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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

SHARON and DERRICK DeBOOM,
MARJORIE APODACA, and MARGARET
and DANIEL HAMILTON,

Plaintiffs,

v.

TERESA BERGESON, in her official capacity
as Superintendent of Public Instruction for the
State of Washington,

Defendant.

No. _____

PLAINTIFFS' CIVIL RIGHTS
COMPLAINT UNDER
42 U.S.C. § 1983

INTRODUCTION

1. This is a civil rights lawsuit to vindicate the Free Exercise, Equal Protection, Establishment Clause, and Due Process rights of children with disabilities whose parents choose to send them to religious schools. The Superintendent of Public Instruction for the State of Washington has promulgated regulations that discriminate against such students by requiring them to travel off-site to some "nonsectarian" location in order to access special education services, including equipment, under the federal Individuals with Disabilities Education Act

1 (IDEA). The regulations nonetheless allow children with disabilities whose parents choose to
2 send them to *non*-religious schools—whether public or private—to receive IDEA services and
3 equipment on-site at their respective schools.
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5 Washington’s policy harms children the IDEA requires it to help. Traveling off-site to
6 access special education services is simply impracticable in many, if not most, circumstances.
7 Moreover, because many types of services are required *at the point of learning*, they are
8 effectively useless if the student is required to travel off-site to access them.
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10 Even in those situations where it is technically possible to travel off-site, however, doing
11 so is unduly burdensome for students and their parents. Bouncing back and forth between school
12 and some “nonsectarian” location is incredibly disruptive for children with disabilities, for many
13 of whom structure and consistency is imperative. Being carted off to access services is also
14 stigmatizing for these children, who already face physical or emotional difficulties. And time
15 spent traveling rather than learning results in the children falling even further behind in their
16 academics.
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18 Because traveling off-site is, at best, unduly burdensome and, at worst, impracticable and
19 useless, parents who desire an education at a religious school for their disabled child are forced
20 to make an unpalatable choice: (1) enroll their child in a public or non-religious private school
21 in order to receive special education services on-site, thereby foregoing their right to choose a
22 religious school; or (2) keep their child at the religious school, thereby foregoing the special
23 education services for which the child might otherwise be eligible under the IDEA. In this
24 manner, Washington’s IDEA regulations: (1) condition receipt of a public benefit on the
25 surrender of religious freedom, in violation of the Free Exercise Clause of the First Amendment;
26 (2) treat similarly situated parents and children differently because of religion, in violation of the
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2 Equal Protection Clause of the Fourteenth Amendment; (3) target religion for disfavor, in
3 violation of the Establishment Clause of the First Amendment; and (4) condition receipt of a
4 public benefit on the forbearance of parents' liberty to direct the upbringing and education of
5 their children, in violation of the Due Process Clause of the Fourteenth Amendment.

6
7 **PARTIES, JURISDICTION, AND VENUE**

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9 2. Plaintiffs Sharon and Derrick DeBoom are adult residents of Lynden,
10 Washington, which is in Whatcom County. They are the parents of Michael DeBoom, a
11 fourteen-year-old boy with disabilities whom the Lynden School District has determined to be
12 eligible for special education services under the IDEA. Sharon and Derrick bring this action on
13 their own and Michael's behalf.

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15 3. Plaintiff Marjorie Apodaca is an adult resident of Lynden, Washington, which is
16 in Whatcom County. She is the mother of Rachael Apodaca, a fourteen-year-old girl with
17 disabilities whom the Lynden School District has determined to be eligible for special education
18 services under the IDEA. Marjorie brings this action on her own and Rachael's behalf.

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20 4. Plaintiffs Margaret and Daniel Hamilton are adult residents of Everson,
21 Washington, which is in Whatcom County. They are the parents of Skyler Hamilton, a nine-
22 year-old boy with disabilities whom the Meridian School District has determined to be eligible
23 for special education services under the IDEA. Margaret and Daniel bring this action on their
24 own and Skyler's behalf.

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26 5. Defendant Teresa Bergeson is the Superintendent of Public Instruction for the
27 State of Washington. Her office is located at the Old Capitol Building, P.O. Box 47200,
28 Olympia, WA, 98504. Pursuant to Wash. Rev. Code § 28A.155.090(7), she has the "duty and
authority . . . to . . . [p]romulgate such rules as are necessary to implement part B of the [IDEA]."

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6. Plaintiffs' action, filed pursuant to 42 U.S.C. § 1983, seeks a declaration that Wash. Admin. Code §§ 392-172A-04075(2) and (3) are unconstitutional on their face and as applied to Plaintiffs, as well as an injunction enjoining their enforcement. Under 28 U.S.C. §§ 1331 and 1343(a), this Court possesses jurisdiction over the action.

7. Pursuant to 28 U.S.C. § 1391(b), venue is proper in this Court.

FACTUAL BASES FOR CLAIMS

8. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, is a federal law designed to ensure special education services and improve educational results for all children with disabilities. To that end, it governs how states provide special education and related services to eligible children with disabilities.

9. Part B of the IDEA, 20 U.S.C. §§ 1411–1419, governs the provision of special education and related services for children and youth aged three to twenty-one. Under Part B, the federal government provides grants to the states, which, in turn, make sub-grants to local educational agencies (*e.g.*, local boards of education or schools districts), to assist in providing special education and related services to children with disabilities.

10. For each child with a disability as defined under the IDEA, the local educational agency is obligated to make available a free appropriate public education in conformity with an individualized education program (IEP): a written statement of an educational program for the student that includes, among other things, the special education and related services that the local educational agency will provide to the child if he or she is enrolled in a public school.

11. Local educational agencies, however, must also use a proportionate share of the federal funds received under Part B of the IDEA to provide special education and related services for the group of children with disabilities who are enrolled by their parents in private

1 schools, regardless of whether such schools are religious or non-religious. The IDEA refers to
2 such students as “parentally placed private school children with disabilities” or, simply,
3 “parentally placed private school children.”
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5 12. To that end, each local educational agency, in consultation with representatives of
6 private schools and parents of parentally placed private school children, must undertake an
7 annual “child find” process to determine the number of children with disabilities enrolled by
8 their parents in private, including religious, schools located within the district served by the
9 agency. The child find process must be designed to: obtain an accurate count of parentally
10 placed private school children with disabilities in order to calculate the proportionate share of
11 federal funds the local educational agency is required to spend on such children; and ensure the
12 “equitable participation” of such children in the special education and related services provided
13 by the local educational agency.
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16 13. Also in consultation with representatives of private schools and parents of
17 parentally placed private school children, local educational agencies must designate which
18 children from the group of parentally placed private school children will receive special
19 education and related services.
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21 14. For each parentally placed private school child designated by the local
22 educational agency to receive special education and related services, the local educational
23 agency must develop a services plan: a written statement that describes, among other things, the
24 special education and related services that the local educational agency will provide to that
25 student.
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2 15. The IDEA permits special education and related services to be provided to
3 parentally placed private school children “on the premises of private, including religious,
4 schools, to the extent consistent with law.” 20 U.S.C. § 1412(a)(10)(A)(i)(III).

5 16. The federal regulations implementing the IDEA permit special education and
6 related services to be provided to parentally placed private school children “on the premises of
7 private, including religious, schools, to the extent consistent with law.” 34 C.F.R. § 300.139(a).

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9 17. The United States Supreme Court has held that the Establishment Clause of the
10 United States Constitution permits special education and related services to be provided to
11 parentally placed private school children on the premises of religious schools. *See Zobrest v.*
12 *Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993).

13 18. Congress’s intent is “that local educational agencies should provide direct
14 services for parentally-placed private school students with disabilities . . . on site at their school,
15 unless there is a compelling rationale for . . . off-site services,” because “providing services on
16 site at the private school is more appropriate for the student and less costly in terms of
17 transportation and liability.” H.R. Rep. No. 108-77, at 95 (2003).

18
19 19. The United States Department of Education has advised that, “in the interests of
20 the child, [local educational agencies] should provide services on site at the child’s private
21 school so as not to unduly disrupt the child’s educational experience, unless there is a compelling
22 rationale for these services to be provided off-site.” *See Assistance to States for the Education of*
23 *Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg.
24 46,540, 46,596 (Aug. 14, 2006).

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26 20. Despite the fact that the IDEA, federal regulations, United States Supreme Court
27 precedent, Congressional intent, and guidance from the United States Department of Education
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1 permit and encourage the provision of special education and related services to parentally placed
2 private school children on the premises of religious schools, the State of Washington prohibits it.
3
4 At the same time, Washington allows the provision of special education and related services on
5 the premises of *non*-religious schools, whether public or private.

6 21. Specifically, the Office of the Superintendent of Public Instruction (OSPI) has
7 promulgated the following regulations: “No services, material, or equipment of any nature shall
8 be provided to students on the site of any private school or agency subject to sectarian control or
9 influence,” Wash. Admin Code. § 392-172A-04075(3); “No services, material, or equipment of
10 any nature shall be provided to any private school or agency subject to sectarian (i.e., religious)
11 control or influence,” *id.* § 392-172A-04075(2); and “Equipment and supplies used with students
12 in a private school or agency may be placed on *nonsectarian* private school premises for the
13 period of time necessary for the program,” *id.* § 392-172A-04070(2) (emphasis added).
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16 22. Washington’s purported justification for prohibiting the provision of special
17 education and related services on the premises of religious schools while allowing them on the
18 premises of non-religious schools, whether public or private, is compliance with two provisions
19 of the Washington Constitution: Article IX, section 4, which provides, “All schools maintained
20 or supported wholly or in part by the public funds shall be forever free from sectarian control or
21 influence”; and Article I, section 11, which provides, in relevant part, “No public money or
22 property shall be appropriated for or applied to any religious worship, exercise or instruction, or
23 the support of any religious establishment[.]”
24

25 23. Compliance with Article IX, section 4 and Article I, section 11 of the Washington
26 Constitution is not a compelling, or even legitimate, interest or rationale for prohibiting the
27 provision of special education and related services on the premises of religious schools. In fact,
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1 Washington allows services under other federal programs, such as Title I of the Elementary and
2 Secondary Education Act of 1965, 20 U.S.C. § 6301 *et seq.*, to be provided on the premises of
3 religious schools.
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5 24. By requiring parentally placed private school children enrolled in religious
6 schools to travel off-site to access special education and related services under the IDEA,
7 Washington harms children the IDEA requires it to help.
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9 25. Traveling off-site to some “nonsectarian” location to access special education
10 services is often impracticable, and it renders services that are required at the point of learning
11 effectively useless.
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13 26. Even where it is technically possible, however, traveling off-site to access special
14 education services is substantially burdensome: it is incredibly disruptive for children with
15 disabilities, for whom structure and consistency is imperative; time spent traveling, rather than
16 learning, results in the children’s falling even further behind in their academics; being carted off
17 to access services is stigmatizing for children with disabilities, who already face physical or
18 emotional difficulties; because Washington permits the cost of transporting parentally placed
19 children with disabilities off-site to be paid from the children’s proportionate share of federal
20 IDEA funds, money that should be spent providing special education to these children is instead
21 used as gas money; and time spent at the “nonsectarian” location means less of an education at
22 the religious school that is the parents’ conviction—and right—to provide their children.
23

24 27. Because of these and other problems that prohibiting special education and related
25 services at religious schools presents, many parents simply forego the services for which their
26 disabled child might otherwise be eligible. Many other parents forego their right to educate their
27 child in a religious school and instead enroll the child in a public or non-religious private school,
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1 where he or she can access services on-site. In this regard, Washington's regulations force
2 parents to choose between receipt of a public benefit and their constitutional right to educate
3 their child in a religious school.
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5 *Michael DeBoom*

6 28. Plaintiffs Sharon and Derrick DeBoom are the parents of Michael DeBoom, a
7 fourteen-year-old eighth-grade boy with attention deficit/hyperactivity disorder and generalized
8 anxiety disorder.
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10 29. Michael began receiving special education services under the IDEA in
11 kindergarten, which he attended at a public school in the Lynden School District, and continued
12 to receive them in first grade.

13 30. For his second-grade year, Sharon and Derrick transferred Michael to Lynden
14 Christian School. Sharon and Derrick had religious objections to certain aspects of the public
15 school curriculum, and they felt compelled by their religious convictions to have Michael
16 educated at a Christian school, consistent with their religious beliefs. They chose Lynden
17 Christian because it aspires to present Christ in all subject matters it teaches and views itself as
18 an extension of the Christian home, designed to reinforce the faith and values of parents.
19

20 31. Michael did not receive IDEA services during his second, third-, fourth-, or fifth-
21 grade years at Lynden Christian. He did, however, receive math instruction under Title I of the
22 Elementary and Secondary Education Act, 20 U.S.C. § 6301 *et seq.* This instruction was
23 provided by the Lynden School District, initially in a bus parked on the campus of Lynden
24 Christian and, later, in a classroom on the campus of Lynden Christian.
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2 32. During Michael's fifth-grade year, Lynden Christian's Director of Special
3 Education Services, Gladys Senti, suggested to Sharon and Derrick that they pursue special
4 education services under the IDEA for Michael, which Sharon and Derrick decided to do.

5 33. In referring Michael to the Lynden School District for evaluation, Mrs. Senti
6 expressed concerns with, among other things, Michael's low academic performance, withdrawal,
7 difficulty with higher level thinking skills, and slow academic progress.

8
9 34. Michael was evaluated by the Lynden School District in May 2006. As part of
10 the evaluation, he was seen by a medical doctor who diagnosed him with attention deficit
11 hyperactivity disorder, depression, and anxiety disorder. The evaluation's assessment of
12 Michael's social, emotional, and adaptive skills also identified problems with attention,
13 withdrawal, and anxiety, and the assessment of his motor skills identified issues with visual-
14 motor skills, including printing.

15
16 35. The evaluation team determined that Michael was eligible for special education
17 services under the IDEA. It concluded that his "health impairments hinder the acquisition of
18 academic skills at the same rate as . . . his grade peers" and that he "does not have prerequisite
19 academic skills to use grade level education curriculum materials successfully."

20
21 36. The evaluation team recommended that Michael receive special education
22 services in math, behavior/social skills, written expression, and reading. Regarding his motor
23 skills issues, the evaluation observed that "keyboarding . . . should serve [Michael] better than
24 printing" and, to that end, recommended consideration of an Alphasmart computer or other
25 device to assist him with writing.
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2 37. In light of Michael's evaluation, Sharon met with Lynden School District's
3 Special Education Director, Steve Dahl, and Gladys Senti in the spring of 2007, during
4 Michael's sixth-grade year, to discuss what services Michael could receive under the IDEA.

5 38. Mr. Dahl initially offered Sharon and Derrick an IEP. Sharon and Derrick
6 rejected the IEP offer, however, because it would have required Michael to enroll in public
7 school and their religious conviction was to educate Michael at a Christian school. Accordingly,
8 they requested a services plan under which Michael could remain at Lynden Christian.
9

10 39. Mr. Dahl determined that, with money available under the IDEA's proportionate
11 share requirement, Lynden School District could offer Michael a services plan that would
12 provide: a paraeducator to work with Michael and his teachers at Lynden Christian to modify
13 curriculum, lesson plans, assignments, and tests; and an Alphasmart computer or similar
14 electronic device to assist with note- and test-taking at Lynden Christian.
15

16 40. Around the time Mr. Dahl was pursuing the provision of these services for
17 Michael, however, OSPI announced that it was promulgating new regulations governing special
18 education in Washington. The proposed regulations reiterated earlier Washington policy in
19 prohibiting the provision of special education and related services on-site at religious schools.
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21 41. On May 15, 2007, during the rulemaking process, Sharon submitted public
22 comments to OSPI objecting to this ban and explaining how discriminatory and harmful it was to
23 bar the provision of special education services on-site at religious schools.

24 42. On June 10, 2007, as the rulemaking process continued, Mr. Dahl also submitted
25 public comments to OSPI. His comments emphasized how irrational, unnecessary, and harmful
26 it was to prohibit the provision of special education services under the IDEA on-site at religious
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1 schools, especially given the fact that OSPI *allows* the provision of services under Title I of the
2 Elementary and Secondary Education Act of 1965 on-site at religious schools.

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4 43. In spite of the comments submitted by Sharon and Mr. Dahl, OSPI adopted the
5 current IDEA regulations, including Wash. Admin Code. § 392-172A-04075(2) & (3), which
6 prohibit the provision of special education services on-site at religious schools.

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8 44. After Washington's IDEA regulations took effect in the summer of 2007, Mr.
9 Dahl—appropriately committed to the welfare of *all* children with disabilities in Lynden School
10 District, including those enrolled by their parents at Lynden Christian—sought legal counsel
11 from the school district's attorney to determine whether there was any way he could legally
12 provide special education and related services on-site at Lynden Christian.

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14 45. Ultimately, Mr. Dahl, the Lynden School District's attorney, and the Lynden
15 School Board determined that, because of Washington's IDEA regulations, there was simply no
16 way the district could provide services—including Michael's paraeducator and Alphasmart—on-
17 site at Lynden Christian.

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19 46. The only way Michael could receive the services Mr. Dahl wanted to provide him
20 was if he and his teachers were able and willing to travel off-site to a nonsectarian location—a
21 public school—to work with the paraeducator and access the Alphasmart there. Specifically,
22 Michael's teachers would have to travel to the public school once per week; Michael, three times
23 per week.

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25 47. Traveling to public school and back to Lynden Christian each week would have
26 been impracticable for Michael's teachers, who could not leave their own classes at Lynden
27 Christian in order to accompany Michael to a public school.

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2 48. Being required to travel to a public school to access an Alphasmart or similar
3 device that Michael needed for note- and test-taking would have rendered the device useless.
4 Michael required the device at the point of learning—that is, in the classroom at Lynden
5 Christian.

6 49. Traveling to public school and back to Lynden Christian three times per week
7 would have been unduly disruptive and burdensome for Michael, whose May 2006 evaluation
8 emphasized that he “[b]enefits from routine.”
9

10 50. Being removed from Lynden Christian and transported to public school three
11 times per week would have been stigmatizing and stressful for Michael, whose May 2006
12 evaluation identified his problems with anxiety and withdrawal.

13 51. Time spent traveling rather than learning and interacting with classmates would
14 have interfered with Michael’s educational tasks and thereby detracted from the educational
15 benefit he would receive by continuing to attend school full-time at Lynden Christian.
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17 52. Time spent at a public school rather than Lynden Christian would have detracted
18 from the education at the religious school that was Sharon and Derrick’s conviction—and
19 right—to provide Michael.

20 53. The cost of transporting Michael to and from public school could have been paid
21 from the proportionate share of federal funds that the Lynden School District is required to spend
22 on services for parentally placed private school children, resulting in less money for the actual
23 education of Michael and other such children.
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25 54. Because traveling to a public school would have been impracticable, unduly
26 burdensome, disruptive, stigmatizing, stressful, inefficient, and counterproductive; would have
27 rendered the services for which Michael was otherwise eligible effectively useless; and would
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1 have thwarted Sharon and Derrick's conviction to educate Michael at a Christian, rather than
2 public, school, Sharon and Derrick decided to forego the services. Washington's IDEA
3 regulations forced them to choose between receipt of a government benefit and their right and
4 religious conviction to educate Michael in a religious school.
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6 55. In a last effort to assist Michael, Sharon offered to purchase a laptop on her own if
7 the school district would equip it with appropriate software to assist Michael with note- and test-
8 taking. Sharon was informed, however, that, under Washington's IDEA regulations, even this
9 was prohibited if the laptop was to be used at Lynden Christian.
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11 56. Consequently, Michael attended seventh grade at Lynden Christian without
12 receiving any services under the IDEA.
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14 57. At the end of Michael's seventh-grade year, Lynden Christian's administration
15 informed Sharon and Derrick that Michael was not making adequate academic progress and that
16 the school would be unable to keep him as a full-time student without the services of a
17 paraeducator trained in curriculum modification, which Michael was eligible for—but, because
18 of Washington's IDEA regulations, unable to receive—under the IDEA, and which Lynden
19 Christian could not itself provide.
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21 58. Because their conviction was to keep Michael at Lynden Christian, Sharon and
22 Derrick searched for a qualified paraeducator whom they could hire on their own to work with
23 Michael at the school. They eventually found one but could only afford to hire her for
24 approximately two hours per week, which was insufficient for Lynden Christian to retain
25 Michael as a full-time student.
26

27 59. Consequently, in August 2008, against their religious convictions, Sharon and
28 Derrick had to enroll Michael part-time in a public school, where he was able to receive special

1 education services on-site through an IEP. Washington's IDEA regulations had once again
2 forced them to choose between receipt of a government benefit and their right and religious
3 conviction to educate their child in a religious school.
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5 60. Michael is currently in eighth grade and attends public school four hours per day,
6 from approximately 7:30 a.m. to 11:30 a.m., Monday through Friday. Under an IEP, he receives
7 special education services in language arts, math, and social skills.
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9 61. Because Sharon and Derrick are so determined for Michael to receive some form
10 of Christian education, they have arranged for him to continue to attend Lynden Christian part-
11 time. He takes classes in Bible, social studies, art, and physical education, as well as a guided
12 study class in which he works twice per week, for approximately one hour at a time, with the
13 paraeducator whom Sharon and Derrick have hired at their own expense.
14

15 62. Even though Michael is still able to attend Lynden Christian part-time, his ability
16 to do so is substantially burdened.

17 63. Because Michael has to attend public school every morning of the week, he is not
18 receiving the full religious education that Sharon and Derrick feel compelled to provide him. He
19 misses out on the Christ-centered approach that is a part of all classes taught at Lynden Christian,
20 as well as specific religious exercises, such as chapel services, which are conducted in the
21 morning, when Michael attends public school. Chapel services are an integral part of the
22 religious education offered at Lynden Christian and one in which Sharon and Derrick feel
23 compelled to have Michael participate.
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25 64. Traveling between two different schools five days per week is unduly disruptive
26 and burdensome for Michael, whose May 2006 evaluation emphasized his need for routine.
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2 65. Having to travel between two different schools five days per week is stigmatizing
3 and stressful for Michael, especially given the anxiety and withdrawal issues noted in his May
4 2006 evaluation.

5 66. Time spent traveling rather than learning and interacting with classmates
6 interferes with and disrupts Michael's educational tasks and thereby detracts from the
7 educational benefit he would receive were he able to attend school full-time at Lynden Christian,
8 the school of his parents' choice.

9
10 67. Because Michael has had to enroll in a public school, the time, cost, and effort of
11 transporting him from the public school to Lynden Christian each day falls on Sharon and
12 Derrick and is unduly burdensome, disruptive, and stressful for them.

13 68. In this regard, Washington's IDEA regulations have violated, and continue to
14 violate, Sharon, Derrick, and Michael's Free Exercise, Equal Protection, Establishment Clause,
15 and Due Process rights.
16

17 *Rachael Apodaca*

18 69. Plaintiff Marjorie Apodaca is the mother of Rachael Apodaca, a fourteen-year-old
19 eighth-grade girl with Down syndrome.

20 70. From kindergarten through fifth grade, Rachael attended public school in the
21 Lynden School District. During this time, she was evaluated under the IDEA, deemed eligible
22 for special education services, and received such services pursuant to IEPs.
23

24 71. Rachael's IEPs during this period typically provided special education and related
25 services in math, reading, writing, social skills, occupational therapy, and speech-language
26 pathology, and they typically called for considerable modifications to Rachael's curriculum and
27 assignments. To that end, Rachael also received the services of an instructional assistant in the
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2 general educational setting who assisted her with work that was modified to her instructional
3 level.

4 72. It was Marjorie's religious conviction, however, to have Rachael educated at a
5 Christian school. To that end, she inquired about sending Rachael to Lynden Christian for
6 Rachael's sixth-grade year. Marjorie was attracted to Lynden Christian because it aspires to
7 present Christ in all subject matters it teaches and views itself as an extension of the Christian
8 home, designed to reinforce the faith and values of parents.
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10 73. Lynden Christian's administration informed Marjorie that, while Rachael could
11 attend Lynden Christian for Bible and elective classes, she would require certain special
12 education services on-site at the school in order to participate in the rest of the curriculum.
13 Lynden Christian was itself unable to provide these services.

14 74. In order to determine whether Rachael might be able to receive such services
15 through the IDEA, Lynden Christian's Director of Special Education Services, Gladys Senti,
16 consulted the Lynden School District. Through her consultation, Mrs. Senti learned that Lynden
17 School District would not provide any special education services on-site at Lynden Christian.
18

19 75. Because Rachael would not be able to receive special education services on-site at
20 Lynden Christian, and because it was Marjorie's conviction to remove Rachael from public
21 school in favor of a Christian learning environment, Marjorie decided to home-school Rachael in
22 reading, math, and writing for her sixth-grade year and send her to Lynden Christian part-time in
23 the afternoons for Bible and elective classes.
24

25 76. As Rachael's sixth-grade school year began, she was re-evaluated by the Lynden
26 School District in accordance with the IDEA. The September 2006 evaluation report observed
27 that Rachael's "delays in communication and academic skills negatively impact her ability to
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2 participate in the general education curriculum using curricular materials at her grade level and at
3 a pace commensurate with that of grade peers.”

4 77. Rachael’s evaluation team recommended that she receive an IEP providing
5 special education services in reading, writing, math, communication, and independence skills.
6 To receive the services, however, Rachael would be required to enroll part-time in and attend
7 public school five days per week.

8
9 78. Because it was her conviction to remove Rachael from public school, Marjorie
10 advised the evaluation team that she would forego all special education services except for the
11 communication, or speech-language pathology, services, which Marjorie did not feel capable of
12 providing Rachael on her own.

13 79. Rachael thus received an IEP for speech-language pathology services, which were
14 provided seven times per month, 25 minutes at a time, at her local public school.

15
16 80. Accordingly, during her sixth-grade year, Rachael was home-schooled every
17 morning in reading, writing, and math; traveled to public school for speech therapy from 11:35
18 a.m. until 12:00 p.m., seven times per month; and traveled to Lynden Christian for Bible class
19 and electives every afternoon.

20
21 81. In the spring of 2007, toward the end of Rachael’s sixth-grade year, Mrs. Senti
22 again inquired—this time with Steve Dahl, the then-new Special Education Director for Lynden
23 School District—about the possibility of Rachael’s receiving special education services on-site at
24 Lynden Christian through a services plan.

25 82. Mr. Dahl was willing to provide special education services to Rachael and other
26 parentally placed children on-site at Lynden Christian through services plans. He specifically
27 considered using the proportionate share of federal funds for parentally placed private school
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1 children to provide a paraeducator on-site to modify curriculum for Rachael and other children
2 with disabilities.
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4 83. With the services of a paraeducator on-site, Lynden Christian was willing and
5 able to provide Rachael a greater portion of her education than just Bible and elective classes.

6 84. Around the time Mr. Dahl was pursuing the provision of a paraeducator on-site at
7 Lynden Christian, however, OSPI announced that it was promulgating new regulations
8 governing special education in Washington. The proposed regulations would prohibit the
9 provision of special education services on-site at religious schools.
10

11 85. On June 10, 2007, during the rulemaking process, Mr. Dahl submitted public
12 comments to OSPI discussing how irrational, unnecessary, and harmful it was to prohibit the
13 provision of special education services under the IDEA on-site at religious schools, especially
14 given the fact that OSPI *allows* the provision of services under Title I of the Elementary and
15 Secondary Education Act of 1965 on-site at religious schools.
16

17 86. In spite of Mr. Dahl's comments and similar comments submitted by Plaintiff
18 Sharon DeBoom, OSPI adopted the current IDEA regulations, including Wash. Admin Code. §
19 392-172A-04075(2) & (3), which prohibit the provision of special education services on-site at
20 religious schools.
21

22 87. After Washington's IDEA regulations took effect in the summer of 2007, Mr.
23 Dahl—appropriately committed to the welfare of *all* children with disabilities in Lynden School
24 District, including those enrolled by their parents at Lynden Christian—sought legal counsel
25 from the school district's attorney to determine whether there was any way he could legally
26 provide special education services on-site at Lynden Christian.
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2 88. Ultimately, Mr. Dahl, the Lynden School District's attorney, and the Lynden
3 School Board determined that, because of Washington's IDEA regulations, there was simply no
4 way the district could provide special education services on-site at Lynden Christian.

5 89. Consequently, Rachael could not receive a services plan for a paraeducator at
6 Lynden Christian. Washington's IDEA regulations forced her to forego this otherwise available
7 public benefit simply because her mother had exercised her conviction—and right—to educate
8 Rachael in a religious school.
9

10 90. Accordingly, Rachael spent her seventh-grade year, and currently spends her
11 eighth-grade year, as she did her sixth: being home-schooled every morning in reading, writing,
12 and math; traveling to public school for speech therapy from 11:35 a.m. until 12:00 p.m., seven
13 times per month, under an IEP; and traveling to Lynden Christian each afternoon for Bible class
14 and electives only.
15

16 91. Because, without the services of a paraeducator, she is able to receive only a small
17 portion of her education at Lynden Christian, Rachael is not receiving the full education at a
18 religious school that Marjorie feels compelled to provide her and that was Marjorie's reason for
19 sending her to Lynden Christian in the first place. Rachael misses not only the Christ-centered
20 approach that is a part of all classes taught at Lynden Christian, but also specific religious
21 exercises, such as chapel services, which are conducted in the morning, when Rachael is home-
22 schooled. Chapel services are an integral part of the religious education offered at Lynden
23 Christian and one in which Marjorie feels compelled to have Rachael participate.
24

25 92. The time, cost, and effort of home-schooling Rachael are unduly burdensome and
26 stressful for Marjorie. Were Rachael able to receive the services of a paraeducator on-site at
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1 Lynden Christian, she could receive a greater portion of her education at the school, and the
2 burden and stress Marjorie bears in home-schooling her would be substantially alleviated.

3
4 93. Because, without the services of a paraeducator, she is able to receive only a small
5 portion of her education at Lynden Christian, Rachael's interaction with classmates is
6 substantially limited and she is thereby deprived of the social skills development that was
7 emphasized under her earlier IEPs.

8
9 94. In this regard, Washington's IDEA regulations have violated, and continue to
10 violate, Marjorie and Rachael's Free Exercise, Equal Protection, Establishment Clause, and Due
11 Process rights.

12 *Skyler Hamilton*

13 95. Plaintiffs Margaret and Daniel Hamilton are the parents of Skyler Hamilton, a
14 nine-year-old boy in remission from medulloblastoma, a type of cancer of the brain and spinal
15 column.

16
17 96. Skyler attended a year of pre-school at Lynden Christian, from 2002 to 2003.
18 Margaret and Daniel sent Skyler to Lynden Christian because they felt compelled by their
19 religious convictions to educate him in a Christian school. They were attracted to the fact that the
20 school aspires to present Christ in all subject matters it teaches and views itself as an extension
21 of the Christian home, designed to reinforce the faith and values of parents.

22
23 97. By the end of Skyler's first year in pre-school, it had become evident that he
24 needed additional help in certain areas, including social, communication, and fine motor skills.
25 At the suggestion of teachers at Lynden Christian, Margaret and Daniel made the difficult choice
26 of enrolling Skyler in the Special Education Pre-School Program at a public school in the
27 Meridian School District.

1
2 98. Skyler attended a second year of pre-school and a year of kindergarten at the
3 public school. During kindergarten, he received an IEP that provided him special education
4 services in speech, motor skills, and social skills.

5 99. At the end of his kindergarten year, in June 2005, Skyler underwent a special
6 education evaluation review by the Meridian School District, which determined he had made
7 progress in the areas identified in his IEP and no longer required special education.
8

9 100. Because they felt compelled by their religious convictions to provide Skyler a
10 Christian education, Margaret and Daniel removed Skyler from the public school and re-enrolled
11 him at Lynden Christian, where he spent his first-grade year.

12 101. In August 2006, during the summer between his first- and second-grade years,
13 Skyler was diagnosed with medulloblastoma.

14 102. Skyler missed his entire second-grade year at Lynden Christian as he underwent
15 treatment, including surgery, chemotherapy, and radiation, at Seattle's Children's Hospital. As a
16 result of his treatment, Skyler suffered profound posterior fossa syndrome, which rendered him
17 mute for approximately two months; experienced paralysis on the right side of his body; and
18 spent nearly a year on a feeding tube.
19

20 103. The Lynden Christian staff and families were incredibly supportive of Skyler
21 during his time in the hospital. They visited him regularly, provided meals for his family, and
22 sent him frequent well-wishes and messages of encouragement. On occasions when Skyler was
23 able to depart the hospital, he visited his classmates and teachers at Lynden Christian.
24

25 104. By the time Skyler was discharged from Children's Hospital in June 2007, he had
26 regained only slight use of the right side of his body, which was particularly problematic given
27 that he had been right-handed. Moreover, as a result of his treatment, Skyler suffered ataxia, a
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2 condition of the nervous system that affects coordination and impaired Skyler's ability to
3 perform routine functions, such as walking, writing, and reaching for objects. Skyler's legs were
4 also significantly weakened, requiring use of a wheelchair.

5 105. A subsequent neuropsychological evaluation concluded that Skyler had
6 significant difficulties with information processing and short-term memory, was "likely to have
7 serious challenges in making academic progress," and would "require significant academic
8 support." The evaluation suggested a number of strategies for helping Skyler progress
9 academically, many of which involved modifications to the content, methodology, and delivery
10 of instruction.

11
12 106. Because it was apparent that Skyler would need special education services in the
13 classroom upon his return to school, his teacher from the school at Children's Hospital, which
14 Skyler periodically attended during his stay there, suggested that Margaret and Daniel explore
15 what services he might be able to receive under the IDEA. She also advised them, however, that
16 he might not be able to receive services at Lynden Christian if they chose to re-enroll him there.

17
18 107. Because of their religious convictions, Margaret and Daniel felt compelled to send
19 Skyler back to Lynden Christian. To that end, they met with members of Lynden Christian's
20 administration, including its Director of Special Education Services, Gladys Senti, in August
21 2007.

22
23 108. Lynden Christian's administration informed Margaret and Daniel that, because of
24 the extent and nature of Skyler's disabilities, the school could accept him on only a limited basis
25 if he did not have access to certain special education and related services on-site at the school—
26 services that Lynden Christian was itself unable to provide.
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2 109. Lynden Christian's administration, which had spent the previous several months
3 unsuccessfully attempting to acquire special education services for Michael DeBoom, Rachael
4 Apodaca, and other children with disabilities, also confirmed what Margaret and Daniel had been
5 told by Skyler's teacher from the school at Children's Hospital: because of Washington's IDEA
6 regulations, Skyler would not receive—or even be considered to receive—any special education
7 services on-site at Lynden Christian.
8

9 110. Margaret subsequently reviewed Washington's IDEA regulations on her own and
10 confirmed the information she had received from Skyler's teacher at Children's Hospital and the
11 Lynden Christian administration.

12 111. Faced with the fact that Skyler would not be considered for any special education
13 services on-site at Lynden Christian, Margaret and Daniel were forced to enroll Skyler in a
14 public school in the Meridian School District for his third-grade year. In short, they were forced
15 to forego their religious conviction to educate Skyler in a religious school in order to receive a
16 public benefit.
17

18 112. Skyler was evaluated by the Meridian School District pursuant to the IDEA at the
19 start of his third-grade year, in the fall of 2007, and was deemed eligible for special education
20 services.
21

22 113. Skyler received an IEP from the Meridian School District that provided him with,
23 among other things, special education and related services in self-help skills and occupational
24 and physical therapy for motor-skill issues. The IEP also provided for alteration of assignment
25 formats to reduce the need for written work; modifications to the methodology and delivery of
26 instruction; adaptive living support (*e.g.*, assistance using the toilet); a scribe, as appropriate, for
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1 writing activities; and allowance for written responses through keyboarding. Skyler was
2 provided a full-time aide in the classroom.
3

4 114. Because Margaret and Daniel felt so compelled to provide Skyler some form of
5 Christian education, they made arrangements for him to also attend Lynden Christian on
6 Monday, Wednesday, and Friday mornings for one-and-a-half hours so that he could attend
7 Bible class and chapel services.
8

9 115. Skyler received no special education services at Lynden Christian. In fact,
10 Margaret had to remain at Lynden Christian during Skyler's mornings there to provide him with
11 services he might have been able to receive under the IDEA but for Washington's regulations.
12

13 116. In July 2008, during the summer between his third- and fourth-grade years, Skyler
14 underwent another neuropsychological evaluation at Children's Hospital. The evaluation
15 revealed that, although Skyler had made progress in many areas, he still had substantial problems
16 with short-term memory and information processing. The evaluation observed that Skyler would
17 "continue to require significant academic support" and "would benefit from continuing to work
18 with an aide in the classroom." Among other concerns identified in the evaluation were Skyler's
19 problems with social integration—specifically, his lack of interaction with his classmates.
20

21 117. In August 2008, Skyler began fourth grade at public school, where he continues to
22 receive special education and related services under an IEP.
23

24 118. Skyler also continues to attend Lynden Christian. Because of his schedule at the
25 public school, however, he can now do so only two afternoons per week—Tuesdays and
26 Thursdays—for approximately an hour-and-a-half each day. Skyler participates in recess
27 activities and Bible and computer classes during this time.
28

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2 119. During Skyler's time at Lynden Christian, a retired teacher and grandmother
3 provides him, on a volunteer basis, services he might have been able to receive under the IDEA
4 but for Washington's regulations.

5 120. Even though Skyler is still able to attend Lynden Christian for a brief time each
6 week, his ability to do so is substantially burdened.

7 121. Because Skyler has to attend public school for the large majority of his education,
8 he is not receiving the full religious education that Margaret and Daniel feel compelled to
9 provide him. He misses out on the Christ-centered approach that is a part of all classes taught at
10 Lynden Christian, as well as specific religious exercises such as chapel services, half of which
11 are conducted when Skyler is attending public school. Chapel services are an integral part of the
12 religious education offered at Lynden Christian and one in which Margaret and Daniel feel
13 compelled to have Skyler participate.
14

15 122. Having to travel between two different schools is unduly disruptive and
16 burdensome for Skyler, who is still substantially weakened from the radiation treatment he
17 underwent to fight his cancer.
18

19 123. Having to travel between two different schools is stigmatizing and stressful for
20 Skyler, especially given the social integration problems identified in his July 2008
21 neuropsychological evaluation.
22

23 124. Time spent traveling rather than learning and interacting with classmates
24 interferes with and disrupts Skyler's educational tasks and thereby detracts from the educational
25 benefit he would receive were he able to attend school full-time at Lynden Christian, the school
26 of his parents' choice.
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2 125. Because Skyler has had to enroll in a public school, the time, cost, and effort of
3 transporting him from the public school to Lynden Christian falls on Margaret and Daniel and is
4 unduly burdensome, disruptive, and stressful for them.

5 126. In this regard, Washington's IDEA regulations have violated, and continue to
6 violate, Margaret, Daniel, and Skyler's Free Exercise, Equal Protection, Establishment Clause,
7 and Due Process rights.
8

9 **COUNT I: FREE EXERCISE OF RELIGION**

10 127. By this reference, Plaintiffs incorporate each and every allegation and averment
11 set forth in paragraphs 1 through 126 of this Complaint as though fully set forth herein.

12 128. The Free Exercise Clause of the First Amendment to the United States
13 Constitution provides, "Congress shall make no law . . . prohibiting the free exercise" of religion.

14 129. The Free Exercise Clause applies to the states through the Fourteenth Amendment
15 to the United States Constitution.
16

17 130. The Free Exercise Clause protects against governmental hostility toward religion
18 and forbids even subtle departures from neutrality toward religion.

19 131. Wash. Admin. Code §§ 392-172A-04075(2) and (3) are not neutral with respect to
20 religion and are not laws of general applicability. Rather, they discriminate against religion on
21 their face, in that they prohibit the provision of special education and related services on the
22 premises of "sectarian" (defined as "religious") schools, while allowing the provision of special
23 education and related services on the premises of nonsectarian schools, whether public or
24 private.
25

26 132. On their face and as applied to Michael DeBoom, Rachael Apodaca, and Skyler
27 Hamilton, Wash. Admin. Code §§ 392-172A-04075(2) and (3) condition receipt of a public
28

1 benefit on the forgoing of religious convictions and free exercise rights. By making access to
2 special education and related services by parentally placed private school children attending
3 religious schools at best unduly burdensome, disruptive, stigmatizing, stressful, inefficient, and
4 counterproductive and, at worst, impracticable and useless, the regulations force parents to either
5 forego the receipt of—indeed, even consideration for—such services or forego their right and
6 religious conviction to educate their child in a religious school.
7
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9 133. On their face and as applied to Michael DeBoom, Rachael Apodaca, and Skyler
10 Hamilton, Wash. Admin. Code §§ 392-172A-04075(2) and (3) substantially burden the free
11 exercise rights of parents whose religious conviction it is to educate their child in a religious
12 school.
13

14 134. Washington has no compelling, substantial, or even legitimate interest in
15 prohibiting parentally placed private school children from receiving special education and related
16 services on the premises of religious schools.
17

18 135. Wash. Admin. Code §§ 392-172A-04075(2) and (3) are not narrowly tailored to
19 achieve, nor are they rationally related to, any interest Washington purports to have.
20

21 136. The state's justifications for Wash. Admin. Code §§ 392-172A-04075(2) and
22 (3)—Article IX, section 4 and Article I, section 11 of the Washington Constitution—were
23 motivated by anti-religious animus, generally, and anti-Catholic sentiment, specifically; they
24 have as their object and purpose the suppression of religion and religious conduct. As such, they
25 are unconstitutional and impermissible justifications for Wash. Admin. Code §§ 392-172A-
26 04075(2) and (3).
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2 137. On their face and as applied to Michael DeBoom, Rachael Apodaca, and Skyler
3 Hamilton, Wash. Admin. Code §§ 392-172A-04075(2) and (3) violate the Free Exercise Clause
4 of the First Amendment to the United States Constitution.

5 **COUNT II: EQUAL PROTECTION OF THE LAWS**

6 138. By this reference, Plaintiffs incorporate each and every allegation and averment
7 set forth in paragraphs 1 through 137 of this Complaint as though fully set forth herein.

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9 139. The Fourteenth Amendment to the United States Constitution provides, in part,
10 “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

11 140. The Equal Protection Clause of the Fourteenth Amendment to the United States
12 Constitution prohibits government from treating similarly situated people differently, particularly
13 where the differential treatment is based on a suspect classification, such as religion.

14
15 141. The Equal Protection Clause of the Fourteenth Amendment to the United States
16 Constitution prohibits government from discriminating on the basis of religion.

17 142. By prohibiting the provision of special education and related services to
18 parentally placed private school children on the premises of religious schools, while allowing the
19 provision of such services on the premises of non-religious schools, Wash. Admin. Code §§ 392-
20 172A-04075(2) and (3) discriminate on the basis of religion, both on their face and as applied to
21 Michael DeBoom, Rachael Apodaca, and Skyler Hamilton.

22
23 143. Washington has no compelling, substantial, or even legitimate interest in
24 prohibiting parentally placed private schools children from receiving special education and
25 related services on the premises of religious schools while allowing the provision of such
26 services on the premises of non-religious schools.

1
2 144. Wash. Admin. Code §§ 392-172A-04075(2) and (3) are not narrowly tailored to
3 achieve, nor are they rationally related to, any interest Washington purports to have.

4 145. The state's justifications for Wash. Admin. Code §§ 392-172A-04075(2) and
5 (3)—Article IX, section 4 and Article I, section 11 of the Washington Constitution—were
6 motivated by anti-religious animus, generally, and anti-Catholic sentiment, specifically; they
7 have as their object and purpose the suppression of religion and religious conduct. As such, they
8 are unconstitutional and impermissible justifications for Wash. Admin. Code §§ 392-172A-
9 04075(2) and (3).
10

11 146. On their face and as applied to Michael DeBoom, Rachael Apodaca, and Skyler
12 Hamilton, Wash. Admin. Code §§ 392-172A-04075(2) and (3) violate the Equal Protection
13 Clause of the Fourteenth Amendment to the United States Constitution.
14

15 **COUNT III: ESTABLISHMENT OF RELIGION**

16 147. By this reference, Plaintiffs incorporate each and every allegation and averment
17 set forth in paragraphs 1 through 146 of this Complaint as though fully set forth herein.

18 148. The First Amendment to the United States Constitution provides, in relevant part,
19 "Congress shall make no law respecting an establishment of religion"
20

21 149. The Establishment Clause applies to the states through the Fourteenth
22 Amendment to the United States Constitution.

23 150. The Establishment Clause prohibits government hostility toward religion and
24 governmental purposes of disapproving of particular religions or religion in general.

25 151. On their face and as applied to Michael DeBoom, Rachael Apodaca, and Skyler
26 Hamilton, Wash. Admin. Code §§ 392-172A-04075(2) and (3) are hostile towards and
27 disapproving of religion.
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2 152. Washington does not have a secular legislative purpose for prohibiting the
3 provision of special education and related services on the premises of religious schools. Rather,
4 Washington's purpose for prohibiting the provision of such service is compliance with Article
5 IX, section 4 and Article I, section 11 of the Washington Constitution, which were motivated by
6 anti-religious animus, generally, and anti-Catholic sentiment, specifically; they have as their
7 object and purpose the suppression of religion and religious conduct.
8

9 153. On their face and as applied to Michael DeBoom, Rachael Apodaca, and Skyler
10 Hamilton, Wash. Admin. Code §§ 392-172A-04075(2) and (3) have the principal or primary
11 effect of inhibiting religion, in that they make access to special education and related services by
12 parentally placed private school children attending religious schools at best unduly burdensome,
13 disruptive, stigmatizing, stressful, inefficient, and counterproductive and, at worst, impracticable
14 and useless. In this regard, the regulations condition receipt of special education and related
15 services on parents' willingness to forego their religious conviction and right to have their child
16 educated in a religious school. The regulations thereby create a substantial disincentive to
17 enrollment of children with disabilities in religious schools.
18

19 154. On their face and as applied to Michael DeBoom, Rachael Apodaca, and Skyler
20 Hamilton, Wash. Admin. Code §§ 392-172A-04075(2) and (3) violate the Establishment Clause
21 of the First Amendment to the United States Constitution.
22

23 **COUNT IV: PARENTAL LIBERTY TO DIRECT THE EDUCATION OF CHILDREN**

24 155. By this reference, Plaintiffs incorporate each and every allegation and averment
25 set forth in paragraphs 1 through 154 of this Complaint as though fully set forth herein.
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2 156. The Due Process Clause of the Fourteenth Amendment to the United States
3 Constitution provides, in relevant part, “No state shall . . . deprive any person of life, liberty, or
4 property, without due process of law.”

5 157. Among the liberties protected by the Due Process of the Fourteenth Amendment
6 to the United States Constitution is the liberty of parents to direct the upbringing and education
7 of their children.

8
9 158. On their face and as applied to Michael DeBoom, Rachael Apodaca, and Skyler
10 Hamilton, Wash. Admin. Code §§ 392-172A-04075(2) and (3) condition receipt of a public
11 benefit on forbearance of the liberty of parents to direct the upbringing and education of their
12 children. By making access to special education and related services by parentally placed private
13 school children attending religious schools at best unduly burdensome, disruptive, stigmatizing,
14 stressful, inefficient, and counterproductive and, at worst, impracticable and useless, the
15 regulations force parents to either forego the receipt of—indeed, even consideration for—such
16 services or forgo the right to send their child to the school of their choice.

17
18 159. Washington has no compelling, substantial, or even legitimate interest in
19 prohibiting parentally placed private schools children from receiving special education and
20 related services on the premises of religious schools.

21
22 160. Wash. Admin. Code §§ 392-172A-04075(2) and (3) are not narrowly tailored to
23 achieve, nor are they rationally related to, any interest Washington purports to have.

24 161. The state’s justifications for Wash. Admin. Code §§ 392-172A-04075(2) and
25 (3)—Article IX, section 4 and Article I, section 11 of the Washington Constitution—were
26 motivated by anti-religious animus, generally, and anti-Catholic sentiment, specifically; they
27 have as their object and purpose the suppression of religion and religious conduct. As such, they
28

1 are unconstitutional and impermissible justifications for Wash. Admin. Code §§ 392-172A-
2 04075(2) and (3).
3

4 162. On their face and as applied to Michael DeBoom, Rachael Apodaca, and Skyler
5 Hamilton, Wash. Admin. Code §§ 392-172A-04075(2) and (3) violate the Due Process Clause of
6 the Fourteenth Amendment to the United States Constitution.
7

8 **PRAYER FOR RELIEF**

9 Plaintiffs respectfully request the following relief:

10 A. A declaratory judgment by the court that Wash. Admin. Code §§ 392-172A-
11 04075(2) and (3), on their face and as applied to Plaintiffs, violate the Free Exercise and
12 Establishment Clauses of the First Amendment to the United States Constitution and the Equal
13 Protection and Due Process Clauses of the Fourteenth Amendment to the United States
14 Constitution;
15

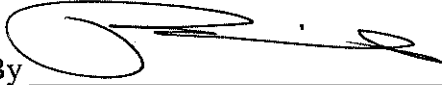
16 B. A permanent injunction prohibiting Defendant from enforcing Wash. Admin.
17 Code §§ 392-172A-04075(2) and (3);

18 C. An award of attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988;
19 and

20 D. Any other legal and equitable relief as this Court may deem appropriate and just.
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2 DATED: November 11, 2008.
3

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6
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