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

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

PLAINTIFFS' OPPOSITION TO DEFENDANT PITTSBURG UNIFIED SCHOOL DISTRICT'S MOTION FOR RENEWAL OF DEMURRER TO OPERATIVE VERIFIED PETITION

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

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 C. 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

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INTRODUCTION

Having failed to dismiss this action following an unsuccessful demurrer, an unsuccessful appeal of that demurrer, and a motion for judgment on the pleadings, Defendant Pittsburg Unified School District ("Pittsburg Unified" or "District") now files yet another motion, this time a renewal of its first demurrer, attempting to relitigate settled issues by misinterpreting and overstating a Ninth Circuit decision, *Martinez v. Newsom*, 46 F.4th 965 (9th Cir. 2022). However, *Martinez* merely affirms the long-established caselaw that this Court relied upon in overruling Defendants' previous demurrers, which holds that a plaintiff is excused from exhausting administrative remedies under the Individuals with Disabilities Education Act ("IDEA") when the plaintiff pleads that a school district maintains a systemic policy or pursued a practice of general applicability that is contrary to the law. This Court correctly ruled on this issue in its earlier demurrers and—given that the law did not change—should deny the District's renewal of its prior demurrer filed nearly a year ago.

Further, assuming, *arguendo*, that the Ninth Circuit narrowed the IDEA's administrative exhaustion exception to apply only when a plaintiff identifies a policy that contravenes the law, Defendant's renewal of demurrer nonetheless fails because Plaintiffs have expressly pleaded that Defendant has maintained policies that violate the law in each of its claims. Plaintiffs allege unlawful policies related to all four categories of violations of the rights of disabled students—overidentification of Black and English learner students arising from inadequate assessment for special education services, segregation, inadequate academic instruction, and over-discipline of students with and without disabilities. For example, Plaintiffs alleged the District has a policy of allowing students to be assessed for special education in their non-native language, (Second Amended Petition and Complaint "SAP") ¶¶ 46, 112, and of refusing to provide evidence-based instruction tied to the state academic content standards to disabled students, ¶ 66. Accordingly, this Court should deny Defendant's renewal of demurrer and allow all of Plaintiffs' claims to proceed.[1]

[1] Plaintiffs were not afforded an opportunity to explain their interpretation of *Martinez* and potentially avoid the need for the instant briefing because Defendant failed to meet and confer

BACKGROUND

I. Summary of Plaintiffs' Petitions and Complaints and Pittsburg Unified's Challenges

Plaintiffs are two English learner students with disabilities at Pittsburg Unified (collectively "Student Plaintiffs"), through their guardians ad litem, and three taxpayer Plaintiffs (collectively "Taxpayer Plaintiffs") who are parents of current and former Pittsburg Unified students and/or current and former staff at Pittsburg Unified. SAP ¶¶ 22-29. As detailed in the SAP, each Plaintiff has been harmed by the District's systematic and longstanding refusal to address the discriminatory policies and practices at Pittsburg Unified. SAP ¶¶ 16-17, 59-60, 68-69, 71, 76-78, 83-94, 103, 133.

Plaintiffs collectively allege that Pittsburg Unified maintains policies and practices contrary to law that (1) disproportionately identify Black and English learner students as eligible for special education, including with more significant or restrictive disabilities, SAP ¶¶ 11, 13, 46–49; (2) disproportionately place students found eligible for special education, and particularly Black and English learner students, in segregated special education classrooms, ¶¶ 12, 46, 54-60, 84-86; (3) disproportionately discipline students with disabilities, students of color, and particularly disabled students of color, ¶¶ 15-18, 60, 75-78, 80-81; and (4) refuse to offer and fail to provide research-based instruction and interventions tied to the state academic content standards to disabled students, ¶¶ 14, 64-72, 87-88, 91. The SAP makes clear the consequences of these policies and practices: fewer than 5% of disabled students in the District read, write, and perform math functions at grade level, SAP ¶ 14; the District ranks among the worst in the state in segregating disabled students, ¶¶ 12, 54-56; and the District consistently overidentifies and disproportionately disciplines students of color with and without disabilities, ¶¶ 11, 15, 18, 46-48, 75-78, 81.

On January 11, 2022, the District filed a demurrer to Plaintiffs' original Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. On March 9, 2022, the Court issued an Order denying the demurrer in part and sustaining it in part with leave to amend.

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with Plaintiffs before filing its renewed demurrer, contravening California Code of Civil Procedure section 430.41.

In that Order, the Court held that the Student Plaintiffs "were not required to complete the OAH process and instead they could exhaust their administrative remedies by completing the C[omplaint] R[esolution] P[rocess]" Order after Hearing on Def's Demurrer 9, Mar. 9, 2022 ("Order"). The Court also held that "Taxpayer Plaintiffs' claims involve systemic issues and . . . they were not required to complete the OAH process." *Id*. at p. 14. On March 25, 2022, Plaintiffs filed their First Amended Petition ("FAP") that clearly stated Plaintiffs had exhausted their remedies related to disabled students through the State's Complaint Resolution Process. On April 25, 2022, the District filed an Answer to the FAP. On April 26, 2022, the District filed a Petition for Writ of Mandate or Prohibition with the California Court of Appeal in the First Appellate District with respect to the Court's March 9, 2022 Order affirming that Plaintiffs had exhausted their administrative remedies. On May 20, 2022, the Court of Appeal denied the District's petition.

On June 20, 2022, the District filed a Motion for Judgment on the Pleadings seeking to (1) remove Taxpayer Plaintiffs as plaintiffs with standing to certain causes of action; and (2) strike language from Plaintiffs' First and Second Causes of Action. On August 8, 2022, the Court issued an Order denying the Motion for Judgment on the Pleadings in part and sustaining it in part, with leave to amend to allow Plaintiffs to more clearly state their taxpayer causes of action. On August 11, 2022, Plaintiffs filed their SAP.

On December 8, 2022, the District filed a Motion for Renewal of Demurrer ("Renewed Demurrer") based on a decision in *Martinez v. Newsom*, issued nearly four months ago by the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") regarding administrative exhaustion requirements of the IDEA. The Renewed Demurrer attempts to resurrect arguments that this Court has already ruled on and which are unchanged by the *Martinez* decision. The District's Renewed Demurrer does not challenge Plaintiffs' causes of action on behalf of non-disabled students.

LEGAL STANDARD

In ruling on a demurrer, a court must "assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of

which judicial notice has been taken." *Regents of Univ. of California v. Superior Ct.*, 220 Cal. App. 4th 549, 558 (2013), *as modified on denial of reh'g* (Nov. 13, 2013); *Schifando v. City of Los Angeles*, 31 Cal. 4th 1074, 1081 (2003). Courts "liberally construe[] [the pleading], with a view to substantial justice between the parties." Cal. Civ. Proc. Code § 452; *Schifando*, 31 Cal.4th at 1081. "[A]verments with respect to racial segregation should be treated on general demurrer as allegations of ultimate facts and not mere conclusions of law." *Tinsley v. Palo Alto Unified Sch. Dist.*, 91 Cal. App. 3d 871, 892 (1979). "[I]t is error for a . . . court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory." *Aubry v. Tri–City Hospital Dist.*, 2 Cal. 4th 962, 967 (1992). "[I]t is [also] an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility [that the] defect . . . can be cured by amendment." *Id.* at 967.

ARGUMENT

I. *Martinez* Does Not Impact Plaintiffs' Claims and this Court's Previous Ruling on Pittsburg Unified's Demurrer

A. *Martinez* Did Not Narrow the Well-Settled Exceptions to Administrative Exhaustion

Defendant misinterprets and overstates the holding of *Martinez*. The Ninth Circuit did not intend for its brief discussion about exhaustion to represent a sweeping limitation of its long-held rule that the Complaint Resolution Process ("CRP") can suffice for exhaustion purposes where plaintiffs challenge "a policy or practice of general applicability that is contrary to the law." *Paul G. by & through Steve G. v. Monterey Peninsula Unified Sch. Dist.*, Port F.3d 1096, 1100. (9th Cir. 2019). Federal courts have consistently discussed the "policies or practices" requirement in conjunction with the systemic exception, which requires showing a need for "restructuring the education system itself in order to comply with the dictates of the [IDEA]." *Id.* at 1102. *Martinez* is in accord with this line of cases and does not overrule them.

For example, in *Christopher S. v. Stanislaus County Officer*, the Ninth Circuit held that the plaintiffs exhausted administrative procedures via a CRP complaint where the plaintiffs challenged "blanket policies that had nothing to do with the content of individual IEPs—no

individualized decisions were made on a case-by-case basis." 384 F.3d 1205, 1211, 1213 (9th Cir. 2004). Similarly, in *Everett H. v. Dry Creek Joint Elementary School District*, the court held that allegations of 16 illegal policies and practices identified in the complaint, with specific factual examples related to the plaintiffs' case, presented a fact question about whether a CRP complaint satisfied exhaustion that could not be determined through a motion to dismiss. 5 F. Supp. 3d 1184, 1194 (E.D. Cal. 2014). By contrast, in *Hoeft v. Tucson Unified School District*, the Court ruled that students' challenge to the district's eligibility criteria used to qualify students for extended school year services attacked merely "a single component of [the school district's] special education program," and thus "d[id] not rise to systemic proportions" nor required structural relief. 967 F.2d 1298, 1309 (9th Cir. 1992).

Consistent with these cases, *Martinez* confirms that a CRP suffices for exhaustion purposes where plaintiffs challenge "unlawful policies or practices." 46 F.4th at 974. Defendant's interpretation of *Martinez* is incorrect; *Martinez* did not implicitly put aside decades of precedent and set a new standard for this requirement. After summarizing the same Ninth Circuit caselaw on the issue upon which this Court previously relied in its March 9 Order, the *Martinez* panel stated that "[t]hese cases demonstrate that to fall within the systemic exception, the injury the plaintiffs complain of must 'result [] from an agency decision, regulation, or other binding policy." *Id.* (quoting *Doe By & Through Brockhuis v. Ariz. Dep't of Educ*, 111 F.3d 678, 684 (9th Cir. 1997)). The panel then recounted the settled doctrine that "[a] plaintiff cannot rely on the systemic exception simply by reframing an act of inadvertence of negligence as a policy or practice of not complying with the IDEA." *Id.* Indeed, *Doe By & Through Brockhuis v. Arizona Department of Education*, the case *Martinez* quotes in the passage that Defendant, expressly holds—contrary to Defendant's assertion—that "exhaustion is not required . . . if the agency 'has adopted a policy or pursued *a practice* of general applicability that is contrary to the law.'" 111 F.3d at 681 (citing *Hoeft*, 967 F.2d at 1303-04) (emphasis added).

Courts have declined to interpret decisions as overturning settled doctrines without an explicit statement of intent. *See USA Recycling, Inc. v. Town of Babylon*, 66 F.3d 1272, 1294 (2d Cir. 1995) (noting the principle that, when courts intend to overrule clear precedent, they should

do so in plain and explicit terms); *United States v. Pepe,* 895 F.3d 679, 688 (9th Cir. 2018) ("[C]ases are not 'precedential for propositions not considered[.]"); *Trovata, Inc v. Forever 21, Inc.*, No. SACV 07-01196-JVS (MLGx)), 2008 U.S. Dist. LEXIS 128735, at *7-8 (C.D. Cal. Aug. 14, 2008) ("Absent an explicit statement to the contrary, the Court will not assume that the Court in Samara Bros. intended to overrule a long history of precedent holding that is does."). Nowhere did the *Martinez* panel's opinion indicate that it intended to overrule, limit, or otherwise change longstanding doctrine allowing the systemic exception to be demonstrated through generally applicable school district practices that violate the law. Accordingly, the law has not changed and this Court's March 9, 2022 decision on the demurrer should stand. *See Quair v. Sisco*, No. 1:02-CV-5891DFL, 2007 U.S. Dist. LEXIS 36858, at *21 n.15 (E.D. Cal. May 21, 2007) (refusing to interpret a decision as changing law where "the court made this statement without any indication that it meant to limit [] or fundamentally reinterpret" established caselaw).

Here, consistent with the *Martinez* ruling and the long line of Ninth Circuit cases on this issue, Plaintiffs allege their injuries resulted from multiple District policies, decisions, and generally applicable practices, as described in more detail below. SAP ¶¶ 15, 46, 54, 57-58, 66-68, 70, 75, 112.

B. Plaintiffs Have Properly Pled That Defendants Maintain both Policies and Practices that Violate the Law

Even under Defendant's incorrect and overbroad interpretation of Martinez, Plaintiffs have properly pled that Defendants maintain policies that violate the law. Indeed, this Court already held in its March 9 Order that Plaintiffs satisfied the exhaustion requirement by alleging multiple binding policies and District decisions that caused their injuries. *See* Order at 9. At the hearing on the demurrer, this Court further confirmed that Plaintiffs are "challenging what they claim are certain cross-setting issues about the effect and the impact of the *policies* of the District." Request for Judicial Notice, Decl. of Amanda Schwartz, Exh. A, Tr. of Feb. 24, 2022 Hearing, at 13:11-13 (emphasis added).

Indeed, Plaintiffs allege unlawful policies and District decisions related to all four categories of violations of the rights of disabled students—overidentification of Black and English learner students arising from inadequate assessment for special education services, segregation, inadequate academic instruction, and over-discipline of students with and without disabilities. On the issue of assessment, Plaintiffs allege the District has a policy of allowing students to be assessed for special education in their non-native language. SAP ¶¶ 46, 112. Plaintiffs also allege the District has a policy of allowing "informal placements" of Black students in special education classrooms even when those students have not been assessed for special education or the assessment indicates a mild disability. SAP ¶ 46.

Similarly, with respect to segregation and discipline, Plaintiffs allege the District's "deficient policies" (SAP ¶ 54) result in unlawful practices related to the failure to provide sufficient positive behavior interventions and supports, functional behavioral assessments, behavior intervention plans, mental health services, paraprofessional support, push-in services, continuum of placements, and unbiased discipline. SAP ¶¶ 15, 75 (describing "an arbitrary and biased discipline system that allows staff to make decisions and impose punishments unchecked, excessively punishing minor transgressions by Black, multiracial, Native American, and disabled students"), ¶ 57 (describing an outside evaluation of the District's special education program finding that "the District does not provide students with disabilities adequate support when placed in the general education classroom," does not " prioritize students' needs in creating a tailored approach to their special education needs," and that "in-class support . . . is virtually non-existent and is typically provided by aides, when provided at all"), ¶ 58 (describing the District's routine refusal to conduct Functional Behavioral Assessments or assess disabled students for Educationally Related Mental Health Services or to sufficiently staff special education and general education classrooms to provide required supports for disabled students; and the District's policy to not create special day classes for students with mild and moderate disabilities to enable them to receive adequate academic instruction), ¶ 112 (listing unlawful District policies that "have the effect of denying Plaintiffs full and equal access to the benefits of the programs or activities administered by the District, or of subjecting Plaintiffs to

discrimination under such programs or activities, on the basis of their race, national origin, or disability"). Plaintiffs further tied these unlawful practices to District policy decisions related to professional development and training in these areas. SAP ¶¶ 19, 58, 67-68, 70, 75.

On the issue of unlawful instruction, Plaintiffs alleged the District has "a policy and systemic practice of refusing and failing to provide evidence-based instruction tied to statewide academic content standards to students with disabilities in special and general education classrooms." SAP ¶ 66. Plaintiffs also tied these two policies to District training decisions. SAP ¶¶ 70-71. Ignoring its unlawful policy of refusing to provide evidence-based instruction, the District improperly attempts to dispute issues of fact improper for adjudication at this stage by reframing a District email on the state academic standards issue. Mem. of P&A in Supp. of Def. PUSD's Renewed Dem. To Pls.' Petition. ("PUSD MPA") at 15-17. But "[a] court ruling on a demurrer . . . cannot take judicial notice of the proper interpretation of a document submitted in support of the demurrer." *Fremont Indem. Co. v. Fremont Gen. Corp.*, 148 Cal. App. 4th 97, 115 (2007); *see also Unruh-Haxton v. Regents of Univ. of Cal.*, 162 Cal. App. 4th 343, 365 (2008), as modified (May 15, 2008) ("[J]udicial notice of matters upon demurrer will be dispositive only in those instances where there is not or cannot be a factual dispute concerning that which is sought to be judicially noticed.'") (internal citation omitted).

Even if the email's proper interpretation was properly presented before the court, its language extends far beyond the District's framing. The email did not simply summarize Supreme Court caselaw—it took the categorical position that disabled students can never have goals based on or otherwise achieve the state academic content standards, even where they have demonstrated that ability. PUSD MPA at 16 ("The law does not require that special education students achieve general education standards . . . ."). In accordance with this unlawful policy, the District then directed a teacher to unilaterally change IEP goals based on the state academic content standards regardless of the student's individual ability to meet those standards. *Id.* Defendant does not dispute the illegality of this position. Indeed, the IDEA and California Education Code require disabled students be provided instruction tied to the state academic content standards. *See, e.g.*, *L.H. v. Hamilton Cnty. Dep't of Educ.*, No. 1:14-CV-00126, 2016

U.S. Dist. LEXIS 153322 , at *48 (E.D. Tenn. Nov. 4, 2016), *aff'd in part, rev'd in part and remanded on other grounds in* 900 F.3d 779 (6th Cir. 2018) ("IEP goals are to be firmly grounded in a child's current abilities, but aligned with, or pointed toward, the applicable general-education standards for the child's current grade level."); 20 U.S.C. § 1412(a)(11) (expressly linking free and appropriate public education to the academic content standards States are required to adopt); 20 U.S.C. § 6311(b)(1)(A)-(D) (same); 20 U.S.C. § 1400(c)(5); 7 S. Rep. No. 108-185, at 17-18 (2003); *see also* 20 U.S.C. § 6311(b)(2). As further evidence, Plaintiffs allege the District refused to provide Plaintiffs Mark S. and Rosa T. with instruction tied to the statewide academic content standards. SAP ¶¶ 87-89, 91. These allegations sufficiently present factual issues about the illegality of the District's policy.

Defendant also implies that policies are limited to formal, written policies enacted by the school board or other district authority. PUSD MPA at 13, 17. However, California and federal courts have made clear that the term "policies" is interpreted much more broadly, encompassing widespread customs and usages. *See, e.g.*, *Oviatt v. Pearce*, 954 F.2d 1470, 1477 (9th Cir. 1992) (defining a policy as a "deliberate choice to follow a course of action made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question" and noting that acts of omission, as well as commission, can serve as the basis for finding an unconstitutional policy or custom); *County of Fresno v Fresno Deputy Sheriff's Ass'n*, 51 Cal. App. 5th 282, 295 (2020) ("An existing and acknowledged practice affecting conditions of employment has the same dignity as an existing agreement, when it is sufficiently widespread and of sufficient duration."); *Oyenik v. Corizon Health Inc.*, 696 F. App'x 792, 794 (9th Cir. 2017) (using the terms "custom" and "policy" interchangeably and noting that liability for improper custom is "founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy"); *Long v. County of Los Angeles*, 442 F.3d 1178, 1186 (9th Cir. 2006) (holding that a "municipality's failure to train an employee who has caused a constitutional violation can be the basis for § 1983 liability" where "such inadequate training can justifiably be said to represent municipal policy"); *Choate v. County of Orange*, 86 Cal. App. 4th 312, 350 (2000) ("[T]he

municipality may have in place a custom or practice so widespread in usage as to constitute the functional equivalent of an express policy.").

Finally, *Martinez* is inapposite because the plaintiffs in that case failed to identify any systemic illegal policies, unlike in the instant case. In *Martinez*, the court held that the plaintiffs' allegations there rose to nothing more than "a negligence claim: they allege[d] that the districts failed to adequately accommodate special needs students after the transition to remote instruction." 46 F.4th at 975. To reiterate, Plaintiffs here do not merely allege that the District "routinely" and "frequently" violated the law or limit the allegations to District "failures" or "ad hoc" decisions. Instead, as described above, Plaintiffs alleged Defendant's routine and generally applicable practices result from District policies and deliberate decisions regarding professional development. *See Everett H.*, 5 F. Supp. 3d at 1194 (holding allegations of 16 illegal policies and practices identified in the complaint, with specific factual examples related to the plaintiffs' case, presented a fact question about whether a CRP complaint satisfied exhaustion that could not be determined through a motion to dismiss). Nor are these allegations unsupported "legal conclusions," PUSD MPA at 15—the SAP further alleges that current and former District staff members have observed these policies and practices and how they impact disabled students throughout the District as borne out by statistical evidence. SAP ¶¶ 46, 48, 54, 58, 66-68, 72, 75, 81.

C. This Court Correctly Held that Plaintiffs Exhausted Administrative Remedies or Were Properly Excused From Exhaustion

Plaintiffs have exhausted their administrative remedies to pursue their claims related to systemic violations of the rights of disabled students. The California Education Code identifies two distinct procedural methods to address disputes about a disabled student's education needs. Parents may request a due process hearing at the Office of Administrative Hearings ("OAH") to challenge a proposal or refusal to initiate or change the identification, evaluation, or educational placement of a child, or the provision of a free and appropriate public education ("FAPE"). Cal. Educ. Code §§ 56501, *et seq.* Alternatively, parents may file a complaint directly with the California Department of Education ("CDE") through a CRP complaint—"an administrative

mechanism for ensuring state and local compliance with . . . IDEA." *Christopher S.*, 384 F. 3d at 1210-13 (citation omitted); *Lucht v. Molalla River Sch. Dist.*, 225 F.3d 1023, 1028-29 (9th Cir. 2000) ("The CRP and the due process hearing procedure are simply alternative (or even serial) means of addressing a § 1415(b)(6) complaint."); *Porter v. Bd. of Trs. Of Manhattan Beach Unified Sch. Dist.*, 307 F.3d 1064, 1073 (9th Cir. 2002) (complaint to State may serve as a substitute for due process exhaustion); *E.E. v. State*, No. 21-CV-0785-SI, 2021 U.S. Dist. LEXIS 214001, at *37-38 (N.D. Cal. Nov. 4, 2021) (holding that a complaint filed with the CDE alleging the unlawfulness of a state policy met the exhaustion requirement). In those circumstances, the CDE must investigate the allegations in the complaint, including by requesting all documentation and evidence regarding the allegations, potentially conducting a site visit, providing an opportunity for the complainant to present evidence, and completing an investigation report within sixty days of receiving the request. Cal. Code Regs., tit. 5, § 3202; 34 C.F.R. § 300.152. "Although different, a CRP is no less a proceeding under [20 U.S.C.] § 1415 than a due process hearing[.]" *Lucht*, 225 F.3d at 1028-29.

Pursuant to this procedure, Plaintiffs Mark S., Rosa T., and Jessica Black each filed separate complaints with the CDE's Complaint Resolution Unit against the District challenging all of the systemic violations of the law outlined in the original Petition and now the SAP against Pittsburg Unified. These administrative complaints indicated that other parents and their children have been affected by similar failures and requested that the CDE directly intervene in the District to prevent students' immediate and irreparable harm. SAP ¶¶ 100-03. Following its investigation, the CDE denied all of the systemic claims and refused to investigate systemic claims raised in previous complaints. *Id*. at ¶ 100-02. These CRP complaints afforded the District multiple opportunities to correct any violations and Plaintiffs, thereby, fulfilled any exhaustion requirement. In the March 9, 2022 Order, the Court correctly found that Plaintiffs alleged that Student Plaintiffs made claims relating to systemic violations of the law, that the District's treatment of students with disabilities is a systemic problem, that "[m]ost of the requested relief seeks to mandate changes to district-wide practices," and thus, "many of the issues raised in this

Petition involve alleged systemic problems within the District that OAH would not be able to adequately address if the issues were brought to OAH." Order at 9.

Nothing in the Ninth Circuit's decision in *Martinez v. Newsom* requires a different result. There, unlike the instant case, the plaintiffs failed to exhaust any administrative remedy prior to filing the lawsuit. *Martinez*, 46 F.4th at 973. Here, Student Plaintiffs and Taxpayer Plaintiff Black exhausted their administrative remedies through the CRP. With respect to Taxpayer Plaintiffs Redfoot and Royston, filing CRP complaints would have been futile because, as alleged in the SAP, "the California Department of Education stated that it would not investigate systemic violations that had been made in previous administrative complaints." SAP ¶ 101. Accordingly, Taxpayer Plaintiffs Redfoot and Royston were properly excused from exhausting the CRP process, which this Court found in its March ruling. Order at 14. Accordingly, unlike the plaintiffs in *Martinez*, Plaintiffs in this action have properly exhausted their administrative remedies or were properly excused.

Moreover, the language of *Martinez* supports Plaintiffs' position that the systemic exception exists and is demonstrated through allegations of policies and generally applicable practices that violate state and federal law protecting the rights of disabled students. Here, Plaintiffs have amply met that standard in their SAP.

D. Defendant District's Overstatement of *Martinez* Would Improperly Eviscerate Taxpayer Standing in California Education Cases

If accepted, Defendant's narrow interpretation of the exhaustion requirement on account of *Martinez* would effectively eliminate taxpayer standing in special education cases in California. California Code of Civil Procedure section 526a confers broad standing for taxpayers to bring suit by "enabl[ing] a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts . . . ." *Weatherford v. City of San Rafael*, 2 Cal. 5th 1241, 1249 (2017). A rule that requires taxpayer plaintiffs to exhaust OAH on behalf of individual students is unfeasible. As a general matter, taxpayer plaintiffs are not public agencies and may not necessarily be parents of children in a school district's special education program. As a result, taxpayer plaintiffs cannot file due process complaints at OAH on behalf of individual

students. *See* 34 C.F.R. § 300.507(a)(1) ("A *parent* or a *public agency* may file a due process complaint on any of the matters described . . . .") (emphasis added). The District's position that Taxpayer Plaintiffs must exhaust administrative remedies via the CRP process would render taxpayer standing conferred by Code of Civil Procedure section 526a unavailable to potential plaintiffs to challenge a school district's unlawful actions. Such a position would contravene settled California law that allows taxpayers to bring claims against school districts for violations of education law. *See, e.g., Hector F. v. El Centro Elementary Sch. Dist.*, 227 Cal. App. 4th 331, 342 (2014) (plaintiff had taxpayer standing under Code of Civil Procedure section 526 to sue school district).

Here, Taxpayer Plaintiffs do not currently have students with IEPs at the District, highlighting that the issues they raise in their complaint highlights *systemic* issues. Nor would accepting Taxpayer Plaintiffs' CRP complaints defeat the exhaustion requirement—Taxpayer Plaintiffs have satisfied the purposes of exhaustion by placing Defendants on notice of the potential violations and allowing them the opportunity to remediate. *Christopher S.*, 384 F.3d at 1213.

CONCLUSION

For the foregoing reasons, the Plaintiffs respectfully request that the Court deny Defendant's Motion for Renewal of Demurrer. In the alternative, should the Court find any such amendment necessary, Plaintiffs respectfully request leave to amend their Second Amended Complaint.

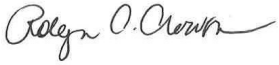
Date: December 29, 2022

Malhar Shah
Claudia Center
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

Attorneys for Plaintiffs-Petitioners continued on next page

Linnea Nelson
Grayce Zelphin
Brandon Greene
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA

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



Robyn Crowther
Amanda C. Schwartz
Geoffrey Warner
STEPTOE & JOHNSON LLP

Attorneys for Plaintiffs-Petitioners

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): **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