Parties’
17 stipulated limited interim relief, which (a) excused from the HSGQE graduation requirement
18 those students with disabilities in the Class of 2004 who were otherwise qualified to receive a
19 diploma and (b) included a certification of a Plaintiff Class under FRCP 23.

20 4. Defendants deny any and all liabilities to the Named Plaintiffs and to Class Members and
21 deny that they have violated any laws pertaining to access to the HSGQE for students with
22 disabilities or that they have discriminated against students with disabilities.

23 5. The Lawsuit has been vigorously prosecuted and defended.

24 6. The Parties now desire to resolve their differences and disputes by settling the suit in
25 such a manner as to:

- 26 a. Improve access to the HSGQE for students with disabilities;
27 b. Assure that neither the Named Plaintiffs nor the Class nor any Class
28 Member will attempt to enforce, and Defendants will not thereby be subject to, conflicting

1 standards regarding compliance with the ADA, IDEA, Section 504, state law, and state and
2 federal constitutional law concerning access to and implementation of the HSGQE for students
3 with disabilities.

4 **I. DEFINITIONS**

5 As used in this Agreement, the following terms shall have the meaning ascribed to them
6 in this Section. All other terms shall be interpreted according to their plain and ordinary
7 meaning.

8 **A. Accommodations**

9 An “Accommodation” is a change made in the administration of the HSGQE to ensure
10 that the information obtained from a test is an accurate reflection of what the test is intended to
11 measure rather than a measure of the student’s disability. Accommodations are permitted on the
12 regular HSGQE.

13 **B. Board**

14 “Board” means the Alaska State Board of Education.

15 **C. Class or Class Members**

16 “Class” or “Class Members” means and refers to all persons who meet the definition of
17 the Class as entered by the Court in its Order dated April 7, 2004.

18 **D. Class Counsel**

19 “Class Counsel” means and refers to Disability Rights Advocates, the Disability Law
20 Center of Alaska, and Davis Wright Tremaine LLP, including the attorneys therein.

21 **E. Compliance Period**

22 “Compliance Period” means the period from the date of Final Approval of this Settlement
23 Agreement until 30 months from Final Approval. The duration of the Compliance Period can be
24 modified by the Court upon on a showing of good cause.

25 **F. Commissioner**

26 “Commissioner” means the Commissioner of the Alaska Department of Education and
27 Early Development.

28 **G. Defendants**

1 “Defendants” means each of the named Defendants.

2 **H. Department**

3 “Department” means the Alaska Department of Education and Early Development.

4 **I. School District**

5 “District” means an Alaska school district as defined in AS 14.17.990.

6 **J. Fairness Hearing**

7 “Fairness Hearing” means the hearing described in Section II.D and required pursuant to
8 Federal Rule of Civil Procedure 23(e)(1)(C).

9 **K. Final Approval**

10 “Final Approval” means the date when the Court issues an order granting final approval
11 of this Settlement Agreement in Case No. A04-0057 CV (JKS).

12 **L. Modification**

13 A “Modification” is a change made in the administration of the HSGQE which distorts
14 the measurement of the skills targeted by a test or compromises the validity of the testing results.
15 Modifications are only allowed on the Modified HSGQE.

16 **M. Named Plaintiffs**

17 “Named Plaintiffs” means and refers to Plaintiffs Alexander Noon, by his guardian ad
18 litem Tracy Barbee; Kendall Leibach, by her guardian ad litem Jacqueline Leibach; Douglas
19 Mate; Tiana Lupie, by her guardian ad litem, Evelyn Lupie; Irene Takak; and Learning
20 Disabilities Association of Alaska.

21 **N. Parties**

22 “Parties” means the Defendants and Named Plaintiffs.

23 **O. Preliminary Approval**

24 “Preliminary Approval” means the preliminary approval by the Court in Case No. A04-
25 0057 CV (JKS) of the terms of this Settlement Agreement which shall occur prior to any notice
26 being provided in accordance with Section II.E.

27 **P. Released Claims**

28 “Released Claims” means those claims described in Section IX.

1 **Q. Released Parties**

2 “Released Parties” means those parties described in Section IX.

3 **R. Settlement Agreement**

4 “Settlement Agreement” or “Agreement” means this document.

5 **S. Subtest**

6 “Subtest” or “Subtests” means any one or all of the three subtests which make up the
7 HSGQE: the Writing, Reading, and Mathematics subtests.

8 **II. APPROVAL**

9 **A. Joint Approval Action**

10 The parties shall jointly move the Court for an order granting Preliminary Approval of
11 this Settlement Agreement within 15 days of this settlement, directing notice to the settlement
12 class as described in Section II.E, below, and setting a hearing for Final Approval allowing for
13 notice as directed by the Court.

14 **B. Objections**

15 Any Class Member may object to the proposed Settlement Agreement by filing with the
16 Clerk of the Court a written objection (“Objection”) filed or postmarked no later than a date set
17 by the Court after Preliminary Approval of the Settlement Agreement.

18 **C. Equitable Provisions Binding**

19 Upon Final Approval of this Settlement Agreement, all Class Members shall be bound by
20 all equitable provisions of this Settlement Agreement and orders issued pursuant thereto,
21 notwithstanding any objection filed by a class member under II.B of this Agreement and subject
22 to Release provisions under IX.A of this Agreement. In the event that the Board does not
23 ultimately adopt the substantive terms of this Agreement in whole as recommended by the
24 Commissioner, this Agreement is null and void.

25 **D. Fairness Hearing**

26 The Court shall hold a hearing under FRCP 23(e)(1)(C) to establish the fairness of the
27 final settlement of the claims of the Class against Defendants and to decide whether there will be
28 Final Approval of the Settlement Agreement. This hearing shall take place at a date allowing for

1 a period of reasonable notice to the Class as the Court may direct. At this hearing, the Parties
2 shall jointly move for Final Approval of this Settlement Agreement and entry of the Stipulated
3 Injunctive Order. The Parties specifically intend that some sections of the Settlement Agreement
4 shall be implemented prior to formal Court approval of the Settlement in accordance with the
5 timelines set forth herein.

6 **E. Notice to the Class Regarding the Proposed Settlement**

7 The Department will provide at its sole expense notice regarding the terms of the
8 proposed Settlement Agreement. The Parties will prepare a notice plan for submission to the
9 Court at the Fairness Hearing.

10 **III. EQUITABLE PROVISIONS**

11 The Parties agree that, conditioned upon entry of Final Approval, Defendants shall do the
12 following in order to ensure an appropriate opportunity to fulfill the HSGQE graduation
13 requirement for students with disabilities:

14 **A. Accommodations**

15 1. The Commissioner will recommend regulations to the Board that will clarify and
16 revise the information regarding the HSGQE in the “Participation Guidelines for Alaska Students
17 in State Assessments” (“Participation Guidelines”) with respect to options for participation by
18 students with disabilities. The information will include descriptions of the options for
19 participation in the HSGQE by students with disabilities, the implication of each of the options,
20 and the appeals process. The Department shall further clarify in the Participation Guidelines
21 (and in any other publications or websites designed to provide information about
22 accommodations on the HSGQE) that:

- 23 a. the guideline concerning the use of a proposed HSGQE accommodation
24 for three months prior to test in the classroom is a recommendation only
25 and is not a requirement;
- 26 b. any list (regulatory or otherwise) of approved accommodations published
27 by the Department as a guide for school Districts shall not be deemed
28 exclusive by the Department. With respect to any potential

1 accommodation that is not on the “approved” list, the Department will
2 provide IEP and 504 Plan teams with a checklist and/or guidelines with
3 criteria to be used in determining if an accommodation is appropriate.

4 2. The Department shall work with Districts to ensure test security while allowing
5 students with disabilities the opportunity to:

- 6 a. take the HSGQE over the course of more than one day if necessary to
7 accurately demonstrate proficiency on the HSGQE; and
8 b. take the HSGQE at home, provided that, due to a disability, the student’s
9 primary instruction location is the student’s own home.

10 3. IEP and 504 Plan teams shall meet in accordance with the timeline set forth
11 herein. Plans for all students with disabilities shall be reviewed in their next annual IEP or 504
12 Plan review (and then at least annually thereafter) for the presence and appropriateness of
13 accommodations to be used in the HSGQE.

14 4. In addition to other trainings described below in Section V.3, the Commissioner
15 will recommend regulations to the Board that will require Districts to plan and make available
16 training for parents of special education students in the ninth grade (freshman) regarding the
17 HSGQE and the range of participation options for students with disabilities. The trainings shall
18 occur in preparation for the student’s first HSGQE experience the spring of the student’s
19 sophomore year.

20 5. The Department will broaden the current list of appropriate accommodations for
21 students with disabilities and shall at least annually consider the appropriateness of other
22 proposed accommodations that may arise. Districts retain the right to deny a requested
23 accommodation on a case-by-case basis and provide the reasons or basis for the denial.

24 6. A student’s IEP or 504 Plan Team will initially determine whether a particular
25 proposed modification for use on the Modified HSGQE will be helpful to a student on the
26 Subtest(s) of the HSGQE which the student has not passed. The IEP or 504 Plan team will then
27 apply to the Department for approval of the proposed modification. The Department will
28 determine whether the benefit of the modification outweighs its potentially adverse effect on the

1 validity of the test. In balancing the benefits against the potential drawbacks, the Department
2 shall consider the effect of the proposed modification on an entire Subtest, not just on a single
3 construct of that Subtest.

4 **B. Sequence of Testing**

5 1. The Commissioner shall promptly recommend to the Board appropriate
6 regulations concerning the alternative assessment program under the provisions of Alaska
7 Statutes § 14.03.075(c) to implement the following procedure for accessing the HSGQE:

8 a. If an eligible student fails to pass any subtests of the HSGQE, the
9 student's IEP or 504 Plan team shall determine whether the student
10 should:

11 i. retake those subtests of the HSGQE with other accommodations;

12 or

13 ii. take the Modified HSGQE for those subtests with appropriate
14 accommodations and any of the modifications approved by the
15 Department, including, but not limited to:

- 16 1. asking a test proctor for clarification of a test question,
 - 17 2. sign language interpretation of test questions for a deaf
18 student,
 - 19 3. spell-checker on a word processor,
 - 20 4. grammar checker on a word processor,
 - 21 5. oral presentation (read-aloud) of test question (including
22 recorded oral presentation),
 - 23 6. graphing calculator,
 - 24 7. dictionary or thesaurus,
 - 25 8. math or writing resource guides,
 - 26 9. voice recognition software and word processor,
 - 27 10. asking test proctor for synonym of unknown word; or
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iii. take a non-standardized assessment instrument designed to measure competency in skills tested by HSGQE for whichever subtest(s) the student failed if the IEP or 504 Plan team certifies that the student meets the applicable qualifications (see Section III.C.1 below).

C. Non-standardized Assessment Format that Leads to a Standard Diploma

1. The non-standardized assessment is reserved only for those diploma-track students who:
 - a. are working at or near grade level;
 - b. have a documented history of being unable to demonstrate proficiency on a standardized assessment because of one or more of the following conditions:
 - (i) the student has a severe emotional or behavioral impairment or a pervasive developmental or other disability that causes the student to be unable to maintain sufficient concentration to participate in standard testing, even with accommodations or appropriate modifications;
 - (ii) the student cannot cope with the demands of a prolonged test administration because of multiple physical disabilities, severe health-related disabilities, or a neurological disorder;
 - (iii) the student has a significant motor, learning, or communication disability that causes the student to need more time than is reasonable or available for testing, even with the allowance of extended time.
2. The Department shall make available an appropriate non-standardized assessment using formats or a format that fairly assesses a disabled student's mastery of state content standards and eligibility for a standard high school diploma. This non-standardized format:

- 1 a. May be, but is not required to be, a student work portfolio that
- 2 incorporates a review of a student’s work and/or classroom performance
- 3 and/or grades over a period of time which demonstrates mastery of state
- 4 content standards.
- 5 b. May be, but is not required to be, a system of individualized assessment
- 6 whereby a student’s IEP or 504 Plan team develops (with the oversight
- 7 and approval of the Board or Department of Education) a system of
- 8 assessment for that particular student that measures the student’s
- 9 qualifications to obtain a high school diploma without directly assessing
- 10 the student’s disability.

11 3. The Department will provide appropriate and thorough guidance and information
12 to Districts, which will provide training to IEP teams, 504 teams, other instructional planning
13 teams, parents, and students concerning this non-standardized assessment option leading to a
14 standard high school diploma for students who qualify under this provision.

15 **D. Appeals of Accommodation and Modification Decisions**

16 1. Parents of students with IEPs and 504 Plans may request that a District consult
17 with the Department before a District rejects an accommodation or modification on the grounds
18 that the accommodation or modification would make a test invalid. In response to such a
19 request, the Department will provide to the District and parents a non-binding written statement
20 regarding the accommodation or modification. The parent of a student with an IEP or 504 Plan
21 may request mediation, a due process hearing, or a state complaint, consistent with state and
22 federal law and regulations. In this type of an appeal, the procedure will be consistent with 4
23 AAC 52.550(g) and applicable federal law. The Parties also agree that the Department will issue
24 a directive to all hearing officers that in these appeals, the hearing officers will make every
25 reasonable effort to issue a decision as soon as possible but not later than 25 days. The Parties
26 do not intend that the state shall have to adopt new regulations to implement this provision.

27 **IV. PHASE-IN PROVISIONS FOR CLASS OF 2005**

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1 1. For school year 2004-05 only, a District shall grant a waiver to a student with a
2 disability who has an IEP or 504 Plan, is a senior, and has met all other requirements of
3 graduation, and the student’s IEP or 504 Plan team does not meet on or before September 24,
4 2004, and because of the failure to meet,

5 a. the student does not have two opportunities during the 2004-2005 school
6 year to use an allowable modification that an IEP or 504 Plan team
7 determines the student needs to demonstrate proficiency on the state
8 assessment; or

9 b. the student does not receive the non-standardized assessment for which the
10 student is eligible during the 2004-2005 school year.

11 2. The parties acknowledge that the non-standardized assessment will be a new
12 instrument and that training of personnel and development of this instrument will be evolving
13 over the year. Therefore, it is appropriate that the non-standardized assessment be phased-in
14 during the 2005 school year. To accomplish this, in 2005 only, the grading standards for the
15 non-standardized assessment will be published as “interim standards,” which may not be as
16 rigorous as the final standards.

17
18 **V. IMPLEMENTATION & REPORTING**

19 1. Defendants shall take all necessary steps to implement the terms of this
20 Agreement. The parties understand that implementation of this Agreement will require adoption
21 of regulations by the Board, and that the Board will exercise its independent judgment in the best
22 interests of the State when adopting regulations. The parties further understand that this
23 Agreement does not purport to bind the Alaska State Legislature, and that a change in state or
24 federal law may moot or otherwise obviate this Agreement.

25 2. The Department shall designate a State employee or official as the Facilitator
26 responsible for collecting information concerning compliance with this Agreement, and
27 producing the semi-annual reports referenced in Paragraph V.7 below. In addition to other
28

1 duties, this or another qualified employee shall be assigned the duty to use independent judgment
 2 to monitor the defendants' compliance with this Agreement.

3 3. The Department will provide notice and statewide trainings regarding the
 4 revisions to the HSGQE system under this Agreement for Districts. Specific notice of the terms
 5 of this Agreement will be sent to all Districts, with direction that the Districts provide notice to
 6 special education teachers, IEP and 504 Plan team members, special education directors, and
 7 parents of class members within 30 days of Final Approval that a copy of the Agreement is
 8 available for review or may be obtained upon request.

9 4. The Department shall develop appropriate forms for implementation of the terms
 10 of this Agreement.

11 5. The implementation of the terms of this Agreement shall proceed according to the
 12 following timeline:

Issue	Implementation Complete
Accommodations	
Clarification/new edition of Participation Guidelines	September 30, 2004
IEP/504 Plan team meetings to review accommodations/modifications for classes of 2005-06 for October 2004 administration.	September 24, 2004, annually thereafter for subsequent classes
IEP/504 Plan team meetings to review accommodations/modifications for class of 2007, and for class of 2006 if they have not already met in the current school year, for April 2005 administration	January 1, 2005, annually thereafter for subsequent classes
First wave of trainings for parents of students in ninth grade (Class of 2008)	June 1, 2005
Review of accommodation validity research	Ongoing
Regulatory changes necessary to implement new accommodations procedure for October 2004 administration	September 30, 2004
Non-Standardized Assessment Program	
Deadline for IEP/504 Plan teams to identify and certify students for non-standardized assessment program for March 2005 administration	September 24, 2004, annually thereafter
Development and availability of application and scoring guidelines for Non-standardized assessment program for assessing proficiency in HSGQE skills	September 1, 2004
Appeals Process	
Appeals process established	September 15, 2004
Other Implementation	

1	Designation of state implementation Facilitator	Within 30 days of Final Approval
2	Notice regarding terms of Settlement Agreement to all Districts.	Within 30 days of Final Approval

3
4 6. This timeline assumes that Defendants are able to develop and implement the
5 equitable provisions of this Agreement in a timely fashion. If any deadline involving
6 implementation of the equitable provisions for the April 2005 testing date is not met before
7 February 15, 2005, the Parties agree to meet and confer to determine (1) whether students will
8 still have a fair opportunity to access the HSGQE in April 2005 and (2) whether this Agreement
9 should be amended.

10 7. For a period of 30 months after Final Approval of this Agreement, the Department
11 shall provide written reports on a semi-annual basis to Class Counsel regarding work performed
12 to implement this Agreement. The reports shall detail (a) what steps the State has taken to
13 comply with the Agreement since the last report, (b) whether the State has met the deadlines for
14 implementation set forth in this Agreement, and if not, the extent to which such work has been
15 completed and an explanation for any gaps, (c) what problems if any the State has encountered in
16 complying with the Agreement, (d) what if anything the State plans to do to remedy these
17 problems, and (e) any complaints and any responses to such complaints the State has received
18 regarding the HSGQE with respect to students with disabilities. The first such report shall be
19 due 180 days after the Final Approval of this Agreement.

20 8. Class Counsel shall receive the semi-annual reports required by this Agreement
21 for purposes of monitoring the State's compliance. Plaintiffs reserve the right to seek monitoring
22 fees under any legal basis available under applicable law, and Defendants reserve the right to
23 oppose Plaintiffs' request for monitoring fees. To the extent that Defendants are liable for fees
24 under this paragraph, those fees shall not exceed \$10,000 per year.

25 9. In the event that Class Counsel concludes that there has been a significant pattern
26 of violation of the terms of this Agreement, Class Counsel is not precluded from seeking fees
27 and costs for increased monitoring by motion to the Court.
28

1 10. Monitoring of the implementation of this Agreement by Class Counsel shall
2 continue for 30 months following the Final Approval. This Compliance Period may be extended
3 by the Court only upon a showing of good cause. The Compliance Period may be either
4 shortened or lengthened by agreement of the Parties or by order of the Court.

5 **VI. MEDIA**

6 The Parties agree to hold a joint press conference.

7 **VII. TERM OF THE AGREEMENT**

8 The term of this Agreement shall consist of the Compliance Period, as set forth in
9 Paragraph I.E above. In addition, Defendants shall be required to submit a Final Report to Class
10 Counsel within 60 days of completion of the 30 month Compliance Period. The complaint shall
11 be dismissed with prejudice when all efforts referenced in Sections III, IV, and V are complete
12 and the Final Report has been submitted.

13 **VIII. DISPUTE RESOLUTION**

14 1. The Parties will attempt to resolve any claim of material violation of this
15 Agreement through negotiation. An attempt at informal resolution, as described below, will be a
16 prerequisite to any Party's request for relief from the Court for an alleged violation of this
17 Agreement.

18 2. The Court will retain jurisdiction solely for the purposes of enforcing compliance
19 with this Agreement and adjudicating fees and costs if the Parties are unable to reach agreement.

20 3. Before relief is sought from the Court, the following process will be used by the
21 Parties: Any Party claiming that a violation has occurred under this Agreement will give notice
22 of the claim in writing to the other Parties and will propose a resolution of the issue to the other
23 Parties.

24 4. The responding Parties will have twenty (20) days following receipt of the written
25 claim to respond in writing, unless the period is enlarged by agreement of the Parties.

26 5. If the Party asserting the claim is dissatisfied with another Party's response, or if
27 no response is received, the Party asserting the violation may, after providing ten days written
28 notice to the other Parties, submit the matter to mediation for a non-binding determination. If

1 any Party is dissatisfied with the mediator’s determination, that Party may request relief from
2 this Court. The mediator’s determination will be considered a recommendation to the Court.

3 6. In any dispute resolution procedure, attorneys’ fees and costs may be claimed
4 under any legal basis available under applicable law.

5 **IX. RELEASES**

6 **A. Releases By The Class**

7 In return for the consideration provided for in this Settlement Agreement, on the date of
8 Final Approval, all Class Members, both individually and as a Class, shall release Defendants
9 and their officers, directors, employees, attorneys, agents, and insurers (“Released Parties”) from
10 any and all claims, liabilities, obligations, demands, and actions under the ADA, Section 504,
11 IDEA, AS 14.03.075, AS 18.80.200 *et seq.*, 4 AAC 06.775, or any other state or federal statutes
12 or regulations, or the federal and Alaska constitutions, that were brought or could have been
13 brought against the Released Parties for injunctive or declaratory relief relating to access to the
14 HSGQE and implementation of AS 14.03.075 for students with disabilities. Notwithstanding
15 any other term of this Agreement, this Release does not apply to (1) the validity of the HSGQE
16 as a high stakes high school exit exam or (2) any and all issues of instructional validity,
17 curricular validity, and opportunity to learn material tested by the HSGQE. Notwithstanding any
18 other term of this Agreement, Plaintiffs do not release any claims related to the requirement,
19 found in AS 14.03.075(c)(1), of failing the HSGQE once before accessing the Modified HSGQE
20 and/or the non-standardized assessment. Plaintiffs reserve the right to challenge this requirement
21 in judicial forums or through special education due process procedures available under federal
22 law.

23 **B. Releases By Named Plaintiffs**

24 Named Plaintiffs Alexander Noon, Kendall Leibach, Douglas Mate, Tiana Lupie, Irene
25 Takak, and Learning Disabilities Association of Alaska, in return for the consideration set forth
26 in this Agreement, and except for the terms of this Agreement and subject to the exceptions in
27 the foregoing paragraph, hereby release Released Parties from any and all claims, liabilities,
28 obligations, demands, actions, and claims that were brought or could have been brought under

1 the ADA, Section 504, IDEA, AS 14.03.075, AS 18.80.200, 4 AAC 06.775 or any other state or
2 federal statutes or regulations, or the federal and Alaska constitutions against the Released
3 Parties relating to access to the HSGQE and implementation of AS 14.03.075 for students with
4 disabilities.

5 **X. ATTORNEYS' FEES AND COSTS**

6 The Parties have not reached an agreement regarding attorneys' fees and costs. Plaintiffs
7 expressly retain the right to seek reasonable attorneys' fees under any legal basis available under
8 applicable law and will make an appropriate application to the Court within 45 days of Final
9 Approval. Defendants reserve the right to object to all or any part of Plaintiffs' request to
10 recover attorneys' fees and costs on any other basis, including, but not limited to, the
11 reasonableness of rates and time spent. Failure of the Parties to resolve this issue does not
12 invalidate any of the other provisions of the Settlement Agreement.

13 **XI. ORDERS AND DISMISSAL**

14 **A. Continuing Jurisdiction**

15 The Court shall maintain jurisdiction over this lawsuit, including jurisdiction to enforce
16 the terms of this Agreement for the duration of the Compliance Period and to resolve disputes
17 over attorneys' fees and costs. The Parties agree that the Court may delegate the determination
18 of attorney's fees and costs to a Magistrate Judge.

19 **B. Dismissal**

20 Within thirty business days after the submission of Defendants' Final Report pursuant to
21 Paragraph VII, Class Counsel shall provide to counsel for Defendants a signed form of Request
22 for Dismissal with Prejudice.

23 **XII. MISCELLANEOUS**

24 **A. Entire Agreement**

25 This Agreement contains the entire agreement between the Parties. No modifications or
26 limits will be binding on the Parties unless expressly provided for in this Agreement or made by
27 writing signed by all Parties. This Agreement expresses the complete and final understanding
28 with respect to the subject matter of this Agreement. The Parties hereto understand and agree

1 that the terms of this Agreement supersede any prior discussions, understandings, or agreements
2 between them related to the subject matter hereof.

3 **B. Counterparts**

4 This Agreement may be executed in counterparts, each of which will be considered an
5 original, but all of which, when taken together, will constitute one and the same instrument.

6 **C. Interpretation**

7 The language of this Agreement shall be construed as a whole according to its fair
8 meaning, and not strictly for or against any of the Parties. The headings in this Agreement are
9 solely for convenience and will not be considered in its interpretation. Where required by
10 context, the plural includes the singular and the singular includes the plural. This Agreement is
11 the product of negotiation and joint drafting so that any ambiguity shall not be construed against
12 any Party. Nothing in this Agreement should be construed in a manner that would violate the
13 Individuals with Disabilities Education Act.

14 **D. Additional Documents**

15 To the extent any documents are required to be executed by any of the Parties to
16 effectuate this Agreement, each party hereto agrees to execute and deliver such and further
17 documents as may be required to carry out the terms of this Agreement.

18 **E. Authority to Bind**

19 Roger Sampson, Commissioner of Education and Early Development, represents and
20 warrants that he is authorized to sign on behalf of, and to bind, the State Defendants to this
21 Settlement Agreement, which include himself, the Alaska State Board of Education and Early
22 Development, and Richard Smiley, in his official capacity as an employee of the Alaska
23 Department of Education & Early Development. Carol Comeau, the Superintendent of the
24 Anchorage School District, represents and warrants that she is authorized to sign on behalf of,
25 and to bind, the Anchorage School District to this Settlement Agreement.

26 FOR PLAINTIFFS:

28 Approved as to Form:

DISABILITY RIGHTS ADVOCATES

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By: _____
Sid Wolinsky
Attorneys for Plaintiffs

DAVIS WRIGHT TREMAINE LLP

By: _____
Joan Wilson
Attorneys for Plaintiffs

DISABILITY LAW CENTER OF ALASKA

By: _____
David Fleurant
Attorneys for Plaintiffs

FOR DEFENDANTS:

Approved as to Form:

By: _____
Roger Sampson
Commissioner of Education and Early
Development

By: _____
Carol Comeau
Superintendent of the Anchorage School
District

ATTORNEY GENERAL FOR THE STATE OF
ALASKA

By: _____
Gregg D. Renkes
Attorneys for Defendants

DISABILITY RIGHTS ADVOCATES
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