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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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GOLETA UNION ELEMENTARY
SCHOOL DISTRICT; et al.,

Plaintiffs,

v.

ANDREW ORDWAY; et al.,

Defendants,

AND RELATED COUNTER-CLAIM.

Case No. CV 99-07745 DDP (EX)

ORDER GRANTING IN PART AND
DENYING IN PART THE CROSS-MOTIONS
FOR SUMMARY JUDGMENT BY CROSS-
CLAIMANT AND COUNTER-DEFENDANT
DIANA RIGBY

[Motions filed on 10/21/02]

This matter comes before the Court on the counter-claimant and counter-defendant cross-motions for summary judgment. Having considered the materials submitted by the parties, the matters raised at oral argument and the issues raised thereby, the Court adopts the following order.

I. Background

This action stems from an administrative hearing appeal regarding alleged violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq. ("IDEA"). The defendants are Andrew Ordway ("Andrew"), and his mother, Cynthia Ordway.

(174)

1 Andrew has been a special education student since 1993. (Counter-
2 claimant's Statement of Genuine Issues, p. 1.)

3 The plaintiffs and counter-defendants filed this action on
4 July 27, 1999, appealing the April 30, 1999 decision of a
5 California Special Education Hearing Officer (the "Hearing
6 Officer"). The Hearing Officer found, inter alia, that the
7 plaintiffs failed to offer Andrew a free and appropriate public
8 education ("FAPE") as required by IDEA, and that one or more of the
9 plaintiffs should be required to reimburse Cynthia Ordway for
10 Andrew's residential placement. (See Compl., Ex. 1 at 19-21.) The
11 plaintiffs sought to set aside the Hearing Officer's findings, as
12 well as additional declaratory relief and attorney's fees. (See
13 Compl. at 13-15.)

14 On September 24, 1999, defendants California Department of
15 Education and California Special Education Hearing Office answered
16 the complaint. On October 18, 1999, defendant Cynthia Ordway filed
17 an answer and a counter-claim. The counter-claim named the
18 plaintiffs as counter-defendants, as well as Marcia McClish, both
19 individually and as the director of SELPA, and Diana Rigby, both
20 individually and as the Director of Student Services for the SBHSD.
21 The counter-claim included the following allegations and causes of
22 action: (1) the counter-defendants violated Ms. Ordway's rights
23 under IDEA; (2) the counter-defendants violated Ms. Ordway's rights
24 under Section 504 of the Rehabilitation Act; (3) the counter-
25 defendants "acted in bad faith in denying Counterclaimant [sic] her
26 statutory rights under IDEA, and thereby violated Section 1983";
27 (4) the counter-defendants "acted with intentional disregard for
28 Counterclaimant's [sic] statutory rights under IDEA, and thereby

1 violated Section 1983"; (5) the counter-defendants "acted in bad
2 faith in denying Counterclaimant [sic] her statutory rights under
3 Section 504 [of the Rehabilitation Act] and thereby violated
4 Section 1983"; and (6) the counter-defendants "acted with
5 intentional disregard for Counterclaimant's [sic] statutory rights
6 under Section 504 [of the Rehabilitation Act] and thereby violated
7 Section 1983." (Counter-Compl. at ¶¶ 97-108.) Subsequently, Ms.
8 Ordway agreed to dismiss her second, fifth, and sixth counter-
9 claims. (See Opp. to Mot. to Dismiss at 8-9.)

10 On August 10, 2001, the Court affirmed the Hearing Officer's
11 findings in favor of defendants/counter-claimants on all grounds,
12 with the exception of the finding that the AB 3632 assessment was
13 completed in a timely manner. The Court reversed the Hearing
14 Officer's decision regarding the assessment, and found in favor of
15 the Ordways on that issue. The Court affirmed the Hearing
16 Officer's monetary award and granted SEHO's and the Department of
17 Educations' motions for summary judgment. The Court affirmed the
18 hearing officer's decision that Andrew Ordway's rights secured by
19 the IDEA were violated.

20 The counter-defendant then filed a motion for summary judgment
21 on the issues of: (1) whether a civil rights action under § 1983
22 could be maintained based on a violation of IDEA; (2) whether the
23 11th Amendment barred the action against Rigby in her official
24 capacity; and (3) whether Rigby was entitled to qualified immunity
25 to the extent she is sued in her individual capacity. This Court
26 denied the motion on August 8, 2001.

27 In the instant motion for summary judgment, the cross-
28 defendant, Ms. Rigby, asks the Court to (1) reconsider its ruling

1 that a civil rights action under § 1983 can be based on a violation
2 of IDEA; (2) find that the counter-claim based on California Law is
3 barred by the Tort Claims Act; (3) interpret the previous orders in
4 this case to constitute a ruling on the third and fourth counter-
5 claims in that negligence is insufficient to sustain a claim under
6 § 1983 for a violation of IDEA; (4) deny Cynthia Ordway's claims
7 under IDEA inasmuch as they are based on rights held by her son
8 Andrew; (5) find that the transfer of Andrew was not actionable
9 conduct; and (6) read the "open enrollment" requirement of
10 California law as a defense to Ms. Rigby's conduct.

11 The counter-claimant, Ms. Ordway, in her cross-motion, moves
12 for summary judgment on the question of whether Ms. Rigby is liable
13 under § 1983 for committing the following violations of IDEA:
14 (1) transferring Andrew to La Colina Jr. High without assessing
15 whether it was an appropriate placement; (2) transferring Andrew
16 without developing goals and objectives pursuant to an
17 Individualized education Plan ("IEP"); (3) denying Ms. Ordway's
18 right to meaningfully participate in the IEP; (4) failing to
19 convene an IEP meeting to develop an assessment plan and implement
20 a behavioral intervention plan and conduct a timely manifestation
21 determination; (5) failing to conduct a behavioral assessment and
22 develop a behavior intervention plan; and (6) failing to timely
23 refer Andrew for an AB 3632 placement.

24

25 II. Legal Standard

26 Summary judgment is appropriate where "there is no genuine
27 issue as to any material fact and . . . the moving party is
28 entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

1 A genuine issue exists if "the evidence is such that a reasonable
2 jury could return a verdict for the nonmoving party," and material
3 facts are those "that might affect the outcome of the suit under
4 the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
5 248 (1986). Thus, the "mere existence of a scintilla of evidence"
6 in support of the nonmoving party's claim is insufficient to defeat
7 summary judgment. Id. at 252. In determining a motion for summary
8 judgment, all reasonable inferences from the evidence must be drawn
9 in favor of the nonmoving party. Id. at 242.

10

11 III. Analysis

12 A. The Motion for Reconsideration is Denied

13 The counter-defendant, Ms. Rigby, first requests the Court to
14 reconsider its previous ruling that a § 1983 claim can be based on
15 a violation of IDEA. This, the Court declines to do. The cases
16 cited by the counter-defendant neither raise new issues of fact or
17 law, nor point to any issue that the Court has manifestly failed to
18 consider. There has been, contrary to the counter-defendant's
19 assertion, no Ninth Circuit case denying recovery under § 1983 for
20 violations of IDEA decided since Congress amended IDEA's
21 predecessor law in 1986. 20 U.S.C. § 1415(f). This Court's
22 determination that a plaintiff can recover under § 1983 for
23 violations of IDEA is founded on the Congressional intent evidenced
24 by this amendment. Therefore, the counter-defendant offers no
25 binding authority to support her position. The motion for
26 reconsideration is denied.

27

28

1 B. Counter-claims Based on California Law

2 The counter-defendant moves for summary judgment on the
3 counter-claims brought under the California Education Code § 56000
4 et seq., arguing that the action is untimely under the Tort Claims
5 Act.¹

6 The Court finds that the Tort Claims Act is inapplicable under
7 these circumstances. The purpose of the Tort Claims Act is to
8 provide governmental agencies with notice of the claims against
9 them and provide them with sufficient information to investigate
10 and settle claims, if appropriate, without the expense of
11 litigation. City of San Jose v. Superior Ct., 12 Cal. 3d 447, 455
12 (1974). There is no requirement to file a claim under the Act
13 where the statute in question prescribes different claims filing
14 procedures. Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial
15 ¶ 1:660 (The Rutter Group 2001). For example, in Snipes v. City of
16 Bakersfield, 145 Cal. App. 3d 861, 865 (1983), the court held that
17 claims under the Fair Employment and Housing Act ("FEHA") do not
18 implicate the Tort Claims Act as the FEHA contains its own claims
19 filing procedures, insuring adequate notice. Likewise, where
20 parties requesting monies from a state created fund were required
21 to first file a claim with the fund, the Tort Claims Act was found
22 inapplicable. Becerra v. Gonzales, 32 Cal. App. 4th 584, 592
23 (1995).

24

25

26 ¹ The Court is confused by the counter-defendant's assertion
27 that a plaintiff cannot simultaneously maintain an action for
28 violation of state and federal law where both apply. The counter-
defendant cites no case to support this argument and, without more,
the Court declines to rule on it.

1 California enacted §§ 56500-56507 of the Education Code to
2 comply with the exhaustion requirement of IDEA. 20 U.S.C. § 1415;
3 Porter v. Board of Tr., 307 F.3d 1064, 1068 (9th Cir. 2002). The
4 cross-claimants followed the procedures outlined in California law,
5 including participating in a full hearing before a Special
6 Education Hearing Officer. The Hearing Officer is under contract
7 with the California Department of Education to provide due process
8 hearings for claims under California Education Code § 56000 et seq.
9 The State and its employees, therefore, were on notice of the
10 claims before the filing of the instant action and the Tort Claims
11 Act is inapplicable.

12 C. A § 1983 Claim for Violation of IDEA Does Not Require a
13 Showing of Heightened Culpability

14 The counter-defendant moves for summary judgment on the
15 counter-claims maintaining that she cannot be held personally
16 liable under § 1983 for violation of IDEA because mere negligence
17 on the part of a government official is insufficient to support
18 such a claim. The counter-defendant interprets this Court's
19 previous ruling to be definitive on the subject of her culpability.
20 This Court found that the counter-claimant failed to create a
21 triable issue of fact as to whether Ms. Rigby acted with reckless
22 or callous disregard for the rights of others. (10/15/01 Order.)

23 The language of § 1983 does not contain a state-of-mind
24 requirement. The Supreme Court, however, has explored the issue of
25 what level of culpability, if any, is required to establish a
26 § 1983 violation where the claim was predicated on a violation of a
27 constitutional right. In Daniels v. Williams, 474 U.S. 327 (1986),
28 the Court explicitly held that the negligent acts of a government

1 official could not sustain a due process claim under § 1983. The
2 Court reasoned that § 1983 does not create or establish any right
3 but, instead, provides only a remedy for the violation of federal
4 rights created by another source. As such, "in any given § 1983
5 suit, the plaintiff must still prove a violation of the underlying
6 constitutional right; and depending on the right, merely negligent
7 conduct may not be enough to state a claim." Id. at 330; see also
8 Pink v. Lester, 52 F.3d 73, 74 (4th Cir. 1995) ("the requisite
9 intent in a given [§ 1983] case turns upon the standard necessary
10 to establish a violation of the underlying constitutional or
11 statutory right"). Considering the source of the constitutional
12 right at issue, the due process clause of the Fourteenth Amendment,
13 the Supreme Court found that negligent conduct could not support a
14 § 1983 claim. Id. at 332.²

15 In contrast to Daniels, the underlying right at issue here is
16 not constitutional, but statutory. The proper approach, therefore,
17 is to look to IDEA. A showing of heightened culpability is not
18 required to establish a violation of IDEA. Thus, all that is
19 required to establish a § 1983 claim is proof of a violation of
20 IDEA under color of law.

21 D. Parents May Sue Under § 1983 For All Violations Of IDEA

22 The counter-defendant moves for summary judgment on the
23 majority of the counter-claims, asserting that Ms. Ordway cannot
24

25 ² Ninth Circuit case law also requires a showing of
26 heightened culpability to sustain a § 1983 claim based on a
27 constitutional violation. Stevenson v. Koskey, 877 F.2d 1435 (9th
28 Cir. 1989) (holding that an officer's handling of an inmate's mail
was at most negligent and, thus, did not reach the level of
culpability necessary to permit a finding of personal liability
under § 1983); Woodrum v. Woodward County, 866 F.2d 1121 (9th Cir.
1989).

1 maintain a cause of action under § 1983 for violations of IDEA that
2 do not specifically implicate the enumerated rights granted to a
3 parent.³ This approach requires dissecting IDEA into categories of
4 rights, some of which belong to the parents and some of which
5 belong to the child.

6 Under § 1983 "[e]very person who, under color of any statute,
7 ordinance, regulation, custom, or usage . . . , subjects, or causes
8 to be subjected any citizen of the United States . . . to the
9 deprivation of any rights, privileges or immunities secured by the
10 Constitution and laws, shall be liable to the party injured."

11 Frazier v. Fairhaven Sch. Comm., 276 F.3d 52, 58 (1st Cir. 2002).

12 The key question is whether the actions of the party deprived the
13 plaintiff of a federally secured right. Id. This Court has
14 already ruled that § 1983 can support an IDEA claim. However, the
15 approach used to determine whether a specific statutory scheme
16 supports § 1983 claims is instructive in answering the question
17 presented here.

18 The Supreme Court has used a three factor test to determine
19 whether or not a statutory provision creates an enforceable right
20 (1) whether the plaintiff is an intended beneficiary of the
21 statute; (2) whether the plaintiff's asserted interests are not so
22 vague and amorphous as to be beyond the competence of the judiciary
23 to enforce; and (3) whether the statute imposes a binding
24 obligation on the state. See Wilder v. Virginia Hosp. Ass'n, 496
25 U.S. 498, 509 (1990). In Suter v. Artist M., 503 U.S. 347, 357

26
27 ³ The Court notes that this issue could be easily avoided by
28 adding Andrew as a party to the counter-claim and questions why
this has not been done.

1 (1992), the Supreme Court again addressed whether a statute created
2 a right that could form the basis of a § 1983 claim and held that
3 the statute in question must unambiguously confer upon the intended
4 beneficiaries a right to enforce the provisions of the statute. To
5 determine the intended beneficiaries, one looks to the statutory
6 language to see whether it is "phrased in terms of the persons
7 benefitted." Victorian v. Miller, 813 F.2d 718, 720-21 (5th Cir.
8 1987) (quoting Cannon v. University of Chicago, 441 U.S. 677, 692
9 n.13 (1979)).

10 The IDEA statement of purpose recognizes that the goal of the
11 statute is "to ensure that the rights of children with disabilities
12 and parents of such children are protected." 20 U.S.C.
13 § 1400(d)(1)(B) (emphasis added). Moreover, IDEA unambiguously
14 confers upon the parent beneficiaries of the statute an enforceable
15 right to the procedural mechanisms that secure their disabled
16 children a free and appropriate public education.⁴ Courts have
17 consistently recognized the importance of parents to the proper
18 functioning of IDEA. Porter v. Board of Tr. of Manhattan Beach,
19 307 F.3d 1064 (9th Cir. 2002); Amanda J. v. Clark County Sch.
20 Dist., 267 F.3d 877, 882 (9th Cir. 2001). The IDEA, therefore,
21 intends to protect and benefit not only disabled children, but
22 their parents, by recognizing that there is a unity of interest

23

24

25 ⁴ Ms. Rigby makes much of the requirement that § 1983 rights
26 be "personal", citing to numerous cases wherein a parent was unable
27 to bring a claim for violation of a child's civil rights. These
28 cases, however, do not address § 1983 claims based on statutory
violations. In the context of an alleged violation of a right
guaranteed by federal law, the Supreme Court has looked to the
language of the statute to determine the statute's intended
beneficiaries.

1 between the parent and the child in obtaining a free and
2 appropriate education.

3 Moreover, the Court can find no precedent to support a parsing
4 of IDEA into separate rights for parents and children. In
5 contrast, the Supreme Court, analyzing the National Labor Relations
6 Act ("NLRA") in the context of § 1983, held that the NLRA created
7 rights in both labor and management. Golden State Transit Corp. v.
8 City of Los Angeles, 493 U.S. 103, 108 (1989). Next, the Court
9 found that the petitioner, a taxi cab franchise owner, was an
10 intended beneficiary "of a statutory scheme that prevents
11 governmental interference with the collective-bargaining process.
12 ." Id. (emphasis added). The enforcement mechanism of IDEA
13 evidences an intent to create a comprehensive statutory scheme
14 benefitting both parents and children without distinction.

15 The IDEA gives parents the right to "present complaints with
16 respect to any matter relating to the identification, evaluation,
17 or educational placement of the child, or the provision of a free
18 appropriate public education to such child." 20 U.S.C.
19 § 1415(b)(6). Parents are not limited to enforcing those
20 procedures which directly address parental participation but can
21 enforce any matter that relates to the provision of an appropriate
22 education to their child. It was "[t]o ensure that the parents
23 would not be silenced by the very forces that had once excluded
24 disabled children from public education, [that] Congress granted
25 parents the right to seek review of their child's IEP." Heldman v.
26 Sobol, 962 F.2d 148, 151 (2d Cir. 1992). It is the parents, then,
27 who are specifically granted the right to an impartial due process
28 administrative hearing. 34 C.F.R. § 300.506; Radcliffe v. School

1 Bd. of Hillsborough County, 38 F. Supp. 2d 994, 998 (M.D. Fla.
2 1999). Upon the completion of the administrative process, "any
3 party aggrieved by the findings and decision . . . shall have the
4 right to bring a civil action with respect to the complaint." 20
5 U.S.C. § 1415(i)(2). Parents, therefore, have standing under IDEA
6 to assert violations of any matter relating to their child's
7 receipt of a free and appropriate public education.

8 Finally, to deny parents a free standing right to enforce all
9 of the procedures of IDEA would be inconsistent with the structure
10 and format of IDEA. Although IDEA is designed to provide disabled
11 children with a "free and appropriate public education," Congress
12 did not choose to establish precise substantive rights; instead, it
13 created numerous procedures to ensure and protect that right. 20
14 U.S.C. § 1400(c).

15 IDEA's procedural guarantees, however, serve not only to
16 guarantee the substantive rights accorded by the Act; the
17 procedural rights, in and of themselves, form the
18 substance of the IDEA. . . . The central role of the IDEA
19 process rights bears witness that Congress intended to
20 create procedural rights the violation of which would
21 constitute an injury in fact.

22 Heldman, 962 F.2d at 155. The parents are the critical component
23 in these procedures, and it is through their participation that the
24 process is successful. To separate out each procedure as a right
25 granted individually to one beneficiary or the other belies the
26 intent to create a system of procedures, that, when functioning
27 properly, secures to disabled children, and the parents responsible
28 for them, a free and appropriate public education.

1 E. The Specific Liability of Counter-Defendant Rigby

2 The remainder of the counter-defendant's claims, and all of
3 the counter-claimant's requests for summary judgment, require
4 specific findings regarding Ms. Rigby's liability to Ms. Ordway.⁵

5 1. Andrew's Placement at La Colina

6 The counter-claimant argues that there can be no judgment
7 against her for the placement of Andrew in La Colina Junior High,
8 because a transfer within the district does not require an IEP
9 under IDEA.⁶

10 This Court has twice now stated that "SEHSD should have
11 assessed independently the causes of Andrew's behavior and whether
12 moving him to La Colina would be an appropriate placement." (Order
13 10/15/01 at 26 n.11 (quoting Order 8/13/01 at 19:11-13).) There
14 is, therefore, no need to revisit whether or not an assessment of
15 the appropriateness of the transfer was required. Moreover, this
16 Court held that the only conduct for which Ms. Rigby could be held

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18 ⁵ The counter-defendant makes separate evidentiary objections
19 protesting any assertions by the counter-claimant that this Court's
20 previous orders resulted in findings of fact. The Court may have
21 found that there was no genuine issue of material fact, but these
22 are not "findings" of fact. The counter-defendant further takes
23 exception to any reliance of the SEHO order or evidence presented
24 in support thereof as inadmissible hearsay. The counter-defendant
25 is correct that this Court's review of the SEHO's decision
26 essentially functioned as determination of cross-motions for
27 summary judgment. In that sense, it does not contain findings of
28 fact, but may have determined that no material issue of fact
remained. (Order 8/13/01 at 1.)

25 ⁶ The counter-defendant also maintains that the "open
26 enrollment" requirement of California law, which is translated into
27 a school district policy granting parents permission to request an
28 intra-district transfer, required her to honor Ms. Ordway's request
for a transfer to La Colina without question. The Court finds no
merit in this argument. The policy of a school district cannot
serve as a defense to Ms. Rigby's failure to meet her
responsibilities under IDEA.

1 personally liable under § 1983 was failing to investigate whether
2 La Colina would be an appropriate placement for Andrew. (Order
3 10/15/01 at 24.)' Further, the Hearing Officer found, and this
4 Court affirmed, that the plaintiffs, including Ms. Rigby, denied
5 Andrew a FAPE by, inter alia, failing to offer him an appropriate
6 placement. (Order 8/13/01 at 19.) It was evidence of Ms. Rigby's
7 actions that supported this finding. Thus, the Hearing Officer, in
8 a determination affirmed by this Court, already implicitly found
9 that Ms. Rigby's conduct constituted a violation of IDEA.

10 As well, this Court has already noted, twice, that "Ms. Rigby
11 testified that she moved Andrew to La Colina at the request of Ms.
12 Ordway. Ms. Rigby did this without investigating whether La Colina
13 would be an appropriate placement because she 'honor[s]' parental
14 requests." (10/15/01 Order at 22 n.9 (quoting 8/10/01 Order at
15 19).) The counter-claimant offers no evidence to create a triable
16 issue of fact as to whether or not Ms. Rigby actually conducted an
17 investigation into the appropriateness of La Colina as a placement
18 of Andrew. As there can be no dispute that Ms. Rigby acted under
19 the "color of law," the Court finds that the counter-claimant is
20 entitled to summary judgment on the § 1983 claim against Ms. Rigby

21

22

23 ⁷ The counter-defendant would have the Court leave open the
24 issue of qualified immunity for Ms. Rigby, claiming that the
25 previous order denying summary judgment was not dispositive. As
26 the counter-defendant offers nothing to refute the evidence offered
27 by the counter-claimant in support of the initial order denying
28 summary judgment or the current motion requesting it, she fails to
create a triable issue of fact on this question. Summary judgment
is therefore granted based on this Court's previous order, and the
unrefuted evidence presented in support thereof, that Ms. Rigby is
not entitled to the defense of qualified immunity for her failure
to investigate the propriety of Andrew's placement. (Order
10/15/01 at 19-30.)

1 in her individual capacity for failing to investigate the
2 appropriateness of Andrew's placement at La Colina.

3 2. The Remainder of the Claims Against Ms. Rigby
4 are Denied

5 The counter-claimant moves for summary judgment against
6 Ms. Rigby, claiming that she was personally responsible for
7 overseeing a variety of procedures required by IDEA in Andrew's
8 case. The counter-claimant's request for summary judgment is based
9 on the Hearing Officer's determination regarding SBHSD's
10 responsibilities and duties. This Court has already held that
11 Ms. Rigby's liability under § 1983 cannot be premised on a theory
12 of respondeat superior. (Order 10/15/01 at 24.) Further, this
13 Court held the Hearing Officer's findings implicating SBHSD's
14 cannot be translated into a finding of personal liability against
15 Ms. Rigby. (Id. ("Any findings on the part of the Hearing Officer
16 or this Court relating to the conduct of SBHSD may not be
17 attributed to Rigby herself.") This Court specifically found
18 that the sole action that could be attributed to Ms. Rigby was the
19 failure to investigate the appropriateness of the placement of
20 Andrew in La Colina. (Id.) Summary judgment based on qualified
21 immunity is therefore granted to the counter-defendant on all of
22 the counter-claimants remaining claims.

23

24 **IV. Conclusion**

25 In light of the upcoming trial, the parties are ordered to
26 meet and confer and prepare a joint statement summarizing any
27 remaining issues in this case. The statement shall be submitted
28 within two weeks of the date of this order.

1 A. Counter-Claimant's Motion for Summary Judgment

2 For the reasons above, summary judgment is granted for the
3 counter-claimant on the question of Ms. Rigby's liability in her
4 individual capacity for failing to investigate Andrew's placement
5 at La Colina. Summary judgment is granted to counter-defendant Ms.
6 Rigby for the remaining claims against her.

7
8 B. Counter-Defendant's Motion for Summary Judgment

9 For the reasons above, counter-defendant's motion for
10 reconsideration is denied. Summary judgment is denied on the
11 California Education Code § 56000 et seq. cause of action. Summary
12 judgment is granted on all issues of liability beyond Ms. Rigby's
13 failure to investigate the La Colina placement.

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15 IT IS SO ORDERED.

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17 Dated: 12/6/02


DEAN D. PREGERSON
United States District Judge

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