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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

STEPHEN L. and LAVERNE L.,)	CIVIL NO. 00-00338 DAE
individually and as Guardians))	
Ad Litem of AARON L., an))	
incompetent adult,)	COMPLAINT IN
)	INTERVENTION
)	
Plaintiffs,)	
)	
v.)	
)	
)	
)	
PAUL LEMAHIEU, in his official))	
capacity as Superintendent of))	
the Hawaii Public Schools;)	
WILLIAM C. RHYNE, in his))	
capacity as former Principal of))	
Molokai High and Intermediate))	
School; SARAH KALANI, in her))	
capacity as former Principal))	

of Molokai High and Intermediate)
School; LINDA PULELOA, in her)
official capacity as Principal)
of Molokai High and Intermediate)
School; and DEPARTMENT OF)
EDUCATION, STATE OF HAWAII,)
)
Defendants.)
_____)

COMPLAINT IN INTERVENTION

Plaintiff-intervenor, the United States of America,
alleges:

1. On May 10, 2000, Steven and LaVerne L., individually and as Guardians Ad Litem of Aaron L., filed suit against the Department of Education of the State of Hawaii, Paul LeMahieu, William C. Rhyne and Linda Puleloa (collectively, "defendants"), for alleged violations of Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794, and the Individuals with Disabilities Education Act, 20 U.S.C. § 1401 et seq.

2. Pursuant to 28 U.S.C. § 2403(a), the United States intervenes in this action to fulfill its statutory obligation to defend the constitutionality of Section 504 and the IDEA.

3. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1343, and of this Complaint in Intervention under 28 U.S.C. § 2403.

4. The Department of Education, State of Hawaii, a defendant in this action, is a recipient of federal financial

assistance for Hawaii's public education programs within the meaning of Section 504. See 29 U.S.C. § 794(a).

5. In their official capacities as state officials, defendants Paul LeMahieu, William C. Rhyne and Linda Puleloa have been responsible, inter alia, for implementing policies concerning the allocation of funds among Hawaii's public schools, during the period encompassed by the plaintiffs' Complaint.

6. On April 3, 2001, the defendants filed a Motion for Partial Summary Judgment, asserting Eleventh Amendment immunity to suit under Section 504 and the IDEA, thereby drawing into question the constitutionality of Acts of Congress affecting the public interest.

6. On April 24, 2001, this Court certified to the Attorney General that, in this action, "the constitutionality of Acts of Congress affecting the public interest has been drawn into question" insofar as the defendants have challenged the constitutionality of Section 504 and the IDEA.

7. Section 504 and the IDEA are appropriate legislation under the Spending Clause. Defendants waived their Eleventh Amendment immunity to suit under Section 504 and the IDEA by accepting federal funds after the enactment of 42 U.S.C. § 2000d-7 and 20 U.S.C. § 1403(a).

8. Section 504 and the IDEA are appropriate legislation to enforce the Equal Protection Clause of the

Fourteenth Amendment. In both statutes, Congress constitutionally has abrogated states' Eleventh Amendment immunity to suit. See 42 U.S.C. § 2000d-7 (abrogating immunity to suit under Section 504); 20 U.S.C. § 1403(a) (same, for suit under the IDEA).

WHEREFORE, the United States prays that the Court enter an order that:

A. Declares that the defendants waived any Eleventh Amendment immunity to suit under Section 504 and the IDEA by accepting federal financial assistance after the enactment of 42 U.S.C. § 2000d-7 and 20 U.S.C. § 1403;

B. Declares that Congress' abrogation of States' Eleventh Amendment immunity to private suit in federal court under Section 504 and the IDEA is valid; and

C. Denies Defendants' Motion for Partial Summary Judgment to the extent that the motion challenges the constitutionality of Section 504 and the IDEA.

DATED: May 17, 2001, at Honolulu, Hawaii.

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