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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF CONTRA COSTA**

11 Mark S., by and through his guardian ad litem,
12 Anna S., Rosa T., by and through her guardian
ad litem Sofia L., and Jessica Black, Michell
13 Redfoot, and Dr. Nefertari Royston, as
taxpayers,

14 Plaintiffs and Petitioners,

15 v.

16 STATE OF CALIFORNIA; TONY
17 THURMOND, in his official capacity as STATE
SUPERINTENDENT OF PUBLIC
18 INSTRUCTION; STATE BOARD OF
EDUCATION; CALIFORNIA DEPARTMENT
19 OF EDUCATION; and PITTSBURG UNIFIED
SCHOOL DISTRICT, DOES 1-100,
20 INCLUSIVE,

21 Defendants and Respondents.

Case No.

UNLIMITED JURISDICTION

**VERIFIED PETITION FOR WRIT OF
MANDATE (CCP § 1085) AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF (CCP §
526(A))**

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Attorneys for Plaintiffs-Petitioners

1 **INTRODUCTION**

2 1. This is a Petition for Writ of Mandate pursuant to California Code of Civil
3 Procedure Section 1085 and a Complaint for Declaratory and Injunctive Relief and Statutory
4 Damages under the Unruh Act (“Writ and Complaint”) against the State of California, the State
5 Board of Education, the California Department of Education, State Superintendent of Public
6 Instruction Tony Thurmond in his official capacity (collectively “the State”), and the Pittsburg
7 Unified School District (“the District or “Pittsburg Unified”), (collectively “Defendants”).

8 2. The United States and California Constitutions agree that public education is the
9 institution by which all children receive equal opportunity to better their circumstances, become
10 meaningful participants in our democracy, and identify and realize their dreams for a fulfilling
11 life. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 495 (1954). The California Constitution
12 goes further, recognizing education as a “fundamental right,” perhaps the most vital of all
13 fundamental rights, to be obstructed only upon a showing that there is a compelling interest for
14 doing so. *Butt v. State*, 4 Cal.4th 668, 692-93 (1992).

15 3. No court has ever so much as suggested that it be otherwise for disabled students.
16 To the contrary, the California legislature has enacted a statutory scheme to confirm this
17 conclusion. *See* Cal. Educ. Code § 56000 *et seq.*; *Hayes v. Comm’n on State Mandates*, 11
18 Cal.App.4th 1564, 1592 (1992) (declaring that Section 56000 requires the State and local
19 educational agencies “to do [nothing] more than the Constitution already required of them[.]”).
20 These laws, borne of the unfortunate reality that children with disabilities are too often treated as
21 if they were second-class students not entitled to the same degree of respect as students without
22 disabilities, spell out the scope and nature of their entitlements to an education that enables them
23 to reach their potential, no different from their peers without disabilities. Recognizing, too, that
24 there are lifelong consequences to being unnecessarily segregated from students without
25 disabilities, or to being misidentified in the first place as students with disabilities, the law
26 properly demands that educators meet their obligations without delay to a student’s educational
27 progress. Time and precision matter. The responsibilities of our statewide system of education
28

1 are not just to these students and their families, but also to the larger community, to put an end to
2 societal discrimination against individuals with disabilities once and for all.

3 4. The California Supreme Court has accordingly recognized that students possess
4 two interrelated educational rights through the California Constitution:

5 a) First, students have the right to equal access to a public education system
6 that meets the prevailing statewide standards. *Butt*, 4 Cal.4th 686-87. This includes an
7 education that “will equip [them] with the substantive knowledge and skills they need to
8 succeed in life,” *O’Connell v. Superior Court*, 141 Cal.App.4th 1452, 1478 (2006),
9 including “instruction in phonics, reading comprehension, creative writing, [and]
10 handwriting skills...” *Butt*, 4 Cal.4th 687 n.16. To fulfill this constitutional promise, the
11 State has adopted academic content standards, including the Common Core standards, in
12 the areas of English Language Arts and Mathematics.¹ This established the prevailing
13 statewide standard by describing the “content students need to master by the end of each
14 grade level”² and extends to all students, including disabled students. *See* Cal. Educ.
15 Code § 56000 *et seq.* The constitutional right to education therefore guarantees all
16 disabled students a Free Appropriate Public Education tied to the statewide academic
17 content standards, including the special education services and tools needed to access the
18 relevant content.

19 b) Second, students have the constitutional right to attend integrated schools
20 where students of different racial identities, national origins, and disability statuses can
21 interact and learn together. The California Supreme Court has repeatedly recognized that
22 students’ fundamental right to education requires the State to eliminate de facto
23 segregation in public schools. *Crawford v. Board of Education*, 17 Cal.3d 280, 291
24 (1976); *Collins v. Thompson*, 41 Cal.App.5th 879, 896 (2019). “[I]n the field of public

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26 ¹ *See* Cal. Educ. Code §§ 60210(b), 60605; CAL. BD. OF EDUC., *Content Standards* (July 12,
2021), available at: <https://www.cde.ca.gov/be/st/ss/>.

27 ² CAL. STATE BD. OF EDUC., *California Common Core State Standards* (Mar. 2013) 10, 20, 26,
28 31, 46, 55, 65, 70, 80, 85, available at:
<https://www.cde.ca.gov/be/st/ss/documents/finalelaccsstandards.pdf> (hereinafter “California
Common Core Standards”).

1 education the doctrine of ‘separate but equal’ has no place. Separate educational facilities
2 are inherently unequal.” *Brown*, 347 U.S. 483, 495.

3 5. Tragically, these legal and moral responsibilities have not been met. The result is
4 that disabled students in California, particularly Black and English learner³ students, are
5 receiving the equivalent of no or grossly inferior educations. They attend schools that, in
6 practice, are schools in name only, doubly toxic because their counterparts on the same campuses
7 are receiving meaningful education as the Constitution and law mandates. The message is clear:
8 students with disabilities are not worthy of the same treatment; and, functionally speaking, they
9 can do with less or even no education, consigned to a life without the skills that a public
10 education provides and the respect they should command by virtue of their character. In failing
11 to deliver legally mandated education, the statewide system of public education creates and
12 perpetuates the ugliest societal stereotypes and biases. In other words, it is the educational
13 system that works the most severe and consequential harms on these children’s lives.

14 6. This lawsuit is brought to identify and remediate systemic mistreatment of
15 disabled students, particularly Black and English learner students, in Pittsburg Unified and to
16 hold both the District and the State of California accountable to their duties to provide these
17 young persons with equal educational opportunities long denied them. As detailed in this Writ,
18 Defendants routinely disproportionately discipline and segregate disabled students, particularly
19 Black disabled students, into inferior special education classrooms where little to no learning
20 occurs. Defendants fail to provide disabled students of color with legally required supports and
21 services needed to access general education classrooms and avoid punitive discipline.
22 Defendants also overidentify Black and English learner students as having disabilities, including
23 more severe disabilities, contributing to their disproportionate segregation. Throughout the

24
25 ³ The term “English learner” includes individuals whose native language is one other than
26 English or who come from an environment where a language other than English has had a
27 significant impact on the individual’s English language proficiency, and whose difficulties in
28 speaking, reading, writing, or understanding English language may be sufficient to deny the
individual the ability to meet the State academic standards, the ability to successfully achieve in
classrooms where the language of instruction is English, or the opportunity to participate fully in
society. Cal. Educ. Code § 306(a) (citing 20 U.S.C. § 7801(20)).

1 District and especially in segregated classrooms, disabled children, including Plaintiffs Mark S.
2 and Rosa T., are not provided evidence-based instruction or otherwise taught to read, write,
3 communicate, or perform math functions at their grade level, regardless of their abilities and
4 potential. Defendants justify the continued segregation of these students based on their hindered
5 academic performances and unsupported disability-related behaviors, perpetuating the cycle of
6 re-segregation.

7 7. These systemic deficiencies are in plain sight, tragically a matter of public record.
8 For example, Plaintiff Mark S., an English learner student with autism, has been unlawfully
9 segregated into a special education classroom where he does not receive meaningful educational
10 instruction. When he should have been learning how to read and write in second grade, his
11 teachers instead chose to show him videos, including Disney movies, with no educational value,
12 and directed him to do arts and crafts, effectively denying him a basic education. As a result,
13 Mark S. is now in third grade, but is reading and writing at a pre-kindergarten to kindergarten
14 level. Similarly, Defendants have denied meaningful instruction, in both her general education
15 and special education classrooms, to Plaintiff Rosa T., an English learner student with a Specific
16 Learning Disability. She must now repeat the twelfth grade to graduate and is several years
17 below her grade level in reading and writing. Mark S. and Rosa T.’s experiences are the result of
18 the State and District’s failures to provide access to equal educational opportunity to students on
19 account of their disability, race, and national origin.

20 **I. The District’s Discriminatory Special Education System**

21 8. The California Education Code requires that disabled students receive specially
22 designed instruction, services, and supports to meet their unique academic and social-emotional
23 needs. These can include individualized classroom instruction, education in social-emotional
24 skills, and behavioral supports and services. Schools’ failure to systematically provide these
25 services leaves disabled students especially vulnerable to academic regression. Without the
26 services and supports they need to access learning, disabled students are “entirely excluded from
27 public schools.” *Timothy O. v. Paso Robles Unified School Dist.*, 822 F.3d 1105, 1119 (9th Cir.
28 2016).

1 9. Despite longstanding laws and precedents requiring schools to meet disabled
2 students' unique needs, the State has allowed the District to segregate students with disabilities,
3 and particularly Black and English learner students with disabilities, into inferior separate
4 classrooms. The State has also allowed the District to engage in other exclusionary practices to
5 unlawfully segregate students with disabilities, and Black and English learner students with
6 disabilities in particular. Those practices include failing to provide legally-required services,
7 accommodations, and modifications to allow disabled students the opportunity to access, and
8 thrive in, the general education setting.

9 10. The District and the State's publicly reported data provide ample evidence of the
10 systemic scope of these issues:

11 11. First, the District disproportionately identifies Black and English learner students
12 as having disabilities, including more severe disabilities. For example, in the 2017-18 school
13 year, Black students in the District were identified at the highest rate as having disabilities, at a
14 rate of 14 students identified as disabled per 100 Black students.⁴ That same year, English
15 learner students were 2.5 times more likely to be categorized as having disabilities than non-
16 English learners, and the gap worsened the following school year.⁵ In the 2018-19 school year,
17 Black and multiracial students were significantly more likely to be identified as having

18 ⁴ C.R. Data Collection, *Pittsburg Unified: Students with Disabilities served under IDEA (Survey*
19 *Year: 2017)*, U.S. DEP'T OF EDUC. (2017), available at:
20 <https://ocrdata.ed.gov/profile/9/district/30471/studentswithdisabilitiesidea> (“CRDC Students
21 with Disabilities Report”). By comparison, the ratio for white students was 12.4 per 100; for
22 Native American students 10.7 per 100; for multi-racial students 9.4 per 100; for Latine students
8.4 per 100; for Asian students 6.6 per 100; and for Hawaiian/Pacific Islander students 4.4 per
100.

23 ⁵ In 2017-2018, the District reported 13.7 English learner students with disabilities for every 100
24 English learner students, and 5.4 non-English learner students with disabilities for every 100
25 non-English learner students. *Id*; compare DataQuest, *Pittsburg Unified District Language*
26 *Group Data – Districtwide for 2018-19*, CAL. DEP'T OF EDUC. (2019), available at:
27 [https://data1.cde.ca.gov/dataquest/lc/DistrictLC.aspx?cSelect=0761788--0761788--](https://data1.cde.ca.gov/dataquest/lc/DistrictLC.aspx?cSelect=0761788--0761788--Pittsburg+Unified&cYear=2018-19)
28 [Pittsburg+Unified&cYear=2018-19](https://data1.cde.ca.gov/dataquest/lc/DistrictLC.aspx?cSelect=0761788--0761788--Pittsburg+Unified&cYear=2018-19) with DataQuest, *2018-19 Enrollment by English Language*
Acquisition Status (ELAS) and Grade, Pittsburg Unified District Report, CAL. DEP'T OF EDUC.
(2019), available at:
<https://data1.cde.ca.gov/dataquest/longtermel/ELAS.aspx?cde=0761788&agglevel=District&year=2018-19> (toggle settings “Students With Disabilities: Yes” and “Students With Disabilities:
No”).

1 disabilities than white students.⁶ And for three school years in a row from 2017-20, Black
2 students were disproportionately identified with emotional disturbance disorder and “other health
3 impairment.”⁷

4 12. On measures of placement into special education classrooms, the District was
5 among the most segregated school districts in the state for students with disabilities. In the 2017-
6 18 school year, 74% of school districts statewide had a better rate than Pittsburg Unified of “in
7 regular [general education] class less than 40%” of the time, 82% of districts statewide had a
8 better rate than the District of “in regular class more than 80%” of the time, and 93% of districts
9 statewide had a better rate than the District of placing students in separate schools.⁸ Sadly,
10 because California has the worst rate in the entire nation for segregating disabled students into
11 special education classrooms for over half of the school day,⁹ these statistics indicate Pittsburg
12 Unified is one of the very worst school districts in the nation on this measure. Alarminglly, the
13 State fails to publicly disclose key data that would allow the public to understand the scope of
14 the problem and advocate for equal educational opportunity in districts such as Pittsburg Unified.

15 13. Students have been deeply harmed by these practices, which are infected with
16 racial, ethnic, and disability bias. For example, the District interpreted a very young Black
17 student’s attention deficit hyperactivity disorder as symptomatic of autism, and then segregated

18 ⁶ Compare Data Quest, *2018-19 Enrollment by Ethnicity – Pittsburg Unified Report*, CAL. DEP’T
19 OF EDUC. (2019), available at:

20 [https://data1.cde.ca.gov/dataquest/dqcensus/EnrEthLevels.aspx?cds=0761788&aggllevel=district](https://data1.cde.ca.gov/dataquest/dqcensus/EnrEthLevels.aspx?cds=0761788&aggllevel=district&year=2018-19)
21 [with CAL. DEP’T OF EDUC., *Special Education Enrollment by Ethnicity and*](https://data1.cde.ca.gov/dataquest/SpecEd/SEEnrEthDis3.asp?Disttype=S&cSelect=0761788--PITTSBURG%5eUNIFIED&cChoice=SEEthDis3c&cYear=2018-19&cLevel=Dist&ReptCycle=December)

22 [Disability, Pittsburg Unified](https://data1.cde.ca.gov/dataquest/SpecEd/SEEnrEthDis3.asp?Disttype=S&cSelect=0761788--PITTSBURG%5eUNIFIED&cChoice=SEEthDis3c&cYear=2018-19&cLevel=Dist&ReptCycle=December) (Dec. 1, 2018), available at:

23 [https://data1.cde.ca.gov/dataquest/SpecEd/SEEnrEthDis3.asp?Disttype=S&cSelect=0761788--](https://data1.cde.ca.gov/dataquest/SpecEd/SEEnrEthDis3.asp?Disttype=S&cSelect=0761788--PITTSBURG%5eUNIFIED&cChoice=SEEthDis3c&cYear=2018-19&cLevel=Dist&ReptCycle=December)
24 [PITTSBURG%5eUNIFIED&cChoice=SEEthDis3c&cYear=2018-](https://data1.cde.ca.gov/dataquest/SpecEd/SEEnrEthDis3.asp?Disttype=S&cSelect=0761788--PITTSBURG%5eUNIFIED&cChoice=SEEthDis3c&cYear=2018-19&cLevel=Dist&ReptCycle=December)
25 [19&cLevel=Dist&ReptCycle=December](https://data1.cde.ca.gov/dataquest/SpecEd/SEEnrEthDis3.asp?Disttype=S&cSelect=0761788--PITTSBURG%5eUNIFIED&cChoice=SEEthDis3c&cYear=2018-19&cLevel=Dist&ReptCycle=December) (showing that the proportions of Black and multiracial
26 students with disabilities were significantly higher than white students with disabilities when
27 compared to the proportion in each racial subgroup without disabilities).

28 ⁷ Khou Her Ha, *Pittsburg USD: Special Education*, PITTSBURG UNIFIED SCH. DIST. (Apr. 14,
2021), available at:

[https://go.boarddocs.com/ca/pittsburg/Board.nsf/files/C24SD571D29D/\\$file/SPED%20Update%](https://go.boarddocs.com/ca/pittsburg/Board.nsf/files/C24SD571D29D/$file/SPED%20Update%20Board%20%204_14_2021%20(4).pdf)
29 [20Board%20%204_14_2021%20\(4\).pdf](https://go.boarddocs.com/ca/pittsburg/Board.nsf/files/C24SD571D29D/$file/SPED%20Update%20Board%20%204_14_2021%20(4).pdf).

⁸ See CAL. DEP’T OF EDUC., *Annual Performance Report Measures* (Sept. 2, 2020), available at:
30 <https://www.cde.ca.gov/sp/se/ds/leadatarpts.asp>.

⁹ U.S. DEP’T OF EDUC., *2017-18 Child Count and Educational Environments*, available at:
31 <https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bcc>.

1 the student into a special education classroom without first conducting an assessment, in
2 violation of law and professional norms. These policies and practices reinforce the unwarranted
3 feelings of shame and humiliation disabled students of color experience as they are deemed unfit
4 to learn alongside their peers, unwelcome in and unsupported by their schools. These students
5 are at high risk of extreme and ongoing anxiety, significantly lower self-esteem, and decreased
6 ability to access an adequate education.¹⁰

7 14. State-mandated literacy and mathematics test results, among other indicators,
8 confirm that disabled students at Pittsburg Unified are receiving an inferior education compared
9 to students in other districts. The percentage of disabled students in the District scoring at or
10 above established statewide standards on the state-mandated tests are under 5% and 4%
11 respectively in literacy and mathematics, which is significantly worse than statewide averages
12 for disabled students.¹¹ Pittsburg Unified’s refusal to teach disabled students basic academic
13 skills places the District into the lowest rung of districts across California.

14 **II. The District’s Discriminatory Discipline System**

15 15. Further, Defendants perpetuate excessive and exclusionary discipline on Black
16 students for innocuous and age-appropriate behavior and on disabled students for behavior
17 caused by their disabilities. In the 2017-18 school year, the District suspended or expelled Black
18 students at more than twice their rate of enrollment.¹² From 2011-2019, the District had the
19 fourth-largest gap between Black and white students in the state for instructional days lost due to
20 suspension for “disruption/defiance,” a subjective offense uniquely prone to racially biased
21

22 ¹⁰ Thomas Hehir ET AL., *A Summary of the Evidence on Inclusive Education*, ABT ASSOC.S (Aug.
23 2016) 7-8, 12-19, available at: [https://alana.org.br/wp-](https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf)
24 [content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf](https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf).

25 ¹¹ See CAL. ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS, *English Language*
26 *Arts/Literacy and Mathematics: Pittsburg Unified School District* (2019), available at:
27 <https://caaspp->

28 [elpac.cde.ca.gov/caaspp/DashViewReport?ps=true&lstTestYear=2019&lstTestType=B&lstGroup=2&lstSubGroup=128&lstGrade=13&lstSchoolType=A&lstCounty=07&lstDistrict=61788&lstSchool=0000000&lstFocus=a](https://caaspp-elpac.cde.ca.gov/caaspp/DashViewReport?ps=true&lstTestYear=2019&lstTestType=B&lstGroup=2&lstSubGroup=128&lstGrade=13&lstSchoolType=A&lstCounty=07&lstDistrict=61788&lstSchool=0000000&lstFocus=a).

¹² C.R. Data Collection, *Pittsburg Unified: Discipline Report (Survey Year: 2017)*, DEP’T OF
EDUC. (2017), available at: <https://ocrdata.ed.gov/profile/9/district/30471/disciplinereport>.

1 interpretation.¹³ According to data received through the Public Records Act, in the 2016-17
2 school year, Black students were subjected to “5150s”—referrals wherein students are
3 transported to psychiatric wards due to purported mental health crises—at nearly three times
4 their rate of enrollment in the District. In the subsequent school year, according to data obtained
5 through the Public Records Act, students with disabilities were three times more likely than
6 students without disabilities to receive a disciplinary removal. At the intersection of race and
7 disability, the same data revealed that Black and multiracial disabled students in the District were
8 disciplinarily excluded from school at twice the rate of white and Latine disabled students,
9 flowing from an arbitrary and biased discipline system that allows staff to make decisions and
10 impose punishments unchecked, excessively punishing minor transgressions by Black,
11 multiracial, Native American, and disabled students. The State is aware of this discrimination,
12 but refuses to take steps to protect Black, multiracial, Native American, and disabled students
13 from it.

14 16. Students in the District are traumatized and damaged by these discriminatory
15 policies and practices. For example, when she was 11 years old, L.G., a Black student with
16 disabilities, was suspended for more than 20 days during her first semester of sixth grade for age-
17 appropriate minor misbehavior, and one school staffer used racially-coded language to portray
18 L.G. as “intimidating” and “disrespectful,” claiming in an email to L.G.’s mother, Plaintiff
19 Jessica Black, that “I often observe her ‘mean mugging’ myself and students to intimidate them”
20 as a purported rationalization for excluding L.G. from his class. Studies show that teachers’
21 negative perception of a student’s facial expression is precisely the kind of subjective perception
22 most likely to be inaccurate and invalid when a white adult “interprets” a Black child’s facial
23

24 ¹³ Daniel J. Losen & Paul Martinez, *Is California Doing Enough to Close the School Discipline*
25 *Gap?*, THE U.C.L.A. CTR. FOR C.R. REMEDIES AT THE C.R. PROJECT (June 22, 2020) 26,
26 available at: [https://www.civilrightsproject.ucla.edu/research/k-12-education/school-](https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/is-california-doing-enough-to-close-the-school-discipline-gap/Final_CA_Report_06_29_2020-revised-for-post.pdf)
27 [discipline/is-california-doing-enough-to-close-the-school-discipline-](https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/is-california-doing-enough-to-close-the-school-discipline-gap/Final_CA_Report_06_29_2020-revised-for-post.pdf)
28 [gap/Final_CA_Report_06_29_2020-revised-for-post.pdf](https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/is-california-doing-enough-to-close-the-school-discipline-gap/Final_CA_Report_06_29_2020-revised-for-post.pdf) (finding that “where racial disparities
are their widest, suspensions for disruption/defiance often remain a major contributor” and
finding that Pittsburg Unified had the fourth-largest gap in California between Black and white
students for lost instructional days due to suspension for “disruption/defiance”).

1 expression.¹⁴ The District perpetuates implicit biases and stereotypes that portray Black youth as
2 violent and aggressive, which leads to unjustified restraint and exclusion. One day, L.G. walked
3 out of her sixth grade classroom in frustration because of a teacher’s discriminatory treatment
4 toward her. Shockingly, District staff “5150’d” her in response: they called the police, forced
5 L.G. to be strapped to a gurney, and had her transported to a psychiatric hospital. The District’s
6 treatment of L.G. only worsened after that, until it ultimately pushed L.G. out of the District
7 altogether and into an independent study program when she was 13 years old. L.G. was then
8 isolated from her school peers for three school years during a crucial phase of her social-
9 emotional development.

10 17. The District also routinely disciplined B.T., a Black student, throughout his time
11 in District schools for innocuous activities. When B.T. was in sixth grade, the District disciplined
12 him with an office referral—for which he missed educational time in the classroom—for
13 mistakenly standing in the wrong line (the “girls’ line”) outside of a classroom. This office
14 referral was placed in B.T.’s school record and later impacted his application to an academically
15 rigorous high school program in the District. Another time, the District disciplined B.T. with an
16 office referral for throwing a piece of paper in the trash can. In eighth grade, the District
17 disciplined B.T. for wearing a jacket with a picture of “Goofy,” the Disney character, whom the
18 science teacher arbitrarily deemed “offensive.” B.T. was also disciplined multiple times that year
19 for wearing a jacket that was burnt orange because it was *close* to the color red, which was
20 prohibited under the dress code. These experiences made B.T. feel less safe in school from
21 arbitrary, hostile, and exclusionary treatment from the District, when instead, District staff
22 should have been focused on teaching and supporting B.T. as a student.

23 18. The racially biased perception that Black students’ minor misbehavior is “serious”
24 also contributes to the misidentification of Black students as having more severe disabilities, as

25 ¹⁴ Amy G. Halberstadt ET AL., *Racialized Emotion Recognition Accuracy and Anger Bias of*
26 *Children’s Faces*, JOURNAL OF THE AMER. PSYCH. ASS’N (2020), available at:
27 <https://www.apa.org/pubs/journals/releases/emo-emo0000756.pdf> (finding in a study of
28 racialized emotion recognition accuracy where 178 prospective teachers were asked to evaluate
72 children’s facial expressions that “[b]oth Black boys and Black girls were falsely seen as
angry more often than White boys and White girls.”).

1 described above. The District’s disciplinary practices not only communicate damaging
2 stereotypes against Black students and students with disabilities, but also risk these students
3 internalizing the underlying message that they do not belong in school, where they are subject to
4 a hostile educational environment. The District’s actions and failures create real and lasting
5 harms, including emotional trauma, stigmatization, and isolation of Black students and students
6 with disabilities. This injures not only the students who are dehumanized and discriminated
7 against, but all students in District schools who witness and are implicitly taught to normalize
8 such discriminatory treatment.

9 19. The causation for these unconscionable disparities is readily discernible:
10 inadequate training and monitoring, lack of adequate resources, and discriminatory attitudes and
11 practices. Black, English learner, and disabled students are pitted against their peers as if a
12 constitutionally and statutorily sufficient education is impossible to be afforded to both and as if
13 there is a rigid segregative division to be enforced. All students—including disabled students of
14 all races—are entitled to a meaningful opportunity to be educated side-by-side with their peers in
15 an inclusive, general education environment, free from the daily fear of excessive and disparate
16 exclusionary discipline.

17 20. It is well established that the State of California has a critical role in establishing
18 and operationalizing a system of accountability that identifies and roots out the systemic
19 deficiencies named here and more fully described in the narratives presented. As discussed in
20 *Butt v. State of California*, and reinforced numerous times in other judicial decisions, the State—
21 through its officers, who hold constitutional responsibilities for the delivery of public
22 education—has a non-delegable duty to respect and protect the fundamental educational rights of
23 all students. This duty mandates the State ensure that students receive an education basically
24 equivalent to that received by students who have been afforded a real opportunity to learn state-
25 mandated curricula and seek higher education and meaningful careers and life paths. COVID-19-
26 related school closures have only heightened the stakes for these students, who have spent over a
27 year even more isolated from their peers. Without meaningful systemic reforms, these students
28 will continue to be isolated and deprived of an equal education.

1 **B. Taxpayer Plaintiffs**

2 26. **Plaintiff Michell Redfoot** is a taxpayer residing in Solano County who works in
3 Pittsburg, California. She teaches a Special Day Class at Willow Cove Elementary School in
4 Pittsburg Unified. She has been a special education teacher for fourteen years, including
5 approximately eleven years in the District. Ms. Redfoot holds an Education Specialist Teaching
6 Credential (Moderate/Severe) to teach special education students. She is deeply concerned about
7 the District’s policies and practices that treat disabled students unfairly and send the message to
8 disabled students of color, particularly Black students, that they are undeserving of equal
9 educational opportunity. She is also alarmed that the State is aware of pervasive discrimination
10 in District schools but has failed to take any meaningful steps to stop it.

11 27. **Plaintiff Dr. Nefertari Royston** is a taxpayer residing in Pittsburg, California.
12 She has been a school psychologist for seven years. She was employed by the District from
13 approximately 2018-20. Three of her children currently attend District schools, and one recently
14 graduated from Pittsburg High School. All of her children have experienced discrimination as
15 Black students in District schools. Dr. Royston is deeply concerned about the District’s policies
16 and practices that treat Black students unfairly and send the message to disabled students of
17 color, particularly Black students, that they are undeserving of equal educational opportunity.
18 She is also alarmed that the State is aware of pervasive discrimination in District schools but has
19 failed to take any meaningful steps to stop it.

20 28. **Plaintiff Jessica Black** is a taxpayer residing in Pittsburg, California. She is the
21 mother of two Black students who previously attended District schools. Her daughter, L.G.,
22 experienced years-long discrimination in the District on the basis of her race and disability. Ms.
23 Black is deeply concerned that the District has acted with impunity, for many years, in
24 egregiously violating the rights of Black students with and without disabilities and that the State
25 has effectively shielded the District from being held accountable for those violations. She does
26 not want any other student to endure the unfair and racist treatment her daughter suffered for
27 years in District schools.

1 29. Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and Jessica Black pay taxes to
2 the City of Pittsburg, the City and County in which they reside, and to the State of California.

3 **II. DEFENDANTS**

4 30. **Defendant State of California** is the legal and political entity with the ultimate
5 responsibility for educating all California public school students, including the responsibility to
6 establish and maintain the system of common schools and free education, under Article IX,
7 Section 5 of the California Constitution, and to assure that all California public school students
8 receive their individual and fundamental right to an equal education, under the equal protection
9 clauses of the California Constitution, Article I, Section 7(a), and Article IV, Section 16(a).

10 31. **Defendant State Board of Education** and its members are responsible for
11 determining the policies governing California’s schools and for adopting rules and regulations
12 for the supervision and administration of all local school districts. Pursuant to California
13 Education Code Sections 33030-32, Defendant State Board of Education is required to supervise
14 local school districts to ensure they comply with State and federal law requirements concerning
15 educational services.

16 32. **Defendant California Department of Education** is the department of State
17 government responsible for administering and enforcing the laws related to education. Pursuant
18 to California Education Code Sections 33300-16, the California Department of Education is
19 responsible for revising and updating budget manuals, forms, and guidelines; cooperating with
20 federal and state agencies in prescribing rules and regulations, and instructions required by those
21 agencies; and assessing the needs and methods of collecting and disseminating financial
22 information. The California Department of Education bears ultimate responsibility for Pittsburg
23 Unified.

24 33. **Defendant Tony Thurmond**, sued here solely in his official capacity, is the State
25 Superintendent of Public Instruction for the State of California, a Constitutional Officer of the
26 State charged with the supervision of all California schools and school districts, the Secretary
27 and Executive Officer for the State Board of Education, and the Chief Executive Officer of the
28 California Department of Education. As such, he is obligated to take all necessary steps to ensure

1 facts giving rise to the causes of action or some parts of the causes alleged in this Writ and
2 Complaint arose in Contra Costa County.

3 **FACTUAL ALLEGATIONS**

4 **I. Defendants’ Legal Duties to Provide Educational Equity to All Students**

5 38. Access to education is a “uniquely fundamental personal interest in California”
6 and belongs to each individual student. *Butt*, 4 Cal.4th at 681. All California students possess a
7 fundamental constitutional right to “equal access to a public education system that will teach
8 them the skills they need to succeed as productive members of modern society.” *O’Connell*, 141
9 Cal.App.4th at 1482; *Serrano v. Priest*, 5 Cal.3d. 584, 608-09 (1971). A constitutional violation
10 of basic educational equity occurs where “the actual quality of the [school’s] program, viewed as
11 a whole, falls fundamentally below prevailing statewide standards” that effects disparate
12 treatment upon a group of students. *Butt*, 4 Cal.4th at 685-87. Any action that has a real and
13 appreciable impact on a student’s fundamental right to education is subject to strict scrutiny.
14 *Serrano v. Priest*, 18 Cal.3d 728, 761, 767-768 (1976). This right encompasses the right to
15 access essential skills students are expected to learn at each grade level, such as reading, writing,
16 and mathematics literacy. *O’Connell*, 141 Cal.App.4th at 1482.

17 39. California accordingly adopted academic content standards in 1997, including
18 Common Core standards, in the areas of English Language Arts and Mathematics to create a
19 “uniform and specific vision of what students should know how and be able to do” in each
20 subject area, describing the “content students need to master by the end of each grade level[.]”¹⁵

21 ¹⁵ See CAL. STATE BD. OF EDUC., *English-Language Arts Content Standards for California*
22 *Public Schools* (Dec. 1997), available at:
23 <https://www.cde.ca.gov/be/st/ss/documents/elacontentstnds.pdf> (hereinafter “California 1997
24 Content Standards”); California Common Core Standards, *supra* n.2. The Common Core
25 standards are only one component of a robust and complete education. A robust and complete
26 education also includes instruction where students, in particular diverse students, receive
27 culturally responsive teaching. See, e.g., Linda Darling-Hammond & Channa M. Cook-Harvey,
28 *Educating the Whole Child Improving School Climate to Support Student Success*, LEARNING
POL’Y INST. (Sept. 2018) 22, available at:
[https://learningpolicyinstitute.org/sites/default/files/product-
files/Educating_Whole_Child_REPORT.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/Educating_Whole_Child_REPORT.pdf) (explaining that culturally responsive teaching that
employs an “intellectually demanding curriculum” “become the basis for meaningful
relationships and favorable academic results”).

1 In 2010, the State Board of Education adopted the standards in the areas of English Language
2 Arts and Literacy in History/Social Studies, Science, Technical Subjects, and Math. This law set
3 the prevailing statewide standard because, in the State’s words, these standards “fulfill[]
4 California’s vision that all students graduate from our public school system as lifelong learners
5 and have the skills and knowledge necessary to be ready to assume their position in our global
6 economy.”¹⁶

7 40. California also passed California Education Code Section 56000 (“Section
8 56000”) to fulfill disabled students’ fundamental right to a basic education and established the
9 prevailing constitutional statewide standard for these students. Section 56000, which
10 incorporates and supplements the federal Individuals with Disabilities Education Act, guarantees
11 disabled students a Free Appropriate Public Education, meaning special education tied to
12 California’s statewide academic content standards. *See* 20 U.S.C. § 6311(b)(1)(A)-(D); *see also*
13 20 U.S.C. § 6311(b)(2), (C)(4)(A); 7 S. Rep. No. 108-185, at 17-18 (2003). Schools must
14 therefore provide disabled students with individually tailored services and supports to enable
15 them to meet these standards. “[F]or most children, a [Free Appropriate Public Education] will
16 involve...individualized special education calculated to achieve advancement from grade to
17 grade.” *Andrew F. v. Douglas Cnty.*, 137 S. Ct. 988, 1000 (2017).

18 41. A violation of students’ constitutional rights also occurs when a policy or practice
19 has a “substantial disparate impact on the minority children of its schools, causing de facto
20 segregation of the schools and an appreciable impact to a district’s educational quality, and no
21 action is taken to correct that policy when its impacts are identified.” *Collins v. Torlakson*, 41
22 Cal.App.5th 879, 896-97. Evidence of intentional discrimination is not required to state a
23 cognizable claim. *Butt*, 4 Cal.4th at 681 (holding that the State is required to take steps to correct
24 disparities between districts “even when the discriminatory effect was not produced by the
25 purposeful conduct of the State or its agents.”); *Collins*, 41 Cal.App.5th at 896-897.

26 42. The State bears the “ultimate responsibility for public education [that] cannot be
27 delegated to any other entity,” including “ensur[ing] basic educational equality under the

28 ¹⁶ California Common Core Standards, *supra* n.2 v.

1 California Constitution.” Cal. Const. Art. IX, § 5; Cal. Const. Art. I, § 7; *Butt*, 4 Cal.4th at 681.
2 Public education is an obligation which the State assumed by the adoption of the Constitution.
3 *Butt*, 4 Cal.4th at 680, 685. The Constitution prohibits the State from maintaining and operating
4 the common public school system in a way that denies educational equity to the students and
5 requires the State to intervene when a local district’s policies or practices “deny its students basic
6 educational equality, unless the State can demonstrate a compelling reason for failing to do so.”
7 *Id.* at 680, 685, 692. The State therefore has a clear, present, ministerial, and non-discretionary
8 duty to prevent and correct any deprivations of students’ fundamental right to education.

9 43. Although the State is ultimately responsible for delivering California’s promise of
10 access to educational opportunity and “the State’s ultimate responsibility for public education
11 cannot be delegated to any other entity,” *id.* at 681, local school districts, as agencies of the State,
12 also have a duty to provide basic educational equity to all children enrolled in their schools. *See*
13 *O’Connell*, 141 Cal.App.4th at 1473 n.14. The District therefore also has a clear, present,
14 ministerial, and non-discretionary duty to prevent and correct any deprivations of students’
15 fundamental right to education.

16 **II. The District and State Have Created and Perpetuated a School System that**
17 **Discriminates Against Students on the Basis of Race, National Origin, and**
18 **Disability.**

19 44. For years, the District has 1) overidentified Black and English learner students as
20 having more severe disabilities; 2) disproportionately segregated Black and English learner
21 students with disabilities into inferior separate classrooms; 3) failed to provide evidence-based
22 instruction tied to California’s statewide academic content standards, as a matter of District
23 policy, to disabled students in general and special education classrooms; and 4)
24 disproportionately excluded Black, multiracial, and Native American students with and without
25 disabilities through exclusionary discipline. The State is aware of these policies and practices,
26 and the resulting egregious discriminatory impact on students, but has consistently refused to
27 acknowledge the scope and harm of all four systemic practices and remedy systemic violations
28 of the rights of students of color, English learner, and disabled students in Pittsburg Unified.

1 **A. The District Overidentifies Black and English Learner Students as Having**
2 **Disabilities, Including Severe Disabilities.**

3 45. Under Section 56000, school districts have a clear, present, ministerial, and non-
4 discretionary duty to ensure that all children who need special education and related aids and
5 services are evaluated. Cal. Educ. Code § 56337; 5 C.C.R. §§ 3030(b)(10)(A)-(C). Pursuant to
6 these evaluation duties, the District must comprehensively evaluate students in all areas related
7 to the suspected disability. Cal. Educ. Code § 56320(f). The assessments must be conducted in
8 the student’s native language to determine whether they are eligible for special education and
9 related aids and services. Cal. Educ. Code § 56320(b)(1); 5 C.C.R. § 3023(a). The District must
10 also select and administer assessments so as not to be racially or culturally discriminatory. Cal.
11 Educ. Code § 56320(a). Based on the assessment and by drawing upon information from a
12 variety of sources, the District must determine the student’s eligibility for special education
13 services. Cal. Educ. Code § 56330.

14 46. In Pittsburg Unified, staff systematically refer Black and English learner students
15 for disability assessments based on behavior or academic performances that do not indicate a
16 disability. For example, special education assessments of English learners are sometimes
17 conducted in English rather than the student’s native language, thus confounding the results,
18 which measure the student’s language confusion rather than a disability. District staff who
19 conduct special education assessments have been pressured to conduct inappropriate assessments
20 of Black students and to diagnose Black and English learner students with more severe
21 disabilities than the assessments indicated. School staff have witnessed Black students who were
22 removed from the general education classroom and “informally” placed in restrictive special
23 education classrooms based on school administrators’ and other staffers’ inaccurate perceptions
24 that those students’ behavior was related to a disability rather than developmentally appropriate
25 mild misbehavior. Staff have also witnessed a District administrator state that a Latine English
26 learner student was “automatically qualified” for special education services even when the
27 assessments did not indicate special education services were needed.

1 47. Data from the District and State shows how the District’s discriminatory practices
2 result in overidentification of Black and EL students:

3 48. **Black Students:**

- 4 • In the 2017-18 school year, Black students had the highest rate of being identified
5 as having disabilities, at a rate of 14 students identified as disabled per 100 Black
6 students.¹⁷ Black students comprised 16.4% of students enrolled but were 23.8%
7 of students with disabilities enrolled.¹⁸
- 8 • In the 2018-19 school year, Black students were significantly overrepresented
9 among students with disabilities compared to statewide averages.¹⁹
- 10 • For three school years in a row from 2017-2020, Black students were
11 disproportionately identified with emotional disturbance disorder and Other
12 Health Impairment.²⁰

13 49. **English Learner Students:**

- 14 • In the 2017-18 school year, English learner students were 2.5 times more likely to
15 be categorized as having disabilities than non-English learners.²¹
- 16 • In the 2018-19 school year, English learner students were significantly
17 overrepresented in the districtwide population of students identified as having
18
19
20

21 ¹⁷ CRDC Students with Disabilities Report, *supra* n.4.

22 ¹⁸ *Id.*

23 ¹⁹ Compare Data Quest, *2018-19 Enrollment by Ethnicity and Grade – Pittsburg Unified Report*,
CAL. DEP’T OF EDUC. (2019), available at:

24 [https://data1.cde.ca.gov/dataquest/dqcensus/EnrEthLevels.aspx?cds=0761788&aggllevel=district](https://data1.cde.ca.gov/dataquest/dqcensus/EnrEthLevels.aspx?cds=0761788&aggllevel=district&year=2018-19)
25 *&year=2018-19 with Special Education Enrollment by Ethnicity and Disability, Pittsburg*
Unified, supra n.6; Compare Data Quest, *Enrollment Multi-Year Summary by Ethnicity – State*
Report, CAL. DEP’T OF EDUC., available at:

26 [https://data1.cde.ca.gov/dataquest/dqcensus/EnrEthYears.aspx?cds=00&aggllevel=state&year=20](https://data1.cde.ca.gov/dataquest/dqcensus/EnrEthYears.aspx?cds=00&aggllevel=state&year=2018-19)
27 *18-19* (last accessed Sept. 7, 2021) with U.S. DEP’T OF EDUC., *2018-19 Child Count and*
Educational Environments, available at: [https://www2.ed.gov/programs/osepidea/618-data/state-](https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bcc)
28 [level-data-files/index.html#bcc](https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bcc) (last accessed Sept. 7, 2021).

²⁰ Her Ha, *supra* n.7.

²¹ CRDC Students with Disabilities Report, *supra* n.4.

1 disabilities. Data also showed that the overrepresentation of English learners
2 identified as having disabilities grew from the previous two years.²²

3 **B. The District Disproportionately Segregates Disabled Students, Especially**
4 **Black and English Learner Students, in Inferior Separate Classrooms and**
5 **Fails to Provide Legally Required Supports and Services.**

6 50. Section 56000 imposes on the State and District a clear, present, ministerial, and
7 non-discretionary duty to educate disabled students in the Least Restrictive Environment. Cal.
8 Educ. Code § 56040.1. Decades of research affirms the importance of this mandate—inclusion of
9 disabled students in the general education classroom has essential positive short- and long-term
10 effects for all students. Disabled students in these classes are absent less often, develop stronger
11 skills in reading and math, and are more likely to have jobs and pursue education after high
12 school.²³ Non-disabled peers benefit too, through better academic and social-emotional
13 development.²⁴

14 51. The State and District must educate disabled students to the maximum extent
15 possible with non-disabled students, and can only remove disabled students from the general
16 education classroom if their education cannot be achieved satisfactorily with the use of
17 supplementary aids and services. To prevent unnecessary removal of disabled students from the
18 general education classroom, the District must assess students in all areas related to their
19 suspected disability—including social and emotional status, academic performance, and
20 communicative status—and identify necessary supplementary aids and services. Cal. Educ. Code
21 §§ 56320(f), 56031. Districts may place students in segregated classes only when the nature or
22 severity of the disability is such that the disabled student’s education in the regular classes with
23 the use of supplementary aids and services, including curriculum modification and behavioral
24 support, cannot be achieved satisfactorily. Cal. Educ. Code §§ 56364.2(a), 56040.1(b);

25 _____
26 ²² Compare *Pittsburg Unified District Language Group Data – Districtwide for 2018-19*, *supra*
27 *n.5 with 2018-19 Enrollment by English Language Acquisition Status (ELAS) and Grade*,
28 *Pittsburg Unified District Report*, *supra* n.5 (toggle settings “Students With Disabilities: Yes”
and “Students With Disabilities: No”).

²³ Hehir, *supra* n.10 12-19.

²⁴ *Id.* 7-9.

1 *Sacramento City Unified Sch. Dist., Bd. of Educ. v. Rachel H. By & Through Holland*, 14 F.3d
2 1398, 1403 (9th Cir. 1994). These requirements also apply to separate schools, or when disabled
3 students are removed from the general education environment in other ways. Cal. Educ. Code §
4 56364.2(a).

5 52. Moreover, a disabled student need not be able to keep academic pace with their
6 non-disabled peers to access the general education classroom. The “attainment of passing grades
7 and regular advancement from grade to grade are generally accepted indicators of satisfactory
8 progress.” *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998). For
9 example, a disabled student may have an Individualized Education Plan (“IEP”) to help her
10 address a deficit in writing. If the rest of the class is keeping a daily journal as part of their
11 learning activities, a disabled child should participate in this activity by having a teacher or
12 instructional aide dot words for the child to trace over.

13 53. California Government Code Section 11135 expressly incorporates the
14 protections and prohibitions set forth in federal law, Section 504 of the Rehabilitation Act and
15 Title II of the Americans with Disabilities Act, and implementing regulations. *See* Cal. Gov’t
16 Code § 11135(b); *Bassilios v. City of Torrance*, 166 F.Supp.3d 1061, 1084 (C.D. Cal. 2015)
17 (“[I]f a public entity that receives state funding has violated the [Rehabilitation Act] or [Title II],
18 then it has also violated § 11135”). Section 11135 therefore prohibits the State and District from
19 discriminating against disabled students (including through unnecessary segregation) when
20 providing educational services, programs, and activities, and requires public entities to
21 administer their services, programs, and activities in the most integrated setting appropriate to
22 the needs of qualified students with disabilities.

23 54. The State’s own data reveals how the District’s deficient policies and practices
24 negatively impact disabled students. For example, the State releases data about the educational
25 environment placements of school-age students with disabilities in California, broken down into
26 three categories: 1) percentage of students who spends 80% or more of their school time in a
27 general education setting; 2) percentage of students who spends 40% or less of their school time
28 in a general education setting; and 3) percentage of students in separate schools. ***This data***

1 *reveals that the District was among the most segregated school districts in the state for*
2 *students with disabilities.* In the 2017-18 school year:

- 3 • 74% of districts statewide had a better rate than Pittsburg Unified of “in regular
4 [general education] class less than 40%” of the time,
- 5 • 82% of districts statewide had a better rate than Pittsburg Unified of “in regular
6 class more than 80%” of the time, and
- 7 • 93% of districts statewide have a lower (better) rate than Pittsburg Unified of
8 placing students in separate schools.

9 55. In 2018-19, the District placed 46.52% of disabled students in the general
10 education classroom for less than 80% of the time—seven percentage points higher than the state
11 average—and placed a significantly greater number of students in separate schools than the
12 statewide average. When it comes to segregation, Pittsburg Unified is bringing down the State’s
13 numbers, which are already abysmal compared to the segregation rates in other states.

14 56. Ms. Redfoot and other staff have witnessed the District place Black and English
15 learner students with disabilities in segregated placements without first considering or providing
16 services and supports to enable them to remain in or access the general education classroom.
17 Although the State collects this disaggregated data, it has refused to publicly disclose that data.
18 This effectively prevents public understanding of the scope of the problem, and creates barriers
19 to advocacy by parents, students, and concerned community members to hold school districts
20 accountable to disabled students, especially disabled students of color.

21 57. In 2015, the District voluntarily retained an outside consultant, Stetson &
22 Associates, to evaluate its services to students with disabilities. The report highlights many of
23 deficiencies in the District’s special education program.²⁵ Specifically, the report found that the
24 District does not provide students with disabilities adequate support when placed in the general
25 education classroom, and fails to prioritize students’ needs in creating a tailored approach to their

26
27 ²⁵ STETSON & ASSOCS., INC., *Evaluation of Services Provided to Students with Disabilities:*
28 *Pittsburg Unified School District, January 2016* (Jan. 2016),
<https://www.pittsburg.k12.ca.us/cms/lib/CA01902661/Centricity/Domain/91/Program%20Evaluation%202015%20-%20Stetson%20Review.pdf> (hereinafter “Stetson Report”).

1 special education needs. Indeed, the report found that “in-class support, referred to as ‘Push-In’
2 services in [the District], is virtually non-existent and is typically provided by aides, when
3 provided at all.”²⁶

4 58. The State and District have been on notice about the deficiencies in the District’s
5 special education program through the State’s own evaluation processes, the District’s data
6 collection, and the District’s reports to the State on educational outcomes for students with
7 disabilities. Yet, they have failed to ameliorate the issues that harm students with disabilities,
8 including those issues identified in the Stetson Report over the last five years. For example, the
9 District failed and continues to fail to provide the following widely-recognized evidence-based
10 services and supports for disabled students in the general education classroom:

11 a) **Positive Behavioral Interventions and Supports:** California law requires
12 districts consider the use of Positive Behavioral Interventions and Supports and other
13 strategies to address disability-related behaviors for students whose behavior impedes
14 their learning or that of others. Cal. Educ. Code §§ 56521.2(b), 56341.1(b)(1). On
15 information and belief, the District fails to provide sufficient training to its staff in how to
16 consider and provide these behavioral interventions and supports. Ms. Redfoot, a long-
17 time special education teacher in the District, has not received sufficient supports and
18 services to be able to implement Positive Behavioral Interventions and Supports. Ms.
19 Redfoot has also not been trained on writing or completing Functional Behavioral
20 Assessments and writing Behavior Intervention Plans (“Behavior Plans”) to effectively
21 implement Positive Behavioral Interventions and Supports for more severely-impacted
22 students.

23 b) **Behavior Intervention Plans:** California law requires school districts to
24 provide a student with an adequate Behavior Plan in appropriate cases where a child’s
25 behavior impedes the child’s learning or that of others. Cal. Educ. Code § 56521.1(b).
26 The District frequently writes inadequate Behavior Plans that fail to reduce students’
27 behaviors and neglects to provide sufficient training in how to write strong Behavior

28 ²⁶ *Id.* 15.

1 Plans. Ms. Redfoot has routinely witnessed these flaws and has not received sufficient
2 training in how to write a strong Behavior Plan.

3 c) **Functional Behavioral Assessments:** A functional behavioral assessment
4 is a process in which a student's behavior is monitored to determine the purpose of
5 particular behaviors and create a strong Behavior Plan. Assessments may be required
6 when a disabled student's IEP has proven inadequate to prevent disability-related
7 behaviors. Ms. Redfoot and other District staff have routinely witnessed the District fail
8 to conduct these required behavioral assessments, even when a student's IEP and
9 Behavior Plan have proven ineffective.

10 d) **Educationally Related Mental Health Services:** When students display
11 mental health-related disabilities that interfere with their education, school districts must
12 provide assessments for Educationally Related Mental Health Services ("Mental Health
13 Services"). Cal Educ. Code § 56320(f). Students who qualify for Mental Health Services
14 receive counseling on campus administered by the county's mental health department.
15 The District routinely fails to assess disabled students for Mental Health Services even
16 when their symptoms clearly indicate a mental illness that interferes with their education.
17 The District also fails to sufficiently train staff in how to identify students with suspected
18 mental illnesses and how to consider and offer assessments for Mental Health Services.
19 For example, Plaintiff Rosa T. has experienced symptoms of severe anxiety and
20 depression that worsened over the last two years and caused her to miss 47 days of school
21 one year, but the District failed to provide Mental Health Services and supports. The
22 District's failures further lead to undiagnosed and unaddressed trauma. For example, L.G.
23 experienced severe trauma as a result of years of bullying and harassment from her peers,
24 but the District never identified that trauma or provided her trauma-sensitive services and
25 supports.

26 e) **Paraprofessional Support:** California law requires districts provide
27 paraprofessional support to students who need additional individualized or small-group
28 attention to benefit from their education, including situations where the student needs an

1 aide to participate in the general education classroom. Cal. Educ. Code § 56033.5. Aides
2 may also implement a student’s Behavior Plan and provide positive behavioral supports
3 and services, among other tasks. The District fails and refuses to provide a sufficient
4 number of classroom and individual aides to help students transition to and succeed in the
5 general education classroom. The District also fails to provide sufficient training to aides
6 in implementing and supporting evidence-based curriculum. Ms. Redfoot and other
7 District staff have routinely witnessed the District’s refusal and failure to provide
8 classroom and individual aides, lack of a sufficient number of classroom aides to aide in
9 transitions, and poorly trained aides unable to provide sufficient supports.

10 f) **Push-in Services:** To maximize disabled students’ time in the Least
11 Restrictive Environment, general education teachers, special education teachers, and
12 other service providers must work closely with students to provide instructional support,
13 differentiated instruction, and related services in the general education classrooms. The
14 District lacks policies and practices for providing push-in services. Ms. Redfoot has
15 routinely witnessed her students being pushed out of the general education classroom
16 because they did not receive sufficient push-in services.

17 g) **Continuum of Placements:** The Stetson Report recommended the District
18 create a continuum of placements that provides more disabled students with more
19 opportunities to transition to the general education classroom. But the District has failed
20 to create special day classes specifically for students with mild and moderate disabilities
21 to enable them to receive tailored instruction, and has failed to take any related steps,
22 causing disabled students districtwide to receive inadequate instruction by overwhelmed
23 and unsupported special education teachers.

24 h) **Training:** The District does not sufficiently train its staff to consider
25 special education-related aids and services to disabled students before placing those
26 students in a segregated setting. Ms. Redfoot and other District staff have not received
27 adequate professional development on how to prevent unnecessary segregation of
28 disabled students.

1 i) **Failure to Offer Appropriate Services and Supports:** On information
2 and belief, when making offers of Free Appropriate Public Education in IEP meetings,
3 the District intentionally offers inadequate services and supports to pressure parents to
4 agree to meet with the District outside of IEP meetings, where the District conditions
5 adequate services on waivers of students' legal claims, in violation of its mandatory
6 duties. Cal. Educ. Code §§ 56001(a), 56040(a).

7 59. The District's failure to resolve these systemic deficiencies have caused the
8 unlawful segregation of disabled students. For example, the District continually used Mark S.'s
9 struggles with occupational skills, speech and language, and ability to self-regulate to justify
10 segregation, but failed to consider and provide one-to-one paraprofessional support, a functional
11 behavioral assessment, or an adequate Behavior Plan. The District continually increased Mark
12 S.'s segregation despite recommendations from a special education teacher that he should have
13 been fully included in the general education classroom. Mark S. now needs individualized
14 remediation services to catch up to his peers, but because the District lacks an infrastructure for
15 providing push-in services, he must be pulled out of the general education classroom to receive
16 those services.

17 60. When she was an elementary and middle-school student, L.G. and her mother,
18 Plaintiff Jessica Black, consistently complained to school and District staff about other students
19 calling L.G. hateful slurs like "Afro-Circus," "fat," and "stink." Students also regularly
20 physically harassed L.G. at school, including kicking her possessions when they fell on the floor,
21 pushing and elbowing her, and threatening to beat her up. These incidents continued throughout
22 her time at Pittsburg Unified schools. L.G. and her mother also reported to school staff on at least
23 two occasions that L.G. was being sexually harassed by staff and students. As a result of these
24 incidents, L.G.'s disability-related behaviors and need for behavioral support increased. The
25 District failed to attribute L.G.'s behavior to her disability and failed to provide appropriate
26 behavioral supports and services, such as a strong Behavior Plan or Mental Health Services.
27 Instead, the District assumed her behavior stemmed from her being naturally aggressive, a
28 racially-biased assumption. When L.G.'s disability and fear for her safety caused her to bring a

1 stun gun to school, the District expelled her, failing to consider that her behavior stemmed from
2 her struggles with executive functioning and impulse control. The District then segregated L.G.
3 into a non-public school, and then into an independent study program, for three school years
4 during a crucial phase of her social-emotional development. The District refused to provide the
5 necessary services for L.G. to transition back to school, including an adequate Behavior Plan, a
6 social-emotional curriculum, or in-person support from a trained behaviorist who could help
7 L.G. learn self-regulation skills.

8 **C. The District Has Failed to Provide Evidence-Based Instruction Tied to**
9 **California’s Academic Content Standards, as a Matter of District Policy, to**
10 **Disabled Students in Special and General Education Classrooms.**

11 61. Section 56000 incorporates and supplements the federal Individuals with
12 Disabilities Education Act²⁷ and guarantees qualified disabled students the right to a Free
13 Appropriate Public Education. Cal. Educ. Code § 56000(a). Section 56000 requires the State and
14 local educational agencies “do [nothing] more than the Constitution already required of them,”
15 *Hayes v. Commission on State Mandates*, 11 Cal.App.4th 1564, 1592 (1992), by providing a
16 “free, appropriate public education and special educational instruction and services for these
17 persons.” Cal. Educ. Code § 56000(a). Through Section 56000, the State acknowledged disabled
18 students’ fundamental right to a basic education and established the prevailing constitutional
19 statewide standard for these students. A Free Appropriate Public Education provides disabled
20 students with access to learning, without which they would be effectively excluded from public
21 schools. *Timothy O.*, 822 F.3d at 1109.

22 62. To carry out its clear, present, ministerial, and non-discretionary duty under
23 Section 56000, the District must ensure that all children who need special education and related
24 aids and services are evaluated. Cal. Educ. Code § 56337; 5 C.C.R. § 3030(b)(10)(A)-(C). After
25 determining eligibility, the District must offer, develop, and implement an IEP with effective
26

27 ²⁷ *Kent v. Dir., California Off. of Admin. Hearings*, No. SACV1501926SJOJCGX, 2016 WL
28 356021 at *1 (C.D. Cal. Jan. 29, 2016) (noting that “California adopted legislation to participate
in IDEA, codified in California Education Code sections 56000 *et seq.*”).

1 special education and related aids and services, including appropriately intensive research-based
2 instruction and services, and provide special education services to conform with the IEP. Cal.
3 Educ. Code §§ 56345, 56001(a), 56040(a). The IEP must contain “a statement of measurable
4 annual goals,” including academic and functional goals, designed to “enable the pupil to be
5 involved in and make progress in the general education curriculum.” Cal. Educ. Code §
6 56345(a)(2). These goals must be “reasonably calculated to enable a child to make progress
7 appropriate in light of the child’s circumstances,” “‘specially designed’ to meet a child’s ‘unique
8 needs,’ and ‘appropriately ambitious,’ to enable the child to meet ‘challenging objectives.’”
9 *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999-1000 (2017). These goals are
10 expressly linked to states’ “challenging academic content standards” for all students, including
11 those with disabilities, to ensure they “are held to high academic achievement standards.” 20
12 U.S.C. § 6311(b)(1)(A)-(D), (b)(2), (C)(4)(A). Disabled students therefore have a right to receive
13 individually tailored services and supports to enable them to meet state academic content
14 standards, including California’s Content Standards.²⁸ Thus, “for most children, a [Free
15 Appropriate Public Education] will involve . . . individualized special education calculated to
16 achieve advancement from grade to grade.” *Andrew F.*, 137 S. Ct. 1000.

17 63. Section 11135 prohibits discrimination on the basis of disability, including in the
18 State’s and District’s obligation to provide a Free Appropriate Public Education. It expressly
19 incorporates the protections and prohibitions set forth in federal law, Section 504 of the
20 Rehabilitation Act and Title II of the Americans with Disabilities Act, and implementing
21 regulations. *See* Cal. Gov’t Code § 11135(b); *Bassilios v. City of Torrance*, 166 F.Supp.3d 1061,
22 1084 (C.D. Cal. 2015)(“[I]f a public entity that receives state funding has violated the
23 [Rehabilitation Act] or [Title II], then it has also violated § 11135”).

24 64. The 2015 Stetson Report found that there was a universal perception at the
25 District that the statewide academic content standards are not a framework for disabled
26

27 ²⁸ *See* California 1997 Content Standards, *supra* n.15 iv (describing the “content students need to
28 master by the end of each grade level[.]”); California Common Core Standards, *supra* n.2
(same).

1 students.²⁹ The report further found a lack of curriculum alignment with general education
2 standards for students with moderate to severe disabilities. After observing special education
3 classrooms, the auditors noted:

4 the frequent absence of learner objectives linked to the curriculum,
5 little evidence of planning between special education teachers and
6 the enrolled grade level teachers, and alignment with the activities
7 or standards being addressed in the general education settings.
8 Across the board, respondents indicated that the general
9 curriculum was not referenced to student IEPs—an instructional
10 and policy compliance concern.³⁰

9 In general education classrooms, the auditors observed that “instructional aides are typically the
10 only in-class support offered and instructional accommodations were infrequently observed,
11 leaving struggling students on their own to learn the content efficiently.”³¹

12 65. To address these concerns, the Stetson Report made several recommendations to
13 the District to: 1) better ensure access and progress in the general education framework for
14 students with disabilities; 2) provide training and other resources for special education staff to
15 gain knowledge and use the general education curriculum; and 3) provide training and other
16 resources for instructional aides in academic content, using effective differentiated strategies
17 with students, and effectively planning for instruction with their supervising teachers.³²

18 66. Despite these findings and recommendations, the District has retained a policy
19 and systemic practice of refusing and failing to provide evidence-based instruction tied to
20 statewide academic content standards to students with disabilities in special and general
21 education classrooms. The District has taught its special education teachers that the law does not
22 require—and, in fact, forbids—that disabled students in segregated settings be provided
23 instruction tied to the statewide academic content standards, even if those students are capable of
24 mastering those standards and have a related area of deficit. The District has accordingly
25 forbidden special education teachers in special education classrooms throughout the District

26 _____
27 ²⁹ Stetson Report, *supra* n.24 25.

28 ³⁰ *Id.* 27.

³¹ *Id.* 25.

³² *Id.* 31-33.

1 from providing instruction tied to the statewide academic content standards. For example, in a
2 2019 email to Ms. Redfoot, the District stated:

3 ***The law does not require that special education students achieve***
4 ***general education standards [statewide academic content***
5 ***standards]...you are hereby directed to discontinue the***
6 ***coordination of your special education program with the Common***
7 ***Core Standards pacing guide and provide instruction based on the***
8 ***Individual Education Plan of the children enrolled in your***
9 ***classroom. For those children who have goals written that are***
10 ***based on the Common Core Standards for their grade level,***
11 ***please replace those goals with ones that are directly related to***
12 ***the student’s areas of need at the appropriate instructional level***
13 ***indicated.***

14 (emphasis added).

15 67. Accordingly, the District fails to adequately train special education teachers on
16 how to implement evidence-based instruction tied to the statewide academic content standards.³³
17 The District’s failure and refusal to provide training to special education teachers on how to
18 implement evidence-based special education practices or provide related supportive material
19 resources means many disabled students in special education classrooms do not have access to
20 the statewide curriculum. Nor does the District provide sufficient training to instructional aides
21 on content overviews of academic areas or differentiated instructional strategies. In over ten
22 years of working at the District as a special education teacher, Ms. Redfoot has repeatedly
23 witnessed the District fail and refuse to train special education teachers to use evidence-based
24 instruction in their classrooms.

25 68. As a result, many special education teachers in special education classrooms
26 throughout the District fail to provide evidence-based instruction tied to the statewide academic
27 content standards. Instead, they spend most classroom time focusing on non-academic activities,
28 thereby preventing disabled students from accessing or making any progress in the statewide
academic curriculum. Even when some teachers attempt to provide evidence-based instruction,

³³ Evidence-based instructional practices are “instructional techniques with meaningful research supporting their effectiveness that represent critical tools in bridging the research-to-practice gap and improving student outcomes.” Bryan G. Cook & Sara Cothren Cook, *Unraveling Evidence-Based Practices in Special Education*, 1 J. SPECIAL EDUC. (2011) 1.

1 they implement only small pieces of programs meant to be implemented fully and with fidelity,
2 thus preventing students from benefiting from the program and mastering the statewide academic
3 content standards. Staff have witnessed untrained special education teachers disregard or
4 inadequately implement evidence-based instructional strategies and cause their students to
5 regress academically. As a result, disabled students like Mark S. and Rosa T., who are placed in
6 segregated classrooms throughout Pittsburg Unified, are deprived of access to the statewide
7 academic curriculum and the opportunity to meet challenging objectives and achieve
8 advancement from grade to grade.

9 69. For example, during most school days while he was in second grade (a key
10 developmental age for learning to read), Mark S.'s teachers provided little to no evidence-based
11 instruction on standard academic content standards and goals. Rather, they spent most of the
12 classroom time showing non-instructional videos and movies, having students work on arts and
13 crafts, or teaching functional skills. As a result, Mark S. has entered the third grade but his
14 reading and writing skills are at a pre-Kindergarten to beginning first grade level. An
15 independent evaluation by a well-known neuropsychologist concluded that Mark S.'s regression
16 was the result of "District programming [that] has not provided [Mark S.] with the kinds of
17 instruction or tools he has needed to in order to make meaningful educational progress in several
18 core academic skill areas."

19 70. The District also fails to provide disabled students with evidence-based
20 instruction tied to the statewide academic content standards in the ***general education***
21 ***classrooms***. The District fails to adequately train general education teachers in how to implement
22 evidence-based instruction for disabled students in their classrooms, guaranteeing that disabled
23 students in these classrooms will not have access to the curriculum. Nor does the District provide
24 sufficient training to general education classroom teachers or instructional aides that include
25 differentiated instructional strategies. Many general education teachers do not provide
26 differentiated, small-group, or one-to-one special education instruction to their disabled students.
27 Instead, they provide the same grade-level instruction to all students despite knowing that
28 disabled students will not be able to access the curriculum because of their disabilities and lack

1 of necessary supports. Thus, disabled students in general education classrooms throughout
2 Pittsburg Unified are deprived of access to the statewide academic content standards, such as the
3 Common Core curriculum, and the opportunity to meet challenging objectives and achieve
4 advancement from grade to grade.

5 71. For example, most school days during the 2019-20 and 2020-21 academic years,
6 Rosa T.'s general education and special education teachers provided little to no evidence-based
7 instruction designed to help disabled students progress in the statewide academic content
8 standards. As a result of these deficient instructional practices, in the middle of her twelfth grade
9 year, Rosa T. was reading at a seventh grade level and had remained at that level for at least a
10 year. Rosa T. is now unable to meet proficiency in English Language Arts or Mathematics on the
11 California Assessment of Student Performance and Progress ("California Assessment Exam").

12 72. The California Assessment Exam measures proficiency in the statewide academic
13 content standards. Disabled students' performance districtwide on this measure confirms that the
14 District's practices prevent them from meeting these standards. In the 2018-19 school year, the
15 last time the California Assessment Exam was administered, 95.1% of disabled students in the
16 District did not meet proficiency in English Language Arts and 96.27% did not meet proficiency
17 in Mathematics, compared to 83.64% and 87.38%, respectively, for disabled students across the
18 state.³⁴ The District's failure and refusal to provide evidence-based instruction tied to the
19 statewide academic content standards to disabled students places the District into the lowest rung
20 of districts across California.

21 **D. The District Disproportionately Disciplines and Excludes Black, Native**
22 **American, Multiracial, and Disabled Students.**

23 73. A violation of students' constitutional right to equal educational opportunity
24 occurs when a policy or practice has a "substantial disparate impact on the minority children of
25 its schools, causing de facto segregation of the schools and an appreciable impact to a district's
26 educational quality, and no action is taken to correct that policy when its impacts are identified."
27

28 ³⁴ See CAL. ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS, *supra* n.11.

1 *Collins*, 41 Cal.App.5th at 896. Evidence of intentional discrimination is not required to state a
2 cognizable claim. *Id.*; *Butt*, 4 Cal.4th at 681.

3 74. Section 11135 also provides an explicit private right of action to challenge
4 disparate-impact discrimination on the basis of race, ethnicity, national origin, and disability
5 status, among other protected categories, by the State and District when providing educational
6 services, programs, and activities to students. Cal. Gov't. Code § 11135(a); Cal. Code Regs. Tit.
7 2 § 11154(i)(1). Accordingly, Defendants have a clear, present, ministerial, and non-
8 discretionary duty to ensure that students in protected categories do not suffer disproportionately
9 from school-based discipline.

10 75. The District subjects Black, Native American, multiracial, and disabled students
11 to discriminatory discipline practices, which flow directly from the State's failure to provide
12 meaningful oversight.³⁵ The District's student discipline system provides staff with unfettered
13 discretion to choose among several different disciplinary options, including suspension and
14 expulsion for certain offenses, without justification or meaningful oversight. This system allows
15 racial and ableist biases and stereotypes to guide disciplinary decision-making, including views
16 among District staff that the behavior of students of color and disabled students—and students at
17 the intersections of these identities—is inherently defiant, problematic, and deserving of extra-
18 punitive punishment. As a result, District staff regularly target and harass Black, Native
19 American, and other students of color through harsher discipline, including suspension,
20 expulsion, and involuntary transfer to alternative programs, for the same or similar behaviors as
21 their peers, causing these students to lose equal access to the classroom. Black and Native
22 American students in the District are disciplined at the highest rates for “disruption/defiance,”
23 which is one of the most subjective disciplinary offense and most likely to be infected by racial
24 bias. For the four school years encompassing 2016-2020, the District suspended Black students
25 for defiance-only at the highest or second-highest rates as compared to other racial/ethnic

27 ³⁵ PITTSBURG UNIFIED SCH. DIST., *The Student Rights and Responsibilities Handbook (2021-*
28 *2022)* (2021) 70-71 (“Student Misbehavior and Progressive Disciplinary Action Chart”
describing multiple disciplinary options to address various categories of student misbehavior).

1 groups.³⁶ During the 2017-18 and 2018-19 school years, the District suspended Native American
2 students for defiance-only suspension at over twice the rate for white, Asian, and Latine
3 students.³⁷ Despite having actual knowledge of these practices, the District has acted with
4 deliberate indifference by failing to intervene and provide sufficient training to its staff in how to
5 make antiracist and anti-ableist disciplinary decisions.

6 76. As described above, when she was an elementary and middle-school student, L.G.
7 and her mother, Plaintiff Jessica Black, consistently complained to school and District staff that
8 other students were verbally and physically harassing L.G. at school. Because of this harassment,
9 L.G.’s disability-related behaviors and need for behavioral support increased. Instead of
10 addressing the underlying racism and harassment, school and District staff routinely used their
11 discretion to harshly discipline L.G. for minor behaviors such as leaving her jacket in the office,
12 calling a staff member a “rugrat,” and alleged uniform violations. Staff attempted to rationalize
13 these practices using racially-coded and stereotypical language, claiming that L.G. was “giving
14 people dirty looks,” “intimidating” students,” “mean mugging,” “com[ing] in with hoods on,”
15 and “intimidat[ing students] with her facial expressions.” Other students were not disciplined for
16 similar or identical behaviors. This pattern reveals the implicit racial bias infused in the District’s
17 disciplinary system.

18 77. When J.T., another Black student, was thirteen years old, he was given lunch
19 detention for allegedly touching another student in class. The District failed to properly
20 communicate with J.T.’s mother, Plaintiff Dr. Royston, who worked for the District at the time
21 as a school psychologist, about the incident and the resulting discipline. Over the next few
22 weeks, Dr. Royston and school staff had a disagreement about whether J.T. should be disciplined
23 with lunch detention for the incident. Shortly thereafter, in apparent retaliation for Dr. Royston
24 challenging the unfair discipline of her child, the District unilaterally transferred J.T. into an
25 academically-inferior alternative school in the District for over two months as purported

26
27 ³⁶ EDUC. DATA P’SHIP, *Pittsburg Unified: Students Suspended for Defiance Only by*
28 *Race/Ethnicity*, available at: <https://www.ed-data.org/district/Contra-Costa/Pittsburg-Unified>
(last accessed June 9, 2021).

³⁷ *Id.*

1 discipline for the classroom incident. This encapsulates the District’s attitude that it is acceptable
2 to use extra-punitive discipline on Black students, irreparably damaging those students’
3 academic careers simply because it has the power to do so.

4 78. The misperception by District staff that Black students are more disruptive or
5 have “problem behaviors” extends to even the youngest Black students. When he was in second
6 grade, M.G., a Black student, was excelling academically in a dual English-Spanish immersion
7 program in a District school. One day, the teacher told M.G.’s mother that she planned to have
8 M.G. involuntarily transferred out of the dual-immersion program. M.G.’s mother, Dr. Royston,
9 was shocked that M.G.’s second grade teacher would make that decision without even consulting
10 her and cavalierly disregard M.G.’s well-being as a student by permanently excluding him from
11 her classroom. After Dr. Royston successfully advocated to keep her son in the dual-immersion
12 program, the teacher poured a bottle of water on M.G.—a seven-year-old child—in front of the
13 entire classroom because M.G. happened to fall asleep one afternoon at his desk. When Dr.
14 Royston complained to District staff, they refused to allow her to transfer M.G. to a different
15 dual-immersion classroom.

16 79. The District claims to have adopted a so-called “restorative justice” program. But
17 this program, as implemented by the District, actually perpetuates the District’s racially biased
18 and ableist disciplinary system. The District fails to provide sufficient training to its staff and
19 create a system for implementing restorative justice practices with fidelity. The program focuses
20 only on superficial implementation for the sake of declaring “the District uses restorative
21 justice,” at the expense of authentically preventing future incidents through strengthening
22 relationships between staff and students, increasing capacity to address interpersonal conflict, or
23 reducing punitive staff reactions to behaviors. Staff are not held accountable for addressing harm
24 they inflict on students through restorative justice; instead, Black students are not respected
25 because of implicit racial bias, and they have no outlet to remedy or even challenge unjust
26 treatment by staff. The District’s “restorative justice program,” in practice, is little more than a
27 standard disciplinary meeting where school staff require students to simply sit and apologize to
28

1 each other (regardless of circumstance) and is used by staff as a last resort only after punitive and
2 exclusionary discipline have been exhausted.

3 80. The District also disproportionately disciplines and excludes disabled students
4 compared to their nondisabled peers. These disparities are primarily driven by the District's
5 failure to write adequate Behavior Plans, conduct Functional Behavioral Assessments, use
6 Positive Behavioral Interventions and Supports, and provide Mental Health Services, which
7 causes disabled students to be disciplined for disability-related behaviors. The District then uses
8 these behaviors and disciplinary incidents to further justify segregating disabled students.

9 81. Data from the District, State, and the federal government shows how the District's
10 discriminatory practices disparately impact Black, Native American, multiracial, disabled
11 students, and students at the intersection of those identities:

- 12 • From the 2016-17 through 2018-19 school years, the District disciplinarily
13 excluded Black students at ever-increasing rates. In the 2017-18 school year,
14 Black students were suspended or expelled from District schools at more than
15 twice their rate of enrollment.³⁸ In the 2018-19 school year, according to data
16 received pursuant to the Public Records Act, the District disciplinarily excluded
17 Black students at the highest rate (15 students per 100) compared to every other
18 student racial/ethnic group, with multiracial students a close second (14 students
19 per 100) and Native American students at the third-highest rate (10 students per
20 100).
- 21 • In the 2017-18 school year, according to data received pursuant to the Public
22 Records Act, students with disabilities were three times more likely than students
23 without disabilities to be suspended.
- 24 • At the intersection of race and disability, in the 2017-18 school year, Black and
25 multiracial students with disabilities were disciplinarily excluded from school at
26 twice the rates of white and Latine students with disabilities.³⁹

27
28 ³⁸ C.R. Data Collection, *supra* n.12.

³⁹ *Id.*

- In the 2017-18 school year, data received through the Public Records Act reveals that fully *one-third of Black students with disabilities were disciplinarily excluded from District schools or classrooms*, and nearly 8% of disabled Black students were suspended multiple times.

III. COVID-19 Related School Closures Have Raised the Stakes for Defendants’ Failures to Remedy These Systemic Deficiencies.

82. The Defendants’ systemic deficiencies compound the unmet needs disabled students face in the aftermath of California’s shelter-in-place order enacted to stem the spread of the coronavirus. COVID-19-related school closures did not relieve Defendants of their obligation to provide students with an equal educational opportunity and a Free Appropriate Public Education in the Least Restrictive Environment. For eighteen months, these students experienced elevated anxiety, stress, trauma, social isolation, and learning loss. To successfully transition back to in-person instruction, they need well-tailored instruction, a nurturing school environment, and adequate assessments, services, and supports. Instead, these students are returning to a school district that isolates them and exacerbates their mental health needs through segregation and discriminatory discipline, while providing inadequate instruction that will cause them to fall further behind. It is especially urgent, in this moment of heightened student need, that Defendants uphold their constitutional and statutory duties to remedy the systemic deficiencies at the District.

IV. The Experiences of Individual Plaintiffs

A. Mark S.

83. Mark S., a seven-year-old Latino English learner student who qualifies for special education services because he has autism. Mark S. has experienced years of deprivation of his fundamental right to education, including a Free Appropriate Public Education in the Least Restrictive Environment.

1. Unlawful Segregation

84. From Mark S.’s preschool year in 2016-17 through most of his second grade year in 2020-21, the District placed Mark S. in a special education classroom for at least 70% of the

1 school day. The District continually used Mark S.'s struggles with occupational skills, speech,
2 language, and self-regulation to justify segregating him in a special education classroom. Yet, the
3 District failed to consider and provide behavior-related services and supports that could have
4 enabled Mark S. to participate in or transition into the general education classroom, such as a
5 one-to-one paraprofessional, Functional Behavioral Assessment, or an adequate Behavior Plan.
6 On at least three occasions, when his mother Anna S. visited Mark S. during recess one day, she
7 saw him segregated in response to his disability-related behaviors, playing by himself on the
8 kindergarten playground, under the supervision of a behavioral aide who was on her phone.

9 85. On multiple occasions, the District increased Mark S.'s time outside of the
10 general education classroom despite recommendations from Ms. Redfoot and the school
11 psychologist that Mark S. was ready for more time in the general education classroom and had
12 made improvements to his motor and functional skills, behaviors, and response to the general
13 education classroom. For example, by the end of his first grade year in May 2020, Ms. Redfoot
14 reported to the District that Mark S. no longer needed a special education classroom and
15 recommended his attendance in the general education class for 80% of the time with one-to-one
16 paraprofessional support. The District refused to follow these recommendations and kept Mark
17 S. outside of the general education classroom for 70% of the time. District staff stated that
18 providing Mark S. a full-time one-to-one paraprofessional in the general education classroom
19 would be more restrictive than placement in a segregated setting, which is a legally inaccurate
20 statement that flies in the face of the intent and purpose of state protections for disabled students.

21 86. Because of the District's failure to follow Ms. Redfoot's recommendations, Mark
22 S. matriculated out of Ms. Redfoot's class into another special education classroom where he did
23 not receive evidence-based instruction, or proper behavioral services and supports, causing him
24 to regress academically. Mark S. now needs individualized remediation services, but because the
25 District lacks an infrastructure for providing push-in services, he must be pulled out of the
26 general education classroom to receive remediation.

1 **2. Inadequate Instruction**

2 87. Mark S. has strong academic skills. During Mark S.’s kindergarten and first grade
3 years, Ms. Redfoot provided him evidence-based instruction tied to the statewide academic
4 content standards despite the District’s contrary policy and practice, and Mark S. achieved
5 mastery of those standards. But when Ms. Redfoot’s was forced to take a temporary disability
6 leave for health reasons at the beginning of Mark S.’s first grade year, Mark S.’s teachers wrote
7 his new IEP goals and failed to align those goals to the statewide academic standards. The
8 teachers also failed to provide any evidence-based instruction designed to help Mark S. meet
9 goals aligned to the standards, focused on functional skills, and prioritized behavioral regulation
10 and compliance over all else.

11 88. When Mark S. matriculated into another special education class in fall 2020, the
12 District once again refused and failed to provide him with evidence-based instruction tied to the
13 statewide academic content standards, reflecting District policy and practice. During most school
14 days in the 2020-21 year, Mark S.’s teachers provided little to no evidence-based instruction on
15 standard academic goals for their students to progress from grade to grade. Mark S.’s teachers
16 did not follow any evidence-based programs or implemented only small, dispersed segments of
17 those programs (not as the programs were intended to be used). They spent most of the
18 classroom time showing non-instructional videos and movies, having students work on arts and
19 crafts, or teaching functional skills. In May 2021, at the end of Mark S.’s second grade year, an
20 independent psychoeducational evaluation revealed that Mark S.’s reading and writing skills
21 have fallen to a pre-Kindergarten to beginning first grade level despite having mastered first
22 grade statewide academic content standards at the end of the previous academic year, 2019-20.
23 Specifically, Mark S.’s verbal knowledge is in the first percentile for his age, his English oral
24 language skills are “exceptionally low” for his age, his skills on language-based learning tasks
25 are exceptionally low to well below average for his age and grade, and his reading and written
26 expression skills are estimated to fall at a pre-kinder to early first grade instructional level.

27 89. In her May 2021 report, the assessor wrote that Mark S.’s regression was the
28 result of “District programming [that] has not provided [Mark S.] with the kinds of instruction or

1 tools he has needed to in order to make meaningful educational progress in several core
2 academic skill areas.” The assessor emphasized that Mark S. “deserves to have appropriately
3 ambitious goals that draw upon his unique strengths and that allow him to make meaningful
4 educational progress, while continuing to access the core/general curriculum and being held to
5 state standards.” Mark S. will need numerous hours of individualized instruction over the next
6 two years to fully catch up to his peers. Anna S. is urgently concerned that the District lacks the
7 infrastructure necessary to provide evidence-based instruction to help her son catch up, and that
8 Mark S. will be trapped in a segregated classroom where he will fall further behind his grade-
9 level peers if these violations are not addressed.

10 **B. Rosa T.**

11 90. Rosa T. is a seventeen-year-old Latina English learner student who qualifies for
12 special education services because she has a Specific Learning Disability. Her cognitive abilities
13 are in the average range. Rosa T. also has Anxiety Disorder, Mood Disorder, and Insomnia
14 Disorder. Rosa T. is entering her second year of twelfth grade at Pittsburg Unified because she
15 has not earned enough credits to graduate.

16 **1. Inadequate Instruction**

17 91. Rosa T. has been deprived of evidence-based instruction tied to the statewide
18 academic content standards in both her general education and segregated settings. During most
19 school days during the 2019-2020 and 2020-2021 academic years, Rosa T.’s general education
20 and special education teachers provided little to no evidence-based instruction designed to help
21 disabled students to progress in the standards. Instead, Rosa T.’s general education teachers spent
22 most of the classroom time providing the same instruction to all students despite knowing that
23 Rosa T. was far behind her peers’ grade levels. The teachers did not provide any differentiated,
24 small-group, or one-to-one evidence-based instruction to help Rosa T. master grade-level
25 standards in light of her disability. In Rosa T.’s segregated classroom, the special education
26 teachers hardly provided *any* explicit instruction, let alone evidence-based instruction. Instead,
27 they required Rosa T. and her disabled classmates to work on their homework from other classes
28 and ask for help if needed. As a result of these deficient instructional practices, in the middle of

1 the twelfth grade during the 2020-21 school year, Rosa T.'s reading comprehension skills were
2 several levels below her grade-level, even as low as third grade on certain assessments. She also
3 scored below grade level standards in English Language Arts and Mathematics on the California
4 Assessment Exam in the eleventh grade. Rosa T. has made little academic progress since the
5 2019-20 school year and still struggles significantly with reading, spelling, and writing.

6 **2. Unlawful Segregation**

7 92. The District continues to use Rosa T.'s academic struggles to justify segregating
8 her from her general education peers. Rosa T. currently spends 37% of her time outside of the
9 general education classroom in support classes for students with disabilities. But the District fails
10 to provide push-in services to help Rosa T. remain in the general education classroom, such as
11 providing differentiated, small-group, or one-to-one instruction. Because Rosa T. is so far behind
12 and the District lacks an infrastructure for providing push-in services, Rosa T. will need to be
13 pulled out of the general education classroom and into a segregated setting to receive
14 remediation.

15 **3. Denial of Mental Health Services**

16 93. Rosa T. has experienced symptoms of severe anxiety and depression that have
17 significantly interfered with her education since at least her sophomore year of high school in the
18 2018-19 academic year. Yet, the District has deprived Rosa T. of Mental Health Services. Rosa
19 T.'s psychiatrist has diagnosed Rosa T. with Anxiety Disorder, Mood Disorder, and Insomnia
20 Disorder. In her junior year of high school, Rosa T. missed 47 days of school after missing 90
21 days the year before. Rosa T.'s mother explained to the District in IEP meetings, home visits,
22 and on phone calls that Rosa T.'s absences were due to her anxiety, depression, and insomnia,
23 and that the family needed more support. A 2019 psychoeducational evaluation identified Rosa
24 T.'s mental illnesses and their effect on her attendance, and recommended the District consider
25 offering her on-site counseling. As Rosa T.'s mental health deteriorated over the next two years
26 and Sofia L. requested additional support at school, the District failed to provide Mental Health
27 Services and supports. Instead, the District continually recommended pushing her into a fully
28 segregated placement at a separate school and also referred Rosa T. and her mother to truancy

1 court multiple times. In their last appearance at truancy court, the judge asked why Rosa T. kept
2 getting sent to the court and ordered counseling through the county.

3 94. The District's failure to properly support Rosa T. has exacerbated her mental
4 health issues to the point that she cannot attend school in person. These failures by the District
5 have caused Rosa T. to require full segregation from her peers.

6 **V. The State Has an Obligation to Deliver Equal Educational Opportunity and Is**
7 **Responsible for Monitoring School Districts to Ensure Compliance with the**
8 **Constitution and Section 56000.**

9 95. The State has failed to comply with its obligation to ensure that, through oversight
10 and intervention, Pittsburg Unified and other districts are complying with state constitutional,
11 statutory, and regulatory mandates regarding the education of students of color and disabled
12 students.

13 96. The State retains ultimate, plenary power over public education in the State of
14 California. Notwithstanding any purported delegation of authority to local school districts, the
15 State bears responsibility to ensure that all children in California's public school receive equal
16 educational opportunity. The primary responsibility for carrying out the State's duties and
17 functions with respect to its educational mandate resides with the State Superintendent of Public
18 Instruction and with the State Board of Education. The California Department of Education is
19 ultimately responsible for administering and enforcing laws related to education and has a
20 responsibility under law to monitor school districts to ensure students with disabilities are
21 receiving an appropriate education as required by Section 56000. Cal. Educ. Code §§ 33308,
22 33300-16; 5 C.C.R. § 3201(c)(3). None of these offices have effectively supervised the statewide
23 system of public education to ensure that students in Pittsburg Unified, and in all California,
24 receive equal educational opportunity. Instead, the State has abdicated its legal responsibilities to
25 Mark S. and Rosa T. (collectively "Student Plaintiffs") and their disabled peers and other
26 students of color to provide equal educational opportunities.

27 97. The State has long known that Pittsburg Unified has engaged in the unlawful
28 policies and practices outlined in this Writ and Complaint, because they collect and analyze the

1 data that illustrate the allegations outlined in this Writ and Complaint.⁴⁰ The State has also
2 received multiple written complaints from special education staff and students with similar
3 factual allegations of systemic violations. Although the State should have flagged Pittsburg
4 Unified’s special education and disciplinary programs as extreme outliers, it failed to proactively
5 or adequately monitor, review, inspect, and remedy the District’s unlawful policies and practices.
6 Although the State has flagged the District as needing intensive monitoring and intervention for
7 multiple years, it has only flagged the District on a small subset of the issues described in this
8 Writ and Complaint. Moreover, the District remains flagged by the State as needing intensive
9 monitoring but has made little to no progress on the systemic flaws outlined in this Writ and
10 Complaint. The State’s superficial “monitoring” of Pittsburg Unified’s special education
11 program has been totally ineffective in bringing about better outcomes for Pittsburg Unified’s
12 disabled students and is representative of the State’s broader failure to monitor and intervene
13 when school districts fail to provide equal educational opportunity to disabled students and
14 students of color, especially Black students. These failures by the State have inevitably led to a
15 deficient educational system in the District that steers disabled students, and disabled students of
16 color and disabled English learners in particular, into separate and inferior classrooms where

19 ⁴⁰ See, e.g., CAL. DEP’T OF EDUC., *Annual Performance Report Measures* (Sept. 2, 2020),
20 available at: <https://www.cde.ca.gov/sp/se/ds/leadatarpts.asp> (showing that, in the 2017-18
21 school year: 74% of school districts statewide had a better rate than Pittsburg Unified of “in
22 regular [general education] class less than 40%” of the time, 82% of districts statewide had a
23 better rate than the District of “in regular class more than 80%” of the time, and 93% of districts
24 statewide had a better rate than the District of placing students in separate schools); EDUC. DATA
25 P’SHIP, *Pittsburg Unified: Students Suspended for Defiance Only by Race/Ethnicity*, available at:
26 <https://www.ed-data.org/district/Contra-Costa/Pittsburg-Unified> (last accessed Sept. 7, 2021)
27 (showing for the four school years encompassing 2016-2020, the District suspended Black
28 students for defiance-only at the highest or second-highest rates as compared to other
racial/ethnic groups; and during 2017-18 and 2018-19, the District suspended Native American
students for defiance-only suspension at over twice the rate for white, Asian, and Latine
students.); See CAL. ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS, *supra* n.11
(showing in 2018-19, the last time the California Assessment Exam was administered, 95.1% of
disabled students in the District did not meet proficiency in English Language Arts and 96.27%
did not meet proficiency in Mathematics, compared to 83.64% and 87.38%, respectively, for
disabled students across the state.).

1 they are barred from accessing meaningful academic opportunities and their right to a basic
2 education.

3 98. The State’s monitoring and intervention system also more generally fails to
4 capture low-performing school districts like Pittsburg Unified and effectively remedy their
5 systemic deficiencies. To adequately monitor school districts' compliance with the law, the State
6 must incorporate a qualitative monitoring and intervention approach—including classroom
7 observations, investigation of inputs, and provision of high quality professional development—to
8 ensure that school districts implement policies, procedures, and practices to ensure that students
9 are referred for assessments, and assessed, based on criteria free from racial and language-biases;
10 disabled students are provided quality services and supports to prevent placement into special
11 education classrooms; teachers and aides provide evidence-based instructional strategies tied to
12 statewide academic content standards; and school discipline systems utilize anti-racist and
13 authentic restorative strategies to prevent disproportionate discipline of disabled students of
14 color. The State must also incorporate this qualitative monitoring approach to its complaint
15 investigation procedures, whose paper-compliance mindset overly focuses on quantitative
16 measures that fail to capture violations alleged in administrative complaints. By failing to
17 investigate the adequacy of the inputs, the State improperly assumes that the *outputs*—students’
18 performances—reflect legally compliant educational policies and practices.

19 99. The State must also adjust its quantitative monitoring approach. For example, the
20 State claims to incorporate district-level data disaggregated by race and placement but has never
21 disclosed that data to prove it is conducting the analysis and enable the public to put pressure on
22 failing districts to comply with State and federal constitutional and statutory laws.

23 **VI. Plaintiffs Have Exhausted Administrative Remedies and Have No Plain, Speedy,**
24 **and Adequate Remedy at Law Other than the Instant Writ and Complaint.**

25 100. On February 25, 2021, Anna S. filed a complaint on behalf of her son, Mark S.,
26 and all other similarly situated students at Pittsburg Unified with the California Department of
27 Education’s Complaint Resolution Unit against the Department and the District, pursuant to 5
28 C.C.R. Section 3200 *et seq.*, challenging all of the systemic violations of law outlined in this

1 Writ and Complaint except for discriminatory discipline practices. On May 5, 2021, and May 21,
2 2021, the California Department of Education responded to the administrative complaint denying
3 all of the systemic claims.

4 101. On July 7, 2021, Jessica Black filed a complaint on behalf of her daughter, L.G.,
5 and all other similarly situated students at Pittsburg Unified with the California Department of
6 Education's Complaint Resolution Unit against the Department and the District, pursuant to 5
7 C.C.R. Section 3200 *et seq.*, challenging the same systemic violations of law outlined in Anna
8 S.'s complaint and adding allegations about the District's discriminatory discipline practices.
9 During a phone call with counsel for Plaintiffs and by letter on July 20, 2021, the California
10 Department of Education stated that it would not investigate systemic violations that had been
11 made in previous administrative complaints.

12 102. On July 30, 2021, Sofia L. filed a complaint on behalf of her daughter, Rosa T.,
13 and all other similarly situated students at Pittsburg Unified with the California Department of
14 Education's Complaint Resolution Unit against the Department and the District pursuant to 5
15 C.C.R. Section 3200 *et seq.* challenging the same systemic violations of law outlined in Anna
16 S.'s complaint and adding allegations about the District's failure to provide Mental Health
17 Services.

18 103. Student Plaintiffs have thus fully exhausted their administrative remedies or, in
19 the alternative, are excused from any exhaustion requirements. Accordingly, Student Plaintiffs
20 have no plain, speedy, and adequate remedy at law other than that sought herein.

21 104. On June 1, 2021, Michell Redfoot, Dr. Nefertari Royston, and Jessica Black
22 (collectively "Taxpayer Plaintiffs") filed a Uniform Complaint Procedure ("UCP") Complaint
23 with the District, pursuant to 5 C.C.R. Section 4620, challenging all of the systemic violations of
24 law outlined in this Writ and Complaint. On July 30, 2021, the District issued an Investigative
25 Report finding that "the Complaint lacks merit." On August 4, 2021, the Taxpayer Plaintiffs
26 appealed this decision to the California Department of Education. On August 24, 2021, the
27 District responded again to the UCP Complaint, purporting separate Investigative Reports to Dr.
28 Royston and Jessica Black that were substantially identical to its July 30 response, again finding

1 that “the Complaint lacks merit.” On August 24, 2021, erring on the side of caution to close off
2 any arguments that her UCP Complaint had not been administratively exhausted, Plaintiff Dr.
3 Royston appealed the District’s Investigative Report to the California Department of Education.
4 On August 30, also erring on the side of caution to close off any arguments that her UCP
5 Complaint had not been administratively exhausted, Plaintiff Jessica Black appealed the
6 District’s Investigative Report to the California Department of Education. By filing the August 4,
7 2021, appeal and subsequent substantially identical appeals on August 24 and August 30, the
8 Taxpayer Plaintiffs exhausted their administrative remedies or, in the alternative, are excused
9 from any exhaustion requirements. Accordingly, Taxpayer Plaintiffs have no plain, speedy and
10 adequate remedy at law other than that sought herein.

11 **CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION – VIOLATION OF STATE CONSTITUTIONAL RIGHT**

13 **TO EQUAL PROTECTION**

14 **Against All Defendants for Violation of the Equal Protection Clauses of the California**
15 **Constitution, Article I, Section 7(a) & Article IV, Section 16(a) (Inadequate Instruction)**
16 **(Unlawful Segregation) (Racial Discrimination)**

17 105. Plaintiffs incorporate the preceding paragraphs of this Writ and Complaint as if
18 set forth in full herein.

19 106. Defendants have a clear and present State-mandated duty under Article I, Section
20 7(a) and Article IV, Section 16(a) of the California Constitution to ensure that students,
21 regardless of race, national origin, and disability in Pittsburg Unified are given basic educational
22 opportunities equal to those of other students elsewhere in the State, including a Free
23 Appropriate Public Education tied to California’s academic content standards.

24 107. Defendants have knowingly violated and continue to violate the rights of
25 Plaintiffs to receive equal protection of the laws, as guaranteed by Article I, Section 7(a) and
26 Article IV, Section 16(a) of the California Constitution.

27 108. Defendant District has violated the rights of Plaintiffs by overidentifying Black
28 and English learner students as having disabilities or more severe disabilities; by failing to

1 provide evidence-based instruction based on California’s statewide academic content standards,
2 as a matter of District policy, to disabled students in general and special education classrooms;
3 by disproportionately excluding Black, Native American, and multiracial students with and
4 without disabilities through disciplinary exclusion from the classroom and involuntary transfer to
5 schools with inferior academic instruction; and by harassing, targeting, and discriminatorily
6 disciplining Black, Native American, multiracial, and disabled students, and students at the
7 intersection of those identities.

8 109. State Defendants have also violated the rights of Plaintiffs by failing to respond to
9 reports that disabled students do not receive basic educational opportunities equal to those that
10 other students in California receive and failing to exercise meaningful oversight over school
11 districts, including Pittsburg Unified, where disabled, Black, Native American, multiracial, and
12 English learner students are de facto segregated from school and/or provided inferior academic
13 instruction; and where Black, Native American, multiracial, and disabled students, and students
14 at the intersection of those identities, are targeted for harassment and discriminatory discipline.

15 110. Plaintiffs seek injunctive relief enjoining Defendants from permitting operation of
16 a special education program that overidentifies Black and English learner students as having
17 disabilities or more severe disabilities; fails to provide evidence-based instruction based on
18 California’s statewide academic content standards, as a matter of District policy, to disabled
19 students in general and special education classrooms; disproportionately excludes Black and
20 multiracial students with and without disabilities through disciplinary exclusion from the
21 classroom and involuntarily transfer to schools with inferior academic instruction; and harasses,
22 targets, discriminatorily disciplines Black, Native America, multiracial, and disabled students,
23 and students at the intersection of those identities. Plaintiffs also seek injunctive relief ordering
24 Defendants to promulgate policies and/or practices to restore students’ fundamental right to
25 equal educational opportunity and provide associated relief.

26 111. Unless enjoined, Defendants will continue to violate the right to receive equal
27 protection of the laws under the California Constitution, and Plaintiffs and the general public will
28 suffer irreparable harm.

1 **SECOND CAUSE OF ACTION – VIOLATION OF CALIFORNIA EDUCATION CODE**

2 **SECTION 33300, ET SEQ.**

3 **Against State Defendants for Violation of the California Education Code (Failure to**
4 **Monitor)**

5 112. Plaintiffs incorporate the preceding paragraphs of this Writ and Complaint as if
6 set forth in full herein.

7 113. State Defendants have a clear and present duty under California Education Code
8 Section 33300 *et seq.* to ensure that students with disabilities receive a Free Appropriate Public
9 Education in the Least Restrictive Environment.

10 114. State Defendants have knowingly violated and continue to violate the rights of
11 Plaintiffs to a Free Appropriate Public Education in the Least Restrictive Environment under
12 California Education Code Section 33300 *et seq.*, including but not limited to Sections 33030-32,
13 33112(a), and 33300-16, and California Code of Regulation Title 5 Section 3201(c)(3), by failing
14 to exercise meaningful oversight over school districts to ensure they provide disabled students,
15 including Black, multiracial, and English learner students with disabilities, with a Free
16 Appropriate Public Education in the Least Restrictive Environment and receive equal
17 educational opportunity.

18 115. Plaintiffs seek injunctive relief enjoining State Defendants from failing to exercise
19 meaningful oversight over school districts to ensure that school districts: 1) provide disabled
20 students, including Black, multiracial, and English learner students with disabilities, with a Free
21 Appropriate Public Education in the Least Restrictive Environment; 2) implement policies,
22 procedures, and practices to ensure that students are referred for assessments, and assessed,
23 based on criteria free from racial and language-biases; 3) provide disabled students with quality
24 services and supports to prevent placement into special education classrooms; 4) train and ensure
25 that teachers and aides provide evidence-based instructional strategies tied to statewide academic
26 content standards; and 5) implement school discipline systems that utilize anti-racist and
27 authentic restorative strategies to prevent disproportionate discipline of disabled students of
28 color.

1 and English learner students with disabilities, access to the general education classroom; and by
2 failing to provide evidence-based instruction tied to California’s academic content standards to
3 enable disabled students in special education and general education classrooms to meet
4 “challenging objectives” that are “appropriately ambitious” and “achieve advancement from
5 grade to grade.” *Endrew F.*, 137 S. Ct. 1000.

6 120. Plaintiffs seek injunctive relief enjoining Defendants from failing to provide
7 disabled students, including Black, multiracial, and English learner students with disabilities,
8 with a Free Appropriate Public Education in the Least Restrictive Environment, as well as the
9 use of discriminatory practices, and ordering the Defendants to promulgate policies and/or
10 practices to assure compliance with state law and provide associated relief.

11 121. Unless enjoined, Defendants will continue to violate the right of Plaintiffs and
12 disabled students to a Free Appropriate Public Education in the Least Restrictive Environment,
13 and Plaintiffs will suffer irreparable harm.

14 **FOURTH CAUSE OF ACTION – VIOLATION OF CALIFORNIA GOVERNMENT**

15 **CODE SECTION 11135**

16 **Against All Defendants for Violation of the California Government Code (Unlawful**
17 **Segregation)**

18 122. Plaintiffs incorporate the preceding paragraphs of this Writ and Complaint as if
19 set forth in full herein.

20 123. Defendants have a clear and present duty under California Government Code
21 Section 11135 not to discriminate against persons on the basis of race, sex, national origin, or
22 disability and other protected statuses in state-run or state-funded programs and activities. The
23 prohibition against discrimination applies to the State of California, its departments and agencies,
24 school districts and recipients of direct funding or state financial assistance, including the
25 District.

26 124. California Government Code Section 11139.5 authorizes the Secretary of the
27 Health and Welfare Agency to promulgate regulations that establish standards for determining
28 what practices are discriminatory. The regulations promulgated by the Secretary of the Health

1 and Welfare Agency provide, in relevant part, that “[i]t is a discriminatory practice for a
2 recipient...(i) to utilize criteria or methods of administration that...(1) have the purpose or effect
3 of subjecting a person to discrimination on the basis of ethnic group identification, religion, age,
4 sex, color, or a physical or mental disability[.]” Cal. Code Regs. tit. 2, § 11154(i)(1).

5 125. The District’s operation of elementary schools, middle schools, and high schools
6 within the District and its administration of educational services within those schools are subject
7 to California Government Code Section 11135(a) because they constitute a program or activity
8 that is funded directly by the state of California or receive financial assistance from the state. The
9 State’s operation of programs to oversee and monitor school districts’ compliance with laws
10 requiring educational equity are subject to Section 11135 because they constitute a program or
11 activity that is funded by the State of California.

12 126. California Government Code Section 11139 provides that the antidiscrimination
13 provisions of California Government Code Section 11135 *et seq.*, and the regulations adopted
14 pursuant thereto may be enforced by a civil action for equitable relief, which shall be
15 independent of any other rights and remedies. Plaintiffs therefore have the right to bring a civil
16 action for injunctive relief to enforce the rights guaranteed to them under California Government
17 Code Section 11135 and the regulations promulgated by the Secretary of the Health and Welfare
18 Agency.

19 127. The District’s application of policies in its administration of educational services
20 within District schools has had and continues to have the effect of denying Plaintiffs full and
21 equal access to the benefits of the programs or activities administered by the District, or of
22 subjecting Plaintiffs to discrimination under such programs or activities, on the basis of their
23 race, national origin or disability. The following policies are illustrative of the disproportionate
24 impact of the application of these policies on Black, Native American, multiracial, English
25 learner and disabled students within the District: failing to provide assessments to students in
26 their native language; failing to provide sufficient training to District staff in the consideration
27 and implementation of special education services and supports to include disabled students in the
28 Least Restrictive Environment; refusing to provide instruction tied to the statewide academic

1 content standards to disabled students in segregated classrooms; failing to provide teachers with
2 sufficient training in the use of evidence-based instruction for disabled students; and use of a
3 highly discretionary discipline system, including suspension, expulsion and involuntary policies,
4 that perpetuates racial and ableist biases and disparately negatively impact the rights of Black,
5 Native American, multiracial, English learner, and disabled students to attend school in a general
6 education setting.

7 128. The State Defendants’ defective system for monitoring school districts and
8 selecting them for intensive review and intervention has had and continues to have the effect of
9 denying Plaintiffs full and equal access to the benefits of the programs or activities administered
10 by the District, or of subjecting Plaintiffs to discrimination under such programs or activities, on
11 the basis of their race, national origin or disability. The State’s system for monitoring school
12 districts and selecting them for more intensive review and intervention fails to identify the scope
13 of systemic issues at school districts, like Pittsburg Unified, that disproportionately segregate
14 disabled students of color into classrooms that provide an inferior education.

15 129. Plaintiffs seek injunctive relief enjoining Defendants from permitting operation of
16 a special education program and a student discipline program that discriminate on the basis of
17 race, ethnicity, national origin, or disability. Plaintiffs also seek injunctive relief ordering
18 Defendants to promulgate policies and/or practices to restore students’ fundamental right to
19 equal educational opportunity and provide associated relief.

20 130. Unless enjoined, Defendants will continue to violate the right to receive equal
21 protection of the laws under the California Constitution, and Plaintiffs and the general public will
22 suffer irreparable harm.

1 **FIFTH CAUSE OF ACTION – VIOLATION OF UNRUH CIVIL RIGHTS ACT**

2 **(CALIFORNIA CIVIL CODE SECTIONS 51, 52)**

3 **Student Plaintiffs Mark S. and Rosa T. Against Defendant District for Violation of the**
4 **California Civil Code (Violation of Right to Free Appropriate Public Education in the**
5 **Least Restrictive Environment)**

6 131. Plaintiffs incorporate the preceding paragraphs of this Writ and Complaint as if
7 set forth in full herein.

8 132. Pittsburg Unified has a clear and present duty under California Civil Code Section
9 51 *et seq.* to provide students with a Free Appropriate Public Education in education in the Least
10 Restrictive Environment. The District violated and continues to violate this duty by failing to
11 provide to Plaintiffs evidence-based instruction tied to California’s academic content standards
12 to enable disabled students in special education and general education classrooms and services
13 and supports to enable disabled students to access the general education classroom.

14 133. California Civil Code Section 51(b) *et seq.*, also known as the Unruh Civil Rights
15 Act, provides that all persons in California are entitled to the “full and equal accommodations,
16 advantages, facilities, privileges, or services in all business establishments of every kind
17 whatsoever,” regardless of disability. Under California Civil Code Section 51(e)(1), “disability”
18 is defined as “any mental or physical disability as defined in sections 12926 and 12926.1 of the
19 Government Code.” Under California Government Code Section 12926(j)(2), a “mental
20 disability” includes a mental or psychological condition that requires special education or related
21 services. A violation of the right of any individual under the federal Americans with Disabilities
22 Act of 1990 (Public Law 101-336) also constitutes a violation of this section. Cal. Civ. Code, §
23 51(f).

24 134. Student Plaintiffs Mark S. and Rosa T. are children with disabilities who have
25 been found eligible for special education and are English learners. As such, each is within the
26 class of persons protected by the Unruh Civil Rights Act.

1 135. Pittsburg Unified is a business establishment within the meaning of California
2 Civil Code Section 51 *et seq.*⁴¹

3 136. Through its action and inaction, Defendant Pittsburg Unified has denied, aided,
4 incited a denial of, discriminated, or made a distinction that denied full and equal advantages,
5 privileges, and services to Student Plaintiffs Mark S. and Rosa T. based on their disabilities, and
6 therefore, violated, and continue to violate, the Unruh Civil Rights Act. Accordingly, Student
7 Plaintiffs are entitled to recover a civil penalty authorized by California Civil Code Section
8 52(a).

9 137. Pittsburgh Unified’s staff members and administrators denied Student Plaintiffs
10 Mark S. and Rosa T. equal access to education in the Least Restrictive Environment, and instead
11 provided them with a separate, different, and inferior education, including by 1)
12 disproportionately segregating Black and English learner students with disabilities into inferior
13 separate classrooms; and 2) failing to provide evidence-based instruction based on California’s
14 statewide academic content standards, as a matter of District policy, to disabled students in
15 general and special education classrooms, resulting in deprivations of students’ fundamental
16 right to education and their right to equal educational opportunity.

17 138. The denial of Student Plaintiffs Mark S. and Rosa T.’s right to a full and equal
18 education solely by reason of their disabilities is ongoing.

19 139. As a direct and proximate cause of Pittsburg Unified’s misconduct, Student
20 Plaintiffs Mark S. and Rosa T. have each suffered and/or will each continue to suffer harm,
21 including deprivations of students’ fundamental right to education and their right to equal
22 educational opportunity.

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⁴¹ See *Sullivan v. Vallejo City Unified School District*, 731 F. Supp. 947, 953 (E.D. Cal. 1990) (“[S]ince public schools were among those organizations listed in the original version of the Unruh Act, it must follow that for purposes of the Act they are business establishments as well.”).

1 threaten to continue and will continue to expend tax monies in an illegal manner in violation of
2 State law as alleged in this Writ.

3 147. By failing to implement adequate monitoring and oversight of special education
4 programs and disciplinary exclusion policies and practices and otherwise failing to take steps to
5 ensure equal educational access for Black, Native American, multiracial, English learner and
6 disabled students, as alleged herein, Defendants have unlawfully diverted money intended for
7 monitoring and oversight to other uses in violation of state law.

8 148. Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and Jessica Black have an
9 interest in enjoining the unlawful expenditure of tax funds. Pursuant to Cal. Civ. Proc. Code §
10 526a and this court's equitable power, Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and
11 Jessica Black seek declaratory and injunctive relief to prevent continued harm and to protect
12 Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and Jessica Black and the public from
13 Defendants' unlawful policies, practices, and deliberate indifference, as alleged herein. There is
14 an actual controversy between Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and Jessica
15 Black and Defendants concerning their respective rights and duties. Plaintiffs Michell Redfoot,
16 Dr. Nefertari Royston, and Jessica Black contend that the Defendants have unlawfully
17 administered educational programming in the Pittsburg Unified School District and have failed
18 to satisfy their duties to act to correct deficiencies, as alleged herein, whereas Defendants
19 contend in all respect to the contrary. Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and
20 Jessica Black seek a judicial declaration of the rights and duties of the respective parties with
21 respect to the instant matter.

22 149. Plaintiff taxpayers have suffered and continue to suffer irreparable injury and are
23 without a plain, speedy, and adequate remedy in the ordinary course of the law to compel
24 Defendants to enforce and comply with the legal requirements outlined herein, thereby rendering
25 a Writ of Mandate appropriate. There is no provision in law for a taxpayer to receive money
26 damages for unlawful governmental conduct; money damages would be difficult to ascertain;
27 and money damages would not adequately compensate taxpayers for unlawful governmental
28 activity.

1 155. State Defendants each have a clear and present ministerial duty to provide for
2 equal access to educational opportunity for all children enrolled in the school districts they
3 administer and/or oversee; to take appropriate action to identify and eliminate policies that
4 interfere with the equal participation by their students in their instructional programs; and to
5 monitor and ensure that the schools and/or school districts are in compliance with state and
6 federal statutory and regulatory requirements and the underlying purposes and specific
7 provisions of the California Constitution and state laws applicable to the provision of equal
8 education to students of color and disabled students of color. State Defendants, as alleged herein,
9 have failed and are failing to comply with those duties and obligations.

10 156. Defendant District has a clear and present duty under California Education Code
11 Section 56000 *et seq.* to develop and implement policies, procedures, and programs to ensure
12 that all disabled students receive a Free Appropriate Public Education in the Least Restrictive
13 Environment. Defendant District has failed to develop and implement policies, procedures, and
14 programs consistent with their statutory duties under California Education Code Section 56000 *et*
15 *seq.* Respondents' failure has resulted in the disproportionate segregation of disabled students of
16 color into inferior segregated settings where they are denied access to a Free Appropriate Public
17 Education.

18 157. As a result of the Defendants' failure to comply with their constitutional, statutory
19 and regulatory duties, students of color, English learners, and disabled students in Pittsburg
20 Unified and other California public schools have been denied equal educational opportunity and
21 continue to suffer educational deficits as a result of the lack of an effective educational program
22 designed to provide equal educational opportunity to students regardless of their race, ethnicity,
23 national origin, or disability.

24 158. Plaintiffs have suffered and continue to suffer irreparable injury and are without a
25 plain, speedy, and adequate remedy in the ordinary course of the law to compel Defendants to
26 comply with the legal obligations alleged in this Complaint.

27 159. Plaintiffs seek a writ of mandate to issue directing Defendants to perform
28 ministerial acts required by law, namely to direct State Defendants to 1) provide for equal access

1 to educational opportunity for all children enrolled in the school districts they administer and/or
2 oversee; 2) take appropriate action to identify and eliminate policies that interfere with the equal
3 participation by their students in their instructional programs; and 3) monitor and ensure that the
4 schools and/or school districts are in compliance with state and federal statutory and regulatory
5 requirements and the underlying purposes and specific provisions of the California Constitution
6 and state laws applicable to the provision of equal education to students of color and disabled
7 students of color; and direct Pittsburg Unified to 4) develop and implement policies, procedures,
8 and programs to ensure that all disabled students receive a Free Appropriate Public Education in
9 the Least Restrictive Environment.

10 **REQUEST FOR RELIEF**

11 WHEREFORE, Petitioners pray for judgment as follows:

12 160. Order and declare that Defendants are violating the rights of Plaintiffs under the
13 California Constitution, California Education Code Section 56000 *et seq.*, California
14 Government Code Section 11135, and the Unruh Civil Rights Act.

15 161. Enjoin State Defendants, their successors in office, agents, employees and
16 assigns, and all persons acting in concert with them, to proactively monitor school districts'
17 compliance with the California Constitution, California Education Code Section 56000 *et seq.*,
18 California Government Code Section 11135, and the Unruh Civil Rights Act and intervene and
19 remedy identified violations of the law.

20 162. Enjoin all Defendants, their successors in office, agents, employees and assigns,
21 and all persons acting in concert with them, to implement policies, practices, and training to:

22 a) Adequately assess all students for having disabilities, including ensuring
23 Black and English learner students are not disproportionately identified for having
24 disabilities, including more severe disabilities;

25 b) Ensure disabled students, including Black and English learner students,
26 are provided with their constitutional right to an equal educational opportunity by
27 eliminating de facto segregation and providing special education services and supports
28 enable them to access the Least Restrictive Environment;

1 c) Ensure disabled students, including Black and English learner students,
2 are provided with their constitutional right to an equal educational opportunity and a Free
3 Appropriate Public Education by providing evidence-based instruction tied to the
4 statewide academic content standards in the special and general education classroom;

5 d) Ensure Black, Native American, and multiracial students, with and
6 without disabilities, and disabled students of color, are not disproportionately disciplined;

7 163. Compensatory education to Student Plaintiffs, whom the District has deprived of
8 their right to equal educational opportunity;

9 164. Statutory damages to Student Plaintiffs under the Unruh Civil Rights Act;

10 165. An award of costs, disbursements and reasonable attorneys' fees and expenses;

11 and

12 166. For such other and further relief as the Court may deem just and proper.

13 Date: September 13, 2021

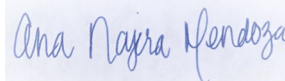
Respectfully by,

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15 Malhar Shah
16 Claudia Center
17 DISABILITY RIGHTS EDUCATION AND
18 DEFENSE FUND

19 

20 Linnea Nelson
21 Brandon Greene
22 Grayce Zelphin
23 AMERICAN CIVIL LIBERTIES UNION
24 FOUNDATION OF NORTHERN
25 CALIFORNIA

26 

27 Ana G. Nájera Mendoza
28 Victor Leung
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN
CALIFORNIA

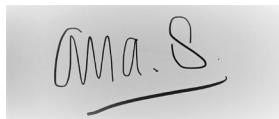
VERIFICATION

I, Anna S., hereby declare:

1. I, Anna S., am the Guardian ad Litem of Plaintiff Mark S. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and Complaint for Individual Damages Under the Unruh Civil Rights Act; and for Individual Declaratory and Injunctive Relief Under California Code of Civil Procedure § 526a. I am informed, and do believe, that the matters herein are true. On that ground, I allege that the matters stated herein are true. In addition, the facts within paragraphs 6-7, 22, 24, 59, 68, 69, 83-89, and 100 are within my own personal knowledge and I know them to be true.

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

Dated: September 13, 2021



Anna S.

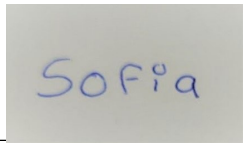
VERIFICATION

I, Sofia L., hereby declare:

3. I, Sofia L., am the Guardian ad Litem of Plaintiff Rosa T. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and Complaint for Individual Damages Under the Unruh Civil Rights Act; and for Individual Declaratory and Injunctive Relief Under California Code of Civil Procedure § 526a. I am informed, and do believe, that the matters herein are true. On that ground, I allege that the matters stated herein are true. In addition, some or all of the facts within paragraphs 6-7, 23, 25, 68, 71, 90-94, and 102 are within my own personal knowledge and I know them to be true.

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

Dated: September 13, 2021

 Sofia

Sofia L.

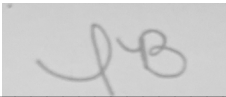
1 **VERIFICATION**

2 I, Jessica Black, hereby declare:

3 5. I, Jessica Black, am a Petitioner/Plaintiff in the above-entitled action. I have read
4 the foregoing petition for writ of mandate and complaint for declaratory and injunctive relief. I
5 am informed, and do believe, that the matters herein are true. On that ground, I allege that the
6 matters stated herein are true. In addition, some or all of the facts within paragraphs 16, 28, 29,
7 58(d), 60, 76, 79, 101, and 104 are within my own personal knowledge and I know them to be
8 true.

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

11
12 Dated: September 13, 2021



Jessica Black

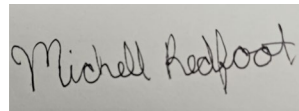
1 **VERIFICATION**

2 I, Michell Redfoot, hereby declare:

3 7. I, Michell Redfoot, am a Petitioner/Plaintiff in the above-entitled action. I have
4 read the foregoing petition for writ of mandate and complaint for declaratory and injunctive
5 relief. I am informed, and do believe, that the matters herein are true. On that ground, I allege
6 that the matters stated herein are true. In addition, some or all of the facts within paragraphs 13,
7 26, 46, 56, 58(a)-(c), 58(e)-(f), 58(h), 66, 67, 68, 85, 87, and 104 are within my own personal
8 knowledge and I know them to be true.

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

11
12 Dated: September 13, 2021



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Michell Redfoot

1 **VERIFICATION**

2 I, Nefertari Royston, hereby declare:

3 1. I, Nefertari Royston, am a Petitioner/Plaintiff in the above-entitled action. I have
4 read the foregoing petition for writ of mandate and complaint for declaratory and injunctive
5 relief. I am informed, and do believe, that the matters herein are true. On that ground, I allege
6 that the matters stated herein are true. In addition, some or all of the facts within paragraphs 13,
7 17, 27, 46, 56, 58(c), 58(e), 77, 78 and 104 are within my own personal knowledge and I know
8 them to be true.

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

11
12 Dated: September 13, 2021



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Dr. Nefertari Royston