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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. N21-1755

UNLIMITED JURISDICTION

PLAINTIFFS' OPPOSITION TO DEMURRER FILED BY DEFENDANT PITTSBURG UNIFIED SCHOOL DISTRICT

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INTRODUCTION

This Court should deny Defendant Pittsburg Unified School District's ("Pittsburg Unified" or the "District") Demurrer because all of its arguments lack merit and are unsupported by prevailing caselaw.

First, Plaintiffs' Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Complaint") is properly pleaded because it sufficiently identifies which Plaintiffs bring each cause of action. To eliminate any ambiguity, the Complaint alleges that all Plaintiffs bring causes of action one, two, three, four, six, and eight; only the Student Plaintiffs bring the fifth cause of action; and only the Taxpayer Plaintiffs bring the seventh cause of action. Second, this Court should allow the Unruh Act claim to proceed because a long line of controlling precedent establishes that school districts are governed by the statute. The only case holding otherwise, relied upon by District Defendant, is currently pending before the California Supreme Court and is not binding. Third, Plaintiffs are not required to exhaust any of their claims administratively but, nonetheless, have exhausted them out of an abundance of caution and to provide District Defendant with the opportunity to remedy at least some of the violations.

As discussed further below, Plaintiffs' allegations fall within well-established exceptions to the exhaustion doctrine: the remedies Plaintiffs seek are not available through the administrative proceedings, exhaustion would be futile, and the Complaint challenges systemic policies and practices that cannot be resolved by individual Due Process complaints. Further, as Plaintiffs have outlined in detail throughout the Complaint, they have painstakingly attempted to resolve these issues through administrative channels, submitting four complaint resolution process complaints, each of which has been denied. Indeed, the denials prove the inadequacy of those administrative procedures to resolve these issues and make clear why these broad and pervasive harms require judicial intervention. Under the theories of District Defendant and their co-defendants California Department of Education ("CDE"), State Board of Education, State Superintendent of Public Instruction, and State of California (collectively, "State Defendants"), district-wide practices can never be addressed because they must be challenged through individual Due Process complaints, but those complaints could never result in systemic change

since the agency consistently refuses to order relief beyond the individual case. Because District Defendant and State Defendants (collectively, "Defendants") make substantially identical arguments in their demurrers about administrative exhaustion of claims regarding violations of the rights of disabled students, Plaintiffs address those arguments in detail in this brief.[1]

Accordingly, Plaintiffs' Complaint is properly pleaded, administrative exhaustion does not bar any portion of the Complaint, and this Court should deny Pittsburg Unified's demurrer and allow the case to proceed on the merits.

BACKGROUND

I. Summary of Complaint

Plaintiffs 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, Compl. ¶¶ 6, 11, 13, 44, 46, 48-49, 108, 110-11, 118, 120-121, 127, 129; (2) disproportionately place students found eligible for special education, and particularly Black and English learner students, in segregated special education classrooms, ¶¶ 6, 7, 12, 44, 46, 54-60, 80, 84-86, 92, 119-120, 137-138; (3) disproportionately discipline students with disabilities, students of color, and particularly disabled students of color, ¶¶ 6,15-17, 44, 60, 75-81, 108, 110, 127; and (4) refuse to offer and fail to provide research-based instruction and interventions tied to the state academic content standards, ¶ 6-7, 14, 22-23, 44, 58, 64, 66-71, 86-89, 91, 108, 110, 119, 127, 129, 132, 137, 157. The Complaint 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, ¶ 14, 72; 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 disabilities, ¶¶ 6, 9, 11, 13, 15-16, 18, 44, 46-48, 60, 76, 81, 93, 108, 110, 118, 120, 127, 129.

Plaintiffs are two English learner students with disabilities at Pittsburg Unified (collectively "Student Plaintiffs"), through their guardians ad litem, and three taxpayer Plaintiffs

[1] Plaintiffs address these arguments in both Plaintiffs' Opposition to Demurrer Filed by District Defendant and Plaintiffs' Opposition to Demurrer Filed by State Defendants but, to avoid duplication, with a more comprehensive discussion of these arguments in this brief.

(collectively "Taxpayer Plaintiffs") who are parents of current and former Pittsburg Unified students and/or current and former staff at Pittsburg Unified. Compl. ¶¶ 22-29. As detailed in the Complaint, each Plaintiff has been harmed by the District's systematic and longstanding refusal to address the discriminatory policies and practices taking place at Pittsburg Unified. ¶¶ 16-17, 22-23, 26-28, 58-60, 68-69, 71, 76-78, 83-94, 111, 116, 121, 130, 136-139, 149, 158.

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 1074, 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, 966-967 (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. The Complaint Is Unambiguous as to Which Causes of Action Are Brought by Which Plaintiffs

Defendant Pittsburg Unified's Memorandum of Points and Authorities in Support of Defendant and Respondent PUSD's Demurrer ("PUSD MPA") erroneously challenges Plaintiffs' Complaint on the grounds that the pleading is ambiguous as to which claims are brought by which Plaintiffs. This challenge is without merit: Plaintiffs have properly identified which Plaintiff brings each cause of action in the text of the Complaint. It is of no consequence that the headers for the causes of action do not contain this information. All claims are brought by all

Plaintiffs except for the fifth cause of action and the seventh cause of action. The fifth cause of action for violation of the Unruh Act is asserted by only the Student Plaintiffs, as made clear in paragraph 131 of the Complaint. The seventh cause of action is brought by only the Taxpayer Plaintiffs, as identified in paragraphs 144 and 148 of the Complaint. At paragraph 149, these three plaintiffs are referred to as taxpayer plaintiffs, and they are identified as "Taxpayer Plaintiffs" on page 14 of the Complaint. These references demonstrate that the claim is brought by the three Taxpayer Plaintiffs and not by the Student Plaintiffs. "[T]he 'label given a petition, action or other pleading is not determinative; rather, the true nature of a petition or cause of action is based on the facts alleged and remedy sought in that pleading.'" *Lewis v. Superior Ct.*, 169 Cal. App. 4th 70, 77 (2008); *Blank v. Kirwan*, 39 Cal.3d 311, 318 (1985) (finding that on demurrer, a court gives the complaint "a reasonable interpretation, reading it as a whole and its parts in their context"); Cal. Civ. Proc. Code § 452 ("In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.").

Further, District Defendant's argument that not all the claims can be brought by some subset of plaintiffs contravenes settled caselaw. It is well established that taxpayer plaintiffs can assert constitutional claims, relevant to the first cause of action for equal protection violations and mandamus actions relevant to the eighth cause of action. *Collins v. Thurmond*, 41 Cal. App. 5th 879, 911-14 (2019) (finding taxpayers can bring an equal protection claim); *Kahn v. E. Bay Mun. Util. Dist.*, 41 Cal. App. 3d 397, 406-08 (1974) (holding that the taxpayer plaintiff's petition for writ of mandate should have been maintained).

Accordingly, the Court should not sustain the Demurrer based on an alleged violation of California Rules of Court, rule 2.112(3) because the Complaint sets forth the essential facts of the case with precision and particularity sufficient to acquaint Defendants with the nature, source, and extent of cause of action. *See Gressley v. Williams*, 193 Cal. App. 2d 636, 643-44 (1961) ("All that is required of complaint, even as against special demurrer, is that it set forth essential facts to plaintiff's case with reasonable precision and with particularity sufficient to acquaint defendant of nature source, and extent of the cause of action."). Moreover, a demurrer

on the basis that a complaint is ambiguous, uncertain, and unintelligible cannot be sustained unless all those imperfections exist. *Kraner v. Halsey*, 82 Cal. 209, 211 (Cal. 1889). Here, the Complaint contains no such imperfections, as the Court and all parties can discern which Plaintiffs bring each cause of action from the text of the pleading. As such, the Court should not sustain the Demurrer.

II. The Unruh Act Applies to School Districts, and Defendant Pittsburg Unified's Reliance on a Case Pending Before the California Supreme Court Is Unpersuasive

Plaintiffs' Fifth Cause of Action, which alleges the District violated the Unruh Civil Rights Act ("Unruh Act"), states a viable claim. The District's reliance on *Brennon B. v. Superior Court*, 57 Cal. App. 5th 367, 377-78 (2020), is unpersuasive in light of the well-established line of cases that confirm the Unruh Act applies to school districts. Pursuant to California Rules of Court, rule 8.1115(e)(1), a Court of Appeal decision that is pending review in the California Supreme Court, such as *Brennon B.,* "has no binding or precedential effect, and may be cited for potentially persuasive value only." The California Supreme Court granted a petition for review of *Brennon B.* on February 24, 2021. Accordingly, *Brennon B.*'s holding currently holds no binding or precedential effect, and this Court should reject the Demurrer which is based on this outlier opinion.[2]

Defendant Pittsburg Unified fails to acknowledge that courts have consistently held that public school districts are "business establishments" as intended by the Unruh Act. *See, e.g., Yates v. E. Side Union High Sch. Dist.*, Case No.18-cv-02966-JD, 2019 U.S. Dist. LEXIS 27143 at *4-6 (N.D. Cal. Feb. 20, 2019) (holding a school district qualifies as a "business establishment" under the Unruh Act); *Whooley v. Tamalpais Union High Sch. Dist.*, 399 F. Supp. 3d 986 (N.D. Cal. 2019) (holding the same). In *Yates*, the court found that the Unruh Act squares with the Americans with Disabilities Act, 42 U.S.C. § 12132, which unquestionably applies to public schools. 2019 U.S. Dist. LEXIS 271473, at *5-6 (citing *Fry v. Napoleon Cmty. Sch.*, 137

[2] That the Supreme Court declined to immediately depublish *Brennon B*. is inapposite to "the court's opinion of the correctness of the result of the decision or of any law stated in the opinion." Cal. Rules of Court, rule 8.1125(d).

S.Ct. 743, 749 (2017); *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1094 n.1 (9th Cir. 2013) ("[A] violation of the ADA is, *per se*, a violation of the Unruh Act.")).

Indeed, while the California Supreme Court will clarify the scope of the Unruh Act in *Brennon B.*, its earlier opinions have acknowledged that the term "business establishment" under this statute should be construed "in the broadest sense reasonably possible." *Isbister v. Boys' Club of Santa Cruz, Inc.*, 40 Cal.3d 72, 78 (1985). More recently, in *White v. Square, Inc.*, the Court affirmed the extensive reach of the Unruh Act, consistent with its "broad preventive and remedial purposes." 7 Cal. 5th 1019, 1025 (2019). In light of these purposes, courts have recognized that "[s]tanding under the Unruh Civil Rights Act is broad." *Id.* Further, the legislative history of the Unruh Act supports the position that the California Legislature intended the Unruh Act to cover school districts; as at least one federal court has explained, "since public schools were among those organizations listed in the original version of the Unruh Act, it must follow that for purposes of the Act they are business establishments as well." *Sullivan By and Through Sullivan v. Vallejo City Unified Sch. Dist.*, 731 F. Supp. 947, 953 (E.D. Cal. 1990).

Given that *Brennon B.* currently "has no binding or precedential effect" and the balance of caselaw confirms that the Unruh Act applies to public schools, the Court should allow Plaintiffs' Fifth Cause of Action to proceed.

III. Student Plaintiffs Have Exhausted Administrative Remedies or Are Excused from an Exhaustion Requirement

Student Plaintiffs have exhausted administrative remedies where required. First, State law—not federal law, upon which both the District Defendant and State Defendants rely heavily in their Demurrers—governs administrative exhaustion and exceptions to exhaustion. Second, Student Plaintiffs have exhausted administrative claims—for state constitutional and remaining systemic claims regarding the rights of students with disabilities—through complaint resolution process ("CRP") complaints filed with CDE. Compl. ¶¶ 100-102. Third, Student Plaintiffs are excused from exhausting administrative remedies related to violations of the rights of disabled students because the Office of Administrative Hearings ("OAH") cannot grant Plaintiffs an

adequate remedy for their systemic claims and, thus, relying on OAH's administrative processes would be futile.

A. Because State Constitutional Claims Are Exempted from IDEA Administrative Exhaustion Requirements, State Law Controls

Defendants' attempt to extend the IDEA's exhaustion standard to state constitutional claims, (Mem. of P&A in Supp. of Defs.' CDE, Tony Thurmond, and SBE's Dem. to Pls.' Compl. 15 ("CDE MPA"); PUSD MPA at 12), contradicts the statute's plain language. "When interpreting statutes, [courts must] begin with the plain, common sense meaning of the language used by the Legislature. If the language is unambiguous, the plain meaning controls." *Voices of Wetlands v. State Water Resources Control*, *Bd.*, 52 Cal. 4th 499, 519 (2011) (citation omitted). The Individuals with Disabilities Education Act ("IDEA") requires exhaustion solely for rights under "the [U.S.] Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. 12101, *et seq.*], title V of the Rehabilitation Act of 1973 [29 U.S.C. 790, *et seq.*], or other **Federal** laws protecting the rights of [children with disabilities.]" 20 U.S.C. § 1415(l) (emphasis added). "[The IDEA's exhaustion provision] does not encompass common law or [state claims.]" *Moore v. Kansas City Pub. Schs.*, 828 F.3d 687, 693 (8th Cir. 2016); *see also Payne v. Norfork Sch. Dist*., No. 3:18-CV-3072, 2019 U.S. Dist. LEXIS 148781, at *11 (W.D. Ark. Aug. 29, 2019) (same); *Graham v. Friedlander*, 223 A.3d 796, 803-04 (Conn. 2020) (same); *Phillips v. Town of Hebron*, 244 A.3d. 964 (Conn. App. Ct. 2020) (same). Indeed, the IDEA's exhaustion requirement does not extend to Plaintiffs' state constitutional claims.

To the extent Defendants rely on state law exhaustion requirements, they should be cabined to state standards governing administrative exhaustion and excusal. As a general matter, California courts have consistently concluded that constitutional claims are not subject to an administrative exhaustion requirement. *State of California v. Superior Court*, 12 Cal.3d 237, 250-51 (1974) (holding that plaintiff land developers were not required to administratively exhaust their constitutional challenge against a state conservation statute even though they were required to administratively exhaust the permit process to proceed on other claims); *Ebel v. City of Garden Grove*, 120 Cal. App. 3d 399, 409-10 (1981) (holding that plaintiff bookseller had

standing to challenge constitutionality of city ordinance without exhausting administrative permit procedures); *but cf. Collins v. Thurmond*, 41 Cal. App. 5th at 911-13 (holding that taxpayer plaintiffs are required to use the UCP process prior to bringing a taxpayer lawsuit against state-level defendants based on allegations the state is wasting money by funding discriminatory practices at the local level).

B. Plaintiffs Have Exhausted Administrative Remedies

Plaintiffs have alleged throughout the Complaint that Defendants have engaged in systemic legal violations that administrative procedures cannot—and have not—remedied. Compl. ¶¶ 46-49, 54-59, 64-72, 75-81, 100, 102-03. Despite no obligation to do so, Plaintiffs have informed Defendants of these legal violations on multiple occasions through formal administrative complaints. ¶¶ 100, 102-03; Cal. Code Regs., tit. 5, §§ 3200-05. Plaintiffs pursued these administrative complaints in a good faith effort to resolve at least some their claims outside of litigation. Yet, Defendants refused to act to address the legal violations. Compl. ¶¶ 100-104. In proffering their exhaustion argument, Defendants overlook both that Plaintiffs have already exhausted their administrative remedies, and that Plaintiffs were excused from doing so in the first place.

Administrative exhaustion is excused when: (1) the complaint seeks wholesale systemic relief that administrative remedies were not designed to address, *Venice Town Council, Inc. v. City of Los Angeles*, 47 Cal. App. 4th 1547, 1566-68 (1996); (2) resort to administrative remedies would prove futile, *Department of Personnel Administration v. Superior Court*, 5 Cal. App. 4th 155, 170-72 (1992); or (3) the defendant has adopted policies and practices of general applicability that are contrary to the law, *R.P.-K ex rel. C.K. v. Department of Educ., Hawaii*, 272 F.R.D. 541, 552-53 (D. Haw. 2011). Because all three exceptions are met here, Plaintiffs are excused from exhausting administrative remedies.

Nevertheless, Defendants insist that each Plaintiff must separately pursue a hearing that cannot provide an effective remedy for their claims. In other words, Defendants take the position that this litigation may only proceed if each Plaintiff goes through an individual complaint process that is incapable of providing the relief sought here. **That is not the law in**

California. Plaintiffs' Complaint challenges both Pittsburg Unified's and the State's policies and general applicable practices that violate the law and seeks broad-based systemic relief, which obviates the need for administrative exhaustion as a matter of law.

1. Plaintiffs Have Exhausted Administrative Remedies Through Repeated Complaint Resolution Process Complaints Filed with the CDE

Even if Plaintiffs were required to exhaust administrative remedies to pursue their claims related to systemic violations of the rights of students with disabilities, which they are not, they have done so here. Defendants' argument that parties can **only** exhaust administrative procedures through a due process proceeding (PUSD MPA 11; CDE MPA 21) ignores the plain text of the California Education Code, which identifies **two** distinct procedural methods to address disputes about a disabled student's education needs, as well as supporting case law regarding federal claims under the IDEA (federal claims which Plaintiffs have not brought). Parents may request a due process hearing at the 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 CDE through a CRP complaint—"an administrative mechanism for ensuring state and local compliance with . . . IDEA." *Christopher S. ex rel. Rita S. v. Stanislaus Cnty. Office of Educ.*, 384 F. 3d 1205, 1210-13 (9th Cir. 2004) (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-07585-SI, 2021 U.S. Dist. LEXIS 214001, at *37-38 (N.D. Cal. Nov. 4, 2021) (complaint filed with CDE alleging the unlawfulness of a state policy served as exhaustion). In those circumstances, 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, § 3203; 34 C.F.R. § 300.152. "Although different, a CRP is no less a proceeding under § 1415 than a due process hearing[.]" *Lucht*, 225 F.3d at 1028-29

Pursuant to this procedure, Mark S., Rosa T., and Jessica Black each filed separate complaints with the CDE's Complaint Resolution Unit against CDE and the District challenging all of the systemic violations of the law outlined in the Complaint against Defendant Pittsburg Unified and the State Defendants. The complaints indicated that other parents and their children have been affected by similar failures and requested that CDE directly intervene in the District to prevent students' immediate and irreparable harm. Compl. ¶¶ 100-03. Following its investigation, CDE responded to the administrative complaints by denying all of the systemic claims and refusing to investigate systemic claims raised in previous complaints. ¶ 100-01; Plaintiffs' RJN Ex. F. These complaints afforded Defendants multiple opportunities to correct any violations and thereby fulfilled any exhaustion requirement.

"CRPs can suffice for exhaustion purposes under several different circumstances"—circumstances that exist here. *See Everett H. v. Dry Creek Joint Elementary Sch. Dist.*, No. 2:13-cv-00889-MCE-DB, 2016 U.S. Dist. LEXIS 136270, at *27-33 (E.D. Cal., Sept. 30, 2016) (holding plaintiffs sufficiently exhausted administrative remedies in suit against CDE and District by identifying 16 illegal policies and practices, with specific factual examples related to the plaintiffs' case); *Christopher S.*, 384 F.3d at 1213 (holding plaintiffs sufficiently exhausted administrative remedies by challenging blanket policies as they applied to all students through an administrative CRP complaint filed by only one student plaintiff).

Here, because the Complaint alleges that Defendants' policies and generally applicable practices violate the law, Plaintiffs appropriately exhausted through a CRP complaint. In *Student A. v. Berkeley Unified School District*, the Northern District of California held that nearly identical allegations brought facial challenges to allegedly invalid policies and practices. 17-cv-02510, 2017 U.S. Dist. LEXIS 169086, at *11-12 (N.D. Cal. Oct. 12, 2017). In that case, plaintiffs challenged the "Defendants['] [failure] to put into effect policies, procedures, and programs that ensure that that all students with suspected reading disorders are . . . identified,

located, evaluated . . . [and] provided appropriate special education and related aids and services." *Id.* at *12 (citation omitted). Specifically, plaintiffs alleged that the use of research-based reading interventions were required by law and that Defendants routinely "refused to offer and provide appropriately intensive research-based reading intervention services, which are essential for these students to learn and advance academically from grade to grade." Plaintiffs' RJN Ex. G (Compl. of Student A., *et al.* ¶¶ 3, 54-56, 79-83, 85, 88, *Student A.*, 17-cv-02510, ECF No. 1) (LEXIS citation unavailable) (describing allegations of school district's failure to offer and provide research-based reading interventions for reading disorders). Plaintiffs here present a substantially similar legal challenge. The Complaint alleges that the use of research-based instruction and interventions designed to allow disabled students to meet challenging objectives are required by law[3] but Pittsburg Unified refuses and fails to provide them as a matter of policy and practice. Compl. ¶¶ 66-68. Plaintiffs similarly allege that the District is required to provide instruction tied to the state academic content standards but refuse to do so as a matter of policy and practice. *Id.* As a result, fewer than five percent of District students are meeting the state academic standards and advancing academically from grade to grade. ¶¶ 14, 72. The determination of whether these policies and practices violate the law obviates the need for individualized determinations.

Plaintiffs similarly allege that District Defendant's policies and practices related to assessments, placement, and discipline of disabled students violate the law—*e.g.*, District Defendants' longstanding refusal to assess students in their native language, Compl. ¶ 46; referral of students for assessments based on behavior or academic performances not indicative of disability, *id.*; refusal to follow legally required placement procedures before segregating students based on administrator perceptions, *id.*; refusal to have available push-in services necessary for integration, ¶ 58; refusal to adequately train staff in providing positive behavioral

[3] In fact, the United States Court of Appeals for the Third Circuit has held that failure to implement a program based on peer-reviewed research "weigh[s] heavily against a finding that the school provided [the student] a FAPE." *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 279 (3d Cir. 2012). Thus, Defendants' systemic failure to offer and provide research-based instruction and interventions to disabled students, such as Plaintiffs and those similarly situated, weighs heavily toward finding a systemic deprivation of FAPE to these students. *See id.*

interventions and support, writing behavior intervention plans, and conducting mental health and behavioral assessments, *id.*; refusal to adequately train paraprofessionals, *id.*; and failure to have available a sufficient continuum of placements, *id*. The Complaint alleges that current and former District staff members have observed these policies and practices and how these districtwide policies and practices impact disabled students throughout the District as borne out by statistical evidence. ¶¶ 46, 48, 54, 58, 66-68, 72, 75, 81. Similarly, Plaintiffs allege that State Defendants' policies and practices related to monitoring and intervention violate the California Constitution. ¶¶ 97-98. These violations arise from State Defendants' refusal to incorporate qualitative monitoring and intervention approaches such as classroom observations and provision of high-quality professional development, ¶ 98; refusal to incorporate these same qualitative approaches to complaint investigation procedures, *id.*; and refusal to identify school districts for more intensive monitoring and interventions based on known performance issues such as low-test scores and high rates of disproportionate segregation, ¶ 97.

Plaintiffs allege these facially unlawful policies and generally applicable practices apply to **all** students with disabilities and fail to account for the necessary individualized decision-making based on each students' learning needs. Compl. ¶¶ 46, 58, 66-68, 75. The data in Plaintiffs' Complaint demonstrate the systemic impact of these policies and practices. Pittsburg Unified ranks among the worst in California in high segregation, disproportionate assessment, and exclusionary discipline, while only five percent of disabled students read at grade level. ¶¶ 48, 54, 72, 81. Additional administrative findings would not further the development of a record because any individual record would not relate to the broader allegations that the special education system precludes disabled students from accessing a FAPE in the least restrictive environment.

Defendants incorrectly characterize Plaintiffs' challenge as requiring individualized inquiries. CDE MPA 16-19; PUSD MPA 15-16. But Defendants rely exclusively on cases involving single students contesting individualized identification, placement, instruction, or

disciplinary decisions based on the student needs and assessments.[4] *Id.* By contrast, Plaintiffs do not argue that any specific Individualized Education Program ("IEP") team incorrectly weighed the needs of students and the school in making these decisions. Instead, they allege that District Defendant's policies and practices violate law and preclude any disabled student from accessing a FAPE in the least restrictive environment. *See, e.g.*, Compl. ¶¶ 58-59 (describing how districtwide refusal to implement research-based services and supports in general education classrooms prevents students from meeting challenging objectives and causes unlawful segregation). As a result, the systemic issues subsume individualized issues and render the resolution of Student Plaintiffs' individual claims at OAH impossible. For example, a student's individual claim for unlawful segregation cannot be resolved if OAH cannot address Pittsburg Unified's refusal to have sufficient push-in services or continuum of placements. And a student's inability to progress toward the state academic standards cannot be resolved if Pittsburg Unified has a policy and practice of refusing to teach toward those academic standards.

Paul G. v. Monterey Peninsula Unified School District, 933 F.3d 1096 (9th Cir. 2019), cited by Defendants in their Demurrers, does not change this conclusion. CDE MPA 22; PUSD MPA at 19-20. In that case, the plaintiff never filed a CRP complaint; thus, the court never considered whether the plaintiff could exhaust a claim against CDE through a CRP

[4] State Defendants cite six cases to argue that whether a District's proposed placement is in the least restrictive environment is a highly individualized inquiry. CDE MPA 16-17 (citing *Poolaw v. Bishop*, 67 F.3d 830, 836-37 (9th Cir. 1995); *Adams v. Oregon*, 195 F. 3d 1141, 1150 (9th Cir. 1999); *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1314-15 (9th Cir. 1987); *A.M. v. Monrovia Unified Sch. Dist.*, 627 F.3d 773, 781 (9th Cir. 2010), *Sacramento City Unified Sch. Dist. V. Rachel H.*, 14 F.3d 1398, 1400-01 (9th Cir. 1994); *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1138 (9th Cir. 2003). State Defendants also cite six cases to argue that Plaintiffs' challenges to blanket identification and evaluation policies and practices must be heard by an administrative law judge at OAH. CDE MPA 17-18 (citing *E.M. ex re. E.M. v. Pajaro Valley Unified Sch. Dist.*, 758 F.3d 1162, 1171-72, 1178 (9th Cir. 2014); *Capistrano Unified Sch. Dist. v. Wartenburg*, 59 F.3d 884, 893 (9th Cir. 1995); *Hood v. Encinitas Unified Sch. Dist.*, 486 F.3d 1099, 1008-10 (9th Cir. 2007); *R.B. v. Napa Valley Sch. Dist.*, 496 F.3d 932, 945-47 (9th Cir. 2007); *L.J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1005-06 (9th Cir. 2017); *Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1032-33 (9th Cir. 2006). All but one of State Defendants' cases involved individual claims and required analysis of Individualized Education Plan team decisions. State Defendants cite one case to argue Plaintiffs' challenge to blanket discipline policies and practices is a highly individualized inquiry. CDE MPA 19 (citing *Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1494-96 (9th Cir. 1994)). But this case turned on only the facial lawfulness of a district's suspension guidelines. *Id.* at 1495-96.

complaint. Here, Plaintiffs filed CRP complaints. Compl. ¶¶ 100-102. In *Everett H.*, the court held the plaintiff could exhaust his claim against CDE through a CRP complaint. 2016 U.S. Dist. LEXIS 136270, at *30-33. Moreover, unlike the *Paul G.* plaintiffs, who challenged an **individual** child's placement and thus were required to obtain an OAH determination, the Plaintiffs here challenge systemic violations arising from districtwide policies and practices, similar to the plaintiffs in *Christopher S.* In that case, 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," and the court held that a CRP complaint challenging those policies, filed by only one student, was sufficient to exhaust administrative remedies as to all plaintiffs. 384 F.3d at 1211, 1213. Similarly, here, Plaintiffs' Complaint describes the experiences of Student and Taxpayer Plaintiffs as illustrative of the structural and systemic nature of the State's and District's failures, not the individual needs of a particular plaintiff. *See, e.g.*, Compl. ¶¶ 7, 13, 16, 58(d), 59, 69, 71 (named students plaintiffs and similarly situated students as **examples** of impact of systemic deficiency), 128 (identifying CDE's defective system for monitoring and intervening which disproportionately segregates disable students of color into inferior classrooms).

Defendants' citations to *Brach v Newsom* are similarly unavailing. PUSD MPA 12; CDE MPA 12. The *Brach* plaintiffs raised the broad issue of whether virtual instruction could provide hundreds of thousands of students a FAPE in the least restrictive environment and therefore required countless individual inquiries. *See* 2:20-cv-06472-SVW-AFM, 2020 U.S. Dist. LEXIS 190361, *26-27 (C.D. Cal Aug 21, 2020). By contrast, Plaintiffs here have alleged that specific policies and practices of general applicability are contrary to law and escape individual decision-making.

Plaintiffs have accordingly exhausted administrative remedies by pursuing to completion administrative CRP complaints. To the extent that a complaint on its face makes "a case for systemic violations that, under pertinent case law, bring [the] complaint outside **individualized** FAPE issues, "the Court cannot find as a matter of law that exhaustion in general is required" on a motion to dismiss. *Student A.*, 2017 U.S. Dist. LEXIS 169086, at *12 (emphasis

added) (citation omitted); *Everett H. ex rel. Havey v. Dry Creek Joint Elementary Sch. Dist.*, 5 F. Supp. 3d 1184, 1194 (E.D. Cal. 2014) (holding 16 illegal policies and practices identified in Complaint with specific factual examples related to the Plaintiffs' case presented fact question about whether CRP complaint satisfied exhaustion that could not be resolved on motion to dismiss).

2. Plaintiffs Are Not Required to Show They Are Aggrieved Parties but Have Nevertheless Done So

Plaintiffs have sufficiently alleged they were aggrieved by the CDE's compliance complaint decisions and therefore may proceed with their Education Code section 56000, et seq, ("Section 56000") claim. A party who brings a civil action under Section 56000 challenging the findings and decisions of an OAH Due Process hearing must show the party is aggrieved by those decisions. Cal. Educ. Code § 56505(k). A plaintiff who obtains a generally favorable result nevertheless qualifies as an aggrieved party where "he contests those aspects of the administrative rulings which were found against him, and for which he has requested relief." *Moubry By & Through Moubry v. Indep. Sch. Dist. No. 696 (Ely)*, 951 F. Supp. 867, 883 (D. Minn. 1996); *see generally Hensley v. Hensley*, 190 Cal. App. 3d 895, 899 (1987) (if a party is "awarded less than was demanded . . . appeal may lie on the unfavorable part of the judgment"). The Complaint alleges that CDE denied all of Mark S.'s systemic claims against CDE and the District and refused to investigate these systemic violations in subsequent complaints, including that of Rosa T. Compl. ¶¶ 100-102; *see* Plaintiffs' RJN, Ex. F (letter from CDE to Plaintiff Jessica Black explaining that the department would not investigate issues raised in previous administrative complaints). Indeed, CDE's investigation report on Rosa T.'s complaint reveals how CDE failed to even acknowledge Rosa T.'s systemic claims. PUSD RJN Ex. B. Accordingly, the Plaintiffs were denied the systemic relief they affirmatively requested. *See M.Z. v. Lake Elsinore Unified Sch. Dist.*, No. EDCV071091VAPOPX, 2008 U.S. Dist. LEXIS 81931, at *9 (C.D. Cal. Aug. 13, 2008) (noting that a party is "aggrieved" if it "was denied relief it affirmatively requested."). And, as the District concedes in its Demurrer, CDE found against Mark S. and Rosa T. on multiple individual claims and they are thus "aggrieved

parties" on those claims. PUSD MPA 18, 22. Moreover, Plaintiffs allege that the systemic violations, which were not addressed in the CRP process, have harmed, and will continue to harm, Student Plaintiffs without relief. Compl. ¶¶ 83-94, 97. Thus, Plaintiffs are more aggrieved than the *Christopher S.* plaintiffs, who received a **favorable** determination on their CRP complaint, yet the court found they successfully exhausted their administrative remedies and could proceed in the civil action. 384 F.3d at 1208, 1213.

In any event, Defendants' contention that Student Plaintiffs must be aggrieved by CDE's findings in response to their CRP complaint to bring their Section 56000 claim, CDE MPA 22; PUSD MPA 18, 22; runs contrary to the Ninth Circuit's holding in *Christopher S,* , 395 F. 3d. 1205. There, in response to the plaintiffs' compliance complaint, the CDE ordered the school district to revise its policies and, after finding that the district had completed corrective action, found the district in compliance. 384 F.3d at 1208. The Court found these facts sufficient for plaintiffs to exhaust administrative remedies and bring a civil action despite the CDE's favorable findings. *Id.* at 1213-14. Defendants have failed to cite any authority that extends the "aggrieved party" requirement to the CDE compliance complaint process.

3. Plaintiffs Were Not Required to Request Reconsideration But Have Nevertheless Done So

District Defendant's contention that Plaintiffs were required to request reconsideration is unavailing. PUSD MPA 16-18, 21. First, reconsideration is not required to complete exhaustion through the CRP process. The California Supreme Court held that "the right to petition for judicial review of a final decision of an administrative agency is not necessarily affected by the party's failure to file a request for reconsideration or rehearing before that agency." *Sierra Club v. San Joaquin Local Agency Formation Com.*, 21 Cal. 4th 489, 510 (1999). The Court reasoned that exhaustion did not require a redundant, pro forma request for reconsideration in situations where the complainant would be forced to "raise for a second time the same evidence and legal arguments one has previously raised solely to exhaust administrative remedies." *Id*. Rosa T. and Mark S. would not raise any new facts or legal arguments in a reconsideration, so reconsideration would not serve any purpose of exhaustion. *See* Cal. Code Regs. tit. 5, § 3204(b)

("In evaluating or deciding on a request for reconsideration, the CDE will not consider any information not previously submitted . . . unless it was previously unknown to party[.]"); *compare* Plaintiffs' RJN, Ex. E *with* PUSD RJN, Ex. B (showing that the same body that completed the investigation report, the CDE's Complaint Resolution Unit, has completed its review of Rosa T.'s reconsideration request).

Second, even if reconsideration were required, Rosa T. has completed this process. *See* Plaintiffs' RJN, Ex. D (Rosa T.'s reconsideration request), Ex. E (December 31, 2021 letter from CDE Complaint Resolution Unit stating that it has completed review of the request); Cal. Code Regs. tit. 5, § 3204 (requiring CDE to respond to request for reconsideration within sixty days of receipt). Rosa T.'s request serves as exhaustion for Mark S. and taxpayer plaintiffs' identical claims. *See Christopher S.*, 384 F.3d at 1213 (holding that one student's CRP complaint challenging a blanket policy served as sufficient exhaustion for all plaintiffs challenging the policy). Requiring all plaintiffs to request reconsideration on precisely the same topics would prove futile, especially given the CDE's refusal to reinvestigate issues previously raised. Compl. ¶¶ 100, 101; *see Christopher S.*, 384 F.3d at 1213 (requiring other plaintiffs to exhaust remedies for challenge to same policies "would not further the purposes of exhaustion").

C. Plaintiffs Are Excused from Exhausting Administrative Remedies

State law excuses exhaustion where administrative remedies are inadequate. In *Tiernan v. Trustees of California State University & Colleges*, the California Supreme Court excused exhaustion where the grievance procedure was designed to handle unlawful discharge claims, rather than claims at issue in the case seeking change in university regulations. 33 Cal.3d 211 217-18 (1982); *see Venice Town Council, Inc.*, 47 Cal. App. 4th at 1567-68 (excusing exhaustion of administrative remedies because appellants sought review of the City's overarching policies and implementation of a state housing statute). Exhaustion is also excused where resorting to administrative procedures would be futile. For example, in *Knoff v. City etc. of San Francisco*, the Court of Appeal excused exhaustion where the relevant administrative body was empowered only to make individual assessments, not to address wholesale deficiencies. 1 Cal. App. 3d 184, 198-99 (1999); *see also Dep't of Personnel Admin. v. Super. Ct.*, 5 Cal. App. 4th 155, 171-72

(1992) (excusing failure to exhaust where agency disclaimed jurisdiction to hear the claim). Finally, exhaustion is excused when the defendant has adopted policies and practices of general applicability that are contrary to the law. *R.P.-K ex rel. C.K.*, 272 F.R.D. at 552-52 (disabled students' challenge to generally applicable rule limiting their right to special education services following twelfth grade excused plaintiffs from exhausting their administrative remedies). OAH has neither the jurisdiction nor the ability to resolve Plaintiff's systemic claims, making further resort to OAH proceedings inadequate and futile.

1. OAH proceedings could not provide adequate relief

OAH cannot hear Plaintiffs' systemic allegations or provide appropriate relief and is thus inadequate. California courts have repeatedly recognized the inadequacy of administrative procedures when they lack jurisdiction to adjudicate systemic grievances. *White v. California*, 195 Cal. App. 3d 452, 465 (1987). In *White*, the Court of Appeal excused exhaustion under the IDEA's predecessor because the hearing scheme was not designed to hear "[l]arger systemic issues." *Id.* Here, Plaintiffs raise legal claims regarding the District's entire special education system. Plaintiffs allege that Pittsburg Unified's policies and generally applicable practices governing assessment, identification, placement, and instruction are unlawful. The District Defendant's strained and narrow characterization of this challenge, PUSD MPA 20, fails to contend with the consequences of Pittsburg Unified's across-the-board failures. Less than five percent of disabled students in Pittsburg Unified meet state academic standards, Compl. ¶ 72, while Pittsburg Unified ranks among the worst in the state in segregating disabled students, ¶ 54, and consistently overidentifies and disproportionately disciplines disabled students of color, ¶¶ 48, 81. These students attend schools that, in practice, are schools in name only and require structural reforms at the district and State level. Courts have found this exception met with narrower allegations. *See J.S. v. Attica Cent Sch.*, 386 F.3d 107, 114-15 (2d Cir. 2004) (student's allegations that district's failure to, among other things, appropriately train staff and provide and implement types of special education services met "systemic" exception to exhaustion); *W.H. v. Tennessee Dep't of Educ*., No. 3:15-1014, 2016 U.S. Dist. LEXIS 7206, at *14-17 (M.D. Tenn. Jan. 20, 2016) (students' challenge to districtwide practices that caused

plaintiffs to be placed in more restrictive environments met systemic and futility exhaustion exceptions).

By contrast, OAH due process hearing procedures speak in terms only of individuals—only a singular student or parent may bring a claim and relief may be provided only to resolve that particular case. The unavailability of the systemic relief sought here is not mere conjecture—OAH has no jurisdiction over claims involving children beyond the individual student engaged in a due process proceeding. *See Wyner v. Manhattan Beach Unified Sch. Dist.*, 223 F.3d 1026, 1029 (9th Cir. 2000) (holding OAH's jurisdiction is limited to circumstances enumerated in Cal. Educ. Code § 56501(a)). Indeed, the Ninth Circuit Court of Appeals has emphasized that "individual administrative [due process] challenges [are] a comparatively inefficient and ineffective means of achieving system-wide relief" and permit students "to challenge only the **effects** of [the district's policy] on individual students—not the legality of [the policy] itself." *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 863 (9th Cir. 2016) (emphasis in original) (internal footnote omitted).

Notably, OAH provides compensatory education as a remedy, one that would be inadequate to address Plaintiffs' **systemic** allegations. Although, the State Defendants argue, for example, that compensatory education would be an adequate remedy, CDE MPA 20, this argument ignores that this remedy could not adequately provide Plaintiffs the relief that they seek, remedies that would impact students beyond only themselves. Compl. ¶¶ 160-162. Because compensatory education is always available as a remedy at OAH, its availability cannot require exhaustion without eviscerating the exceptions. Moreover, Plaintiffs claim that Pittsburg Unified's harmful policies and practices, combined with CDE's deficient monitoring and intervention system, have resulted in widespread violations of the rights of students with disabilities under the constitution and statutory law. They therefore request this Court to require Defendants to "implement policies, practices, and training" to correct injuries incurred by groups of students. ¶ 162 (requesting remedial action to ensure adequate assessment, equal educational opportunity, FAPE in the least restrictive environment, and non-discriminatory discipline for "Black and English learner students," "disabled students," and "Black, Native American, and

multiracial students"). Because due process hearing officers are only authorized to decide individual cases and not systemic claims, resort to OAH to review those claims is excused. *See Porter v. Bd. of Trs. of Manhattan Beach Unified Sch. Dist.*, 307 F.3d 1064, 1071-74 & n.8 (9th Cir. 2002).

District and State Defendants' remaining cases denying the application of a systemic exception deal with factual allegations challenging narrow aspects of the special education system. In *Doe v. Arizona Department of Education*, the Court held this exception did not apply to plaintiff juveniles' challenge to a single oversight of plaintiffs' need for special education services, contained to a single facility, that did not raise an inherent issue in the education program, and was immediately remedied once raised. 111 F.3d 678, 680-82 (9th Cir. 1997). Similarly, the Court in *Paul G.* refused to apply this exception to a student who sued for an in-state residential placement for adult students and therefore requested relief for "only one component of the school district's special education program." 933 F.3d at 1099, 1102. And in *Hoeft v. Tucson Unified School Dist.*, 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).

By contrast, Plaintiffs here challenge every component of the Pittsburg Unified's special education program. Plaintiffs have identified numerous unlawful policies and practices of general applicability relating to the assessment, identification, placement, instruction, and discipline of disabled students, resulting in a program that ranks near the bottom of districts statewide. Compl. ¶¶ 46, 58, 66-67. If these allegations do not require restructuring of the educational program to meet this exception, it is difficult to understand which allegations would suffice.

Finally, resorting to OAH is also inadequate because the agency lacks jurisdiction over Plaintiffs' constitutional claims. In *Lance Camper Manufacturing Corp. v. Republic Indemnity Co.*, the Court of Appeal held plaintiffs were excused from exhaustion where the administrative body lacked authority to adjudicate breach of insurance contract cases, make the requested

monetary awards to redress the past misconduct, or review the type of claim the insured made. 44 Cal. App. 4th 194, 199-200 (1996). Similarly, OAH lacks authority to order State Defendants to comply with their constitutional duties to correct interdistrict disparities.

2. Further Exhaustion of Administrative Remedies Would Prove Futile

Plaintiffs' Complaint raises issues of material fact about whether resorting to OAH procedures would be futile, which are inappropriate for resolution at this stage. Compl. ¶103; *see Twain Harte Associates, Ltd. v. County of Tuolumne*, 217 Cal. App. 3d 71, 89-91 (1990) (finding that futility of administrative remedy was a question of fact). In *Department of Personnel Administration*, the California Court of Appeal held that exhaustion was futile where the agency disclaimed jurisdiction to hear the claim. 5 Cal. App. 4th at 171-72. As previously discussed, OAH lacks jurisdiction to hear Plaintiffs' systemic claims. Filing due process complaints with OAH against the Defendants would prove futile because OAH cannot address any of the shortcomings of their policies, practices, and procedures as they apply to all students with disabilities. Similarly, it would be futile to require Plaintiffs to file additional CRP complaints when the CDE has already denied their systemic allegations and refuses to reinvestigate allegations previously raised. *Student A.*, 2017 U.S. Dist. LEXIS 169086, at *13 ("Plaintiffs clearly allege that the [school district] did not sufficiently change its policies in response to previous CRPs, and the truth of this allegation cannot be resolved as a matter of law.").

3. Plaintiffs Challenge Policies and Generally Applicable Practices as Contrary to Law

As previously discussed, *supra* Section III.B.1., Plaintiffs have alleged that Defendants' policies and generally applicable practices violate the law. Because these allegations make "a case for systemic violations that, under pertinent case law, bring [the] complaint outside individualized FAPE issues, the Court cannot find as a matter of law that exhaustion in general is required" on a demurrer. *Student A.*, 2017 U.S. Dist. LEXIS 169086, at *12.

4. Plaintiffs Have Satisfied the Purposes of Exhaustion

Finally, there is no practical purpose served by requiring further exhaustion here. To the extent the Defendants argue that a factual record needed to be developed by OAH, it should be

noted that the "general purpose of exhaustion and the congressional intent behind the administrative scheme" is to place the school districts and state educational agencies on notice of potential violations and allow responsible agencies with relevant expertise the opportunity to remediate, which has been provided here. *Christopher S.*, 384 F.3d at 1211; Compl. ¶¶ 100, 102-03.

IV. Taxpayer Plaintiffs Are Similarly Excused from Exhausting Administrative Remedies but Have Done So Anyway

Like Student Plaintiffs, Taxpayer Plaintiffs have exhausted administrative remedies through Jessica Black's CRP complaint challenging the unlawful systemic policies and practices outlined in the Complaint. Compl. ¶ 101. In *Christopher S.*, the Ninth Circuit found that one student's CRP complaint challenging a blanket policy served as sufficient exhaustion for all plaintiffs challenging the policy and that requiring each student to seek a due process hearing "would not further the purposes of exhaustion." 384 F.3d 1205, 1213 (9th Cir. 2004). Here too, Jessica Black's CRP complaint challenging unlawful blanket policies at Pittsburg Unified exhausted administrative remedies for all taxpayer plaintiffs making identical claims. It would be futile to require Taxpayer Plaintiffs to file additional CRP complaints when the CDE has already denied Plaintiffs' systemic allegations and refuses to reinvestigate allegations previously raised. Moreover, as previously reviewed, exhaustion should be excused regardless because administrative remedies are inadequate and futile, and Plaintiffs challenge policies and generally applicable practices contrary to law. *See supra* Section III.B.1. Indeed, Taxpayer plaintiffs could not 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).

V. Student Plaintiffs Have Standing to Bring Racial Discrimination Claims

The District's argument that Student Plaintiffs lack standing to bring race discrimination claims ignores the broad standing conferred by writs of mandate. PUSD MPA 19 n.4. A plaintiff can seek a writ of mandate under section 1085 and 1086 of the California Code of Civil Procedure when the petitioner has a sufficiently beneficial interest in the outcome of the dispute.

Lewis v. Super. Ct., 169 Cal. App. 4th 70, 77 (2008). A beneficial interest is defined far broader than standing schemes under other statutes. A beneficially interested petitioner "has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." *Carsten v. Psychology Examining Comm. of the Bd. of Med. Quality Assurance*, 27 Cal.3d 793, 796 (1980).

Here, Mark S. and Rosa T., as students of Pittsburg Unified, have special interests in both the quality of the special education program, including proper assessment, placement, instruction, and discipline of students with disabilities. *Cal. Hosp. Assn. v. Maxwell-Jolly*, 188 Cal. App. 4th 559, 569 (2010), *as modified on denial of reh'g* (Sept. 16, 2010) (holding association had beneficial interest in enforcing the Medicaid Act because it was interested in having its members compensated for the medical services they provide in accordance with the Medicaid program). Moreover, unlawful segregation harms not only the group being discriminated against, but all children in the school. "Separate educational facilities are inherently unequal." *Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483, 495 (1954), *supplemented by*, 349 U.S. 294 (1955); *c.f. Rogers v. Paul*, 382 U.S. 198, 200 (1965) (holding that students in segregated grades had sufficient interest to challenge racial allocation of faculty because it denied them equality of educational opportunity). Here, Plaintiffs have alleged that segregation has detrimental short- and long-term effects for all students, including lower academic and social-emotional development and future career opportunities. Compl. ¶ 50.

CONCLUSION

For all of the foregoing reasons, the Plaintiffs respectfully request that the Court deny Defendants' Demurrers. In the alternative, should the Court find any such amendment necessary, Plaintiffs respectfully request leave to amend their Complaint.

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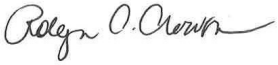

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