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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

ERIC WILSON and KELSI WILSON,
both as parents and on behalf of their
daughter N.W., a minor; and SANDRA
MARTINEZ-HOWELL, d/b/a ABC 123
UNIVERSITY,

Plaintiffs,

vs.

DENISE JUNEAU, in her official
capacity as Superintendent of the
Montana Office of Public Instruction,
and COLUMBUS PUBLIC SCHOOLS,

Defendants.

Case No. _____

VERIFIED COMPLAINT

JURY TRIAL NOT DEMANDED

I. INTRODUCTION

1. This is a civil action under the Individuals with Disabilities in Education Act (“IDEA”), 42 U.S.C. § 1983, the First and Fourteenth Amendments to the United States Constitution, and the Constitution of the State of Montana brought to remedy a violation of the statutory and constitutional rights of N.W., a preschooler with special educational needs who is eligible for IDEA tuition assistance, and her parents Eric and Kelsi Wilson, as well as the constitutional rights of ABC 123 University, a religious, private preschool located in Columbus, Montana.

2. The Wilsons challenge the Montana Office of Public Instruction’s (the “OPI”) and Columbus Public Schools’ (the “District”) unlawful denial of funding to students, like N.W., who attend religious, private preschools—funding to which they are statutorily entitled under IDEA. ABC 123 University challenges the OPI’s and the District’s unconstitutional ban on religious, private schools participating in the State of Montana’s IDEA tuition-assistance program.

II. JURISDICTION

3. This action arises under the IDEA, 20 U.S.C. 1400 *et seq.*, the First and Fourteenth Amendments to the United States Constitution, under federal law; specifically 28 U.S.C. §§ 2201-02, 42 U.S.C. §§ 1983 & 1988; and Article II, Sections 4, 5 & 7 of the Constitution of the State of Montana.

4. This Court possesses original jurisdiction over Plaintiffs’ federal claims by

operation of 20 U.S.C. § 1415(i) and 28 U.S.C. §§ 1331 & 1343, as well as supplemental jurisdiction over Plaintiffs' state-law claims pursuant to 28 U.S.C. § 1367.

5. The IDEA vests this Court with authority to “grant such relief as the court determines is appropriate,” including reimbursement for private school tuition expenses. 20 U.S.C. § 1415(i)(2)(C)(iii); *see also* 20 U.S.C. § 1412(a)(10)(B)-(C).

6. This Court is vested with authority to issue the requested declaratory relief pursuant to 28 U.S.C. §§ 2201-02 and Federal Rule of Civil Procedure 57.

7. This Court has authority to award the requested injunctive relief under Federal Rule of Civil Procedure 65 and 28 U.S.C. § 1343(a)(3).

8. This Court is authorized to award nominal and compensatory damages under 28 U.S.C. § 1343(4).

9. This Court is authorized to award attorneys' fees under 20 U.S.C. § 1415(i)(3)(B) and 42 U.S.C. § 1988.

10. Under 28 U.S.C. § 1391, venue is proper in the United States District Court for the District of Montana because these claims arose in, and all parties reside within, the District of Montana.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. The IDEA establishes an administrative hearing process by which parents may contest the denial of a free and appropriate public education (“FAPE”) to their

child, including a failure to abide by their child's governing Individualized Education Program ("IEP") and a government entity's unilateral alteration of their child's educational placement.

12. N.W.'s original IEP finalized on April 5, 2012 and N.W.'s Amended IEP finalized on October 1, 2012 both reflect the Wilsons' and the Cooperative's mutual agreement that the Cooperative would use IDEA tuition-assistance funds to pay for N.W. to attend ABC 123 University three days per week.

13. Due to a new OPI policy that precluded families eligible for IDEA benefits from enrolling their children in religious, private schools, the District refused to abide by N.W.'s Amended IEP after the first two weeks in October 2012, thus denying the Wilsons their statutory right to a FAPE.

14. The OPI and the District required that the Wilsons transfer N.W. to one of the two nonreligious, private preschools in the Columbus, Montana area in order to continue receiving IDEA tuition-assistance, thereby unilaterally altering the educational placement mutually agreed to by the Wilsons and the District in N.W.'s IEP and Amended IEP.

15. The Wilsons filed a due process complaint with the OPI on November 16, 2012 challenging the OPI's and the District's unlawful denial of IDEA tuition-assistance funding to students, like N.W., who attend religious, private schools—funding to which they are statutorily entitled under IDEA, thus unilaterally altering

N.W.'s educational placement and denying her a FAPE.

16. The due process complaint also alleged that the OPI's and the District's actions violated the Wilsons' procedural IDEA rights by unilaterally amending N.W.'s Amended IEP, which requires the District to pay for N.W. to attend ABC 123 University three days a week, a procedural violation that harmed the Wilsons by cutting off their IDEA tuition assistance.

17. The Wilsons' due process complaint argued that N.W.'s educational needs were best served by continued enrollment at ABC 123 University and that denying tuition-assistance funding to students, like N.W., who attend religious, private schools violated IDEA, the Free Exercise, Establishment, and Free Speech Clauses of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and was also unconstitutional under a hybrid rights theory.

18. The Wilsons' due process complaint also contended that, contrary to the OPI's assertions, neither 34 C.F.R. §§ 76.532 & 76.658, the Establishment Clause of the First Amendment, nor Article X, Section 6 of the Constitution of the State of Montana require the OPI to deny IDEA tuition-assistance funding to students, like N.W., who attend religious private schools.

19. In addition, the Wilsons' due process complaint alleged that neither the OPI nor the District could condition the Wilsons' receipt of IDEA tuition-assistance benefits on the surrender of their fundamental rights to the free exercise of religion,

free speech, and equal protection of the laws.

20. Furthermore, the Wilsons' due process complaint alleged that the OPI's and the District's denial of IDEA tuition-assistance funding to students, like N.W., who attend religious, private preschools violated their rights under Sections 4, 5, and 7 of the Constitution of the State of Montana to individual dignity, freedom of religion, and freedom of speech and expression.

21. The OPI and the District both moved to dismiss the Wilsons' due process complaint, arguing that the administrative hearing officer lacked jurisdiction to decide the legal issues raised therein.

22. The administrative hearing officer agreed and dismissed the Wilsons' due process complaint on February 20, 2013.

23. The State of Montana does not provide for an administrative appeal of the hearing officer's decision.

24. Accordingly, the Wilsons have exhausted their administrative remedies under the IDEA and are entitled to file this "civil action with respect to" the issues raised in their due process "complaint ... in a district court of the United States, without regard to the amount in controversy." 20 U.S.C. § 1415(i)(2).

IV. PARTIES TO THE CURRENT LAWSUIT

A. The Plaintiffs

25. Plaintiff Eric Wilson is N.W.'s father and is a citizen of Montana, presently

residing in Columbus, Montana 59019.

26. Plaintiff Kelsi Wilson is N.W.'s mother and is a citizen of Montana, presently residing in Columbus, Montana 59019.

27. Plaintiff N.W. is a four-year-old preschooler with hearing and speech-language impairments that entitle her to benefits under IDEA and is a citizen of Montana, presently residing in Columbus, Montana 59019.

28. Pursuant to their sincerely held religious beliefs, the Wilsons chose to enroll N.W. in ABC 123 University, a religious preschool close to their home that not only serves N.W.'s special educational needs, but also shares and helps to foster their Christian faith through Bible stories, prayer, and the singing of religious songs.

29. Plaintiff N.W. has made great strides at ABC 123 University in her speech and language development, learning to adjust to being in a classroom environment, and learning to function with the special equipment that enhances her hearing.

30. N.W.'s tuition at ABC 123 University was paid by the District pursuant to her IEP and Amended IEP from September 2012 until October 14, 2012.

31. Since the District's refusal to continue paying N.W.'s tuition at ABC 123 University using federal IDEA funds in mid-October 2012, the Wilsons have paid N.W.'s tuition costs, an expense amounting to \$150 a month.

32. The Wilsons desire N.W.'s Amended IEP to remain unchanged and for

N.W. to receive IDEA tuition assistance to attend ABC 123 University, a preschool that fosters their sincerely held religious beliefs, offers an excellent learning environment for children with special needs, and offers teachers, classmates, and staff to which N.W. is already accustomed.

33. The OPI's and the District's current policy and practice of disallowing IDEA tuition-assistance payments to religious, private schools prevents N.W.'s continued IDEA placement at ABC 123 University in contravention of N.W.'s Amended IEP.

34. Thus, although families entitled to IDEA tuition assistance that desire their children to attend nonreligious preschools continue to have their children's tuition paid at the private school of their choice, families like the Wilsons who are entitled to IDEA tuition assistance and desire their children to attend religious preschools are deprived of the same right.

35. Plaintiff Sandra Martinez-Howell owns and operates ABC 123 University as a sole proprietorship and is a citizen of Montana, presently residing in Columbus, Montana 59019.

36. ABC 123 University is a private, religious preschool located at 325 East First Avenue North, Columbus, Montana 59019.

37. Ms. Martinez-Howell is a Christian who's sincerely held religious beliefs require her to operate ABC 123 University in keeping with the dictates of her faith by offering religious instruction in addition to the teaching of basic educational

concepts that prepare children to attend kindergarten.

38. Accordingly, ABC 123 University operates as a Christian-based preschool that incorporates Bible stories, prayer, and religious songs into its instructional program.

39. Pursuant to its owner's sincerely held Christian beliefs, ABC 123 University desires to continue serving, both now and in the future, the spiritual and educational needs of students eligible to receive IDEA tuition assistance.

40. The OPI's and the District's current policy and practice of excluding religious, private schools from receiving federal IDEA funding prevents ABC 123 University from participating in the IDEA private-school-tuition program on an equal basis with nonreligious, private schools.

41. For example, the OPI's and the District's current policy and practice of favoring nonreligious, private schools over their religious counterparts prevent Plaintiff ABC 123 University from serving students with special needs who cannot afford to pay private school tuition rates absent the use of IDEA funds. At the same time, the OPI and the District actively enable nonreligious, private schools to serve these economically disadvantaged students.

42. The OPI's and the District's new policy and practice require ABC 123 University to choose between incorporating religious instruction into its programs and being excluded from the IDEA tuition-assistance program, or abandoning its

religious principles in order to continue serving IDEA-eligible students and their families.

43. This artificial skewing of the private school market hinders ABC 123 University's faith-based efforts to serve the religious and educational needs of IDEA-eligible students and their families, and could lead to a decreased student population, as the OPI and the District demand that IDEA-eligible families use their tuition-assistance funds at nonreligious schools or lose them entirely.

44. Accordingly, ABC 123 University brings its claims on its own behalf, as well as on behalf of IDEA-eligible families desiring a religious education for their children whom the OPI and the District will incorrectly inform that ABC 123 University is not an available option during the IEP-formulation process.

45. Because of their unfamiliarity with the IDEA's complex statutory and regulatory requirements and reliance on the OPI's and District's administrative expertise, these families are unlikely to discover on their own that IDEA tuition-assistance funds may be lawfully used at religious, private schools.

46. Even if these families did make that discovery, because many of them receive IDEA tuition-assistance at private preschools for only one year, they are unlikely to undertake the expensive and time-consuming process of navigating the state administrative procedures and subsequent civil action in federal court necessary to vindicate their statutory and constitutional rights.

B. The Defendants

47. Defendant Denise Juneau is a citizen of Montana, employed as the Superintendent of Montana's Office of Public Instruction and is thus responsible, in her official capacity, for the OPI's actions and those of its employees.

48. The OPI serves as Montana's department of education and is a body corporate and politic organized under the laws of the State of Montana.

49. Defendant Juneau is the final policy maker responsible for educational policy and practice throughout the State of Montana, including state-wide policy and practice concerning the use of IDEA tuition-assistance funds.

50. Defendant Juneau is thus responsible for the formulation, adoption, and implementation of the OPI's policies and practices, including the policy and practice of prohibiting students and their families, including the Wilsons, from voluntarily using IDEA tuition-assistance funding at religious, private schools.

51. Defendant Juneau is also responsible for her employees' enforcement of the OPI's policies and practices, including the policy and practice of excluding only religious, private schools, including ABC 123 University, from receiving IDEA tuition-assistance funds.

52. Defendant Columbus Public Schools, located in Columbus, Montana, is the public school district that serves N.W.'s residential area.

53. The District thus serves as N.W.'s local education agency ("LEA") for

IDEA purposes.

54. The District directs and is responsible for the actions of the Stillwater/Sweet Grass Special Services Cooperative in administering N.W.'s special education services.

55. The District is also responsible for the formulation, adoption, and implementation of District and Cooperative policies and practices, including the policy and practice of denying IDEA tuition-assistance funds to families who voluntarily select a religious, private school to provide their children's special education services, such as the Wilsons.

56. Furthermore, the District is responsible for the actions of its employees and those of the Cooperative in applying the OPI's policies and practices, including the policy and practice of excluding religious, private schools from participation in the IDEA tuition-assistance program, such as ABC 123 University.

V. FACTUAL ALLEGATIONS

A. IDEA'S REQUIREMENTS

57. The goal of IDEA is to ensure that all children with disabilities have a FAPE available to them and to ensure that the rights of children with disabilities and the parents of such children are protected.

58. The State of Montana accepts federal IDEA funds intended to assist in the education of qualified children with learning disabilities.

59. As a condition of receiving these funds, the State of Montana must comply with IDEA's mandates, including the requirement that the State ensure local school districts provide students with learning disabilities a FAPE that complies with their governing IEP.

60. The State of Montana, in return for the receipt of federal IDEA funds, has agreed to provide a FAPE to students, like N.W., who are preschoolers with qualifying learning disabilities.

61. A FAPE is defined as special educational and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved, and (D) are provided in conformity with a student's governing IEP.

62. An IEP is defined as a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 20 U.S.C. § 1414.

63. Children that qualify for IDEA benefits are provided special education and related services, in accordance with their governing IEPs, at no cost to their parents, if they are placed in, or referred to, private schools or facilities by the State or a local educational agency as the means of carrying out IDEA's requirements.

64. In this case, the District does not offer a public preschool program and accordingly fulfills its obligations under the IDEA by providing IDEA tuition-

assistance funding for preschoolers with special educational needs, like N.W., to attend private preschools.

B. N.W.'S IEP AND AMENDED IEP

65. For a private school to participate in the IDEA tuition-assistance program, an IEP team must consider the needs of an individual student, apply the IDEA's neutral requirements, and conclude that the private school could serve as an appropriate educational placement for that student.

66. The Cooperative, acting on behalf of the District, evaluated ABC 123 University and the two nonreligious, private preschools in the Columbus, Montana area under the IDEA's neutral requirements and determined that any of them could serve as an appropriate educational placement for N.W.

67. The Wilsons desired to enroll N.W. at ABC 123 University because it is an excellent preschool that incorporates religious teaching into its educational programming.

68. Because ABC 123 University satisfied the neutral requirements set forth under IDEA for an appropriate educational placement, the Wilsons and the Cooperative mutually agreed to place N.W. at ABC 123 University.

69. In the same vein, the Cooperative concluded that ABC-123 University was an appropriate educational placement for one other student who was placed there at the same time as N.W. and received IDEA tuition assistance.

70. N.W.'s official placement at ABC 123 University was recorded in N.W.'s IEP finalized on April 5, 2012 and Amended IEP finalized on October 1, 2012, both of which provide, among other things, that the District would use IDEA tuition-assistance funds to pay N.W.'s tuition at ABC 123 University three days each week.

71. The District recognized this fact in a letter dated November 30, 2012 that was sent to the Wilsons' counsel after the conclusion of the IDEA-mandated resolution meeting, which states:

The issue of the Due Process Complaint has to do with tuition support payments that were agreed to in the IEP. This child was enrolled in a private, religious-based academic preschool program that was specifically named in the IEP. Upon direction from the OPI, Monica Pugh (SSG Co-op Director) contacted the parents of N.W. and notified them that she was no longer allowed to pay for the tuition of a child if the child attended a religious-based preschool.

72. Previously, the Wilsons and the Cooperative mutually agreed to a similar IDEA tuition-funded placement at ABC 123 University for K.W., N.W.'s sister, a student who also has hearing and speech-language impairments and is thus eligible to receive special education services under IDEA.

73. K.W. successfully received special education services—including payment of her tuition by the Cooperative using IDEA tuition funds—at ABC 123 University for approximately one year. She then went on to attend Columbus Elementary School because no religious elementary school is available in the

Columbus, Montana area.

C. THE UNILATERAL ALTERATION OF N.W.'S IEP

74. N.W. began attending ABC 123 University in September 2012 and the Cooperative used IDEA tuition-assistance funds to pay her way through the month of September.

75. In late September 2012, the Cooperative informed the Wilsons that the OPI had revoked the IDEA tuition assistance set out in N.W.'s IEP and Amended IEP because of a new OPI and District policy and practice of prohibiting the use of IDEA funds to pay disabled children's tuition at religious, private schools.

76. Because the OPI banned religious, private schools from participating in the IDEA tuition-assistance program, the Cooperative told the Wilsons that they were required to transfer N.W. to a nonreligious, private preschool if they wished to continue receiving IDEA tuition assistance.

77. In late September 2012 or early October 2012, Monica Pugh, the Cooperative's Director, also verbally communicated to Ms. Martinez-Howell, ABC 123 University's owner and operator, that the Cooperative would cease paying the tuition for N.W. and one other student eligible for IDEA tuition assistance enrolled at ABC 123 University after the second week of October 2012.

78. After that time, Ms. Pugh indicated to Ms. Martinez-Howell that these families would be responsible for meeting their own tuition costs without IDEA

tuition assistance from the Cooperative. Ms. Pugh requested that Ms. Martinez-Howell inform the Wilsons of this fact.

79. Ms. Martinez-Howell verbally informed the Wilsons that the Cooperative would no longer pay N.W.'s tuition at ABC 123 University as requested.

80. The District's policy and practice of universally ousting families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program resulted from the OPI's interpretation of 34 C.F.R. §§ 76.532 & 76.658, which prohibit the use of IDEA funds for religious worship, instruction, and proselytization, or to benefit a private school or the students generally enrolled therein.

81. The District's policy and practice of universally ousting families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program also resulted from the OPI's interpretation of Article X, Section 6 of the Constitution of the State of Montana, which prohibits the use of state funds to aid any school controlled in whole or in part by a church, sect, or religious denomination.

82. The Wilsons objected to transferring N.W. from ABC 123 University to a nonreligious, private preschool on multiple grounds.

83. First, N.W. has made great strides at ABC 123 University in her speech and language development, adjusting to being in a classroom environment, and

learning how to function with special equipment that facilitates her hearing. ABC 123 University has proven to be very able and willing to accommodate N.W.'s special educational needs, whereas the level of accommodation N.W. would receive at one of the two nonreligious, private preschools in the Wilsons' area is unknown.

84. Second, pursuant to their sincerely held religious beliefs, the Wilsons desire N.W. to attend a religious preschool that shares and will help foster their Christian beliefs. The Wilsons objected to the OPI and the District negating their right to IDEA tuition assistance because they voluntarily chose to utilize a religious provider of special education services, rather than a secular one.

85. Third, N.W. took time to become accustomed to the environment, students, and staff at ABC 123 University. Transferring her to a different preschool would needlessly disrupt her substantial educational progress and, upon information and belief, has a high likelihood of setting her back, as consistency in environment and staff is a critical component in the successful educational progress of students with special needs.

86. Fourth, upon information and belief, the two nonreligious, private preschools in the Wilsons' area are currently oversubscribed and are unlikely to accept new students, whereas ABC 123 University is not oversubscribed and its staff members are thus able to provide N.W. with more individualized attention.

87. In late September 2012, the OPI informed the Cooperative that N.W. needed to be transferred to a nonreligious, private preschool by October 1, 2012 in order to continue receiving IDEA tuition assistance.

88. The Cooperative, after much resistance from the OPI, was able to lengthen this deadline to October 15, 2012.

89. The Wilsons refused to accept the OPI's and the District's proposed alteration of N.W.'s Amended IEP and kept her enrolled at ABC 123.

90. On October 17, 2012, the Wilsons received a letter from the Cooperative that reads as follows:

The Stillwater/Sweet Grass Special Services Cooperative was informed by the Office of Public Instruction (OPI) on September 26, 2012, that we cannot use federal preschool funds to pay preschool tuition at religious based preschools. Since ABC 123 University is a Christian based preschool, we can no longer pay for [N.W.'s] tuition to attend.

I am very sorry for the position that this puts the Cooperative and you in as [N.W.'s] parents. I understand your desire to have [N.W.] attend ABC 123 University. **It is an excellent preschool close to the [C]ooperative with staff so willing to accommodate and modify to meet the needs for students with special needs.** I admire your decision to pay the tuition so that [N.W.] can continue to go there, even though other options [*i.e.*, N.W.'s enrollment at one of two nonreligious, private preschools in the Columbus, Montana area] were discussed at no cost to you.

(emphasis added).

91. Since October 15, 2012, N.W. has continued to attend ABC 123 University and the Wilsons have paid, out of their own pocket, \$75.00 in tuition for the rest of

October 2012 and \$150 in tuition for each month since.

D. VIOLATION OF THE PLAINTIFFS' RIGHTS

92. In refusing to pay N.W.'s tuition at ABC 123 University using IDEA tuition-assistance funds, the OPI and the District have unilaterally changed N.W.'s educational placement in violation of her Amended IEP and the Wilsons' procedural IDEA rights.

93. The OPI's and the District's refusal to abide by N.W.'s Amended IEP and pay her tuition at ABC 123 University three days each week constitutes a denial of the Wilsons' statutory right to a FAPE that has now been ongoing for approximately five months.

94. Every day that the OPI and the District exclude the Wilsons and ABC 123 University from the IDEA tuition-assistance program based on the exercise of their religious faith represents an independent violation of Plaintiffs' First and Fourteenth Amendment rights, as well as a violation of the Montana Constitution.

95. The harm caused by the OPI's and the District's discrimination against religious persons and the resulting violation of Plaintiffs' constitutional rights is, by its very nature, irreparable and cannot be ameliorated by monetary compensation.

96. The declaratory and injunctive relief requested in Plaintiffs' Request for Relief is the only means of addressing Plaintiffs' irreparable constitutional injuries.

VI. STATEMENT OF CLAIMS

A. FIRST CAUSE OF ACTION: VIOLATION OF THE WILSONS' SUBSTANTIVE AND PROCEDURAL RIGHTS UNDER THE IDEA

97. The Wilson Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1 through 96 of this Verified Complaint.

98. States that accept federal IDEA funds must comply with the IDEA's requirements, including the obligation to provide students with learning disabilities, like N.W., a FAPE in accordance with the terms of their IEPs, jointly formulated by parents, school officials, and other special education professionals.

99. Children that qualify for IDEA benefits are provided special education and related services, in accordance with their governing IEP, at no cost to their parents, if they are placed in, or referred to, private schools or facilities by the State or a local educational agency as the means of carrying out the requirements of IDEA.

100. The District does not offer a public preschool program and accordingly fulfills its obligations under the IDEA by providing eligible students with IDEA funds that cover the cost of their tuition at private preschools.

101. After considering the options available, the Wilsons and the Cooperative mutually agreed that ABC 123 University was an appropriate educational placement for N.W. based on her individualized educational needs.

102. Accordingly, both N.W.'s IEP and Amended IEP contain a provision requiring the Cooperative to provide the Wilsons with IDEA tuition assistance to

cover the cost of N.W.'s attendance at ABC 123 University three days each week.

103. The OPI's and the District's refusal to abide by N.W.'s Amended IEP and continue paying her tuition at ABC 123 University using federal IDEA funds, thus necessitating that the Wilsons make these payments themselves, violates the Wilsons' statutory right to a FAPE, which requires the District to provide N.W. with a **free** and appropriate public education.

104. The OPI's and the District's refusal to abide by N.W.'s Amended IEP and their mandate that the Wilsons transfer N.W. to a nonreligious, private school in order to continue receiving IDEA tuition-assistance funds also constitute a unilateral alteration of the educational placement made in N.W.'s Amended IEP that violates the Wilsons' procedural rights.

105. Indeed, the IDEA requires that an education agency that cannot obtain parental agreement to a proposed IEP amendment either continue working with the parents to develop a mutually-acceptable IEP, or unilaterally revise the IEP and file a due process complaint to have the alteration approved by an administrative hearing officer.

106. The OPI and the District did not continue working with the Wilsons to develop a mutually-acceptable IEP; instead, they unilaterally revised N.W.'s Amended IEP and cut off the Wilsons IDEA tuition assistance funding, but they did not file a due process complaint to have this unilateral amendment of N.W.'s

governing IEP approved by an administrative hearing officer.

107. The OPI's and the District's procedural violation of IDEA was not harmless because the erroneous denial of eligibility for special education services, including IDEA tuition assistance, constitutes an egregious loss of educational opportunity.

108. The OPI's and the District's denial of FAPE to the Wilsons, unilateral alteration of N.W.'s Amended IEP, and resulting change of N.W.'s educational placement was based on a new policy and practice that families would be prohibited from receiving IDEA tuition-assistance if their children are enrolled in religious, private schools and would be required to transfer to nonreligious, privates schools in order to continue receiving IDEA tuition funds.

109. The OPI and the District made this policy determination to universally oust families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program without reference to any individualized educational considerations, such as the educational placement that would best suit N.W.'s and other students' educational needs.

110. The OPI and the District's decision to implement this new policy was also unrelated to the IDEA's general statutory requirements or educational objectives.

111. In this case, for example, the Cooperative explicitly approved of the quality of ABC 123 University's special education services but required that the Wilsons transfer N.W. to one of the two nonreligious, private schools in the Columbus,

Montana area in order to continue receiving IDEA tuition assistance.

112. Neither the OPI nor the District has presented any educational basis for unilaterally revising N.W.'s Amended IEP, which still places N.W. at ABC 123 University based on the Wilsons' and the Cooperative's mutual determination that this represented an appropriate educational placement.

113. To the contrary, the Cooperative's October 17, 2012 letter to the Wilsons explicitly acknowledged that ABC 123 University "is an excellent preschool close to the [C]ooperative with staff so willing to accommodate and modify to meet the needs for students with special needs."

114. N.W. has made significant progress at ABC 123 University in her speech and language development, adjusting to a classroom environment, and learning how to function with her hearing aids and frequency modulated ("FM") system.

115. Transferring N.W. to a nonreligious, private preschool would undoubtedly subject her to an adjustment period that would hinder her educational progress at a sensitive time in her pre-kindergarten development.

116. Such an adjustment period is unnecessary, would serve no educational purpose, and, upon information and belief, would significantly harm N.W.'s educational progress and the strides that she has made in learning to function with her special needs.

117. ABC 123 University also offers the important benefit of a Christian-based

preschool program that furthers N.W.'s religious, educational needs, a service neither local nonreligious, private preschool would provide.

118. Upon information and belief, because the two nonreligious, private preschools in the Wilsons' area are at full capacity, it is further doubtful that OPI's and the District's offer to pay for special education services at these school is of any practical benefit, as N.W. would likely be required to await a vacancy.

119. A waiting period for N.W. to continue receiving special education services is unacceptable because N.W. has a limited time in which to improve her speech sound production, listening skills, and use of aids before she begins kindergarten next year.

120. Upon information and belief, even if N.W. was allowed to immediately enroll in one of the two nonreligious, private preschools in her area, the relatively high number of students at those schools would result in N.W. receiving less individualized attention that she currently receives at ABC 123 University.

121. Upon information and belief, transferring N.W. to a nonreligious, private preschool would thus hinder N.W.'s educational progress and fail to serve any of the IDEA's educational goals.

WHEREFORE, the Wilsons respectfully pray the Court uphold N.W.'s Amended IEP, issue a stay put order, grant the declaratory and injunctive relief set forth hereinafter in the Prayer for Relief, and reimburse them for the costs

associated with maintaining N.W.'s continued enrollment at ABC 123 University.

B. SECOND CAUSE OF ACTION: VIOLATION OF PLAINTIFFS' FIRST AMENDMENT RIGHT TO THE FREE EXERCISE OF RELIGION

122. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1 through 96 of this Verified Complaint.

123. The OPI and the District are required to administer the IDEA tuition assistance program in keeping with the United States Constitution.

124. The First Amendment to the United States Constitution, as incorporated against the states by the Fourteenth Amendment, contains the Free Exercise Clause, which guarantees Plaintiffs' right to exercise their religious faith.

125. The OPI's and the District's policy and practice of universally ousting families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program substantially burdens the Wilsons' sincerely held religious belief that N.W. should attend a preschool that helps to foster their Christian faith in addition to providing a solid educational foundation that will prepare N.W. to attend kindergarten next year.

126. The OPI's and the District's policy and practice of prohibiting IDEA tuition-assistance funds from reaching religious, private schools also substantially burdens Ms. Martinez-Howell's free exercise of religion in that she must choose between maintaining ABC 123 University's religious education program and exclusion

from the IDEA tuition-assistance program, or violating her religious beliefs by discontinuing religious instruction in order to continue serving IDEA-eligible students and their families.

127. The OPI's and the District's policy and practice discriminate against the teaching of religious precepts, targeting those who wish to receive such training, and those who provide it, for special disabilities.

128. For instance, nonreligious, private schools may adopt any number of secular, educational philosophies and remain included in the IDEA tuition-assistance program. But if the private school's educational philosophy is religious in nature, the OPI and the District exclude it from the IDEA tuition-assistance program and prevent families from receiving tuition aid if their children are enrolled there.

129. The Free Exercise Clause prevents the OPI and the District from acting in this manner and thus discriminating against religious belief, prohibiting conduct because it is undertaken for religious reasons, and imposing special disabilities on the basis of religious status.

130. The OPI's and the District's policy and practice of universally ousting families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program force Plaintiffs to choose between freely exercising their religious faith and being excluded from the IDEA tuition-assistance program or violating their religious beliefs in order to participate in the program on an equal

basis with nonreligious families and schools.

131. But the Constitution precludes state and local officials from conditioning the receipt of benefits on the foregoing of any constitutional right, including those guaranteed by the First and Fourteenth Amendments, such as the free exercise of religion.

132. Under the Free Exercise Clause, government policies that are not neutral and not generally applicable must satisfy strict scrutiny in order to avoid invalidation.

133. The OPI's and the District's policy and practice of barring only religious, private schools from the IDEA tuition-assistance program is not neutral or generally applicable. They clearly target only religiously motivated, special educational services for exclusion on their face and have no application to nonreligious families or private schools.

134. No compelling interest justifies the OPI's and the District's policy and practice of universally ousting families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program. Nor are the OPI's and the District's policy and practice narrowly tailored to advance such a compelling interest.

135. The OPI's and the District's policy and practice of barring religious families' and private school's from accessing the IDEA tuition-assistance program singles out religiously-motivated, private actors for discriminatory treatment.

136. By denying IDEA tuition assistance to families who seek a religious education for their children and excluding religious, private schools from participation in the IDEA tuition-assistance program, the OPI and the District have unconstitutionally restricted Plaintiffs' free exercise of religion, a fundamental right guaranteed by the First Amendment.

137. The OPI's and the District's policy and practice, both facially and as applied, constitute an excessive burden on Plaintiffs' free exercise of religion and violate the Free Exercise Clause of the First Amendment, as incorporated against the states by the Fourteenth Amendment.

138. Under the Free Exercise Clause's hybrid rights theory, if a government policy or practice burdens the free exercise of religion and some other constitutionally-protected activity, it violates the First Amendment unless strict scrutiny is satisfied.

139. As explained in Paragraphs 122 to 168, the OPI's and the District's policy and practice of universally ousting families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program burdens Plaintiffs' free exercise of religion, as well as their right to equal protection and freedom of speech.

140. The OPI and the District cannot establish that their policy and practice of expelling families that seek a religious education for their children, like the

Wilson, and religious, private schools, like ABC 123 University, from the IDEA tuition-assistance program serves a compelling state interest, let alone that this across-the-board exclusion is narrowly tailored to serve such an end.

141. Consequently, the OPI's and the District's policy and practice of denying families that seek a religious education for their children and religious, private schools access to the IDEA tuition-assistance program violate, both facially and applied, the First Amendment under a hybrid rights theory.

WHEREFORE, Plaintiffs respectfully pray the Court grant the declaratory and injunctive relief and the request for nominal and compensatory damages set forth hereinafter in the Prayer for Relief.

C. THIRD CAUSE OF ACTION: VIOLATION OF PLAINTIFFS' FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION

142. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1 through 96 of this Verified Complaint.

143. The OPI and the District are required to administer the IDEA tuition assistance program in keeping with the United States Constitution.

144. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the equal protection of the laws.

145. The Equal Protection Clause requires the government to treat all similarly situated groups alike.

146. The OPI's and the District's policy and practice of universally ousting

families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program targets suspect classes—religious persons and schools—for unfavorable treatment in violation of the Equal Protection Clause.

147. There is no distinction between religious and nonreligious families and religious and nonreligious private schools that would justify the OPI and the District treating them differently in administering the IDEA tuition-assistance program.

148. Yet, the OPI and the District exclude families that seek a religious education for their children, like the Wilsons, and religious, private schools, like ABC 123 University, from the IDEA tuition-assistance program, while actively facilitating the participation of their nonreligious counterparts.

149. The OPI's and District's policy and practice of opening the IDEA tuition assistance program only to families seeking a secular education for their children and nonreligious, private schools violates Plaintiffs' fundamental rights, including their right to free speech and the free exercise of religion.

150. When government regulations, like the OPI's and District's policy here, infringe on fundamental rights, discriminatory intent is presumed.

151. In this case, the presumption of discriminatory intent is borne out by the OPI's and the District's facial discrimination against Plaintiffs' religious educational practices, which evinces a clear discriminatory intent.

152. The OPI and the District lack either a rational or compelling state interest for treating Plaintiffs in a disparate manner than their nonreligious counterparts.

153. Banning the participation of religious, private schools in the IDEA tuition-assistance program without any consideration of their educational merit fails to satisfy rational basis review, let alone strict scrutiny.

154. The OPI's and the District's decision to expel families who enroll their children in religious, private schools, like the Wilsons, and private schools that provide educational services from a religious perspective, like ABC 123 University, from the IDEA tuition-assistance program is also not narrowly tailored, as restricting Plaintiffs' religious, educational activities is unrelated to any legitimate government interest.

155. The OPI's and the District's policy and practice of universally ousting families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program thus violate, both facially and as applied, Plaintiffs' right to equal protection of the laws, as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray the Court grant the declaratory and injunctive relief and the request for nominal and compensatory damages set forth hereinafter in the Prayer for Relief.

D. FOURTH CAUSE OF ACTION: VIOLATION OF PLAINTIFFS' FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH

156. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1 through 96 of this Verified Complaint.

157. The OPI and the District are required to administer the IDEA tuition-assistance program in keeping with the United States Constitution.

158. The First Amendment to the United States Constitution, as incorporated against the states by the Fourteenth Amendment to the United States Constitution, guarantees Plaintiffs the right to freedom of speech.

159. Religion provides a specific perspective or standpoint from which a variety of subjects may be discussed and considered.

160. ABC 123's provision of a religious preschool education, including Bible stories, prayer, and religious songs, and the Wilsons' pursuit of this education, which entails N.W. receiving religious information and participating in religious speech, is activity protected by the Free Speech Clause of the First Amendment.

161. Although the OPI and the District allow nonreligious families and private schools to participate in the IDEA tuition-assistance program who engage in secular expression, they have prohibited religious families and private schools, like the Wilsons and ABC 123 University, who engage in religious speech from participating on equal terms.

162. The OPI's and the District's unequal treatment of Plaintiffs' expression

constitutes impermissible viewpoint discrimination against the Wilsons' and ABC 123 University's religious point of view.

163. Viewpoint discrimination, including the OPI's and the District's policy and practice of universally ousting families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program, while allowing their nonreligious counterparts to participate, is unconstitutional in any type of government forum.

164. The OPI's and the District's policy and practice of forbidding families that seek a religious education for their children, like the Wilsons, and religious, private schools, like ABC 123 University, from participating in the IDEA tuition-assistance program is viewpoint-based on its face, due to its censorship of only religious expression.

165. By forbidding families that seek a religious education for their children and religious, private schools from participating in the IDEA tuition-assistance program, the OPI and the District have chilled, deterred, and restricted Plaintiffs from engaging in religious speech.

166. The OPI and the District do not have a compelling justification for precluding religious expression within the IDEA tuition-assistance program.

167. Nor can the District and the OPI justify such an across-the-board prohibition on religious expression as a measure narrowly tailored to serve a compelling

interest, particularly as they allow all points of view related to secular educational methods in the IDEA tuition-assistance forum.

168. The OPI's and the District's policy and practice of excluding religious points of view from the IDEA tuition-assistance program accordingly violate, both facially and as applied, Plaintiffs' right to freedom of expression, which is guaranteed by the First Amendment's Free Speech Clause, as incorporated against the states by the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully pray the Court grant the declaratory and injunctive relief and the request for nominal and compensatory damages set forth hereinafter in the Prayer for Relief.

E. FIFTH CAUSE OF ACTION: VIOLATION OF THE ESTABLISHMENT CLAUSE

169. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1 through 96 of this Verified Complaint.

170. The OPI and the District are required to administer the IDEA tuition-assistance program in keeping with the United States Constitution.

171. The First Amendment to the United States Constitution, as incorporated against the states by the Fourteenth Amendment to the United States Constitution, contains the Establishment Clause.

172. The Establishment Clause requires neutrality toward religion and prevents state actors from evincing a bias or hostility toward religion.

173. The OPI's and the District's policy and practice of universally ousting families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program, after years of allowing them to participate on equal terms with their nonreligious counterparts, evinces a clear bias or hostility toward religion.

174. By allowing only families who enroll their children in nonreligious, private schools and private schools that offer a nonreligious educational program to participate in the IDEA tuition-assistance program, the OPI and the District therefore violated the Establishment Clause.

175. Moreover, the Establishment Clause does not bar public funds becoming available to religious schools, like ABC 123 University, as a result of the genuinely private choices of individual families, like the Wilsons' decision to enroll N.W. in ABC 123 University here.

176. Under the IDEA tuition-assistance program, local education agencies, like the District, apply the IDEA's religiously-neutral criteria to determine what available private schools would provide IDEA-eligible students with an appropriate educational placement.

177. The District applied the IDEA's religiously-neutral criteria here and determined that any of the three private preschools in the Columbus, Montana area could serve as an appropriate educational placement for N.W.

178. The Wilsons and the Cooperative subsequently agreed to place N.W. at ABC 123 University based on the Wilsons' preference that N.W. receive a religious, preschool education.

179. Thus, N.W.'s tuition-assistance funding made its way to ABC 123 University as a result of the Wilsons' private preference, not any form of governmental preference for religion.

180. At the time N.W.'s IEP and Amended IEP were mutually agreed upon, the Cooperative would have fully covered N.W.'s tuition at any of the three private, preschools in the Columbus, Montana area.

181. Because there is no financial incentive for families, like the Wilsons, to choose a religious, private school, like ABC 123 University, over a nonreligious one, a religious, private school's receipt of federal IDEA tuition-assistance funds cannot be attributed to government decisionmaking.

182. Allowing families that seek a religious education for their children and religious, private schools to participate in the IDEA tuition-assistance program on an equal basis with their nonreligious counterparts thus does not violate the Establishment Clause by favoring religion.

183. Instead, the IDEA tuition-assistance program is intended to distribute benefits neutrally to any child with a qualifying learning disability without regard to the religious or nonreligious nature of the school the child attends.

184. By offering a neutral IDEA tuition-assistance service as part of an educational program that is in no way skewed towards religion, the OPI and the District would not favor religion in violation of the Establishment Clause.

185. The OPI ostensibly adopted its current policy and practice of expelling families that seek a religious education for their children and religious, private schools from participation in the IDEA tuition-assistance program to comply with 34 C.F.R. §§ 76.532 & 76.658. But the United States Department of Education implemented § 76.532 and related regulations merely to comply with constitutional requirements and has interpreted them as being coextensive with the Establishment Clause.

186. Allowing families that seek a religious education for their children and religious, private schools to participate in the IDEA tuition-assistance program does not violate the Establishment Clause because any benefit religious schools, like ABC 123 University, receive is attributable to the decisions of private families, like the Wilsons, not to the government.

187. Furthermore, there is no basis for applying § 76.658 in this case because it is unquestionable that the IDEA funds the Cooperative used to pay N.W.'s tuition at ABC 123 University, as established by N.W.'s IEP and Amended IEP, were used to meet her individual educational needs, not those of the school or other students.

188. In addition to the fact that 34 C.F.R. §§ 76.532 and 76.658 do not apply

here, interpreting them to uniquely exclude families that seek a religious education for their children, like the Wilsons, and religious, private schools, like ABC 123 University, from participation in the IDEA tuition-assistance program would violate the First and Fourteenth Amendments to the United States Constitution.

189. The OPI and the District lack any government interest, compelling or otherwise, that might justify expelling families that seek a religious education for their children, like the Wilsons, and religious, private schools, like ABC 123 University, from the IDEA tuition-assistance program.

190. Moreover, an all-encompassing removal of families seeking a religious education for their children and religious, private schools from the IDEA tuition-assistance program is not narrowly tailored to promote any compelling state interest.

191. The OPI's and the District's policy and practice of universally ousting families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program thus violates the Establishment Clause of the First Amendment, as incorporated against the states by the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully pray the Court grant the declaratory and injunctive relief and the request for nominal and compensatory damages set forth hereinafter in the Prayer for Relief.

F. SIXTH CAUSE OF ACTION: VIOLATION OF PLAINTIFFS' RIGHTS UNDER THE MONTANA CONSTITUTION

192. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1 through 96 of this Verified Complaint.

193. The OPI and the District are required to administer the IDEA tuition-assistance program in keeping with the Constitution of the State of Montana.

194. Article II, Sections 4, 5, & 7 of the Montana Constitution guarantees Plaintiffs the right to individual dignity or equal protection, freedom of religion, and freedom of speech and expression.

195. For the reasons explained above in Paragraphs 122 to 191, the OPI's and the District's policy and practice of universally ousting families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program unconstitutionally infringes Plaintiffs' rights under the Montana Constitution to individual dignity (equal protection), freedom of religion, and freedom of speech and expression.

196. Neither the OPI nor the District possesses a compelling state interest that might justify discriminating against families that seek a religious education for their children, like the Wilsons, and religious, private schools, like ABC 123 University, by excluding them from participation in the IDEA tuition-assistance program on an equal basis with their nonreligious counterparts.

197. The OPI's and the District's policy and practice of universally ousting

families that seek, and schools that provide, a religious education from the IDEA tuition-assistance program is also not narrowly tailored to promote a compelling state interest.

198. The OPI ostensibly adopted its current policy and practice of forbidding the participation of families that seek a religious education for their children and religious, private schools in the IDEA tuition-assistance program to comply with Article X, Section 6 of the Montana Constitution.

199. Article X, Section 6 prohibits state and local entities from making direct or indirect payments of public funds for any sectarian purpose or to aid any church or school controlled in whole or in part by any church, sect, or denomination. But Article X, Section 6(2) explicitly states that this prohibition does “not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.”

200. Because the federal government provides IDEA tuition funds to the State of Montana for the express purpose of providing preschoolers with learning disabilities a non-public education where no public program exists, Article X, Section 6 of the Montana Constitution does not apply in the present case.

201. Furthermore, ABC 123 University, the private, religious school at issue in this case, is owned and operated by Ms. Martinez-Howell, not a church, sect, or religious denomination.

202. In addition to the fact that Article X, Section 6 does not apply here, uniquely applying it to exclude families that seek a religious education for their children, like the Wilsons, and religious, private schools, like ABC 123 University, from participation in the IDEA tuition-assistance program would violate the First and Fourteenth Amendments to the United States Constitution and would thus be void under the Supremacy Clause.

WHEREFORE, Plaintiffs respectfully pray the Court grant the declaratory and injunctive relief and the request for nominal and compensatory damages set forth hereinafter in the Prayer for Relief.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for relief as follows:

- a. That this Court immediately enter a stay put order requiring the District to resume paying N.W.'s tuition costs at ABC 123 University using federal IDEA funds during the pendency of this lawsuit and any subsequent appeal;
- b. That this Court issue a Preliminary Injunction (1) restraining the OPI and the District, its officers, agents, employees, and all other persons acting in active concert with it from enforcing the policy and practice challenged herein that infringe upon Plaintiffs' and similarly situated persons' constitutional rights by excluding them from the IDEA

tuition-assistance program based on the exercise of their religious faith, and (2) immediately allowing Plaintiffs and those similarly situated to them to participate in the IDEA tuition-assistance program on an equal basis with their nonreligious counterparts;

- c. That this Court conclude that the OPI's and the District's unilateral amendment of N.W.'s Amended IEP by refusing to continue paying her tuition at ABC 123 University using federal IDEA funds denied the Wilsons' their statutory right to a FAPE;
- d. That this Court conclude that the OPI's and the District's unilateral amendment of N.W.'s Amended IEP by refusing to continue paying her tuition at ABC 123 University using federal IDEA funds violated the Wilsons' procedural rights under the IDEA in a harmful manner;
- e. That this Court uphold the validity of N.W.'s Amended IEP and order the OPI and the District to resume paying N.W.'s tuition at ABC 123 University using federal IDEA funds;
- f. That this Court order the OPI and the District to use federal IDEA funds to reimburse the Wilsons for the costs they have incurred in paying N.W.'s tuition at ABC 123 University;
- g. That this Court issue a Permanent Injunction (1) restraining the OPI and the District, its officers, agents, employees, and all other persons

acting in active concert with it from enforcing the policy and practice challenged herein that infringe upon Plaintiffs' and similarly situated persons' constitutional rights by excluding them from the IDEA tuition-assistance program based on the exercise of their religious faith, and (2) allowing Plaintiffs and those similarly situated to them to participate in the IDEA tuition-assistance program on an equal basis with their nonreligious counterparts;

- h. That this Court issue a Declaratory Judgment declaring the OPI's and the District's policy and practice of excluding families that seek a religious education for their children and religious, private schools from participation in the IDEA tuition-assistance program unconstitutional under the First and Fourteenth Amendments to the United States Constitution;
- i. That this Court issue a Declaratory Judgment declaring the OPI's and the District's policy and practice of excluding families that seek a religious education for their children and religious, private schools from participation in the IDEA tuition-assistance program unconstitutional under Article II, Sections 4, 5, & 7 of the Montana Constitution;
- j. That this Court adjudge, decree, and declare the rights and other legal

relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of a final judgment;

- k. That this court retain jurisdiction of this matter for the purpose of enforcing any Orders;
- l. That this Court award Plaintiffs the costs and expenses incurred in this action and the state administrative process, including a reasonable award of attorney's fees, in accordance with 20 U.S.C. § 1415(i)(3)(B) and 42 U.S.C. § 1988.
- m. That this Court award nominal and compensatory damages to Plaintiffs for the violation of their constitutional rights;
- n. That this Court issue the requested injunctive relief without a condition of bond or other security being required of Plaintiffs; and
- o. That this Court grant such other and further relief as the Court deems equitable and just under the circumstances.

DATED this 21st day of March, 2013.

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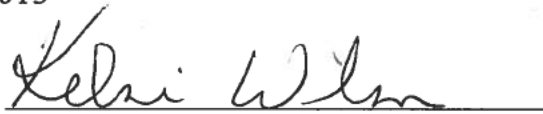
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VERIFICATION

I, Kelsi Wilson, a citizen of the United States and a resident of the State of Montana, have read the foregoing Verified Complaint and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing as related to the Wilson Plaintiffs is true and correct.

Executed this 18th day of March, 2013

A handwritten signature in cursive script that reads "Kelsi Wilson". The signature is written in black ink and is positioned above a horizontal line.

Kelsi Wilson

Individually and on behalf of her daughter N.W., a minor

VERIFICATION

I, Sandra Martinez-Howell, a citizen of the United States and a resident of the State of Montana, have read the foregoing Verified Complaint and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing as related to Plaintiff ABC 123 University is true and correct.

Executed this 20th day of March, 2013



Sandra Martinez-Howell
On behalf of ABC 123 University as
its sole proprietor