

1 Claudia Center (SBN 158255)
1 CCenter@dredf.org
2 Malhar Shah (SBN 318588)
2 MShah@dredf.org
3 Dylan Crary (SBN 340644)
3 DCrary@dredf.org
4 Disability Rights Education and Defense Fund
4 3075 Adeline Street, Suite 210
Berkeley, CA 94703
5 Telephone: (510) 644-2555

6 *Attorneys for Plaintiffs-Petitioners*

7 *Additional counsel on next page*

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF CONTRA COSTA**

12 MARK S., BY AND THROUGH HIS
13 GUARDIAN AD LITEM, ANNA S., ROSA T.,
14 BY AND THROUGH HER GUARDIAN AD
15 LITEM SOFIA L., AND JESSICA BLACK,
MICHELL REDFOOT, AND DR. NEFERTARI
ROYSTON, AS TAXPAYERS,

16 Plaintiffs and Petitioners,

17 v.

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

22 Defendants and Respondents.

Case No. N21-1755

UNLIMITED JURISDICTION

**PLAINTIFFS' OPPOSITION TO
MOTION TO STAY FILED BY
DEFENDANTS CALIFORNIA
DEPARTMENT OF EDUCATION, STATE
SUPERINTENDENT TONY THURMOND,
AND JOINED BY DEFENDANT STATE
OF CALIFORNIA**

1 Linnea Nelson (SBN 278960)

LNelson@aclunc.org

2 Grayce Zelphin (SBN 279112)

GZelphin@aclunc.org

3 Brandon Greene (SBN 293783)

BGreene@aclunc.org

American Civil Liberties Union

4 Foundation of Northern California

39 Drumm Street,

5 San Francisco, CA 94111

Telephone: (415) 621-2493

6 Ana G. Nájera Mendoza (SBN 301598)

7 AMendoza@aclusocal.org

Victor Leung (SBN 268590)

8 VLeung@aclusocal.org

American Civil Liberties Union

9 Foundation of Southern California

1313 West 8th Street

10 Los Angeles, CA 90017

Telephone: (213) 977-9500

11 Robyn Crowther (SBN 193840)

12 RCrowther@Steptoe.com

Amanda C. Schwartz (SBN 307522)

13 ASchwartz@Steptoe.com

14 Steptoe & Johnson LLP

One Market Plaza

Spear Tower, Suite 3900

15 Telephone: (818) 219-0961

16 *Attorneys for Plaintiffs-Petitioners*

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1 **INTRODUCTION**

2 Student Plaintiffs Mark S. and Rosa T., and their guardians ad litem, Anna S. and Sofia
3 L.; and Jessica Black, Michell Redfoot, and Dr. Nefertari Royston as Taxpayer Plaintiffs
4 (collectively, “Plaintiffs”), respectfully request that this Court deny the Motion to Stay of
5 Defendants State Board of Education, California Department of Education (“CDE”), and State
6 Superintendent of Public Instruction Tony Thurmond to which State of California joins
7 (collectively, “State Defendants”).

8 State Defendants argue that because there exists a pending case, *Emma C. v. Thurmond*,
9 that was filed in **federal** court twenty-five years ago by different plaintiffs under **federal** law,
10 this Court should decline to exercise its jurisdiction over the rights of current students assured
11 under California law at Pittsburg Unified School District (“PUSD” or “Pittsburg Unified”).
12 M&A ISO Mot. for Stay of Defs. California Department of Education, State Board of Education,
13 and Tony Thurmond 5-6 (“Def. Mot.”). This argument should be rejected. The current case
14 involves different parties and presents distinct substantive issues from the federal law questions
15 being decided in *Emma C.* Plaintiffs’ lawsuit seeks to enforce different claims, based on harms
16 occurring at a distinct school district, and arises under California constitutional and statutory law.
17 Finally, Plaintiffs’ interests will not be adequately served by the decades-long *Emma C.*
18 litigation; they would suffer substantial hardship if the Court were to stay this action because
19 they would be compelled to remain in classrooms where little to no learning occurs, year after
20 year, while falling desperately behind their peers at schools in the rest of the State. In short,
21 factors required to support a discretionary stay do not exist here, and staying the present
22 litigation would disrupt, not aid, judicial economy.

23 **FACTUAL BACKGROUND**

24 **I. Plaintiffs’ Complaint Is Centered on Violations of State Constitutional and**
25 **Statutory Law for the Operation of a School System That Discriminates Against**
26 **Students on the Basis of Race, National Origin, and Disability**

27 Plaintiffs filed a Petition for Writ of Mandate pursuant to California Code of Civil
28 Procedure section 1085 and Complaint for Declaratory and Injunctive Relief and Statutory
Damages Under the Unruh Act (“Complaint”) against State Defendants and Defendant Pittsburg

1 Unified. Compl., ¶¶26-35. Plaintiffs’ Complaint alleges violations of (1) the Equal Protection
2 Clauses of the California Constitution, ¶¶ 105-111; (2) California Education Code section 56000
3 et seq, ¶¶ 117-121; (3) Government Code section 11135, ¶¶ 122-130; (4) the California Unruh
4 Civil Rights Act, ¶¶131-139; and (5) California Code of Civil Procedure section 526a for illegal
5 expenditure of taxpayer funds, ¶¶ 143-152; and seeks declaratory relief, ¶¶ 140-142, and a writ
6 of mandate, ¶¶ 153-159. Significantly, Plaintiffs **do not** assert claims for violations of federal
7 constitutional or statutory law.

8 Plaintiffs’ claims and requested remedies are based on Plaintiffs’ allegations that
9 Defendant Pittsburg Unified has: “1) overidentified Black and English learners as having more
10 severe disabilities; 2) disproportionately segregated Black and English learner students with
11 disabilities into inferior separate classrooms; 3) failed to provide evidence-based instruction tied
12 to California’s statewide academic content standards, as a matter of District policy, to disabled
13 students in general and special education classrooms; and 4) disproportionately excluded Black,
14 multiracial, and Native American students with and without disabilities through exclusionary
15 discipline.” Compl. ¶ 44. These allegations impose liability not only on Defendant Pittsburg
16 Unified but also on State Defendants for creating and operating a school system that
17 discriminates against students on the basis of their race, national origin, disability, or the
18 intersection of these protected categories.

19 As alleged in the Complaint, State Defendants have an affirmative obligation to operate
20 California’s public schools in compliance with the provision of the California Constitution and
21 the California Education Code that guarantee equal educational opportunity to students and
22 prohibit the delivery of education that discriminates against students based on their race, national
23 origin, disability status, or combination of these identities. *See* Compl. ¶¶ 95-99. Specifically, the
24 Complaint alleges that the State Defendants have not “effectively supervised the statewide
25 system of public education to ensure that students in Pittsburg Unified, and in all California,
26 receive equal educational opportunity. Instead, the State has abdicated its legal responsibilities to
27 Mark S. and Rosa T . . . and their disabled peers and other students of color to provide equal
28 educational opportunities.” ¶ 96.

II. The *Emma C.* Lawsuit Alleges Violations of Federal Law in Federal Court

1 In 1996, students brought a federal lawsuit against the CDE and the Ravenswood City
2 School District for failure to adequately monitor school districts' compliance with the federal
3 Individuals with Disabilities Education Act ("IDEA"). *Emma C. v Eastin*, 985 F. Supp. 940
4 (N.D. Cal. 1997). This resulted in a four-stage consent decree in 2000, later amended in 2003,
5 whereby the CDE agreed to reform its system for evaluating districts' compliance with the IDEA
6 only. Nothing in the *Emma C.* case, however, addresses the CDE's obligations to ensure that
7 Student Plaintiffs, their disabled peers, and other students of color are provided equal educational
8 opportunities regardless of their race, national origin, disability, or intersection of these protected
9 categories pursuant to California constitutional and statutory law. *See generally Emma C. v.*
10 *Thurmond*, 472 F. Supp. 3d 641 (N.D. Cal. 2020).

11 LEGAL STANDARD

12 "When an action is brought in a court of this state involving the **same parties** and the
13 **same subject matter** as an action already pending in a court of another jurisdiction, a stay of the
14 California proceedings is not a matter of right, but within the sound discretion of the trial court."
15 *Farmland Irrigation Co. v. Dopplmaier*, 48 Cal. 2d 208, 215 (1957) (emphasis added); *see also*
16 *Thomson v. Cont'l Ins. Co.*, 66 Cal. 2d 738, 748 (1967). The threshold question presented by this
17 motion, therefore, is whether the earlier-filed case involves both the same parties and the same
18 subject matter. If this threshold requirement is met, trial courts should determine whether to
19 exercise their discretion to stay by considering: (1) the importance of discouraging multiple
20 litigation "designed solely to harass an adverse party;" (2) "avoiding unseemly conflicts with the
21 courts of other jurisdictions;" and (3) "whether the rights of the parties can best be determined by
22 the court of the other jurisdiction because of the nature of the subject matter, the availability of
23 the witnesses, or the stage to which the proceedings in the other court have already advanced."
24 *See Farmland*, 48 Cal. 2d at 215. A determination that the third factor supports a stay requires a
25 close examination of the "nature of the subject matter" in the two proceedings. *See Mave Enters.*
26 *v. Travelers Indem. Co.*, 219 Cal. App. 4th 1408, 1425-26 (2013) (third factor not satisfied where
27 superior court was just as capable as the federal district court in determining issues and tribunals
28 were equally convenient); *Gregg v. Superior Court*, 194 Cal. App. 3d 134, 138 (1987)
(overturning stay where related federal lawsuits were filed first but plaintiff-petitioner was not a

1 party to the federal lawsuit and observing “[w]e find no precedent for preventing a litigant in the
2 circumstances of this case from pursuing an action because other litigants are suing the same
3 defendants over similar grievances in another forum”).

4 ARGUMENT

5 This Court should not stay the instant action because, first, it shares few similarities with
6 *Emma C.* The two lawsuits involve different plaintiffs, largely different defendants, different
7 claims, and are brought under two different sets of laws. Second, a stay is inappropriate because
8 each of the *Farmland* factors weighs in Plaintiffs’ favor and counsel for this case to proceed.
9 Specifically, this case was not brought to harass State Defendants, the two cases have no
10 unseemly conflicts because they involve different defendants and claims, and, for the same
11 reasons, the rights of Plaintiffs here cannot be enforced by *Emma C.* In essence, the State
12 Defendants position is that one case involving the CDE’s duties for special education monitoring
13 (under a different set of laws) should bar litigation touching the CDE’s special education
14 monitoring of **any** subsequent violation for more than two decades. The Court should reject this
15 attempt to evade judicial review.¹

16 **I. Defendants’ Are Not Entitled to a Stay Because Plaintiffs’ Lawsuit Involves** 17 **Different Plaintiffs, Different Defendants, and Different Claims.**

18 State Defendants are not entitled to a stay of this California state court proceeding
19 because a stay should only be granted “[w]hen an action is brought in a court involving the same
20 parties and the same subject matter as an action already pending in a court of another jurisdiction
21 . . .” *Farmland Irr. Co.*, 48 Cal. 2d at 215. As explained below, this case and the *Emma C.* case
22 do not share the same parties or the same subject matter, so the State Defendants’ request for a
23 stay should be denied.

24 **A. The Instant Action and *Emma C.* Do Not Share the Same Parties.**

25 In *Farmland*, the California Supreme Court denied the defendant’s request to stay
26 California state court proceedings based on a pending Oregon action because the plaintiff was

27
28 ¹ To the extent CDE relies on Plaintiffs’ discovery requests in support of its argument in its Motion to Stay, Plaintiffs refer this Court to Plaintiffs’ opposition to CDE’s Request for Judicial Notice of Exhibit 4, filed concurrently herewith.

1 not a party to the Oregon action and only one of the two causes of action was identical.
2 *Farmland Irr. Co.*, 48 Cal. 2d at 216. A stay of the proceedings would therefore have
3 “compel[led] plaintiff to await a judgment that cannot respond to its need.” *Id.* Similarly, the
4 Court of Appeal in *Gregg v. Superior Court* denied a stay motion because the plaintiff had not
5 sought the same relief in another forum and was not a party to a related action in another
6 jurisdiction. 194 Cal. App. 3d 134, 138 (1987). In *Gregg*, the plaintiff franchisee brought an
7 action against his franchisor in state court for fraud, unfair business practices, and operation of
8 an illegal collection agency. *Id.* at 136. The plaintiff’s attorney was representing some 50
9 plaintiffs, not including the franchisee, in eleven federal lawsuits against the franchisor. *Id.* The
10 Court reasoned that because the plaintiff sought relief grounded in state law in state court, a stay
11 order would have unfairly forced him to suspend all efforts to seek relief. *Id.* at 138. The Court
12 rejected the defendant’s reliance on the fact that the two suits covered similar subject matter,
13 observing that the plaintiff-petitioner “has not sought . . . relief in another forum and is not a
14 party to a related action in another forum.” *Id.* at 138.

15 The same principle holds in the present case: Plaintiffs are wholly different from the
16 plaintiffs in *Emma C.* and, as discussed in the following section, are not able to participate or
17 enforce many of their state law claims there. Put another way, as in *Gregg*, a stay of proceedings
18 would leave Plaintiffs without a remedy. It would impose substantial hardship on all Plaintiffs,
19 compelling Student Plaintiffs to remain in classrooms where little to no learning occurs, year
20 after year, while falling desperately behind their peers at schools in the rest of the State; and
21 compelling Taxpayer Plaintiffs to pay for this waste. Finally, two Defendants in this case, the
22 State of California and Pittsburg Unified, are not defendants in the federal action.

23 **B. The Instant Action and *Emma C.* raise different claims Under Different Laws**

24 Further, Plaintiffs seek relief for claims made under distinct and substantively different
25 **state** laws, as opposed to the **federal** law claims made in *Emma C.* *Emma C.* concerns the CDE’s
26 compliance with a consent decree made pursuant to the federal IDEA. Here, Plaintiffs bring
27 purely state law claims, arising from different facts, to hold the Defendants accountable to
28 different and more demanding duties under the California Constitution and state statutory law.

Cf. Thompson v. Cont’l Ins. Co., 66 Cal. 2d 738, 742 (1967) (citing “a state policy that California

1 residents ought to be able to obtain redress for grievances in California courts, which are
2 maintained by the state for their benefit”).

3 As an initial matter, State Defendants’ obligations to monitor compliance with the IDEA
4 are not co-extensive with their obligations under California constitutional and special education
5 laws. Plaintiffs allege that the State’s monitoring and intervention system “fails to capture low-
6 performing school districts like Pittsburg Unified” that violate the State Constitution. Compl. ¶
7 98. The monitoring system being developed by the CDE in *Emma C.* is based solely on the
8 CDE’s general supervisory duties under the IDEA; it does not necessarily fulfill the State’s more
9 demanding duties under the State constitution to correct interdistrict disparities and integrate
10 schools.² *Accord* ¶ 97 (“Although the State has flagged the District as needing intensive
11 monitoring and intervention for multiple years, it has only flagged the District on a small subset
12 of the issues described in this Writ and Complaint.”). If proved at trial, these allegations impose
13 on the State additional obligations, separate from monitoring duties, to prevent and remedy
14 constitutional violations.

15 Further, unlike the federal IDEA, the California Constitution grants students, including
16 Student Plaintiffs and other students in Pittsburg Unified, a fundamental right to equal
17 educational opportunity that meets prevailing statewide standards, including an opportunity to
18 meet the state academic content standards. *See Butt v. State*, 4 Cal. 4th 668, 686-87 (1992).
19 Inherent to this fundamental right to equal educational opportunity is the right to attend
20 integrated schools where students of different racial identities and disability status learn together.
21 *See, e.g., Collins v. Thurmond*, 41 Cal. App. 5th 879, 896-97 (2019). Moreover, the California
22 Constitution imposes more demanding duties on the State. While the federal IDEA does not
23 require that the State directly provide services with respect to individual students with
24 disabilities, 20 U.S.C. § 1412(b), the California Constitution places on the State and its agents a
25 singular and non-delegable duty to “correct basic ‘interdistrict’ disparities in the system of
26 common schools, even when the discriminatory effect was not produced by the purposeful

27 ² Indeed, the *Emma C.* Court has overlooked multiple flaws in the monitoring system on the
28 basis that the IDEA does not require specific monitoring actions. *See, e.g., Emma C.*, Dkt. No.
2520, at 25 (“Neither the monitor nor the plaintiffs have identified a legal basis [in the IDEA] for
requiring the state to analyze these data . . .”).

1 conduct of the State or its agents.” *Butt*, 4 Cal. 4th at 681 (holding that the State of California is
2 “the entity with ultimate responsibility for equal operation of the common school system”).

3 Beyond the special education claims, Plaintiffs also bring claims of discrimination on the
4 basis of race, ethnicity, national origin and language status under the California Constitution and
5 state law, none of which are at issue in *Emma C.* See Compl. ¶¶ 4.b., 6, 9-11, 13, 15-21, 44-49,
6 56, 60, 73-81, 84-86, 92. Specifically, Plaintiffs allege that Black students, Native American
7 students, multiracial students, and disabled students are routinely disproportionately disciplined
8 through suspension, expulsion, involuntary transfer, and referrals for “mental health crisis” out
9 of school or into inferior classrooms at rates significantly greater than their enrollment and
10 compared to other student groups in the District. ¶¶ 15-17, 60, 75-78, 80-81. Plaintiffs further
11 allege that Black, multiracial, and English learner students are disproportionately identified as
12 having disabilities, or more severe disabilities, at rates greater than their enrollment and
13 compared to other student groups in the District, ¶¶ 11, 13, 46-47, and that Black and English
14 learner disabled students, in particular, are segregated into inferior classroom settings where they
15 are refused access to evidence-based learning strategies and statewide academic content
16 standards. ¶¶ 6-7, 12, 54-56, 59-60, 64, 66-72, 84-89, 91. These allegations support Plaintiffs’
17 claims of unlawful discrimination under state law, which are not at issue in *Emma C.*, and cannot
18 be remedied by compliance with the IDEA through the *Emma C.* litigation. *Accord Clark’s Fork*
19 *Reclamation Dist. # 2069 v. Johns*, 259 Cal. App. 2d 366, 370 (1968) (issues that “clearly are
20 matters of state law” were proper for resolution in State court despite existence of federal
21 litigation).

22 Defendants’ citation to *Caiafa Professional Law Corp. v. State Farm Fire & Casualty*
23 *Co.*, 15 Cal. App. 4th 800, 804 (1993), is inapposite. *Caiafa* involved substantially identical
24 parties pursuing the same subject matter in state and federal court. The plaintiff in the federal
25 matter was the same company as the defendant in the state matter. Moreover, the subject matter
26 in the later-filed state case could have been resolved in the federal action and was therefore
27 within the state court’s discretion to stay. *Id.* at 806-07. Similarly, *Morgan Hill Concerned*
28 *Parents Ass’n v. California Department of Education*, another case cited by State Defendants,
was originally filed in federal court, and was primarily focused on IDEA claims against the CDE

1 to enforce its monitoring and investigation obligations under the IDEA—the same causes of
2 action and same defendant as in *Emma C.* First Amended Compl. for Declaratory and Injunctive
3 Relief, No. 2:11-cv-03471-KJM-AC (N.D. Cal., Apr. 23, 2012), 781 Fed. Appx. 666, 666-67
4 (2019). Here, Plaintiffs, the State of California, and Pittsburg Unified are not parties to the
5 federal action in *Emma C.*, which will not and cannot decide the state constitutional and statutory
6 issues in this case.³ Finally, Plaintiffs here seek different remedies—injunctive relief and
7 statutory damages to remedy interdistrict disparities and segregation in violation of distinct state
8 constitutional and statutory laws, including California’s prohibition on intentional and
9 unintentional race discrimination. Accordingly, the Court should exercise its discretion to deny
10 State Defendants’ request for a stay.

11 **II. The Court Should Exercise its Discretion to Deny State Defendants’ Requested Stay**
12 **Because The *Farmland* Factors Weigh Uniformly Against a Stay.**

13 Even if, as a threshold matter, the earlier-filed case did cover the same subject matter,
14 which it does not, the factors in *Farmland* do not support the issuance of a stay of this litigation.

15 First, the instant lawsuit was not brought to harass State Defendants. *Farmland*, 48 Cal.
16 2d at 215 (stating that “[i]n exercising its discretion the court should consider the importance of
17 discouraging **multiple litigation designed solely to harass** an adverse party.”) (emphasis
18 added). Rather, Plaintiffs brought this suit to enforce their rights and to attempt to improve the
19 quality of education and services they receive. Specifically, Plaintiffs brought the action to
20 challenge the State’s failure to fulfill its constitutional duty to remedy Pittsburg Unified’s
21 discriminatory special education system, which overidentifies Black and English learner students
22 as having disabilities, segregates students with disabilities—particularly Black and English
23 learner students, and fails to provide evidence-based instruction tied to California’s academic
24 content standards to students with disabilities in both special education and general education
25 settings. Plaintiffs also challenge the State’s failure to remedy PUSD’s discriminatory discipline
26 system, including its excessive and exclusionary discipline of Black, Native American, and
27

28 ³ Because sovereign immunity protects states from suit in federal court, the law required
Plaintiffs to file this case in California state court. *Pennhurst State Sch. & Hosp. v. Halderman*,
465 U.S. 89, 100 (1984).

1 Multiracial students and students with disabilities. State Defendants concede this prong by
2 failing to introduce any evidence that Plaintiffs brought this suit to harass State Defendants.
3 Therefore, the Court should find that the first *Farmland* factor weighs against staying the instant
4 action.

5 Second, this suit will not present an “unseemly conflict” with the *Emma C.* court
6 because—as discussed in section I(b) above—Plaintiffs, Pittsburg Unified, and the State of
7 California are not parties to the federal litigation, and this case seeks to hold the State
8 accountable to its more demanding duties under the State constitution, while *Emma C.* concerns
9 the CDE’s obligations under a consent decree made pursuant to the IDEA. *See, e.g., Mave*
10 *Enters. v. Travelers Indem. Co.*, 219 Cal. App. 4th 1408, 1425-26 (2013); *Gregg v. Superior*
11 *Court*, 194 Cal. App. 3d 134, 138 (1987).

12 Third, the Plaintiffs’ constitutional rights and the State Defendants’ constitutional
13 obligations in the instant suit cannot—and should not—be determined by the *Emma C.* court. It
14 would not be in the interests of justice to stay this action pending resolution of *Emma C.* when
15 that matter does not involve state constitutional claims. Furthermore, in the present case,
16 Plaintiffs would be unable to file their current claims against the State of California in *Emma*
17 *C.*’s federal forum due to sovereign immunity. *See Pennhurst State Sch. & Hosp. v. Halderman*,
18 465 U.S. 89, 100 (1984). While *Emma C.* may address the CDE’s minimum obligations under
19 the IDEA, which is not a claim at issue in this case, the State has different and higher obligations
20 under the California Constitution. Plaintiffs’ lawsuit concerns only the later.

21 **CONCLUSION**

22 For the aforementioned reasons, Plaintiffs respectfully request that this Court deny State
23 Defendants’ Motion to Stay all claims against the CDE pending resolution of the *Emma C.*
24 litigation in the United States District Court for the Northern District of California.

25 Date: February 1, 2022



26 Malhar Shah
27 Claudia Center
28 DISABILITY RIGHTS EDUCATION AND
DEFENSE FUND

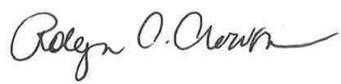
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Linnea Nelson
Grayce Zelphin
Brandon Greene
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA



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



Robyn Crowther
Amanda C. Schwartz
STEPTOE & JOHNSON LLP