

1 Richard D. Ackerman, Esq. (171900)
2 LIVELY & ACKERMAN
3 A Partnership of Christian Attorneys
4 41690 Enterprise Circle North, Ste. 210
5 Temecula, CA 92590
6 (951) 308-6454 Tel.
7 (951) 308-6453 Fax.
8 Professora@aol.com

9 Attorney for Plaintiffs,
10 LEILA J. LEVI, LEVI CLANCY, a minor
11 by and through his guardian ad litem, LEILA J. LEVI
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14 **SUPERIOR COURT OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SACRAMENTO**
16

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

20 Plaintiffs/Petitioners,)

21 vs.)

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

27 Defendants/Respondents.)
28

Case No. 04AS00459

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

Plaintiffs and Petitioners hereby allege as follows:

1. The obligations raised by this Complaint are and were to be performed by California state officials in the City of Sacramento, County of Sacramento, State of California. As such, jurisdiction and venue are appropriate herein.
2. Plaintiff LEVI CLANCY is a minor child, having been born on October 12, 1990. He is of the age of mandatory school attendance. If he fails to attend school, he is a truant by law.

1 3. Plaintiff LEILA J. LEVI, is the mother of Plaintiff LEVI CLANCY and is responsible
2 for ensuring that she and her son comply with all laws concerning mandatory school
3 attendance within the State of California. LEVI CLANCY is under the age of 16.

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

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

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

21 **FIRST CAUSE OF ACTION**

22 **(For Declaratory Relief and/or Writ of Mandate)**

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

26 8. There exists an actual controversy between the parties as and their rights and
27 obligations to each other under the law. Specifically there is a controversy as to
28 whether the minor plaintiff is entitled to an education from Defendants that is

1 particularly suited to his specific psycho-social and academic needs.

2 9. The controversy between the parties cannot be resolved without judicial intervention
3 and there is no known legal authority that addresses the issues in this case.

4 10. LEVICLANCY is a highly gifted child who is 14 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
6 truant under law. *California Education Code* § 48430. CLANCY cannot attend a
7 traditional K-12 school because the schools operated by the CDE, and CLANCY's
8 local district, are ill-equipped and unsuitable for highly gifted children and will
9 actually cause more harm to him than if he simply did not attend. Specifically, they
10 cannot provide for his specific psycho-social and academic needs. Additionally, he has
11 already completed a standard education within the K-12 academic system currently
12 provided for by CDE.

13 11. In 2000, at 9 years of age, CLANCY passed the California High School Proficiency
14 exam. He has been attending Santa Monica College since he was the 7. As such, no
15 existing secondary school operated by the Defendants will or could accept him as a
16 student, and, even if they did, they would not be able to provide for his specialized
17 needs.

18 12. In January 2004, CLANCY began attending the University of California at Los
19 Angeles (UCLA). He is performing well at the school and his specific psycho-social
20 and academic needs are being adequately met through the education provided for by
21 this institution of higher learning.

22 13. LEILA LEVI is a single mother and single income earner in her household. She bears
23 exclusive responsibility in terms of providing for the health and general welfare of her
24 son LEVI CLANCY. She cannot afford to continue paying for a UCLA education.

25 14. The Defendants are not paying for the education of Plaintiff LEVI CLANCY as
26 required by law. California Constitution, Article IX, Section 5, requires that he be
27 provided with a free education. Defendants have a ministerial duty to provide an
28 adequate, fair and equal education to Plaintiff LEVI CLANCY.

1 15. CLANCY has a fundamental constitutional interest in receiving an education that is
2 nondiscriminatory and provides for his specific individualized needs. UCLA is
3 capable of providing this education for him. However, neither he nor his mother can
4 afford to continue paying for this education. Defendants have no ample means of
5 providing an education for highly gifted children as Defendants' state-run educational
6 system is designed to appeal only to the highest common denominator of students, or
7 to those who have special needs in the sense that they operate with less functionality
8 in some way that other students, and does not provide for the unique needs of children
9 who want to learn and are highly gifted. Presently, the Defendants to provide a form
10 of voucher for special needs of students who cannot be serviced by CDE because of
11 their individual needs. Those with highly specialized needs are provided with the
12 resources that they need in order to complete their term of compulsory education. The
13 plaintiff has highly specialized needs because of his unique condition.

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

23 17. If it is the case that CLANCY is lawfully determined to be a truant under the laws, then
24 declaratory relief is necessary as to the constitutionality of *California Education Code*
25 § 48200, since the statute is overbroad, violates Due Process, violates equal protection,
26 and criminalizes behavior and circumstances that are the direct result of immutable
27 human characteristics. More specifically, application of California's truancy statutes
28 results in unequal application of the law and unequal threat of criminal prosecution

1 inasmuch as Plaintiff is similarly situated with respect to his individual educational
2 needs to students with highly specialized needs (because of a lack of academic skills
3 or functional capacity) who are provided exemptions to the truancy laws. Plaintiff asks
4 as alternative relief that the Court strike down as unconstitutional the entire
5 truancy/compulsory education statutory framework.

6 18. Declaratory relief is necessary in this case to determine what type of education must
7 be provided to the minor plaintiff under the California Constitution until he has passed
8 the age limit for a compulsory and free education suited to his particular needs.
9 Whether the need be for no further education, a college/university education, a
10 voucher, highly specialized instruction provided at the expense of the State, or some
11 other form of services that meet the constitutional obligation to provide Plaintiff with
12 a free and equal education suited to his particular needs under the State and Federal
13 Constitutions is undetermined and poses a controversy herein. The controversy cannot
14 be resolved through the administrative means provided by Defendants and the
15 Guardian Ad Litem has exhausted all available administrative remedies, including, but
16 not limited to, individualized education plan hearings, full and complete hearings
17 before special education boards and agencies, administrative appeals, and informal
18 measures. All administrative remedies are futile or exhausted because they are not
19 designed to provide assistance to anyone but those students lacking in functionality
20 with needs related thereto.

21 19. Plaintiff is not seeking a university education per se'. What he is seeking is a
22 determination as to what education is entitled to from the State of California and a
23 further determination as to whether he is compelled by law to continue attending a
24 secondary school operated by the Defendants. To the extent that a secondary school
25 is appropriate, then a determination as to what the Defendants are compelled to provide
26 through such a school is prayed for. As of this time in Plaintiff's academic life, there
27 has never been made a determination as to how Defendants could provide the
28 education guarantees under the California Constitution, the United States Constitution,

1 the “No Child Left Behind Act,” and the laws and protections that apply.

2 20. There is a justiciable controversy as to whether the minor plaintiff is “disabled” within
3 the meaning of the Individuals With Disabilities Act such that his substantive right to
4 a free appropriate public education, within the meaning of 20 U.S.C. § 1400(c) and
5 34 CFR 300.2(b), has been denied by Defendants while acting under color of law. 20
6 U.S.C. § 1400 and 34 CFR 300.2 confer certain privileges upon the minor plaintiff
7 which cannot be denied in the manner now being exercised by Defendants.
8 Additionally, there exists a related controversy as to whether Plaintiff was excluded
9 from the class of children protected by *California Education Code* § 56000, et seq.

10 21. There is a justiciable controversy as to whether Defendants may stop providing any
11 educational services to a student once they have completed a secondary school
12 curriculum. If so, there is a justiciable controversy as to whether the truancy and
13 compulsory education statutes are inapplicable to students and parents such as
14 Plaintiffs herein.

15 22. If a deprivation of a free and equal education suited to the needs of the minor plaintiff
16 has occurred in this case, there is a justiciable controversy as to whether the
17 Defendants ever provided the procedural safeguards designed to protect his interests
18 as better outlined in *County of Los Angeles v. Smith* (1999) 74 Cal.App.4th 500.
19 Plaintiff was never given full and proper notice by Defendants or their local
20 agencies/agents of the fact that he could be deprived of any funding for his special
21 education needs.

22 23. There exists a justiciable controversy as to whether any administrative processes
23 available to children and parents served by Defendants could ever actually provide a
24 viable remedy to the alleged wrongs set forth above. Plaintiff alleges, as a matter of
25 fact, that the current administrative remedies and procedures offered by Defendants do
26 not provide any potential remedy for plaintiff. Actual relief is unavailable and
27 inadequate because Defendants have no means for assessing or helping students with
28 plaintiff’s specific concerns.

1 **SECOND CAUSE OF ACTION**

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

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

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

12 26. Education is a fundamental right in the State of California guaranteed by its
13 constitution. In this regard, Defendants have failed to develop a proper placement
14 proposal suited to Plaintiff's needs while, at the same, time providing special treatment
15 to other students with highly specialized educational needs.

16 27. There is not a compelling, or even substantial, state interest that would justify the
17 failure to provide Plaintiff with an education that meets his intellectual and
18 developmental needs.

19 28. Any interest that the Defendants do have has not been achieved through narrowly
20 tailored means, or even substantially or rationally related means. The deprivation of
21 rights in this instance was arbitrary, capricious, or done with disregard for the rights,
22 privileges, and immunities of the minor plaintiff.

23 29. Plaintiff has been damaged as a result of the actions of the Defendants, and each of
24 them.

25 30. Plaintiff seeks declaratory relief as to the justiciable controversy created by the facts
26 of this case with regard to whether equal protection has been applied in this case.
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1 **THIRD CAUSE OF ACTION**

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

3 31. The allegations stated above in paragraphs 1 through 29, inclusive, are incorporated
4 by this reference as if set forth in full.

5 32. Federal preemption applies herein inasmuch as administrative remedies exhaustion or
6 other state-imposed strictures on the relief sought by Plaintiff.

7 33. Defendants are acting under the color of state law, and are depriving plaintiff of his
8 federal constitutional right to equal protection of the laws in that they have denied him
9 a fair and equal education under law. Plaintiff has been unlawfully excluded by
10 Defendants from classes of persons who would be entitled to a state-funded education
11 because of highly specialized education needs that place the minor plaintiff at a
12 disadvantage in the regular programs offered by Defendants. As such, Defendants
13 have further deprived, without adequate procedural or substantive protections, the
14 minor plaintiff of privileges, immunities, and rights afforded to him under law.

15 34. Defendants are acting under color or state and federal law with regard to the duty to
16 provide a free and equal education particularly suited to the needs of each child entitled
17 to an education under the California Constitution and United States Constitution, or
18 other laws that recognize and provide such rights, immunities, or privileges to children
19 16 and under.

20 35. Children, similarly situated to Plaintiff with respect to the existence of highly
21 specialized needs, economic status, and age status are being presently provided with
22 funding for their needs through local agencies controlled, funded or operated by the
23 Defendants. Defendants are not providing Plaintiff with the same degree or level of
24 service even though his needs are as high and specialized as the other students who do
25 receive ‘vouchers’ or reimbursement for the provision of specialized needs and
26 services. There is no justifiable excuse or rationale, in fact or law, for providing
27 specialized services and staff to similarly situated students while at the same time
28 denying Plaintiff the same. Plaintiff’s highly gifted status is acting as a disability and

1 Defendants are failing to accommodate his needs as required by Equal Protection
2 theory and those state constitutional provisions which protect disabled persons.

3 36. As a direct and proximate result of defendant's actions, plaintiff has suffered and
4 continues to suffer substantial damages, including, but not limited to the costs
5 associated with seeking an education from UCLA or other institution that is suitable
6 to his specific psycho-social and demographic needs.

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

12 WHEREFORE, Plaintiffs pray as follows:

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

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23 Respectfully submitted:

24 DATED: June 24, 2005

LIVELY, ACKERMAN & CODY

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