
SUPREME COURT OF THE STATE OF CALIFORNIA

BRENNON B.,

*Plaintiff, Appellant,
and Petitioner,*

vs.

SUPERIOR COURT, CONTRA
COSTA

*Defendant and
Respondent,*

WEST CONTRA COSTA
UNIFIED SCHOOL DISTRICT, et
al.

Real Parties in Interest.

First Appellate District,
Division One
No. A157026

Contra Costa Superior
Court
No. MSC16-01005

**REQUEST FOR JUDICIAL NOTICE OF DISABILITY
RIGHTS EDUCATION & DEFENSE FUND (DREDF) AS
PROPOSED *AMICUS CURIAE* IN SUPPORT OF
PLAINTIFF-PETITIONER BRENNON B.;
MEMORANDUM OF POINTS & AUTHORITIES;
IDENTIFICATION OF DOCUMENTS; DECLARATION OF
LINDA D. KILB; EXHIBITS 1 & 2; AND PROPOSED
ORDER**

First Appellate District, Division One No. A157026
On Review of an Order Sustaining a Demurrer
Contra Costa Superior Court, No. MSC16-01005
The Honorable Charles Treat, Judge

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Claudia Center, State Bar No. 158255
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TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE OF THE SUPREME COURT OF CALIFORNIA:

Proposed *amicus curiae* Disability Rights Education & Defense Fund (“DREDF”) hereby respectfully requests that this Court take judicial notice of two briefs filed in the U.S. District Court proceedings in *Sullivan v. Vallejo City Unified Sch. Dist.* (E.D.Cal. 1990) 731 F. Supp. 947 (“*Sullivan* case”). This request is made pursuant to California Rules of Court, rules 8.252 and 8.809, and Evidence Code sections 452 and 459. This motion is based on this request; the included memorandum of points and authorities; the identification of documents for which judicial notice is requested; Exhibits 1 and 2; and the proposed order granting the motion.

MEMORANDUM OF POINTS AND AUTHORITIES

As discussed in the contemporaneously filed Proposed Brief of *Amicus* DREDF, the plain and expansive text of the Unruh Civil Rights Act, Civil Code section 51, subdivisions (a) and (f), is sufficient on its face to comfortably encompass California public schools. However, should this Court determine otherwise, the Court is entitled to turn to additional sources of information in construing the Unruh Act. “To the extent a statutory text is

susceptible of more than one reasonable interpretation, [the Court] will consider ‘a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.’” (See *Elsner v. Uveges* (2004) 34 Cal.4th 915, 929 [quoting *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977].)

Consistent with this principle of statutory interpretation, California rules of evidence permit judicial notice of a range of materials designed to aid a reviewing court in addressing pending cases. As relevant here, Evidence Code section 452, subdivision (d), specifies that judicial notice may be taken of “Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.” Of potential further relevance, Evidence Code section 452, subdivision (c), specifies that judicial notice may be taken of “Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” Additionally, Evidence Code section 452, subdivision (h), specifies that judicial notice may be taken of “[f]acts and propositions that are not reasonably subject to dispute and are

capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

As further described below, Proposed *Amicus* DREDF requests judicial notice of briefing filed in the *Sullivan* case, specifically, (1) the December 11, 1989, *amicus* brief submitted by the California Attorney General in the *Sullivan* case (“*Sullivan* AG *Amicus* Brief”)(see Exhibit 1), and (2) the January 16, 1990, opposition to that brief filed by defendant Vallejo City Unified School District (VCUSD)(“*Sullivan Amicus* Opposition”)(see Exhibit 2).

Pursuant to Evidence Code section 452, subdivision (d)(records of prior proceedings), California courts have taken judicial notice of relevant *amicus* briefing. (See *S.Y. v. Superior Ct.* (2018) 29 Cal.App.5th 324, 331, as mod. on denial of reh'g. (Dec. 16, 2019) [*sua sponte* grant of judicial notice of records and briefs, including *amici curiae* briefs, pursuant to Evid. Code, § 452(d)(1)]; and *Guild Mortg. Co. v. Heller* (1987) 193 Cal.App.3d 1505, 1514, fn. 11 [granting party request for judicial notice, pursuant to Evid. Code, §§ 452(d) and 459, of *amicus* brief filed in a prior case, where the brief “traces the development and application” of the rule at issue in the subsequent litigation].)

Alternatively, prior filed briefing of the California Attorney General construing the Unruh Act may be appropriately subject to judicial notice pursuant to Evidence Code section 452, subdivision (c)(official acts of executive departments of U.S. states), and section 452, subdivision (h)(facts and propositions capable of determination by resort to external sources; specifically, in this instance, the legal analysis and conclusion of the California Attorney General as to the scope of Unruh Act Coverage as of 1989).

The *Sullivan* AG *Amicus* Brief, and the *Sullivan Amicus* Opposition are of particular importance because the *Sullivan* case is cited and characterized by both the First Appellate District below, and the parties in their submissions to this Court. (See *Brennon B. v. Superior Court* (2020) 57 Cal.App.5th 367, 392-393; [Party brief cites: (1) *Brennon B.* Opening Brief on the Merits (“Opening Brief”) at pp. 27-28; (2) *Brennon B.* Answer Brief on the Merits (“Answer Brief”) at pp. 36-37; and (3) *Brennon B.* Reply Brief on the Merits (“Reply Brief”) at p. 9].) The First Appellate District dismisses the *Sullivan* court’s analysis of the Unruh Act as “bereft of any depth”. (*Brennon B. v. Superior Court, supra*, 57 Cal.App.5th at p. 393.) This dismissive

characterization is also endorsed by Real Parties in Interest in their Answer Brief. However, this characterization is belied by the detailed Unruh Act analysis offered in the *Sullivan* AG *Amicus* brief, and the *Sullivan Amicus* Opposition. Moreover, while California courts—including this Court—are not obligated to accept federal courts’ interpretations of California law, the *Sullivan* decision was consistent with the analysis offered by California’s top law enforcement officer.

Given these circumstances, it is appropriate for this Court to have the benefit of the prior *Sullivan* briefing in considering the question of whether the Unruh Act covers California public schools.

Proposed *Amicus* DREDF is well positioned to assist this Court in understanding the *Sullivan* case, because undersigned DREDF attorney Linda D. Kilb was counsel of record for Plaintiff Christine Sullivan. (See *Sullivan v. Vallejo City Unified School Dist., supra*, 731 F.Supp. at p. 948 [noting the appearance of Ms. Kilb as plaintiff party counsel].) The California Attorney General’s *amicus* participation in support of plaintiff is also documented in the *Sullivan* decision. As a direct participant, undersigned counsel is able to attest that the *Sullivan* case

involved extensive briefing on a variety of issues. Following briefing and oral argument, U.S. District Judge Lawrence K. Karlton granted plaintiff's request for preliminary injunction. (See *id.* at p. 962.) In the wake of this ruling, the parties resolved the case through settlement. The *Sullivan* case thus concluded without appellate review. In addition to familiarity with the history of the *Sullivan* case, undersigned counsel is also able to confirm the authenticity and provenance of the briefing for which judicial notice is requested.

**DOCUMENTS FOR WHICH
JUDICIAL NOTICE IS REQUESTED**

Exhibit 1 (“Sullivan AG Amicus Brief”): Exhibit 1 attached hereto is a true and correct copy of the 15-page “Application for Leave to Appear as Amicus Curiae and to File Amicus Curiae Brief on Behalf of the State of California in Support of Plaintiff’s Motion for Preliminary Injunction,” filed on December 18, 1989, in *Sullivan v. Vallejo City Unified Sch. Dist.* E.D.Cal. Case. No. CV-89-1505-LKK-EN. This document also includes a sixteenth page, which is the “Declaration of Service by Mail.” Given the age of the case, *Sullivan* pleadings were not electronically filed, and service by mail is the route by which undersigned counsel Linda

D. Kilb came into possession of this document. After the *Sullivan* case concluded, undersigned counsel retained hard-copies of publicly filed pleadings served on plaintiff party counsel. In preparation for this *Brennon B.* filing, undersigned counsel created a scanned version of this hard-copy “Sullivan AG *Amicus* Brief.” Optical Character Recognition (OCR) technology was then used to convert the scanned document to machine readable form, to the extent feasible given the age and original format of the document.

Exhibit 2 (“Sullivan Amicus Opposition”): Exhibit 2 attached hereto is a true and correct copy of the 24-page “Defendant’s Memorandum of Points & Authorities in Opposition to Brief of Amicus Curiae State of California in Support of Plaintiff’s Motion for Preliminary Injunction,” filed on January 16, 1990, in *Sullivan v. Vallejo City Unified Sch. Dist.* E.D.Cal. Case. No. CV-89-1505-LKK-EN. As filed, this document also included a 10-page Exhibit A (“Sullivan Exhibit A”). As noted on page 6 of the Memorandum of Points & Authorities, the Sullivan Exhibit A is an excerpt of deposition testimony as to factual matters, specifically, the nature of the training and tasks performed by Plaintiff Christine Sullivan’s service dog. The Sullivan Exhibit A

includes a deposition caption page, a deposition appearances page, and 8 pages of deposition testimony. The Sullivan Exhibit A has been omitted here, because it is not germane to the question of law at issue in *Brennon B.* However, a hard-copy of the Sullivan Exhibit A is in the possession of undersigned counsel Linda D. Kilb. In addition to the Memorandum of Points & Authorities and its accompanying Exhibit A, undersigned counsel presumes that this filing also included a declaration of service by mail. However, if such a declaration existed, a diligent search has not revealed an extant copy. The “*Sullivan Amicus Opposition*” does include the hand-dated, handwritten signature of VCUSD counsel, which supports its authenticity. Given the age of the case, *Sullivan* pleadings were not electronically filed, and service by mail is the route by which undersigned counsel came into possession of this document. After the *Sullivan* case concluded, undersigned counsel retained hard-copies of publicly filed pleadings served on plaintiff party counsel. In preparation for this *Brennon B.* filing, undersigned counsel created a scanned version of this hard-copy “*Sullivan Amicus Opposition.*” Optical Character Recognition (OCR) technology was then used to

convert the scanned document to machine readable form, to the extent feasible given the age and original format of the document.

Dated: Sept 15, 2021

Respectfully submitted,

DISABILITY RIGHTS
EDUCATION &
DEFENSE FUND (“DREDF”)

By: /s/ Linda D. Kilb
Linda D. Kilb
Attorney for Proposed
Amicus DREDF

**DECLARATION OF LINDA D. KILB IN SUPPORT OF
PROPOSED AMICI CURIAE DREDF'S REQUEST FOR
JUDICIAL NOTICE**

I, Linda D. Kilb, declare:

1. I am a member of the State Bar of California, and I am an attorney with Proposed *Amicus Curiae* Disability Rights Education & Defense Fund (DREDF).
2. I have personal knowledge of the matters set forth in this declaration. If called upon to testify to those matters, I could and would so testify.
3. Attached hereto as Exhibit 1 is a true and correct copy of the *Sullivan AG Amicus* Brief, which is described in detail in the "Documents for Which Judicial Notice Is Requested" that accompanies the related "Memorandum of Points and Authorities."
4. Attached hereto as Exhibit 2 is a true and correct copy of the *Sullivan Amicus* Opposition, which is described in detail in the "Documents for Which Judicial Notice Is Requested" that accompanies the related "Memorandum of Points and Authorities."

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed in California on September 15, 2021

By: /s/ Linda D. Kilb
 Linda D. Kilb

EXHIBIT 1

1 JOHN K. VAN DE KAMP, Attorney General
of the State of California
2 ANDREA SHERIDAN ORDIN
Chief Assistant Attorney General
3 MARIAN M. JOHNSTON (BAR NO. 061643)
Deputy Attorney General
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5 Sacramento, CA 94244-2550
Telephone: (916) 324-7860
6
7 Attorneys for Amicus Curiae
State of California

8
9
10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12

13	CHRISTINE SULLIVAN, by and)	No. CV-89-1505 LKK-EN
14	through MICHELE SULLIVAN, her)	
14	Guardian Ad Litem,)	APPLICATION FOR LEAVE TO
15	Plaintiff,)	APPEAR AS AMICUS CURIAE AND
16	v.)	TO FILE AMICUS CURIAE BRIEF
17	VALLEJO CITY UNIFIED SCHOOL)	ON BEHALF OF THE STATE OF
18	DISTRICT, et al.,)	CALIFORNIA IN SUPPORT OF
19	Defendants.)	PLAINTIFF'S MOTION FOR
		<u>PRELIMINARY INJUNCTION</u>
		DATE: December 18, 1989
		TIME: 10:00 A.M.
		PLACE: Courtroom No. 1

20 TO: The Honorable Lawrence K. Karlton, Chief District Judge,
21 Eastern District of California:

22 John K. Van De Kamp, Attorney General of the State of
23 California, respectfully requests leave to appear as amicus
24 curiae herein and to file the accompanying brief as amicus curiae
25 on behalf of plaintiff's motion for preliminary injunction.

26 The Attorney General is the chief law officer of the
27 State, and is charged with the duty to see that the laws of the


1 State are uniformly and adequately enforced (Cal. Const., art. V,
2 § 13). The Attorney General has specific statutory
3 responsibilities regarding the state laws at issue herein (Cal.
4 Civ. Code §§ 51 and 54). In order to ensure that the civil
5 rights guaranteed by these sections are fully enjoyed, he may
6 bring civil actions to seek injunctive relief (Cal. Civ. Code,
7 §§ 52(c) and 55.1). He also has particular expertise in
8 interpreting these sections, as demonstrated by an Attorney
9 General opinion directly pertaining to the issues herein (70 Ops.
10 Cal. Atty Gen. 104 (1987)).

11 For these reasons, the Attorney General respectfully
12 requests the court to permit him to file the accompanying brief
13 as amicus curiae on behalf of the State of California in support
14 of plaintiff's motion for preliminary injunction, and further
15 requests leave to participate as amicus curiae in any further
16 proceedings before this Court.

17 DATED: December 11, 1989

18 Respectfully submitted,

19 JOHN K. VAN DE KAMP, Attorney General
20 of the State of California
21 ANDREA SHERIDAN ORDIN
22 Chief Assistant Attorney General

23 
24 MARIAN M. JOHNSTON
25 Deputy Attorney General

26 Attorneys for Amicus Curiae
27 State of California

DECLARATION OF SERVICE BY MAIL

Case Name: CHRISTINE SULLIVAN v. VALLEJO CITY
UNIFIED SCHOOL DISTRICT, et al.
No.: CIV. 89-1505-LKK-EN

I declare:

I am employed in the County of Sacramento, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 1515 K Street, Post Office Box 944255, Sacramento, California 94244-2550.

On December 11, 1989, I served the attached

APPLICATION FOR LEAVE TO APPEAR AS AMICUS CURIAE AND TO FILE
AMICUS CURIAE BRIEF ON BEHALF OF THE STATE OF CALIFORNIA IN
SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

in the said cause, by placing a true copy thereof enclosed in a overnight sealed envelope, for delivery by the United Courier services, addressed as follows:


Linda D. Kilb
Disability Rights Education
& Defense Fund, Inc.
2212 Sixth Street
Berkeley, CA 94710

Tamara Dahn
Solano County Legal Assistance
930 Marin Street
Vallejo, CA 94590

Jan K. Danesyn
Kronick, Moskovitz, Tiedemann
Girard
770 L Street, Suite 1200
Sacramento, CA 95814-3363

I declare under penalty of perjury the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on December 11, 1989.

PATRICIA A. WILSON
(Typed Name)


(Signature)

1 JOHN K. VAN DE KAMP, Attorney General
of the State of California
2 ANDREA SHERIDAN ORDIN
Chief Assistant Attorney General
3 MARIAN M. JOHNSTON (BAR NO. 061643)
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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12
13 CHRISTINE SULLIVAN, by and)
through MICHELE SULLIVAN, her)
14 Guardian Ad Litem,)
15 Plaintiff,)
16 v.)
17 VALLEJO CITY UNIFIED SCHOOL)
DISTRICT, et al.,)
18 Defendants.)
19

No. CV-89-1505 LKK-EN
BRIEF OF AMICUS CARIAE
STATE OF CALIFORNIA IN
SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION
DATE: December 18, 1989
TIME: 10:00 A.M.
PLACE: Courtroom No. 1

20 INTRODUCTION

21 Plaintiff Christine Sullivan is a physically
22 handicapped person who uses a trained service dog. This dog
23 assists her in performing various activities and enables her to
24 function successfully in her daily life. Defendants Vallejo City
25 Unified School District, et al., have refused to permit
26 plaintiff's service dog to accompany her in the public high
27 school which plaintiff attends. Plaintiff therefore filed the

1 instant action seeking to compel defendants to permit her to be
2 accompanied by her service dog while she attends high school.

3 Plaintiff's complaint alleges a cause of action under
4 section 504 of the Federal Rehabilitation Act of 1973, as
5 amended, 29 U.S.C. section 794, as well as causes of action under
6 two of California's civil rights laws, Civil Code sections 51 and
7 54. Amicus curiae concurs with plaintiff's position that
8 California's civil rights laws gives her the absolute right to be
9 accompanied by her service dog, and, as set forth below, urges
10 the court to grant plaintiff's motion for preliminary injunctive
11 relief. Once the right to be accompanied by her service dog is
12 established, then plaintiff can work with defendants to resolve
13 any remaining disputes as to her educational needs.

14 ARGUMENT

15 I

16 CALIFORNIA LAW GUARANTEES PHYSICALLY 17 HANDICAPPED PERSONS THE ABSOLUTE RIGHT TO BE 18 ACCOMPANIED BY TRAINED SERVICE DOGS IN PUBLIC 19 BUILDINGS AND OTHER PUBLIC PLACES.

20 California has a strong commitment towards ensuring
21 that disabled persons may fully participate in society, as, for
22 example, in the state laws prohibiting employment discrimination
23 against persons with physical handicaps (Cal. Gov. Code, § 12900
24 et seq.; *American Nat. Ins. Co. v. FEHC*, 32 Cal.3d 603 (1982)),
25 requiring public buildings and buildings open to the public to be
26 accessible (Cal. Gov. Code, § 4450 et seq. and Health & Saf.
27 Code, § 19955 et seq.; *Donald v. Sacramento Valley Bank*, 209
Cal.App.3d 1183 (1989)), and, as is at issue in this case,
requiring public buildings and places of public accommodations to

1 be equally available to disabled persons, including those who use
2 trained service dogs (Cal. Civ. Code §§ 51 et seq. and 54 et
3 seq.).

4 California Civil Code section 51, the Unruh Civil
5 Rights Act, is commonly referred to as California's public
6 accommodations statute. It provides, in pertinent part:

7 "All persons within the jurisdiction of this state
8 are free. and equal, and no matter what their sex,
9 race, color, religion, ancestry, national origin, or
10 blindness or other physical disability are entitled to
the full and equal accommodations, advantages,
facilities, privileges, or services in all business
establishments of every kind whatsoever."

11 California Civil Code section 54 et seq. specifically
12 guarantee civil rights to persons with physical disabilities.
13 Civil Code section 54 states:

14 "Blind persons, visually handicapped persons, and
15 other physically disabled persons shall have the same
16 right as the able-bodied to the full and free use of
the streets, highways, sidewalks, walkways, public
buildings, public facilities, and other public places."

17 California Civil Code sections 54.1 and 54.2 more
18 specifically address the access rights of disabled persons,
19 including the right to be accompanied by a guide dog, signal dog,
20 or other service dog^{1/} in any of the places to which access is
21 otherwise guaranteed. As set forth in California Civil Code
22 section 54.2(a), in pertinent part:

23 "Every totally or partially blind person, or deaf
24 person, or person whose hearing is impaired, or
physically handicapped person shall have the right to

25
26 1. "Service dog" means "any dog individually trained to
27 the physically disabled participant's requirements including, but
not limited to, minimal protection work, rescue work, pulling a
wheelchair, or fetching dropped items." (Cal. Civ. Code §
54.1(5); see also Cal. Civ. Code § 54.2(c).)

1 be accompanied by a guide dog, signal dog, or service
2 dog, especially trained for the purpose, in any of the
3 places specified in Section 54.1 without being required
to pay an extra charge for the guide dog, signal dog,
or service dog."

4 The "places specified in section 54.1" include all "places of
5 public accommodation, . . . and other places to which the general
6 public is invited." (Cal. Civ. Code § 54.1(a).)

7 These statutes mandate that in virtually every public
8 facility or place of public accommodation, a trained guide,
9 signal or service dog must be permitted to accompany a disabled
10 person who depends upon the dog for assistance. The absolute
11 discretion to use such a dog rests with the disabled person, as
12 evidenced by the mandatory language used by the Legislature, that
13 a disabled person "*shall* have the right." The absolute nature of
14 this guarantee is also evident in the other statutes quoted
15 above, which state that disabled persons "*shall* have the same
16 right" as others and "are entitled to . . . full and equal
17 treatment." The legislative intent is clearly to guarantee
18 disabled persons with service dogs the same right to participate
19 in public activities as persons without any need for such dogs.

20 The legislative intent that the right to be accompanied
21 by a service dog be virtually absolute is also evidenced by the
22 very narrow exception carved out for zoos and wild animal parks.
23 (See Cal. Civ. Code § 54.) The Legislature expressly recognized
24 such facilities as the *only* places from which service dogs may be
25 excluded, and additionally imposed requirements of providing
26 sighted escorts and adequate kennel facilities, free of charge,

27

1 so that a disabled person with a service dog will be
2 inconvenienced as little as possible.

3 In light of the mandatory statutory language and the
4 extremely narrow statutory exception, California law must be read
5 as guaranteeing the right to be accompanied by a service dog in
6 every public facility other than zoos and wild animal parks.

7 II

8 A PUBLIC HIGH SCHOOL IS BOTH A PUBLIC
9 BUILDING AND A PLACE OF PUBLIC ACCOMMODATION
WHERE SERVICE DOGS MUST BE PERMITTED.

10 Defendants claim that a public high school is not a
11 place to which disabled persons with service dogs are entitled to
12 access, but this argument fails to recognize the broad reach of
13 California's public accommodations statutes and also fails to
14 acknowledge the particular obligations of publicly-funded
15 facilities to provide access. Furthermore, even though certain
16 members of the public may be excluded from high schools based on
17 non-discriminatory criteria, such exclusion may not be based upon
18 the use of a service dog. Since the right to be accompanied by a
19 service dog is absolutely within the disabled person's
20 discretion, admission may not be conditioned upon the
21 relinquishment of that right.

22 Public high schools fall within Unruh's coverage of
23 "all business establishments of every kind whatsoever." Unruh was
24 enacted substantially in its present form^{2/} in 1959 (Cal. Stat.
25 1959, ch. 1866, § 1, p. 4424), but as the California Supreme
26

27 2. The express prohibition of discrimination based on
physical disability was added in 1987 (Cal. Stat. 1987, ch. 159,
§ 1, p ____).

1 Court has often explained, Unruh and its predecessor statutes are
2 codifications of common law, which forbid all arbitrary
3 discrimination by places affected with a public interest.
4 (*Marina Point, Ltd. v. Wolfson*, 30 Cal.3d 721, 738, cert. denied,
5 459 U.S. 858 (1982); and *Isbister v. Boys' Club of Santa Cruz,*
6 *Inc.*, 40 Cal.3d 72, 78-79 (1985).) Prior to 1959, California's
7 codification of this common law doctrine used the more familiar
8 term "places of public accommodation,"^{3/} but a series of erratic
9 court decisions resulting in inconsistent applications of the
10 statute caused the Legislature to adopt the current language of
11 "all business establishments of every kind whatsoever." (See
12 *Horowitz, The 1959 California Equal Rights in Business*
13 *Establishments' Statute -- A Problem in Statutory Application*, 33
14 *So. Cal. L. Rev.* 260, 262 and 286 (1960).) As explained by our
15 Supreme Court, "the Unruh Act was adopted out of concern that the
16 courts were construing the 1897 public accommodations statute too
17 strictly." (*Isbister, supra*, 40 Cal.3d, at 78.) The 1959
18 language was intended to broaden the reach of the former statute.
19 (See *Burks v. Poppy Construction Co.*, 57 Cal.2d 463, 469 (1962);
20 *O' Connor v. Village Green Owners Assn.*, 33 Cal.3d 790, 793-794
21 (1983); and *Marina Point, supra*, 30 Cal.3d, at 731.) The
22 "business establishment" language was "used in the broadest sense
23 reasonably possible." (*Burks, supra*, 57 Cal.2d, at 468.) It
24 covers all enterprises with "sufficient businesslike attributes"
25 (*O' Connor, supra*, 33 Cal.3d, at 796.) Factors which have been

26
27 3. Cal. Stat. 1897, ch. 108, § 1, p. 137; Cal. Stat.
1919, ch. 210, § 1, p. 309; and Cal. Stat. 1923, ch. 235, § 1,
p. 485.

1 used to identify an enterprise as a business establishment
2 subject to Unruh include number of persons employed and physical
3 facilities maintained. (*O'Connor, supra*, 33 Cal.3d, at 796, and
4 *Rotary Club of Duarte v. Bd. of Directors*, 178 Cal.App.3d 1035,
5 1051-1055 (1986), *affd.* 481 U.S. 537 (1987).)

6 One of the pre-Unruh decisions which the Legislature
7 acted to overrule had held that private schools were not subject
8 to the existing public accommodations statute, so that race
9 discrimination by such a school was not unlawful. (See *Reed v.*
10 *Hollywood Professional School*, 169 Cal.App.2d Supp. 887 (1959).)
11 This is one of the cases identified as "improperly curtailing the
12 scope of the public accommodations provisions" and leading to the
13 enactment of Unruh. (*In re Cox*, 3 Cal.3d 205, 214 (1970); see
14 also *Isbister, supra*, 40 Cal.3d, at 78.) Indeed, the original
15 version of the legislation which became Unruh expressly
16 enumerated "schools" as one of the covered entities, but all the
17 specific enumerations were dropped in favor of a broad term which
18 would not permit courts to repeat their prior mistakes in
19 limiting the law's coverage. (*Id.*, at 78-79.) In light of the
20 Supreme Court's and the Legislature's repudiation of the notion
21 that schools are not places of public accommodation, defendants'
22 argument on this point is shocking.

23 Public high schools are also unquestionably covered by
24 California Civil Code section 54, which guarantees access to
25 public buildings and other public places. A public high school
26 is unquestionably a public building and public buildings bear a
27 special obligation to be accessible to all persons. The mandate

1 that public funds not be used to support discrimination is
2 repeated in various statutes. (See Gov. Code §§ 4450
3 (architectural access to public buildings), 4500 (access to
4 public rapid transit) and 11135 (access to any program receiving
5 state funds).)

6 Finally, Civil Code sections 54.1 and 54.2 make it
7 clear that providing meaningful and effective access to disabled
8 persons with service dogs includes access for the dogs as well as
9 disabled persons. Access with service dogs is guaranteed to all
10 "places of public accommodation, . . . and other places to which
11 the general public is invited." (Cal. Civ. Code § 54.1(a).)

12 Defendants' resistance to this statutory mandate is
13 premised on two faulty assertions. Defendants mistakenly confuse
14 removal of architectural barriers (Cal. Gov. Code § 4450 et seq.)
15 with access for service dogs, and also mistakenly believe that
16 because access to schools may be restricted on certain legitimate
17 bases, schools somehow are no longer places of public
18 accommodation. Neither position is supportable.

19 Defendants erroneously assert that public school
20 accessibility to disabled persons is governed by California
21 Government Code section 4450 et seq. and not the Civil Code
22 sections at issue herein. (Defendants' Memo of Points and
23 Authorities . . . Opposition to Preliminary Injunction, pp. 20-
24 22.) In fact, public schools are subject to *both* statutory
25 schemes, which impose distinct and wholly separate requirements
26 serving different though complimentary purposes, since both
27 enable disabled persons to participate more fully in society.

1 Government Code section 4450 et seq., govern the physical
2 structure of all buildings recently constructed or remodeled with
3 public funds, requiring all such buildings to comply with
4 building standards promulgated by the State Architect, so that
5 new or newly remodeled public buildings are architecturally
6 accessible to disabled persons. These building standards, found
7 in Title 24 of the California Code of Regulations, mandate that
8 public facilities be constructed so that architectural barriers
9 are removed. Disabled persons are guaranteed physical
10 accessibility by requirements for ramps and elevators, corridor
11 and door widths wide enough for wheelchairs, braille markings and
12 audible signals on elevators, grab bars in restrooms, and so
13 forth. Newly constructed or remodeled buildings open to the
14 public are also required to comply with these building standards.
15 (See Cal. Health & Saf. Code § 19955 et seq.)

16 The Civil Code sections, on the other hand, concern the
17 legal right of access to all places of public accommodation, not
18 the removal of any existing architectural barriers. Physical
19 alterations to provide accessibility are not required,^{4/} and the
20 date of construction or remodeling is irrelevant, for purposes of
21 the Civil Code. What matters is that disabled persons not be
22

23 4. As stated in the Unruh Civil Rights Act:
24 "Nothing in this section shall be construed to
25 require any construction, alteration, repair,
26 structural or otherwise, or modification of any sort
27 whatsoever to any new or existing establishment,
facility, building, improvement, or any other
structure, or to augment restrict, or alter in any way
the authority of the State Architect to require
construction, alteration, repair, or modifications that
the State Architect otherwise possesses pursuant to
other provisions of the law."

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entrance, and, for disabled persons with service dogs, this legal right of access includes access for the accompanying service dog.

Equally without merit is defendants' contention that because schools may restrict access, schools are not places of public accommodation. (Defendants' Memo of Points and Authorities . . . Opposition to Preliminary Injunction, pp. 22-24.) Nearly all places of public accommodation restrict access in a variety of ways: by hours of operation, by admission charges, by selectivity or exclusion of non-members, to name just a few. Civil Code sections 51 and 54 do not require unrestricted access, but merely that access not be restricted on a prohibited basis of discrimination. For example, in *O'Connor v. Village Green Owners Assn.*, 33 Cal.3d 790 (1983), there was no question but that the homeowners' organization could restrict membership to owners, but only whether an age restriction was lawful. Similarly, in *Rotary Club of Duarte v. Bd. of Directors*, 178 Cal.App.3d 1035 (1986), *affd.* 481 U.S. 537 (1987), there was no question but that Rotary Clubs could limit membership to community business leaders, but only whether women who were otherwise entitled to join could be excluded because of their gender.

The Attorney General considered a situation very similar to the instant case in 70 Ops. Cal. Atty. Gen. 104 (1987), a copy of which was provided to the Court as an attachment to our letter of December 4, 1989. The Attorney General was asked to determine whether California Civil Code

1 General was asked to determine whether California Civil Code
2 sections 54.1 and 54.2 gave blind persons a statutory right to be
3 accompanied by guide dogs in medical facilities. Obviously, such
4 facilities are not open to every person who wishes to walk in off
5 the street, but where a person does otherwise have the right of
6 access, he or she, if disabled, also has the right to be
7 accompanied by a service dog.

8 As the Attorney General opined:

9 "For purposes of sections 54.1 and 54.2, it is
10 irrelevant that some groups of the general public are
11 excluded from the facility . . . [¶] [A]n able-bodied
12 person may enter the facilities; under sections 54.1
13 and 54.2 a blind person may be accompanied by a guide
14 dog within the facilities for the same purposes. The
15 legislation was intended to grant equality of right,
16 and we so construe it." (70 Ops. Cal. Atty. Gen., at
17 107.)]

18 Though not controlling, Attorney General opinions are entitled to
19 great weight. (*Moore v. Panish*, 32 Cal.3d 535, 544 (1982);
20 *Phyle v. Duffy*, 334 U.S. 431, 441 (1948).)

21 Defendants acknowledge that plaintiff is entitled to
22 access to the school. She, like the other students, satisfies
23 all legitimate admissions criteria. Therefore, pursuant to Civil
24 Code sections 54.1 and 54.2, she has the absolute statutory right
25 to be accompanied by her service dog.

26 CONCLUSION

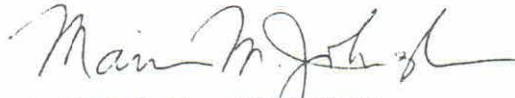
27 A preliminary injunction should be issued to safeguard
28 plaintiff's statutory right to equal access to her school,
29 accompanied by her service dog. The right of a disabled person
30 to be accompanied by a service dog is clear, and defendants'
31 violation of this right is equally clear.

1 Once plaintiff's absolute right of access is recognized
2 and protected, then the parties may address, and perhaps amicably
3 resolve, the additional issues presented herein, as to what, if
4 any, adjustments or accommodations are required to safeguard
5 plaintiff's right to an appropriate education.

6 DATED: December 11, 1989

7 Respectfully submitted,

8 JOHN K. VAN DE KAMP, Attorney General
9 of the State of California
10 ANDREA SHERIDAN ORDIN
11 Chief Assistant Attorney General

12 

13 MARIAN M. JOHNSTON
14 Deputy Attorney General

15 Attorneys for Amicus Curiae
16 State of California
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DECLARATION OF SERVICE BY MAIL

Case Name: CHRISTINE SULLIVAN v. VALLEJO CITY
UNIFIED SCHOOL DISTRICT, et al.
No.: CIV. 89-1505-LKK-EN

I declare:

I am employed in the County of Sacramento, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 1515 K Street, Post Office Box 944255, Sacramento, California 94244-2550.

On December 11, 1989, I served the attached

BRIEF OF AMICUS CARIAE STATE OF CALIFORNIA IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

in the said cause, by placing a true copy thereof enclosed in a overnight sealed envelope, for delivery by the United Courier services, addressed as follows:

Linda D. Kilb
Disability Rights Education
& Defense Fund, Inc.
2212 Sixth Street
Berkeley, CA 94710

Tamara Dahn
Solano County Legal Assistance
930 Marin Street
Vallejo, CA 94590

Jan K. Danesyn
Kronick, Moskovitz, Tiedemann
Girard
770 L Street, Suite 1200
Sacramento, CA 95814-3363

I declare under penalty of perjury the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on December 11, 1989.

PATRICIA A. WILSON
(Typed Name)

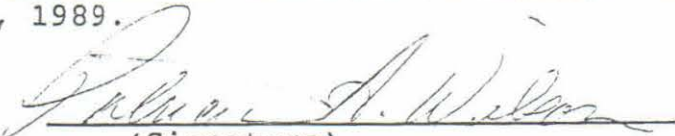

(Signature)

EXHIBIT 2

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTINE SULLIVAN, by and)	NO. CV-89-1505 LKK-EN
through MICHELE SULLIVAN, her)	
guardian ad litem,)	DEFENDANT'S MEMORANDUM
)	OF POINTS AND AUTHORITIES
Plaintiff,)	IN OPPOSITION TO BRIEF OF
)	AMICUS CURIAE STATE OF
v.)	CALIFORNIA IN SUPPORT OF
)	PLAINTIFF'S MOTION FOR
VALLEJO CITY UNIFIED SCHOOL)	PRELIMINARY INJUNCTION
DISTRICT, et al.)	
)	
Defendants.)	
)	

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VALLEJO CITY UNIFIED SCHOOL DISTRICT
et al.

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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 CHRISTINE SULLIVAN, by and)
13 through MICHELE SULLIVAN, her)
14 guardian ad litem,)

15 Plaintiff,)

16 v.)

17 VALLEJO CITY UNIFIED SCHOOL)
DISTRICT, et al.)

18 Defendants.)
19

NO. CV-89-1505-LKK-EN

DEFENDANT'S MEMORANDUM
OF POINTS AND AUTHORITIES
IN OPPOSITION TO BRIEF OF
AMICUS CURIAE STATE OF
CALIFORNIA IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

20 STATEMENT OF THE CASE

21 Plaintiff Christine Sullivan, through her guardian ad
22 litem, Michele Sullivan (hereinafter "Plaintiff"), has filed a
23 complaint for preliminary injunction and declaratory relief
24 against defendant Vallejo City Unified School District
25 (hereinafter "Defendant"). The complaint was served on or about
26 October 31, 1989. On November 20, 1989, defendant filed a
27 Memorandum of Points and Authorities in Support of a Motion to
28

1 Dismiss and Opposition to Preliminary Injunction. On
2 December 11, 1989, the State Attorney General's Office filed an
3 application for leave to appear as amicus curiae and to file
4 amicus curiae brief on behalf of the State of California in
5 support of plaintiff's motion for preliminary injunction. At
6 the hearing of December 18, 1989, this court granted leave to
7 the Attorney General to appear as amicus curiae. Defendant was
8 granted twenty-eight days to file a response to the Attorney
9 General's brief.

10 STATEMENT OF FACTS

11 Plaintiff Christine Sullivan, a minor, is a sixteen
12 year old multiply handicapped student who attends Hogan Senior
13 High School in Vallejo. She suffers from cerebral palsy,
14 learning disabilities, and right side deafness. She uses a
15 wheel chair for mobility. She attends a special class where she
16 receives assistance with her learning disabilities and her
17 physical disabilities. Plaintiff has requested that school
18 officials permit her to bring a service dog to school on a daily
19 basis. School officials have declined to do so, noting that the
20 dog is not needed by Christine for physical access and that her
21 teacher and other students are allergic to dogs. Plaintiff
22 alleges violations of section 504 of the Rehabilitation Act of
23 1973, and sections 51, 54, 54.1 and 54.2 of the California Civil
24 Code.

25 Amicus curiae State of California, through the Civil
26 Rights division of the Attorney General's Office ("Amicus")
27 purports to support plaintiff's motion for preliminary
28

1 injunction. However, in reality, amicus supports only the
2 action for declaratory relief. Amicus asserts that plaintiff
3 has an absolute right to be accompanied by a service dog in a
4 public education facility pursuant to Civil Code sections 54.1
5 and 54.2.

6 ARGUMENT

7 I

8 THE AMICUS POSITION DOES NOT SUPPORT
9 THE ISSUANCE OF A PRELIMINARY INJUNCTION

10 While Amicus facially urges the Court to grant the
11 preliminary injunction, she concedes in the same breath that, if
12 such an order were granted, the parties would still need to
13 "resolve any remaining disputes . . . presented herein . . ." as
14 to plaintiff's educational needs." A preliminary injunction
15 which at best creates uncertainty must be denied.

16 What Amicus is really supporting is the complaint for
17 declaratory relief. She states:

18 Once the right to be accompanied by her
19 service dog is established, then plaintiff
20 can work with defendants to resolve any
21 remaining disputes as to her educational
22 needs. (Amicus Brief, P. 2.)

23 Once plaintiff's absolute right of access
24 is recognized and protected, then the
25 parties may address, and perhaps amicably
26 resolve, the additional issues presented
27 herein, as to what, if any, adjustments or
28 accommodations are required to safeguard
29 plaintiff's right to an appropriate
30 education. (Amicus Brief, p. 12.)

31 Amicus thus recognizes that the preliminary
32 injunction which she purports to support could place the parties
33 in a wholly untenable position due, inter alia, to the allergies

1 suffered by Christine's teacher. She is in reality supporting
2 plaintiff's request for a judicial declaration as to the rights
3 of the parties concerning the dog's access to school. The brief
4 of Amicus Curiae does not, by its own terms, support the Motion
5 for Preliminary Injunction.

6 Moreover, defendants contend that this court does not
7 have jurisdiction over plaintiff's state law claims with which
8 Amicus is concerned because its section 504 claim must be
9 dismissed.

10 We shall nonetheless attempt to address the merits of
11 the Amicus arguments. Amicus would have this federal district
12 court broadly construe and expand the scope of state statutes
13 (CC §§ 51, 54, 54.1 and 54 2) in a manner which the literal
14 language of the statutes does not support and for which there is
15 no precedent. Clearly, these are issues which a state court,
16 not a federal court, should decide.

17 II

18 PLAINTIFF WANTS HER DOG AT SCHOOL PRIMARILY TO
19 PROVIDE SOCIALIZATION AND EMOTIONAL SUPPORT.
CIVIL CODE SECTION 54.2 DOES NOT APPLY TO THIS PURPOSE.

20 The Attorney General's arguments are predicated on
21 the assumption that Plaintiff's service dog meets the
22 requirements of Civil Code section 54.2. ("Section 54.2") Such
23 is not the case, as will be demonstrated below.

24 A close review of Plaintiff's declarations indicated
25 that Christine's primary reasons for wanting her dog at school
26 are social reasons. Bonita Bergin, Executive Director of Canine
27 Companions, states:

1 "More than tasks, a canine companion is an
2 ice breaker socially [sic] enhances a
3 person's life by providing friendship and
4 a common bond with other people."
(Declaration, p. 3.)

4 Christine states:

5 "I wanted the service dog to help me pick
6 things up off the floor and to be social
7 with other people." (Declaration, p. 2.)
8 "Ford makes me want to be social with
9 other people, to start conversations.
10 Ford makes me feel happy inside."

11 Defendants have already demonstrated that Christine's
12 need to have a dog pick things up for her is minimal, and that
13 the story related in her declaration about an aide forcing her
14 to get on the floor and pick up a pencil is totally untrue.
15 Thus, her primary purpose in wanting Ford at school is for
16 socialization and emotional support.

17 The access provided for in Civil Code section 54.2
18 was clearly not intended to serve such a purpose. Plaintiff
19 apparently concedes that: "social dogs...are not afforded the
20 legal access guaranteed by Civil Code section 54.1 et seq...."
21 Declaration of Bonita Bergin, p. 2.

22 Moreover, the statutes at issue, Civil Code section
23 54.1 and 54.2, specifically require that a service dog be
24 trained for the specific purpose for which the handicapped
25 person uses the dog in order to be permitted to enter places of
26 public accommodation. Section 54.2 provides that physically
27 handicapped persons have the right to be accompanied by a
28 service dog "especially trained for the purpose." Section
54.1(5) provides that a service dog means any dog "individually
trained to the physically disabled participant's requirements."

1
2 Christine's dog received training in obedience, in
3 responding to commands, performing certain tasks, and in
4 tolerating public environments. But he received no training
5 whatsoever in serving as an "ice breaker" or providing emotional
6 support or assisting his owner to socialize with her peers.

7 (See Deposition of Bonita Bergin, pp. 53-60, attached as Exhibit
8 A.) Therefore, these purposes are not ones for which section
9 54.2 provides access to public accommodations. Section 54.2
10 provides access to service dogs to assist their owners with
11 physical needs, not social and emotional needs. [Cf. Penal Code
12 § 365.5]

13 For this reason alone, Plaintiff's state claim, as
14 endorsed by the Attorney General, must fail.

15 III

16 THE INTENT OF CIVIL CODE SECTIONS 54.1 AND 54.2
17 IS TO GUARANTEE THAT HANDICAPPED PERSONS
18 HAVE ACCESS TO PUBLIC ACCOMMODATIONS, NOT AN
19 ABSOLUTE RIGHT TO BRING A DOG.

20 Amicus relies primarily on Civil Code section 54.2
21 (Section 52) in making her argument that Christine's right to
22 have her dog is absolute. Section 52 states that a physically
23 handicapped person "shall have the right to be accompanied by a
24 service dog" in places of public accommodation.

25 The Penal Code makes a denial of that right an
26 infraction punishable by a fine of up to \$250. Penal Code
27 section 365.5 more clearly defines the right which the
28 Legislature wished to protect. It provides in pertinent part:

29 (b) No....physically disabled person and
30 his or her specially trained...service dog
31 shall be denied admittance to hotels,
32 restaurants, lodging places, places of

1 public accommodation amusement, or resort
2 or other places to which the general
3 public is invited....because of
4 that....service dog. (Emphasis added.)

5 A service dog is defined in Penal Code section 365.5(f) in the
6 same terms as the Legislature used in section 54.1.

7 The Penal Code provision makes the Legislature's
8 intent very clear: The right to be accompanied by a service dog
9 created by section 54.2 is the right not to be denied access
10 because of the dog. The right does not extend to handicapped
11 individuals who do not require the services of the dog to attain
12 access to the public facility.

13 Plaintiff does not need her service dog to have
14 access to Hogan Senior High School. Therefore, section 54.2, as
15 clarified by Penal Code section 365.5, does not apply to her
16 situation.

17 IV

18 CALIFORNIA CIVIL CODE SECTIONS 51, 54.1 AND 54.2
19 DO NOT GRANT A PHYSICALLY HANDICAPPED PERSON AN
20 ABSOLUTE RIGHT TO BE ACCOMPANIED BY TRAINED SERVICE
21 DOGS IN PLACES OF PUBLIC ACCOMMODATION.

22 Plaintiff asserts that a public school is a place of
23 public accommodation to which the general public is invited
24 under CC §54.1 and 54.2. We disagree. Assuming arguendo that
25 plaintiff is correct, her argument still fails because it
26 requires that the court also find that the right created by CC
27 §54.2 is absolute.

28 The strong commitment of California to ensuring that
physically disabled persons be allowed full and equal
participation in society has been clearly declared by the

1 Legislature in numerous statutory enactments. (E.g., Cal. Civil
2 Code §§ 51, 54, 54.1; also 71 Ops.Att.Gen. 114, 115 (1988).)
3 Notwithstanding this strong state policy, the rights granted to
4 physically disabled persons have never been declared to be
5 absolute. (See Amicus Brief at 4 lines 20-22.) The Attorney
6 General's assertion is startling. Such an assertion cannot
7 withstand analysis in light of related statutes, nor withstand
8 the analysis of the Attorney General's own opinions.

9
10 A. CIVIL LIBERTIES ARE SUBJECT TO REASONABLE
REGULATION.

11 As a general legal proposition, there are no absolute
12 personal rights. Even the most preferred liberties such as
13 freedom of speech and the press are subject to reasonable
14 limitation and regulation. (Curry v. Municipal Court for
15 Newhall Judicial District (1965) 237 Cal.App.2d 335, 337.) The
16 rights and liberties guaranteed by law are subject to regulation
17 in the public interest; rights are guaranteed on an equal rather
18 than an absolute basis. (See Max Factor and Company v. Kunsman
19 (1936) 5 Cal.2d 446, 458, aff'd 299 U.S. 198.)

20 The conditions and limitations contained in the
21 various statutory provisions enacted to ensure full and equal
22 participation by physically handicapped persons evidence a
23 general Legislative intent that the rights granted not be
24 absolute. The entitlement to full and equal accommodations
25 guaranteed by the Unruh Civil Rights Act does not require
26 structural modification in order to make public accommodations

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28

1 accessible. (Cal. Civil Code § 51, paras. 4, 5.) Full and
2 equal access to public conveyances and places of public
3 accommodation likewise does not require structural modification.
4 (Cal. Civil Code § 54.1(b)(3).) Similarly, the right to be
5 accompanied by a guide or service dog is subject to reasonable
6 regulation under the terms in a lease or rental agreement. (Id.
7 at (b)(5), para. 2.) An owner of real property is not required
8 to rent or lease to a disabled person who has a dog if the owner
9 refuses to accept tenants who have dogs. (Id. at (b)(4).)

10 B. THE RIGHT TO FULL AND EQUAL SERVICES UNDER
11 CIVIL CODE SECTION 51 IS SUBJECT TO
12 REASONABLE REGULATION.

13 The right to full and equal services under the Unruh
14 Civil Rights Act is not absolute. The Unruh Act has been
15 construed to proscribe "arbitrary discrimination." (See In Re
16 Cox (1970) 3 Cal.3d 205, 212.) The California Supreme Court has
17 stated that this broad prohibition is not absolute and a
18 business establishment may implement regulations which restrict
19 the right if the regulations are reasonably related to the
20 services performed and the facilities provided. (Id.) In a
21 later opinion, the Court indicated that a business
22 establishment's exclusionary policy must serve "some compelling
23 societal interest" in order to avoid invalidity under the Unruh
24 Civil Rights Act. (Marina Point Limited v. Olson (1982) 30
25 Cal.3d 721, 743.)

26 This apparent inconsistency in California Supreme
27 Court opinions was discussed by the Ninth Circuit in Martin v.
28 International Olympic Committee, 740 F.2d 670, 677 (9th Circuit

1 1984). The principle which the Martin court extracted from the
2 Cox and Marina Point decisions is that a business establishment
3 may exclude individuals if they violate reasonable regulations
4 that are rationally related to the services performed and the
5 facilities provided. (See Martin, 740 F.2d at 675-77.)

6 C. THE RIGHT TO BE ACCOMPANIED BY A TRAINED
7 SERVICE DOG IS SUBJECT TO REASONABLE
8 REGULATION.

8 The right of a physically disabled person to be
9 accompanied by a guide, signal, or service dog in public
10 conveyances, places of public accommodation, amusement or
11 resort, and housing accommodations is subject to such limitation
12 and regulation as is reasonably related to the purpose of the
13 accommodation and uniformly applicable to all persons. (See
14 Cal. Civil Code § 54.1(a); 70 Ops. Atty. Gen. 104, 105 (1987).)
15 The statute itself provides for reasonable limitations. The
16 right to be accompanied by a service dog under Civil Code
17 section 54.2 extends to places to which physically disabled
18 persons are entitled to access under Civil Code section 54.1.
19 (Cal. Civil Code § 54.2(a).) Full and equal access to places of
20 public accommodation under Section 54.1 is subject to
21 "limitations and regulations applicable alike to all persons."
22 (Cal. Civil Code §54.1(a).) Thus, the right of a disabled
23 person to be accompanied by a service dog is subject to such
24 limitations and regulations which are uniformly applied to all
25 persons.

1 D. HOGAN SENIOR HIGH SCHOOL REASONABLY
2 REGULATES THE PRESENCE OF ANIMALS IN
3 SCHOOL.

4 Exclusion of plaintiff's service dog by Hogan Senior
5 High School does not constitute the "arbitrary discrimination"
6 prohibited by the Unruh Civil Rights Act. Hogan Senior High
7 School policies do not result in a blanket exclusion of any
8 class of persons or denial of a right. Physically disabled
9 persons are not prevented from attending school. Handicapped
10 persons are not prohibited from being accompanied by a guide or
11 service dog when it is necessary and appropriate to the
12 educational process. The Hogan Senior High School policy
13 governing the presence of animals at school and in the classroom
14 is a reasonable regulation intended to accommodate a large
15 number of individuals with potentially conflicting health and
16 educational needs within the facilities of a public school.

17 Even assuming arguendo that Plaintiff has a right to
18 be accompanied by a service dog under Civil Code sections 54.1
19 and 54.2, Defendant's refusal to permit the presence of a
20 service dog in a classroom pursuant to reasonable rules does not
21 violate Section 54.2.

22 Hogan Senior High School permits animals in
23 classrooms to the extent necessary and appropriate to the
24 educational process as determined by the responsible teacher and
25 site manager. School policy states:

26 Animals in the Classroom.

27 All animals brought into the classroom
28 will be treated humanely.

Insects, small mammals, amphibians and
reptiles may be brought to school only
with the approval of the responsible

1 teacher and site manager. Venomous or
2 toxic insects, reptile and plant species,
3 and such other species commonly regarded
4 as dangerous are not permitted at school
5 unless by permission of the principal.

6 Hogan Senior High School, Policy No. 6163.2

7 Plaintiff's request to be accompanied by her service
8 dog was declined after review by a team of professional
9 educators, including the teacher and site manager. Two major
10 factors in the team's decision were the fact that Plaintiff does
11 not need the dog for physical access, and the fact that the
12 appropriate educational placement for plaintiff is in a class
13 instructed by a teacher with an intense allergy to animal
14 dander.

15 If, as the Attorney General contends, physically
16 disabled persons have an absolute right to be accompanied by
17 service dogs at public schools, no service dog could ever be
18 excluded regardless of the circumstances. Such cannot be the
19 intent of the law. The nature of the educational process and
20 facilities requires that the presence of guide, signal and
21 service dogs be subject to reasonable regulations applicable to
22 all.

23 V

24 PUBLIC SCHOOLS ARE NOT BUSINESS ESTABLISHMENTS
25 UNDER CIVIL CODE SECTION 51. NOR ARE THEY PUBLIC
26 ACCOMMODATIONS UNDER SECTIONS 54.1 AND 54.2.

27 The brief of the Attorney General is flawed by its
28 failure to clearly distinguish between Civil Code sections 51,
54.1, and 54.2. Notwithstanding the broad reach of California
Statutes creating and protecting the rights of physically

1 disabled persons, Section 54.2, which specifically refers to
2 service dogs, is a distinct statutory provision which serves a
3 specific purpose and should not be confused with Civil Code
4 section 51.

5 A. PUBLIC SCHOOLS ARE NOT BUSINESS ESTABLISHMENTS.

6 Civil Code section 51, the Unruh Civil Rights
7 Act, generally ensures full and equal access to business
8 establishments without regard to a person's sex, race, color,
9 religion, ancestry, national origin, or blindness or other
10 physical disability. The protections afforded blind and
11 physically disabled persons were added to the statute in 1987.
12 Cal.Stats.1987, c.159, § 1. The Unruh Act does not confer any
13 rights or privileges which are otherwise conditioned or limited
14 by law. (Cal. Civ. Code § 51 para.3.)

15 The Attorney General's brief attempts to blur the
16 distinction between the right of full and equal access to all
17 business establishments under the Unruh Act with the right to be
18 accompanied by a service dog in places of public accommodation
19 or other places to which the general public is invited under
20 Section 54.2. The Attorney General attempts to rely on
21 authority construing Civil Code section 51 for the proposition
22 that schools are "public accommodations" under Sections 54.1 and
23 54.2. (See Amicus Brief at 5-7.) The Attorney General is
24 forced to this strained and conclusory analysis because there is
25 no case or statutory authority to support the assertion that
26 public schools are "public accommodations" under Sections 54.1
27 and 54.2.

1 In 1959, the Legislature amended Civil Code section
2 51 to read "all business establishments of every kind
3 whatsoever." (Cal.Stats.1959, c.1866, p. 4424, § 1.) However,
4 when Civil Code sections 54, 54.1 and 54.2 were added in 1968,
5 the Legislature chose to describe the rights of blind and
6 disabled persons to access their assistance dogs by reference to
7 public places and places to which the general public is invited.
8 The legislature incorporated §54.1 by reference into §54.2. It
9 did not incorporate §51, the "Unruh Act" statute.
10 (Cal.Stats.1968, c.461, p. 1024, § 1 (emphasis added).) When
11 the Legislature later amended Sections 54.1 and 54.2, it
12 continued to retain the reference to Section 54.1 rather than
13 substituting the broader language of the Unruh Act. (See e.g.,
14 Cal.Stats.1972, c.819, p. 1466, § 2; Cal.Stats.1979, c.293,
15 p. 1092, §§ 1 and 2; Cal.Stats.1980, c.773, §§ 1 and 2.)

16 The Legislature was aware that the phrase "other
17 public places" in a statute had been construed to mean places
18 like those enumerated in the statute. (See Reed v. Hollywood
19 Professional School (1959) 169 Cal.App.2d Supp. 887, 889.)
20 Notwithstanding numerous amendments to sections 54.1 and 54.2,
21 the Legislature has never seen fit to alter the language of
22 54.1, or to incorporate §51 into §54.2 along with or in place of
23 §54.1.

24 By not acting to amend section 54.2 when it had the
25 opportunity to do so, the Legislature intended the public
26 accommodation language of section 54.1 to apply, not §51.
27

1 B. PUBLIC SCHOOLS ARE NOT PLACES TO WHICH
2 THE GENERAL PUBLIC IS INVITED.

3 The contention of the Attorney General that the
4 plaintiff has an absolute statutory right to be accompanied by a
5 service dog pursuant to Sections 54.1 and 54.2 is equally
6 without merit in light of the analysis of the Attorney General's
7 own opinions. The right to be accompanied by a service dog
8 extends only to common carriers, telephone facilities, hotels
9 and lodging places, places of public accommodation, amusement or
10 resort, and other places to which the general public is invited.
11 (Cal. Civil Code § 54.1(a); 70 Ops.Att.Gen: 104, 105.) This
12 right does not extend to facilities which are not open to the
13 general public. (See 70 Ops.Att.Gen. at 107.)

14 The Attorney General's brief relies on case law
15 interpreting Civil Code section 51 to dismiss the significance
16 of restricted access under Sections 54.1 and 54.2. (See Amicus
17 Brief at 10, lines 4-22.) However, whether a disabled person
18 has a right to be accompanied by a service dog depends precisely
19 upon whether access to a particular location is restricted. 70
20 Ops.Att.Gen. at 108. The Attorney General has stated that the
21 right to be accompanied by a guide or service dog depends upon
22 the individual circumstances of a facility, and has cited with
23 favor the analysis in Perino v. St. Vincent's Medical Center
24 (S.Ct. 1986) 502 N.Y.S.2d 921. (Id.)

25 In Perino, the New York trial court considered
26 whether a blind person accompanied by a guide dog could be
27 denied access to a hospital delivery room under a statute
28 similar to Sections 54.1 and 54.2. (See id. at 921-22.) In

1 reaching its conclusion that the hospital delivery room is not
2 normally open to the general public, the court examined four
3 general factors: (1) whether the facility is commonly perceived
4 to be open to the general public; (2) whether access is
5 restricted to particular parties; (3) whether reasonable
6 measures require that the facility not be open to the public;
7 and (4) whether the facility is normally a closed unit. (Id. at
8 922; see also 70 Ops.Att.Gen. at 108.)
9

10 Applying the above analysis to the circumstances of a
11 public school leads to the conclusion that public school
12 classrooms are not open to the general public.

13 Public school classrooms are not commonly perceived
14 to be places to which the general public is normally invited or
15 permitted. It is the declared intent of the Legislature to
16 restrict and condition access to school campuses in order to
17 ensure safe, secure, and peaceful public schools. (Cal. Penal
18 Code § 627 et seq.; see also Cal. Educ. Code §§ 32210, 32211.)
19 In the interest of preserving the educational process, the
20 Legislature has specifically authorized school district
21 governing boards to adopt policies to minimize classroom
22 interruptions. (Cal. Educ. Code § 32212.)

23 Access to and attendance at public education
24 facilities is restricted to particular parties. All persons
25 between the ages of 6 and 18 years are subject to compulsory,
26 full time education at the public school of the school district
27 in which the residence of either parent or legal guardian is
28

1 located. (Cal. Educ. Code § 48200, et seq.) Only pupils,
2 school district employees and officers, and others whose
3 activities require them to be present on school grounds are
4 permitted access to school facilities and classrooms. Others
5 may enter only with the permission of the school principal.
6 (Cal. Penal Code §§ 627.1 and 627.2.)
7

8 Reasonable health, welfare and safety measures
9 dictate that classrooms not be open to the public. The
10 California Constitution guarantees students and staff a right to
11 attend safe, secure and peaceful public schools. (Cal. Const.
12 Art. I, § 28; see also Cal. Penal Code § 627(c).) The
13 Legislature has charged school district governing boards to
14 provide for the health, safety and security of pupils. (See
15 Cal. Educ. Code §§ 35160, 35161, 35291, 49300.) One method by
16 which school boards ensure the safety and security of pupils is
17 to deny access to the general public. (Ed.C. §32212.) Even
18 parents are restricted in their access. (Cf. e.g., Cal. Educ.
19 Code § 48900.1 (board shall adopt policy authorizing teachers to
20 permit parents/guardians of suspended pupils to attend portion
21 of school day).) Further, public use of school facilities is
22 limited by the provisions of the Civic Center Act. (See Cal.
23 Educ. Code §§ 40040, et seq.)

24 Public school classrooms are not facilities which are
25 open to the general public. Therefore, a physically disabled
26 person does not have an absolute right to be accompanied by a
27 guide, signal or service dog in a public school classroom under
28 CC §54.2.

1
2 The Education Code supports the conclusion that the
3 Legislature does not consider public school facilities and
4 services to come within the scope of "places to which the
5 general public is invited" under Section 54.1. Section 54.1
6 grants a disabled person the right to be accompanied by a
7 service dog on all "public conveyances or other modes of
8 transportation." (Cal. Civil Code §§ 54.1(a).) However, in
9 1976 the Legislature adopted Education Code section 39839 which
10 provides that guide and service dogs may be transported in a
11 school bus when accompanied by handicapped pupils. (Cal.
12 Stats.1976, c.1010, § 2.) If the Legislature had considered
13 school buses to be "public conveyances" under the Civil Code,
14 then Education Code section 39839 would need to be mandatory
15 rather than permissive. Similarly, if the Legislature had
16 considered the right to be accompanied by a service dog to be
17 compelled by section 54.1, it would not have given the governing
18 board's discretionary authority to determine whether service
19 dogs are allowed on public school buses on a case-by-case basis.
20 (See Cal. Educ. Code § 39839.) It is well settled that
21 statutory enactments must be construed to harmonize whenever
22 possible.

23 By distinguishing public school buses from "public
24 conveyances," the Legislature clearly did not consider public
25 school buses to be a place to which the public is invited.
26 Likewise, public school buildings and classrooms are
27 distinguishable from "public accommodations" and are not places
28 to which the general public is invited.

1
2 CONCLUSION

3 California Civil Code sections 54.1 and 54.2 do not
4 grant a physically disabled person the absolute right to be
5 accompanied by a trained service dog. They give the disabled
6 person the right not to be denied access because of the dog.

7 A disabled person's right to full and equal services
8 under the Unruh Act is subject to reasonable regulation
9 rationally related to the services performed and facilities
10 provided. Likewise, a disabled person's right to be accompanied
11 by a service dog is subject to reasonable regulations applicable
12 alike to all persons. Hogan Senior High School reasonably
13 regulates the presence of animals in the classroom in a manner
14 rationally related to the educational purpose and the facilities
15 available, and on a case by case basis.

16 The right of a disabled person to be accompanied by a
17 guide, signal or service dog does not extend to places to which
18 the general public is not invited. Access to public schools is
19 restricted to particular persons. Hogan Senior High School is
20 not a place to which the general public is invited. Therefore,
21 a disabled person does not have the right to be accompanied by a
22 service dog in a public school classroom.

23 The right to full and equal services in all business
24 establishments under the Unruh Act are distinct from the right
25 to be accompanied by a service dog in places to which the
26 general public is invited. The statutory scheme and legislative
27
28

1 history evidence an intent that public schools are not places to
2 which the general public is invited within the meaning of Civil
3 Code section 54.1.

4 We respectfully submit that despite the Attorney
5 General's support, the state law claim must be denied.

6 Dated Jan 16, 1990

7 Respectfully submitted,

8 Kronick, Moskovitz, Tiedemann & Girard
9 A Professional Corporation

10
11 By Jan K. Damesyn
12 Jan K. Damesyn
13 Attorneys for Defendant
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[PROPOSED] ORDER

The request for judicial notice by Proposed *Amicus* DREDF
dated Sept. ___ 2021 is granted.

DATED: _____

Chief Justice
Supreme Court of the State of
California

PROOF OF SERVICE

I am employed in the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action.

My business address is 3075 Adeline Street, Suite 210, Berkeley, CA 94703.

On September 15, 2021, I served the following document described as:

REQUEST FOR JUDICIAL NOTICE OF DISABILITY RIGHTS EDUCATION & DEFENSE FUND (DREDF) AS PROPOSED *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-PETITIONER BRENNON B.; MEMORANDUM OF POINTS & AUTHORITIES; IDENTIFICATION OF DOCUMENTS; DECLARATION OF LINDA D. KILB; EXHIBITS 1 & 2; AND PROPOSED ORDER

on the interested parties in this action as follows:

- BY Electronic Transmission (TrueFiling 3.0):** I electronically uploaded a true and correct PDF copy of the above document(s) by filing via TrueFiling 3.0, an Electronic Filing Service Provider designated for this matter by the Court.

Case No. S266254

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BY U.S. Mail: I served the said document by depositing a true copy thereof with the U.S. Postal Service with the postage fully pre-paid, addressed to the addresses set forth below:

Case No. S265223

Contra Costa County Superior Court Attn: Hon. Charles Treat 1020 Ward Street Martinez, CA, 94553 (for Charles Treat)	MSC16-01005
California Court of Appeal First Appellate District, Division One	A157026

30 McAllister Street San Francisco, CA 94102	
Solicitor General of California 1515 Clay St. Oakland, CA 94612 (for Attorney General of California)	Service Required by Cal. Rules of Court, rule 8.29

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 15, 2021, in California

/s/ Susan Henderson

Susan Henderson