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LEGAL PROCESS #7

1 **Richard D. Ackerman, Esq. (171900)**
2 **LIVELY, ACKERMAN & CODY**
3 **41690 Enterprise Circle North, Suite 200M**
4 **Temecula, CA 92590**
5 **(909) 308-6454 Tel.**
6 **(909) 308-6453 Fax**
7 **Professora@aol.com**

8 **Scott D. Lively, Esq. (203081)**
9 **LIVELY, ACKERMAN & CODY**
10 **550 Sunrise Boulevard, Suite H4**
11 **Fair Oaks, CA 95628**
12 **(916) 965-8925 Tel.**
13 **(916) 965-8931 fax.**
14 **Lively@AbidingTruth.com**

15 Attorneys for Plaintiffs,
16 **LEILA J. LEVI, LEVI CLANCY, a minor**
17 **by and through his guardian ad litem, LEILA J. LEVI**

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **IN AND FOR THE COUNTY OF SACRAMENTO**

20 **LEILA J. LEVI, LEVI M. CLANCY, a minor,**
21 **by and through his guardian ad litem, LEILA**
22 **J. LEVI,**

23 **Plaintiffs/Petitioners,**

24 **vs.**

25 **JACK O'CONNELL, in his official capacity**
26 **as Superintendent of Education for the State**
27 **of California, CALIFORNIA DEPARTMENT**
28 **OF EDUCATION, and DOES 1 through 10,**
29 **Inclusive,**

30 **Defendants/Respondents.**

CASE NO. 04AS00459

COMPLAINT FOR
DECLARATORY RELIEF
and/or for WRIT OF MANDATE;
DAMAGES FOR VIOLATION
OF CIVIL RIGHTS

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31 **Plaintiffs and Petitioners hereby allege as follows:**

- 32 1. The obligations raised by this Complaint are to be performed by California state officials
33 in the City of Sacramento, County of Sacramento, State of California. As such,
34 jurisdiction and venue are appropriate herein.
35 2. Plaintiff LEVI CLANCY is a minor child, having been born on October 12, 1990. He

36 1.

37 **COMPLAINT FOR DECLARATORY & OTHER RELIEF (Civil Rights Violations)**

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is of the age of mandatory school attendance. If he fails to attend school, he is a truant by law.

3. Plaintiff LEILA J. LEVI, is the mother of Plaintiff LEVI CLANCY and is responsible for ensuring that she and her son comply with all laws concerning mandatory school attendance within the State of California.

4. Defendant JACK O'CONNELL is the duly elected Superintendent of Public Instruction for the STATE OF CALIFORNIA DEPARTMENT OF EDUCATION. He is personally responsible for ensuring that all laws concerning the funding of public instruction and the provision of a free education for children of mandatory-attendance age. As alleged below, said Defendant is failing to provide a free, equal, and suitable education for Plaintiff LEVI CLANCY, and therefore placing him and his mother in jeopardy of law for failure to attend or cause attendance at school.

5. Defendant CALIFORNIA DEPARTMENT OF EDUCATION is a duly formed administrative agency responsible for provision of public instruction at California's state-operated kindergarten through 12th grade schools. JACK O'CONNELL is the chief executive officer of this agency and is responsible for its day to day operations.

6. DOES 1 through 10 are other governmental officials who are personally responsible for ensuring that a free and equal educational opportunity is provided for all children of mandatory-attendance age in the STATE OF CALIFORNIA. The names and capacities of these persons are not reasonably known or ascertainable to Plaintiffs/Petitioners at this time. Upon discovery of the same, this complaint will be amended accordingly.

FIRST CAUSE OF ACTION

(For Declaratory Relief and/or Writ of Mandate)

7. Plaintiffs/Petitioners hereby incorporate Paragraphs 1 through 6 as though fully set forth herein. Moreover, the contents of the Petition for Appointment of Guardian Ad Litem are also incorporated by reference herein as though fully set forth.

- 1 8. There exists an actual controversy between the parties as to their rights and obligations
2 to each other under the law.
- 3 9. The controversy between the parties cannot be resolved without judicial intervention.
- 4 10. LEVI CLANCY is a highly gifted child who is 13 years of age. He is of the mandatory
5 attendance age for minors under the age of 16. If he does not attend school, he is a truant
6 under law. *California Education Code* § 48403. CLANCY cannot attend a traditional K-
7 12 school because the schools operated by the CDE, and CLANCY's local district, are ill-
8 equipped and unsuitable for highly gifted children and will actually cause more harm to
9 him than if he simply did not attend.
- 10 11. In 2000, at 9 years of age, CLANCY passed the California High School Proficiency exam.
11 He has been attending Santa Monica College since he was 7.
- 12 12. In January 2004, CLANCY began attending the University of California at Los Angeles
13 (UCLA). He is performing well at the school.
- 14 13. LEILA LEVI is a single mother and single income earner in her household. She bears
15 exclusive responsibility in terms of providing for the health and general welfare of her son
16 LEVI CLANCY. She cannot afford to continue paying for a UCLA education.
- 17 14. The Defendants are not paying for the education of Plaintiff LEVI CLANCY as required
18 by law. California Constitution, Article IX, Section 5, requires that he be provided with
19 a free education. Defendants have a ministerial duty to provide an adequate, fair and
20 equal education to Plaintiff LEVI CLANCY.
- 21 15. CLANCY has a fundamental constitutional interest in receiving an education that is non-
22 discriminatory and provides for his individualized needs. UCLA is capable of providing
23 this education for him. However, neither he nor his mother can afford to pay for this
24 education. Defendants have no ample means of providing an education for highly gifted
25 children as Defendants' state-run educational system is designed to appeal only to the
26 highest common denominator of students, and does not provide for the unique needs of

1 children who want to learn and are highly gifted.

2 16. CLANCY is subject to the provisions of the *California Education Code*, which set forth
3 compulsory full-time education requirements for children his age. If CLANCY is unable
4 to attend a university appropriate to his learning needs, he and his mother will be forced
5 to violate the law and will continue to be deprived of their rights without sufficient
6 process of law. LEVI is required, by law, to place her child in full-time education.
7 *California Education Code* § 48200, et seq. Plaintiffs do not have a plain, speedy and
8 adequate remedy at law that would restore his right to receive a free and equal education
9 as guaranteed by the California Constitution.

10 **SECOND CAUSE OF ACTION**

11 **(Violation of California Equal Protection Clause)**

12 17. The allegations stated above in paragraphs 1 through 16, inclusive, are incorporated by
13 this reference as if set forth in full.

14 18. The truancy statutes, the failure to provide an adequate education suited to the needs of
15 gifted children, and the overall failure of California schools to meet the needs of gifted
16 children unfairly, unequally, and unreasonably singles out plaintiff and others similarly
17 situated and requires them to shoulder the burden of finding a suitable education that will
18 meet their individualized needs. For this reason, the statute violates plaintiff's right to the
19 equal protection of the laws, as guaranteed and protected by the Article I, section 7 of the
20 California Constitution.

21 19. Education is a fundamental right in the State of California.

22 20. There is not a compelling state interest that would justify the failure to provide Plaintiff
23 with an education that meets his intellectual and developmental needs.

24 21. Any interest that the Defendants do have has not been achieved through narrowly tailored
25 means.

26 22. Plaintiff has been damaged as a result of the actions of the Defendants, and each of them.

1 **THIRD CAUSE OF ACTION**

2 **(Damages Under 42 United States Code section 1983)**

3 23. The allegations stated above in paragraphs 1 through 22, inclusive, are incorporated by
4 this reference as if set forth in full.

5 24. Defendants are acting under the color of state law, and are depriving plaintiff of his
6 federal constitutional right to the equal protection of the laws in that they have denied him
7 a fair and equal education under law.

8 25. As a direct and proximate result of defendant's actions, plaintiff has suffered substantial
9 damages, including, but not limited to the costs associated with seeking an education from
10 UCLA.

11 26. The precise amount of plaintiff's damages presently is unknown, but plaintiff is informed
12 and believes, and based on such information and belief alleges, that his damages are in
13 excess of the jurisdictional minimum established for this court. Plaintiff will amend this
14 complaint to state the true nature and extent of his damages once they are ascertained with
15 particularity.

16 WHEREFORE, Plaintiffs pray as follows:

- 17 A. For a writ of mandate compelling Defendants to provide Plaintiff LEVI CLANCY with
18 a fair, equal, and funded education suited to his personal needs;
- 19 B. For declaratory relief setting forth the rights and obligations of the parties to this case;
- 20 C. For general damages;
- 21 D. For special damages, including, but not limited to, the expenses associated with Plaintiff
22 CLANCY's education at UCLA and Santa Monica College;
- 23 E. For attorneys' fees pursuant to 42 U.S.C. § 1983, 1988;
- 24 F. For costs of suit;
- 25 G. For any and all other relief as the Court may deem appropriate.

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Respectfully Submitted:

DATED :Feb 4, 2004

LIVELY, ACKERMAN & CODY



RICHARD D. ACKERMAN, ESQ.,
Attorneys for Plaintiffs/Petitioners,
LEILA J. LEVI, LEVI M. CLANCY.

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Richard D. Ackerman, LIVELY, ACKERMAN & CODY (171900) 41690 Enterprise Circle North, Suite 200M Temecula, CA 92590 TELEPHONE NO: 909-308-6454 FAX NO: 909-308-6453 ATTORNEY FOR (Name): LEILA J. LEVI, LEVI M. CLANCY		FOR COURT USE ONLY FILED FEB - 9 AM 10:00 LEGAL PROCESS #
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 Ninth Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME: Central		
CASE NAME: LEVY v. O'CONNELL		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filled with first appearance by defendant (Cal. Rules of Court, rule 1811)	CASE NUMBER: 04AS00458 JUDGE: DEPT.:

All five (5) items below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) Non-P/PI/D/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Detamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PI/D/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input checked="" type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court
 c. Substantial amount of documentary evidence f. Substantial post-judgment judicial supervision

3. Type of remedies sought (check all that apply):
 a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify):

5. This case is is not a class action suit.

Date: February 4, 2004

Richard D. Ackerman, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

JACK O'CONNELL, in his official capacity as Superintendent of Education for the State of California, CALIFORNIA DEPARTMENT OF EDUCATION, and DOES 1 through 10, Inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LEILA J. LEVI, LEVI M. CLANCY, a minor, by and through his guardian ad litem, LEILA J. LEVI

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Sacramento Superior Court
720 Ninth Street
Sacramento, CA 95814

CASE NUMBER:
(Número del Caso):

04AS00459

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Richard D. Ackerman, LIVELY, ACKERMAN & CODY
41690 Enterprise Circle North, Suite 200M, Temecula, CA 92590 (909) 308-6454

DATE:
(Fecha)

Clerk, by _____
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

NOTICE TO THE PERSON SERVED: You are served

(SEAL)

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

- 3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

- 4. by personal delivery on (date):