Claudia Center (SBN 158255)
CCenter@dredf.org
Malhar Shah (SBN 318588)
MShah@dredf.org
Disability Rights Education and Defense Fund
3075 Adeline Street, Suite 210
Berkeley, CA 94703
Telephone: (510) 644-2555

Linnea Nelson (SBN 278960)
LNelson@aclunc.org
Grayce Zelphin (SBN 279112)
GZelphin@aclunc.org
Brandon Greene (SBN 293783)
BGreene@aclunc.org
American Civil Liberties Union
Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493

Attorneys for Plaintiffs-Petitioners

Additional counsel on next page

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

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

v.

STATE OF CALIFORNIA; TONY THURMOND, in his official capacity as STATE SUPERINTENDENT OF PUBLIC INSTRUCTION; STATE BOARD OF EDUCATION; CALIFORNIA DEPARTMENT OF EDUCATION; and Pittsburg Unified SCHOOL DISTRICT, DOES 1-100, INCLUSIVE

Defendants and Respondents.

Case No. MSN21-1755

UNLIMITED JURISDICTION

DECLARATION OF AMANDA SCHWARTZ IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT PITTSBURG UNIFIED SCHOOL DISTRICT'S MOTION FOR RENEWAL OF DEMURRER TO OPERATIVE VERIFIED PETITION

[*Filed concurrently with Plaintiffs-Petitioners' Opposition to Demurrer; Request for Judicial Notice*]

Date: January 12, 2022
Time: 9:00 a.m.
Dept.: 39

Ana G. Nájera Mendoza (SBN 301598)
AMendoza@aclusocal.org
Victor Leung (SBN 268590)
VLeung@aclusocal.org
American Civil Liberties Union
Foundation of Southern California
1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-9500

Robyn Crowther (SBN 193840)
RCrowther@Steptoe.com
Geoffrey Warner (SBN 305647)
gwarner@steptoe.com
STEPTOE & JOHNSON LLP
633 West 5th Street, Suite 1900
Los Angeles, CA 90071
Telephone: (213) 439-9400
Facsimile: (213) 439-9599

Amanda C. Schwartz (SBN 307522)
aschwartz@Steptoe.com
Steptoe & Johnson LLP
One Market Plaza
Steuart Tower, Suite 1070
San Francisco, CA 94105
Telephone: (415) 365-6700
Facsimile: (415) 365-6699

Attorneys for Plaintiffs-Petitioners

DECLARATION OF AMANDA SCHWARTZ

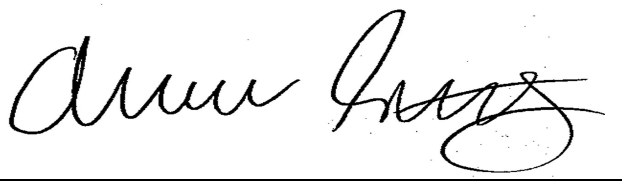
I, Amanda Schwartz, declare as follows:

1. I am an attorney duly admitted to practice law in the State of California. I am counsel of record in this matter for Plaintiffs Mark S. and Rosa T. and Petitioners Jessica Black, Michell Redfoot, and Dr. Nefertari Royston. I submit this declaration in support of Plaintiffs-Petitioners' Opposition to Pittsburg Unified School District's Motion for Renewal of Demurrer. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Reporter's Transcript of the February 24, 2022 hearing before the Hon. Edward J. Weil in the Superior Court of California, County of Contra Costa.

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

Executed in Los Angeles, California on December 29, 2022.



Amanda Schwartz

EXHIBIT A

SUPERIOR COURT CALIFORNIA

COUNTY OF CONTRA COSTA

DEPARTMENT 39

MARK S., et al.,
Plaintiffs,
VS.
STATE OF CALIFORNIA, et al.,
Defendants.
NO. MSN21-1755

HONORABLE EDWARD J. WEIL, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF REMOTE PROCEEDINGS

FEBRUARY 24, 2022

APPEARANCES BY COURTCALL:

FOR THE PLAINTIFF:

DISABILITY RIGHTS EDUCATION AND DEFENSE FUND
BY: MALHAR SHAH, ESQ.
3075 Adeline St., Ste. 210
Berkeley, CA 94703
mshah@dredf.org

STEPTOE & JOHNSON LLP
BY: AMANDA C. SCHWARTZ, ESQ.
One Market St., Ste. 3900
San Francisco, CA 94105
aschwartz@steptoe.com

APPEARANCES BY COURTCALL:

FOR DEFT STATE OF CALIFORNIA:	CALIFORNIA DEPARTMENT OF JUSTICE BY: ANDREW EDELSTEIN, ESQ. JACQUELYN YOUNG, ESQ. 300 S. Spring St., Ste. 1702 Los Angeles, CA 90013 andrew.edelstein@doj.ca.gov jacquelyn.young@doj.ca.gov
	CALIFORNIA DEPARTMENT OF EDUCATION BY: LEN GARFINKEL, ESQ. 1430 N St., Ste. 5319 Sacramento, CA 95814 lgarfinkel@cde.ca.gov
FOR DEFT PITTSBURG UNIFIED SCHOOL DISTRICT:	LEONE AND ALBERTS BY: KATHERINE A. ALBERTS, ESQ. 1390 Willow Pass Rd., Ste. 700 Concord, CA 94520 kalberts@leonealberts.com

JAY M. BULLARD, CSR #3455
OFFICIAL COURT REPORTER PRO TEMPORE

Martinez, California - Thursday, February 24, 2022

Morning Session

(The following proceedings were held via CourtCall:)

THE COURT: On Mark S. vs. State of California. We have some people here in the courtroom. We also have a number of people on the telephone. The people in the courtroom can come forward. I'll start with the appearances on the telephone so that people don't speak over each other, sort of take roll.

Do I have Jacquelyn Young for the State of California?

MS. YOUNG: Yes. Good morning, Your Honor.

THE COURT: Do I have Andrew Edelstein also for the State of California?

MR. EDELSTEIN: Good morning. I'm here.

THE COURT: And Jay Bullard, court reporter. Are you present?

THE REPORTER: Yes, I am, Your Honor.

THE COURT: We don't have a stipulation to the use of a private court reporter, so counsel are going to need to get that for the court electronically today. Who hired the reporter?

MR. EDELSTEIN: The State of California, Your Honor.

THE COURT: You need to get the form stipulation that's provided in our local rules and get it signed and get it to the court.

MR. EDELSTEIN: Will do so.

THE COURT: All right. I have Malhar Shah for Plaintiff.

MR. SHAH: Good morning, Your Honor. I'm here.

THE COURT: Amanda Schwartz also for Plaintiff.

MS. SCHWARTZ: Good morning, Your Honor. I'm here.

THE COURT: All right. And here in the courtroom.

MS. ALBERTS: Good morning, Your Honor. Katherine Alberts for the Pittsburg Unified School District.

MR. GARFINKEL: Good morning, Your Honor. I'm Len Garfinkel representing the California Department of Education, the State Board of Education, and State Superintendent.

THE COURT: Okay. You can have a seat if you're more comfortable here in the courtroom, and it also gets you closer to the microphone, which the people on the telephone need to be able to hear you.

All right. I suppose we're not really talking about line nine, correct? We can skip over that one. There is nothing more to say about that. The State's joinder is granted.

Mr. Edelstein or Ms. Young, do you have anything to say about that one?

MR. EDELSTEIN: The joinder is granted? No. We appreciate it, Your Honor. Thank you.

THE COURT: All right. Who wants to talk about line

ten?

MR. EDELSTEIN: That is the claim against the State? I will address that, Your Honor.

THE COURT: All right. Go ahead.

MR. EDELSTEIN: You know, I'm familiar with Butt, as is the Court and the Plaintiff. From our point in view, having the State as the Defendant adds nothing to this lawsuit except for cost to the People of the State of California. Anything the State is ordered to do, it acts through its agents which are parties to this lawsuit. And under the case law we cited, those are the proper defendants. And we have the legal argument that there is nothing that the State, in and of itself, can do, and to the extent it has a nondelegable duty that is effectuated through its agents. And it's different than in Butt where the issue was delegating that duty to a school district, and that clearly isn't present in this case, Your Honor.

THE COURT: All right. Who would like to respond on behalf of Petitioner?

MR. SHAH: This is Malhar Shah on behalf of the Petitioner and Plaintiff, Your Honor. I have nothing to add. Your Honor was correct in your analysis that the State is a proper party under Butt vs. State of California. Thank you.

THE COURT: Anyone else want to be heard on that?

So on line nine, which I skipped over, the tentative will be the order. On line ten, I understand it's

not of a great deal of practical significance, but I still think on what the Supreme Court said the State's a proper party in that it has the legal responsibility ultimately. So the tentative will be the order on line ten.

All right. Let's talk about line 11.

MS. ALBERTS: Hi, Your Honor. I would like to address the --

THE COURT: For the court reporter's convenience, please make sure you identify yourself.

MS. ALBERTS: This is Katherine Alberts on behalf of the Pittsburg Unified School District. What I'd like to talk about in the tentative is the exhaustion requirement, obviously. The Court admits that these are FAPE claims, and that under the Supreme Court's decision in Fry, they must be exhausted. However, in analyzing the exhaustion provision, the Court conflates and confuses systemic with the term facial in the Ninth Circuit's precedent on whether or not exhaustion is required. These are two different terms that have entirely different meanings and lead to different results under Ninth Circuit precedent.

There's a three-step analysis when it comes to exhaustion. And, one -- the first step, is exhaustion required? The Court has already determined that these are FAPE claims and that exhaustion is required. In certain narrow, narrow circumstances, this is where the term systemic comes into play. If you get past that and exhaustion is

required, then you have to look at is the challenge to a facially allegedly invalid call with a facial call versus it's a question of law as opposed to a dispute of fact as to educational issues, methodology, eligibility, that type of thing. This is where facial comes into play. And then if there is a facial challenge, this is where the case-by-case analysis that the Court uses would come into play, because you could still require exhaustion if it would help the Court under the purposes of Hoeft.

In this case we say that these are not systemic claims as the Ninth Circuit defines systemic. In Hoeft vs. Tucson Unified, they said that there was a narrow exemption to the general rule of exhaustion before the Office of Administrative Hearings for systemic claims.

Doe vs. Arizona Department of Education in the Ninth Circuit, 1997, defines a systemic claim where it is one that implicates the integrity and reliability of the IDEA dispute resolution procedures themselves such as biased judges, or there isn't a procedure that's available for anybody, so why would you then cause exhaustion? Or when you're reinstructing the entire educational system in order to comply with the dictates of the IDEA. That's a top-down complete change of an entire special ed department, which is not what we have here. When it's a specific thing, such as in Hoeft vs. Tucson where it was just about extended summer services as part of a special ed department, that's why the

Ninth Circuit said it didn't apply. These weren't systemic claims in that case.

So we don't have systemic claims. You can't just slap a label in a pleading on a claim and call it systemic and get by with exhaustion -- and get out of exhaustion. It would render the exhaustion requirement meaningless, which is an important part of the IDEA. And the Ninth Circuit has even said that you can't do this. You have to look beyond the pleading and the label, but that's a preclusory label in Hoeft and Christopher S.

So, if you don't have a systemic claim and you have to exhaust, then you look to whether this is a facial dispute on a matter of question of law or a dispute as to facial fact. Here -- and that's where sort of the dispute complaint resolution process, CRP, would come into play.

The Ninth Circuit has said that the CRP can be an exhaustion but only for challenges to facially invalid policy. Christopher S. refined that and said only when questions of law are involved and you need an identifiable policy and need to be able to determine the validity of that policy solely by resorting to law and not facts. That is not what we have in this case.

They have alleged four issues. The first being the overidentification of African American, Native American, English language learners, multi-racial students for special ed or that they're given a more serious category. You can't

determine that as a question of law. This Court in order -- sorry, take that back. This Court would have to look at individual IECs and determine whether or not certain students were properly qualified for special education and then were given the right category of eligibility. That's not a question of law. It's a question of eligibility and methodology, which are classic examples of OAH exhaustion requirements.

The next one that they allege is that the district disproportionately segregates African American and English language students into inferior class reports. In other words, putting it in the terms of the IDEA, that they violate the least restrictive environment requirement.

Again, you're going to need to look at each individual IEC to determine whether a certain student has been placed in the proper placement and is given the proper service. That is not something that can be determined on a matter of law.

And then the third issue is they provide instruction tied to California Academic Standards to special ed students in special ed and general education classes. You're going to need to look at -- this is also a question of educational methodology. You're going to need to -- ICE EGLS (phonetic) will have to be -- individual ICE EGLS (phonetic) and instruction in individual classrooms are going to have to be looked at, because the point of the IDEA is that there is

no blanket standard for what is the proper instruction. As the Andrew F. case -- or the report stated, you have to meet the students where they are, meet their unique needs to help them advance beyond where they currently are and make progress. That's an individualized determination. That is not a question of law.

The last main category is disproportionate discipline. Again, each instance of discipline will have to be looked at to see if it's proper. It's not a question of law that there are more kids getting disciplined. And this comes with the use of statistics that are throughout the Complaint. Statistics are people. The District can't -- the District wouldn't be able to say oh, we're going to fix our numbers by eliminating special education for certain students or not disciplining certain students. It's required by the Ed Code. So, in this instance, these are individualized determinations.

Same with the other instances of assessments not in the native language, involuntary transfers. The pleadings say that this sometimes happens. It's not a systemic thing. So each instance has to be evaluated as to whether or not that's appropriate.

So in this State on step two, this is not a facial dispute. This is a dispute that the Court needs an admin record from the OAH to help it get through the educational issues that are prevalent in this case.

And why that is true, because even if, let's say, you take the Court's -- this is a facial count. We dispute it's not, but for the sake of argument that it is, this is where the case-by-case exception can come up from the Ninth Circuit and up.

It's only appropriate -- Porter vs. The Board of Trustees of Manhattan Beach, the Ninth Circuit said that a CRC is an exception to OAH, or, in the alternative to an OAH, a due process hearing is only appropriate where the only purpose of exhaustion is to notify the state of local noncompliance and to afford it an opportunity to correct it.

So, in other words, if a due process hearing would help the Court resolve the matter before it, the educational issues through the use of the OAH's expertise and the development of a complete factual record and administrative record, then the hearing is still required.

And this is what we have here. The purposes of OAH administration is to allow -- to give the Court, through the generalist and not educational experts, the analysis of the educational experts of the administrative law judge based on a hearing with evidence and testimony and then an administrative record, including that transcript and all of the evidence admitted -- all of the exhibits submitted in that hearing.

There is also a another and very important part of the purposes of due process of the OAH and the IDEA in

general, which is parental involvement. There are many students who would be affected by this where their parents are not involved in this case. For instance, neither of the two named students and their parents are claiming that they were over -- they were misidentified, that they shouldn't be in special ed or that they're not in the right category. That issue wasn't exhausted because that's not their claim. But to hear the claims of the students who supposedly were when their parents are not before the room violates the purposes of the IDEA. And the District can't change anything about those student IECs without their parents involvement. That's the golden rule of the IDEA, and that's to protect students and parents. So that's why this due process portion of having to go to the OAH as opposed to a CRC, especially in this case, is so important.

The way this is supposed to work is that after the OAH prepares -- has the hearing, issues a decision, most of which are over 30 pages, analyzing all of the issues, supporting of the facts, then an appeal to either the state court or the federal court is in the form of that. It's an appeal with an administrative record. It's like a 1094.5 writ. We don't have that here for you unless -- for the Court, unless we use the -- we admitted the papers that were put together in the CRP process by the CDE.

So, technically, if that's going to be the substitute, then that's what this case is limited to. And

even in that instance, the CDE reviewed 30 IECs and made determinations about the alleged "systemic," quote, unquote, issue. So the Court's going to have to evaluate the IECs to get to an answer on these issues. It's not a facial challenge and one that the Court really should have the expertise of a full analysis with a disputed hearing before the OAH.

THE COURT: Okay. Let me just make it clear that what I'm not intending to do here is to simply have a court case that reconsiders the individual IECs for each of the Plaintiffs. They're challenging what they claim are certain cross-setting issues about the effect and the impact of the policies of the District. So some evidence about the individual students may be necessary, but the underlying issue is not whether each individual plaintiff should have been treated differently. That should have been raised in an administrative hearing, you're right. And also we don't have a class certification motion before me at this point. So some of those issues are relevant to whether they work as a class or whether individual issues are predominate.

Who would like to -- counsel here in the courtroom with the State, would you like to be heard on this case?

MR. GARFINKEL: Yes, Your Honor. On line 12 I'd like to be heard on both this exhaustion issue and also the equal protection issue and a couple other points. Is this the best

time for me to talk about it?

THE COURT: We're talking about line 11, right?

MR. GARFINKEL: Well, the Court has referenced its discussion in line 11 in ruling on our exhaustion issue in line 12, so if this would be the appropriate time, I'm more than happy to address it.

THE COURT: It's more or less the same issue, so go ahead and talk about it.

For the court reporter, again, will you identify yourself for the record.

MR. GARFINKEL: I'm sorry. Len Garfinkel, Assistant General Counsel for the California Department of Education.

The exhaustion issue, from the CDE's point of view, is actually a different issue, Your Honor, as we've explained in our briefing. There's a different analysis that needs to happen in determining whether a party has satisfied exhaustion for purposes of bringing an action against a state educational agency as opposed to a local educational agency.

Typically, for example, at an Office of Administrative Hearing hearing, the CDE is not a party because it's not providing services to the students. It has nothing to do with that hearing.

The Christopher S. case in the Ninth Circuit, which is cited as a basis for using a compliance complaint to the CDE against the LEA as a basis here for filing an action against the CDE, in other words, substituting for exhaustion,

is not authority for that. CDE was not a party in Christopher S. The court made absolutely no statement that such a compliance complaint proceeding could be used as a substitute for exhaustion to bring an action against the CDE. This is why the Paul G. case that we've cited is the controlling case and is dispositive as to this issue as to the CDE. In Paul G., the Plaintiff brought the case against the LEA, and it was about -- they wanted an in-state residential placement and were forced to go ultimately out of state.

They brought a case against the LEA about that issue and said they were denied FAPE, and ultimately they sought to bring an action against the CDE saying that CDE had an overarching responsibility to make sure in-state residential placements were available. They sought systemic relief in a court action against the CDE. The court said to the plaintiff you can't do that because you did not obtain an OAH determination that your students -- any student was denied FAPE as a result of this issue.

The plaintiffs had settled their case at OAH. They hadn't exhausted that issue, and they hadn't received a determination that any student had been denied FAPE. And so, therefore, the court said, the Ninth Circuit, you can't seek systemic relief against the state, essentially asserting that this is some sort of statewide problem, unless you have a determination at the administrative level that you can show

us that at least one student has been harmed by this alleged systemic problem. You cannot --

THE COURT: Even if they're challenging systemic problems that could not be addressed in an individual hearing because they would be beyond the authority of the hearing officer?

MR. GARFINKEL: That's exactly what the Ninth Circuit said in Paul G., directly. That was the issue. And they said because you could get some relief at OAH because you can get compensatory education. And Paul G. specifically said the fact that you can't get all the relief you're seeking does not mean that the OAH remedy would be futile or inadequate. That's exactly what Paul G. stands for.

Now, we need to look at Paul G. in comparison to Christopher S. Remember that Paul G. says if you want to bring a court action against the CDE, you have to have an OAH determination that a student was denied a FAPE. Well, you can't get that in a compliance complaint proceeding because that's not the standard in a compliance complaint proceeding.

We cited in our brief the fact that the compliance complaint proceedings are not in the statute, in the IDEA. They're only in the regs, but they're in the regs at 34 CFR 300.151-153. And there it says that you can bring a complaint to the CDE against an LEA for any alleged violation of special education law.

So it does not apply the standards that is in

statute for an OAH hearing for the ALJ to determine whether or not the student was denied a FAPE. That is the determination at OAH. That's not the determination at a compliance complaint proceeding.

For example, in a compliance complaint proceeding, an LEA can be found in violation because they missed a timeline, just to use an easy example. They're procedurally out of compliance, and they have violated the IDEA or state education law implementing the IDEA because they procedurally are out of compliance. They violated that timeline. But, as the Ninth Circuit has said in the Napa case, which we cited and which is in statute actually in the IDEA, a procedural violation alone of the IDEA does not necessarily mean a student was denied a substantive FAPE.

So you can't use a compliance complaint proceeding as a basis for satisfying the Paul G. requirement for proceeding against the CDE because you are never going to get that ruling, that required ruling whether a student was denied a FAPE or not, because that isn't the standard in a compliance complaint proceeding. It's a different proceeding. So Paul G. precludes this action being brought here against the CDE.

THE COURT: Okay. Thank you. All right. Who on the telephone would like to speak on behalf of Plaintiff?

MR. SHAH: This is Malhar Shah on behalf of the Plaintiffs, Your Honor. Your Honor, we don't have much to

add with respect to the Pittsburg Unified School District's argument. We believe your analysis was exactly on point as the Plaintiffs have alleged policies and practices that are contrary to law that stemmed throughout the School District and impact students throughout the District as a whole.

The District's truncated analysis and interpretation of the Complaint makes it appear as though Plaintiffs are challenging policies and practices that are narrow and individually affect a small group of students and a limited number of issues, but as Your Honor acknowledged in your tentative which we believe is exactly on point, the systemic allegations -- the allegations of systemic policies and practices affects students throughout the District as a whole as borne out by the statistics and the observations of Taxpayer Plaintiffs who are currently and formerly at the School District. That's all I had to say, Your Honor, about that specific argument.

With respect to the CDE's argument about Paul G., Your Honor. The CDE first fails to tell Your Honor that the Plaintiff in Paul G. never filed a CRP complaint. The CDE attempts to put into Paul G. language that is not there. The court there never stated that a plaintiff could not exhaust against the CDE using a CRP complaint. The court there (unintelligible) for the Plaintiff who failed to file any complaint at all, whether it was a due process complaint in front of OAH or a CRP complaint in front of CDE. So, of

course, the court held that the plaintiff had not exhausted.

Moreover, Your Honor, the CDE seems to be talking out of both sides of its mouth. In its briefing it states well, Paul G. is actually about a systemic claim, but then earlier in its briefing when it talks about Paul G., the CDE says well, Paul G. wasn't really about a systemic claim.

In fact, Your Honor, the Court there held -- the Court there considered whether the state was required to create an out-of-state placement for a specific child. That is an incredibly narrow issue for the court to consider.

As Your Honor acknowledged in your tentative, the Plaintiffs here have attacked policies and practices that have to do with identification, evaluation with the provision of special education instruction, and the disciplining of students with disabilities and students of color with disabilities throughout the District, and then finally have made allegations with respect to the placement of those students.

Your Honor, the District Defendants, in fact, cite to the case, the Second Circuit case of Jay S. where the court held that the Plaintiffs did make systemic allegations. Plaintiff's pleadings, while slightly different from the pleadings in that case, largely track the systemic issues there.

For those reasons, Your Honor, we submit to the tentative in full on all of the issues, including this

specific issue. Thank you.

THE COURT: All right. Does Ms. Young or Mr. Edelstein have anything to add on this issue?

MR. EDELSTEIN: No, Your Honor.

MR. GARFINKEL: Your Honor, may I --

THE COURT: Let's see if Ms. Alberts has anything else to say first.

MS. ALBERTS: Your Honor, I understand that you're saying that this has been alleged policies. I don't find a specific policy in here. They are vague, overriding. They can't even be considered a standard practice because that would be saying, then, that the District has a policy of discriminating against African American students by putting them in special ed or English language learners or a policy which isn't within here.

Because, in order to do that, you would have to say, then, that some of these students aren't properly placed or aren't in the right -- shouldn't be in special ed at all, or aren't receiving the right instruction, or aren't receiving -- in the right classroom. And you can't evaluate that without looking at their individual IEC. There is no way in this case to look at -- to adjudicate the claim without looking at individual issues. And why that plays an important part here is because in those situations, the Court needs an administrative record.

In a class action -- you know, in a purported

class action, at least the named plaintiffs have to have exhausted and lost on the certain issue that are before the court for the class, and we don't have that here. They haven't gone to the OAH. They haven't gone to the CDE and CRP process on all the issues before the Court.

To say that these are systemic and they're school-wide or district-wide is just labels. We have to go beyond the labels in order not to render the exhaustion process meaningless.

THE COURT: Well, they're going to have to do more than just make the bald claim that they are cross-setting policies. They're going to have to say what they are.

MS. ALBERTS: Well, they haven't in the pleadings.

THE COURT: They don't have to be something -- in a racial discrimination case, they don't have to be something that on the face of the policy is racially discriminatory. It can be something with disparate impact, and then we go through a process of them establishing if there is a disparate impact, and then we get to the issue of whether there's -- whatever the test would be in an educational case, but some level of justification for the policy in question.

MS. ALBERTS: You're right, Your Honor.

THE COURT: And that will at some point involve some individual evidence, but, as I said before, we're not going to just redo the IECs for each of the individual Plaintiffs.

MS. ALBERTS: Because of the unique nature of the IEC,

in which all of these decisions that you're going to be talking about are made by a team of school district employees, student teachers, the student service providers and the parents in a series of meetings and then they are decided upon jointly, unique to each individual and his or her needs or their needs, you can't run through that analysis of the disparate impact without looking at each individual and their circumstances that you're claiming that there is an overt -- that there's some sort of discrimination, because decisions aren't made by -- the decisions are made by a practice and a procedure that looks at individual needs. They're not made by a blanket-like metric at all.

THE COURT: Well, to some degree you're disputing what they're alleging in the Complaint. They're alleging in the Complaint that there are policies and practices that are not individualized. Am I correct about that, Mr. Shah?

MR. SHAH: That is correct, Your Honor.

MS. ALBERTS: They haven't identified those in the pleadings.

MR. SHAH: Your Honor, if I --

THE COURT: We'll get back to you, Mr. Shah, in a moment. Let me see if Ms. Alberts has anything else she'd like to say.

MS. ALBERTS: Even when Mr. Shah was talking, he talked about identification, evaluation, instruction, discipline of special ed students, again, which all are

individualized. What I wanted to mention was that it hasn't been brought here under the IDEA and the State procedures for discipline of the special education students of a certain degree, suspension over a certain number of days and up to expulsion, there's even an administrative process for that, called the manifestation determination. That's a hearing. It's a group meeting to determine whether the cause of the behavior was a manifestation of the disability of that student individualized, and then discipline can either get upheld or overturned. And that's challengeable before the OAH. So it's a decision that the Plaintiffs --

THE COURT: To some degree, it seems like what you're saying is since ultimately there's always an IEC and an individual decision, you can never really bring a case challenging a policy, because even if there was a uniform policy subject to attack, if the ultimate decision what to do with that student was made individually, you could only have an individual case.

MS. ALBERTS: Well, in certain situations, Your Honor, you're right, in the IDEA, because you need an administrative record. The named Plaintiffs don't even have one here if you were to do it on a class basis. There's no record before you of the class, of the two named Plaintiffs on these issues where they've gone to the OAH and a determination has been denied by the OAH for you to review the causes of the named Plaintiffs.

But only in certain -- the Ninth Circuit says only in certain narrow circumstances, even in class relief, can you skip the OAH, and that's with a facially invalid policy like Christopher S. Christopher S. was autistic students don't get as many instructional minutes across the school district, right? That's a plain -- you don't need any facts to determine that. That's a question of law. So if a policy was a question of law -- allegedly facially invalid policy, then yes, the OAH -- you don't need to go there because the Court can make that determination on its own without the expertise. But here that's not what they're alleging.

There's too many factual issues that the OAH should weigh in on and that are going to be predominantly before this Court on a first-time glance without the educational expertise to wade through them.

THE COURT: Okay. Mr. Garfinkel.

MR. GARFINKEL: I just wanted to switch back to Paul G. and rebut two points made by Mr. Shah.

First, that the plaintiff in Paul G. had not filed a compliance complaint. That's true. The plaintiff had filed at OAH, but settled before getting a ruling at OAH that he was denied a FAPE. And the court said that's not good enough for trying to proceed against CDE. And just to reiterate, Christopher S. was never authority for filing a compliance complaint and using it as a basis for pursuing the

CDE. The CDE was not a party to that case.

Paul G. stands strong as a case saying that in order to bring an action such as this against the CDE, you have to have an underlying OAH determination that a student was denied FAPE, and you simply can't get that through a compliance complaint.

The other point was about whether or not a policy was a systemic case or not, and we briefed this at length in the reply. At every stage of that case at two different settings of the district court and ultimately in the Ninth Circuit, the court made very clear that the plaintiffs were seeking systemic relief against the CDE to have the CDE develop in the State of California -- establish and develop in-state residential placements. They were seeking systemic relief. And, as I mentioned earlier, the court directly addressed that point and said the fact that you couldn't necessarily get that systemic relief at OAH does not mean that OAH remedy was inadequate. You should have gone forward and gotten a ruling that at least one plaintiff was denied a FAPE as a result of this alleged lack of in-state placement.

THE COURT: Okay. Mr. Shah, I'll give you the last word.

MR. SHAH: Thank you, Your Honor. I'm going to add in response to counsel for CDE. Your Honor, with respect to the District's argument, we agree with Your Honor that the

policies and practices that we have alleged in the Complaint are one that we will have to show create the disparate impact and the violation of the rights of students with disabilities throughout the District.

One really quick point, Your Honor. The District Defendant's counsel claims that we have not identified specific policies and practices and claim that we made just facially conclusory allegations. Your Honor, at this point, that cannot be true.

There are two specific allegations I'd like to turn Your Honor's attention to. First, Your Honor, the Plaintiffs allege the citation to an internal District email that the District has taught and commanded its teachers that the law forbids disabled students from being provided instruction tied to the State Academic Content Standards. This is the clearest allegation of a written and oral District policy, and the Defendants do not contest that this violates the law.

Second, Your Honor, the Plaintiffs allege that the District has a generally applicable practice and policy, and this is where the District Defendants try to truncate Christopher S.'s language, because we can also make allegations of generally applicable practices.

We've alleged that the District has a generally applicable practice and policy of refusing to provide research-based instruction, and that this policy and practice

of refusing to provide this instruction stems and is embodied in the District's training program which emphasizes skills to the exclusion of research-based instructional practices. The attorneys have alleged that the District failed to sufficiently provide its teaches with the tools they need to provide research-based instruction, and this would be the clearest indication of the policy and practice in violation of law.

So those are just two examples that I wanted to provide Your Honor really quick. Your Honor, we believe that the reason that you have provided in your tentative that the Plaintiffs have made systemic claims is exactly on point. Thank you.

THE COURT: All right. Let me ask you have we covered everything for line 12 ultimately or do we have a few additional issues that people want to talk about under the auspices of line 12 instead of line 11?

MR. GARFINKEL: Your Honor, there is one point, a clarification on -- I'm sorry, we're still on line 11?

THE COURT: No. I'm done with line 11. Did we end up covering everything on line 12 that you wanted to talk about?

MR. GARFINKEL: No, Your Honor. On line 12 I have another point.

THE COURT: Okay.

MR. GARFINKEL: All right. On line 12, Your Honor, I'd like to talk about equal protection and the prevailing

state standard. There's two. One is the disparate impact, Collins vs. Thurmond standard, and the other is the FAPE as a prevailing state standard.

Starting with the first one on disparate impact. Plaintiffs have chosen and invoked a theory of action here that states that the requirement of the pleadings has to be that the CDE took no action. That is the quote from Collins vs. Thurmond. And, therefore, the request for judicial notice, the 17 items from the CDE show action taken by the State Defendants. And those contradict the allegations of the Complaint and the theory of the case chosen by Plaintiff in invoking Collins vs. Thurmond that the State took no action.

They're alleging now, it appears, in the briefing or arguing now in the briefing that, you know, we don't get into at this stage whether or not those actions were effective or that sort of thing. We don't need to go there. Those documents as to which we requested judicial notice are relevant to their theory of the case that the CDE took no action and should dispose of their case because it demonstrates that on all the points their alleging the CDE took no action, the CDE took action. They cannot use the Collins vs. Thurmond theory.

Switching to -- so I'd ask the Court to reconsider the admission of those 17 items for judicial notice and to consider their impact on the validity of

Plaintiff's claim under Collins vs. Thurmond.

On the FAPE as a prevailing standard. FAPE is a term in IDEA, 20 USC 1401 part 9 -- sub 9 that says a FAPE is an entitlement of a student with a disability who qualifies for an IEC under the IDEA to special education and related services to meet that individual student's needs that are provided through an IEC. And the question of whether someone has received the substantive FAPE or not has been addressed by the Supreme Court and most recently in the N. Drew case (phonetic) where it said it is an IEC that is reasonably calculated to enable a student with a disability to make progress in light of the child's circumstances. That's a highly individualized inquiry from ALJ at OAH with witnesses and cross-examination and documents.

The Supreme Court has said twice, in Rowley and most recently in N. Drew (phonetic), that equating FAPE with equal protection is, quote, "entirely unworkable and required impossible measurement and comparison." And understandably these are federal citations, but, as I'll show, these are relevant to the decision under state law.

The Ninth Circuit has said in Blanchard that you can't bring a constitutional claim that's premised on FAPE because the IDEA has a (unintelligible) remedial scheme. The Ninth Circuit has said in Cane that a claim that a student with an IEC received inadequate instruction arises only under the IDEA. It cannot arise as a constitutional

claim.

The Ninth Circuit has said in M & M vs. Lafayette that there's no express private right of action to challenge the CDE's oversight of special education in California and yet that is what this constitutional claim seeks to do directly.

Under state law, Education Code 56000(e) says -- legislative intent language -- California did not intend, in passing its state special education law that implements the IDEA, to set a higher standard of FAPE than the IDEA sets. We've already shown that the IDEA standard, that California does not intend to exceed, does not equate FAPE with equal protection.

In Butt -- as we've point out, Butt says not all disparities in educational quality and service give rise to a constitutional claim. It has to be fundamentally below a prevailing standard. For example, the fact that some students don't read at grade level is not a constitutional violation. And, in fact, in Butt there was a prevailing state standard of a certain number of days for a plaintiff's school year, and the school district was going to provide substantially less. That was a clear enough case, and that was the case in Butt.

Here, the reason of the authorities that we've cited should apply. Whether or not a student is receiving a FAPE is a highly individualized inquiry for an ALJ at OAH.

An individual student either received a FAPE or didn't. That is for an ALJ to decide, and they can remedy it if the answer is that the student didn't.

Now, as to LEAs, there are not LEAs that are providing FAPE in California and LEAs that are not. There is no one that is making that calculation. What we do at CDE, based on federal law, is we analyze how these LEAs are doing under 17 required federal indicators, and we make determinations on an annual basis. And we find if LEAs need corrective action, if they need technical assistance, if they need to be assigned to targeted or intensive monitoring, as the case may be, for particular areas, and then the CDE does that. And that's the Emma C. case.

But attempting to determine whether students in one LEA as a whole are receiving a somehow lesser FAPE than students in another LEA or on some sort of state average is the sort of impossible measurement and comparison that the Supreme Court learned about in Rowley and it should apply under state law as well.

The current ruling just brings forth a potential floodgate of litigation, combined with the Court's tentative ruling on exhaustion, that any student could file a compliance complaint with the CDE against their LEA alleging some sort of violation, allege that it's systemic, bypass OAH and go to court and bring a constitutional claim, having received no OAH ruling that they were ever denied a FAPE, and

bring a constitutional claim against the CDE that they were denied a FAPE. And, with respect, that just can't be the right end.

THE COURT: I understand your point. Let me note for the benefit of the court reporter that when you hear the word FAPE, that's all caps, F, as in Frank, a-p, as in peanut, e, Free and Appropriate Public Education.

Okay. Do you have anything else, Mr. Garfinkel?

MR. GARFINKEL: A few more things. Thank you, Your Honor.

On cause of action two, I know that that was sustained without leave to amend. But just a correction. I think there's an inadvertent error in the tentative. On page 17 it says, "Plaintiff wrote that he has leave to amend on causes of action one and two," and I believe it should just be one there and not two. Because the Court has elsewhere said that cause of action two is sustained without leave to amend as to all (unintelligible).

THE COURT: Okay.

MR. GARFINKEL: On cause of action six, we do contest as to declaratory relief because I know the Court said that there is at least one cause of action with a valid claim, but we contest that.

On cause of action 7 as to taxpayers, there's a statement at page 17 that "Within Exhibits A, B and C it

appears that Redfoot's appeal is closed," but that's not correct. On the exhibit that I believe is being referred to as Exhibit B to Plaintiff's Request for Judicial Notice, and that does not indicate that their appeal is closed.

There's language in that letter that the CDE was referring some of the issues in that appeal back to the District as is provided for in the regulations, and in these regulations -- they were referring some of those issues back for a 20-day referral to do more work on it. And then when Pittsburg does that, they produce a revised report which they can appeal again back to the CDE. Their time is actually still running -- still open, I should say, on appealing that last piece. So I'll represent as an officer of the court that Redfoot's appeal is still open. It is not closed.

Again, with respect to the request for judicial notice, we would ask that the Court reconsider those as to the 17 on the no-action theory. And then on the Supplemental Request for Judicial Notice, those were all decisional law, and to the extent the Court declined judicial notice because it doesn't need -- if the theory was that the Court doesn't need to take judicial notice of it because it's judicial law, I'll submit on that. But was there some other reason why that was, because I want to make sure that --

THE COURT: You don't need to give us request for judicial notice of case law that they author among the reported cases.

MR. GARFINKEL: Understood. And then one additional point was that -- I believe this came in the discussion of the District's demurrer, but to the extent it applies to us. On page 15 there's a statement that it would have been potentially futile for Redfoot or Royston to file a special education compliance complaint with the CDE, and I just want to clarify that. The relevant legal standard is not whether it would have been futile for a party to file a compliance complaint with the CDE. All the decisional law is about whether it would have been futile to file at OAH.

There are two obviously very significant legal issues here that we've discussed on which we're asking for reversal on the tentative ruling. One is with respect to (unintelligible) and whether or not these claims need to be brought against the CDE. The second is whether FAPE can be used as a prevailing state standard for equal protection purposes.

We believe both of those rise to a level that we could ask you under Code of Civil Procedure 156.1, if the Court does not reverse its tentative ruling on those, we would ask the Court to indicate in its ruling that there's a controlling question of law as to which there's substantial grounds for difference of opinion, appellate resolution of which may mutually advance -- 860, I think -- may materially advance the conclusion of the litigation. Those are two very significant points for us.

THE COURT: Okay. Typically, when I'm asked to do that, what I have found is if I agree substantively that there is a need for appellate guidance, I just indicate that in my ruling. And then if you want to seek writ review, you have that statement you can use. And I find whether I make certification discussed in 166 really makes much difference one way or the other, but I understand your point.

MR. GARFINKEL: Thank you, Your Honor. That's all for me on line 12. We'll have more when we get to 15.

THE COURT: All right. What we need to do is take a 15 minute break.

(Recess)

THE COURT: All right. Mr. Garfinkel, do you have anything further at this point?

MR. GARFINKEL: Yes, Your Honor. On line 15 on the motion to stay.

THE COURT: Let's go to line 15 later. If you're done on line 12 --

MR. GARFINKEL: Yes.

THE COURT: -- let me hear from Mr. Shah, see if you have anything else to say about line 12.

MR. SHAH: Just one point of clarification, Your Honor, which is with respect to the request for judicial notice and the closing of the appeals.

If Your Honor looks at the bottom of page two of Exhibit B to Plaintiff's Request for Judicial Notice, the

third to last paragraph, the last line says, "Accordingly, this appeal is now closed." That's the only line that I wanted to bring to Your Honor's attention. Thank you.

THE COURT: Thank you.

MR. GARFINKEL: Your Honor, if I can just clarify that.

THE COURT: Yes.

MR. GARFINKEL: It says that -- it's an administrative phrasing saying that, you know, if Pittsburg issues a revised decision and you appeal that one, we'll assign a new case number to it. That's administratively what that means. It does not mean Redfoot's appeal is closed, and it's not closed.

THE COURT: Okay. It sounds like it's closed.

MR. GARFINKEL: Understood. And perhaps in future correspondence we can do a better job of how we phrase that, but Pittsburg has issued a revised decision, and I believe Mr. Shah still has about a week to appeal it. Presumably, he's going to appeal it. I'm representing to the Court that it's not.

THE COURT: Thank you. All right. So let's talk about line 15. Mr. Garfinkel, I assume you're the first person to be heard from on that.

MR. GARFINKEL: Yes, Your Honor. Emma C. is a monumental case in terms of its impact, the resources -- the judicial and state agency resources that are being poured

into it. It's the only case of its kind in the country that I'm aware of where a judge is looking at a state educational agency's oversight of IDEA, all of the LEAs in that state is their entire monitoring system of the IDEA under 20 USC 1416 and deciding whether it meets IDEA's requirements, whether it's adequate for all the purposes set forth in IDEA of ensuring that LEAs are providing FAPE.

It is in a four-stage inquiry as we've set forth in the briefing. The first is collection of data. That revolves around 17 required federal indicators. The second is how you analyze that data on an annual basis to make determinations about which LEAs need a little extra assistance or monitoring from the CDE.

As we pointed out, this case is significantly far along. CDE has passed both of those stages.

We pointed out in a footnote that there's a holdover issue on A Su (phonetic) having to do with a target that we set, and that was request for judicial notice three on the motion for stay simply to fill in the blanks and show the progress and status of that case, which is that the new targets were submitted in November to the State Board, and that's why you were requested judicial notice of that document.

So we're now at stage three, and stage three is the actual monitoring activities that are done when the CDE has identified which tier an LEA belongs in based on their

performance in the previous year. Do they need the same basic level of assistance and monitoring that any LEA in the state needs? Does it need to be a targeted monitoring, which is an (unintelligible) or intensive monitoring, which is more intense from that. And then what kind of activities does the CDE do to help the LEA in getting better and not needing that level of assistance in the following year?

And phase three has been broken into two stages itself. Stage 3a is called the design phase. What is the CDE's design for doing that stage three monitoring? And that's the one we have the submission due on April -- either April 15th or April 12th. We are a three-day hearing, three-day evidentiary hearing set on that in October. Then there will be phase 3b, which is potentially a second event of those phase three monitoring activities. Not just were they designed in a reasonable way, but were they effective in making some difference for those LEAs?

And then stage four will just be about our policies and procedures that we have for doing our job of oversight of special education in California.

It's a massive effort. There's a reason why when the Morgan Hills case was brought on very similar allegations that the Emma C. court stated and said you are duplicating efforts here. Yes, it's a different school district. Yes, you're making claims that, you know, the kids in Morgan Hills School District aren't getting FAPE as

opposed to kinds in Ravenwood School District, which was the original school district in Emma C. But Emma C. changed from a case that was originally structured as being about whether the CDE's monitoring of grade employees was sufficient to being a statewide case, and we have that in the briefing. That CDE basically represented to the court that we have one statewide monitoring system. We don't have different monitoring systems for different LEAs.

So when you're looking at whether or not our monitoring system as applied to Ravenswood is sufficient, you're looking at whether our monitoring system statewide is sufficient. It is the same monitoring system for everyone.

Ravenswood, by the way, has actually been dismissed out of the case. They have satisfied everything that the court wanted from them, and now it's purely a case about whether CDE's overall statewide monitoring system of special ed is adequate. It's a consent decree. So we're in stage three out of four of trying to satisfy this consent decree. It looks at absolutely every aspect of our monitoring of special education in California. So that includes in all the different indicators the restrictive environment. Is the LEA doing a good job of trying to get students into the mainstream as much as possible? Academic achievement in language, arts, and math, how is the LEA doing in that area?

Now, this case happens to raise questions about

significant disproportionality in identification for special education, placement in special education classes in least restrictive environment, and discipline. All of those are addressed in Emma C. because those are (unintelligible). It's a priority item in federal law for our monitoring.

Every single thing that is raised in this case is being addressed in Emma C. on a statewide level for all LEAs, including Pittsburg. And, again, the court recognized that exact thing in Morgan Hill and said we're not going to have a separate case about Morgan Hill because we're already analyzing the system that CDE is applying to Morgan Hill in Emma C., and that's why they (unintelligible).

Here, Plaintiffs would have you, in the face of Judge Chhabria's oversight of Emma C. that is ongoing, carve out the CDE's -- the same exact issues, CDE's monitoring of special education in California as to Pittsburg Unified alone. And that is for all of the factors identified in the Caiafa case -- I hope I'm pronouncing that right -- and all the reasons why the Emma C. for setting aside Morgan Hill, they all apply here. Tremendous duplication of effort, tremendous burden, tremendous risk that you would reach a result as to CDE's -- what's adequate or not for CDE's oversight of Pittsburg, that is at odds of with what Judge Chhabria ultimately decides is adequate for monitoring statewide.

So, for all of those reasons, it's appropriate

to stay this case to the extent that it challenges CDE's oversight of special education.

As we pointed out in the briefing, that would not prevent the Plaintiff from going ahead against Pittsburg, if they still have a case against Pittsburg. And there is, as we pointed out, a small portion of this case that appears to be not an IDEA case, and we fleshed that out as well as we could, but certainly from the pleadings, there's a reference to a disproportionate discipline of students of color who don't have IECs. That would not be a specialization, that would be in Emma C., and we're not asking the Court to stay this case in that respect.

THE COURT: Okay. Mr. Shah.

MS. SCHWARTZ: Your Honor, this is Amanda Schwartz. I'll be addressing the Court on the motion to stay.

THE COURT: Go ahead.

MS. SCHWARTZ: Your Honor, Plaintiffs submit on the tentative. We think Your Honor did a great job articulating the reasons why Defendants did not fulfill their burden as the moving party and did not meet the legal standard of the Caiafa case.

I would just like to point out that the Morgan Hill case that Defendant is mentioning involved an IDEA claim. And as Your Honor pointed out in the tentative, this case does not involve an IDEA claim. It involves purely state constitutional issues which are not at issue in Emma C.

So, with that, Your Honor, we submit on the tentative.

THE COURT: Okay.

MR. GARFINKEL: And just one quick response to that. The Court has already stated that the gravamen of this claim alleges a denial of state funded IDEA. That's in the tentative ruling, and that's why exhaustion is required.

The claim itself under the Constitution alleges that students aren't receiving FAPE. I don't know how much more you could say to make it clear that it's a FAPE claim with a constitutional label on it.

THE COURT: Thank you. Here's what I'm going to do: Even the most basic matters on nine and ten, just for the sake of clarity, I'm going to take everything under submission, and I will go back and I will consider all the different arguments that have been added today, and you'll get a decision.

MR. GARFINKEL: Thank you, Your Honor.

MS. ALBERTS: Your Honor, if I can on behalf of the District, I would also like to add a request. If Your Honor deems necessary, we would think it would be appropriate, given the exhaustion issue in this case is paramount, and either going forward or not going forward in such a large case, that you would certify it for appellate review. We would like to join in the CDE's request on that matter.

THE COURT: All right. I'll consider that request

along with everything else.

MR. GARFINKEL: Thank you, Your Honor. We appreciate it.

MS. ALBERTS: Thank you, Your Honor.

MR. SHAH: This is Malhar Shah for the Plaintiff. Just one quick note. We were hoping to designate this case for electronic filing. So if Your Honor finds that appropriate, we would greatly appreciate that. That's it. Thank you.

MR. EDELSTEIN: I join in that request.

THE COURT: What we really need to do is set a case management conference. I usually do that at the first case management conference. Do we have a date for one yet in this case?

MR. SHAH: This is Malhar Shah on behalf of the Plaintiffs. No, I do not believe that we have one right now.

THE COURT: All right. Let's set one now. Let's do it relatively soon, say within -- after you get my decision, but within say about 30 days from now. Is that good?

MR. SHAH: This is Malhar Shah. That's great, Your Honor, for us.

THE COURT: March 25, that will be at 8:30. Please do not provide Judicial Council individual CMC statement forms. I'd like a joint narrative.

MR. GARFINKEL: By what date, Your Honor?

THE COURT: A week before the CMC.

Okay. Thank you, counsel.

MR. SHAH: Thank you, Your Honor.

(Adjournment)

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, Jay M. Bullard, CSR No. 3455, Official Court Reporter Pro Tempore, do hereby certify that the within and foregoing reporter's transcript, is a full, true, and correct transcript of my shorthand notes thereof, and a full, true, and correct statement of the testimony and proceedings had in said cause.

Dated: 3-17-22

Jay M. Bullard, CSR #3455
Official Court Reporter
Pro Tempore

PROOF OF SERVICE

I am a resident of, or employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is: Steptoe & Johnson LLP, 633 West Fifth Street, Suite 1900, Los Angeles, California 90071.

On **December 29, 2022,** I served the following listed document(s): **DECLARATION OF AMANDA SCHWARTZ IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT PITTSBURG UNIFIED SCHOOL DISTRICT'S MOTION FOR RENEWAL OF DEMURRER TO OPERATIVE VERIFIED PETITION** by the methods indicated below, on the parties in this action:

State of California Deputy Attorney General California Department of Justice 455 Golden Gate Avenue # 11000 San Francisco, CA 94102	Jennifer.Bunshoft@doj.ca.gov
Tony Thurmond, in his official capacity as State Superintendent of Public School Instruction 1430 N Street, Suite 5111 Sacramento, CA 95814 State Board of Education 1430 N Street, Suite 5111 Sacramento, CA 95814 California Department of Education 1430 N Street, Suite 5111 Sacramento, CA 95814	VCale@cde.ca.gov LGarfinkel@cde.ca.gov
Pittsburg Unified School District c/o Katherine Alberts 1390 Willow Pass Rd #700 Concord, CA 94520	kalberts@leonealberts.com jjohnson@leonealberts.com service@leonealberts.com

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the document(s) to be sent from e-mail address mhernandez@steptoe.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **BY ELECTRONIC SERVICE:** I served the document(s) on the persons listed in the Service List by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onlegal.com.

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

Executed on December 29, 2022, at Los Angeles, California.

s/s Melissa Hernandez
MELISSA HERNANDEZ