



Northern  
California

Transmitted via Electronic Mail

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Rob Bonta, Attorney General  
California Department of Justice  
1515 Clay Street  
Oakland, CA 94612-1499  
[Rob.Bonta@doj.ca.gov](mailto:Rob.Bonta@doj.ca.gov)

**Re: Oakland Unified School District's school closure plan violates constitutional and statutory civil rights protections for Black students and laws guaranteeing public transparency in the operation of government agencies.**

Dear Attorney General Bonta:

Complainant, Justice for Oakland Student Coalition (J4OS), brings this complaint in response to Oakland Unified School District's February 8, 2022 resolution to rapidly and discriminatorily close seven schools beginning in June 2022.<sup>1</sup> These school closures disproportionately impact Black students and were passed in purposeful evasion of a required racial equity analysis.

Following a disturbing twenty-plus year pattern of Oakland Unified School District (hereinafter, "OUSD" or "District") school closures, **most** of the schools set for closure in the District's February 2022 plan are majority-Black student schools. In six of the seven schools slated for closure, Black students are either the majority of students enrolled in the school ("majority-Black") or are enrolled at higher-than-districtwide percentages: Grass Valley Elementary (65%), Community Day School (58%), Parker Elementary (52%), Carl B. Munck Elementary (51%), Horace Mann Elementary (29%), and Brookfield Elementary (23%).<sup>2</sup> Districtwide, Black students comprised 21.7% of students enrolled in 2020-21 school year. District Superintendent Johnson-

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<sup>1</sup> The District's February 8, 2022 Resolution also aims to eliminate grades sixth through eighth in La Escuelita Elementary School and Hillcrest Elementary School, and to merge RISE Community School into New Highland Academy Elementary. Resolution of the Board Of Education of OUSD, Res. No. 2122-0030, School Consolidations for 2022-23 and 2023-24 (Feb. 8, 2022), on file with complainants ("Feb. 8 Resolution").

<sup>2</sup> *Id.*; DataQuest, *2020-21 Enrollment by Ethnicity: Oakland Unified Report*, Cal. Dep't of Educ., available at: <https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthLevels.aspx?cds=0161259&agglevel=district&year=2020-21> (last accessed Apr. 6, 2022) (listing enrollment by ethnicity broken down by each school in the District).

American Civil Liberties Foundation of Northern California

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Farah Brelvi

SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111

FRESNO OFFICE: PO Box 188 Fresno, CA 93707 • SACRAMENTO METRO OFFICE: PO Box 189070 Sacramento, CA 95818  
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • [WWW.ACLUNC.ORG](http://WWW.ACLUNC.ORG)

Trammell herself has admitted that “African-American students and families will be the **most affected** by these recommendations [in the school closures plan].”<sup>3</sup> (emphasis added).

In March 2021, the OUSD Board directed the Superintendent “to work with the [Black Student and Families Thriving Task Force] to develop an equity impact analysis of any proposed closures, mergers, or consolidations of District schools, prior to any vote on school changes pursuant to the Blueprint for Quality Schools” as part of its Reparations for Black Students Resolution. However, the terms of OUSD’s school closure resolution in January 2022 exempted the District from this requirement, demonstrating knowledge and intent to discriminate and fatally undermining this March 2021 equity mandate. Furthermore, Board President Gary Yee himself admitted that **no** equity impact analysis was conducted during a recorded Zoom conversation with his constituents in early February 2022.<sup>4</sup> The District Board quickly passed its resolution, shutting down and ignoring opposition from parents, students, teachers, and community members highlighting the profound disparate racial impact of the planned closures. The Board willfully targeted Black schools for closure and merger, without explanation.

This complaint alleges that the District is engaging in unlawful racial discrimination against Black students and families. The well-documented pattern of OUSD’s anti-Black racist policies and practices demonstrate that its actions here are intentional. As detailed below, OUSD’s intended closures harms **thousands** of OUSD parents, students, and teachers, including Rochelle Jenkins, DeAdrian Jones, Ariel Loudd, Monique Marshall, Holly Shogbesan, Gia Stevenson, Azlinah Tambu, and their students—who will be deprived of equal educational opportunity if the closures are allowed to happen. We therefore respectfully ask the California Department of Justice Bureau of Children’s Justice to investigate OUSD’s actions, and require the District rescind its February 8, 2022 resolution and enjoin it from further unlawful racially discriminatory school closures.

## I. Complainant

**Justice for Oakland Student Coalition (J4OS)** is a multi-racial, intergenerational, collaborative group that was formed to create a movement-building vehicle for educational justice in Oakland. Established in 2016, its membership includes students, parents and family members, teacher allies, and organizations working to increase equity for low-income students of color in OUSD. The organizations who are part of J4OS include: Oakland Kids First (OKF), Bay Area Parent Leadership Action Network (PLAN), Parents United for Public Schools (Parents United), Oakland Education Association (OEA), Teachers for Social Justice (T4SJ), Educators for Democratic

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<sup>3</sup> Annie Sciacca, *Parents, teachers sound off against Oakland Unified’s plan to close or merge 16 schools*, THE MERCURY NEWS (Feb. 4, 2022), <https://www.mercurynews.com/2022/02/01/school-families-teachers-lament-oakland-unified-plan-to-close-or-merge-15-schools>; OUSD Bd. of Educ. Meeting, *Video*, at 12:24-12:31 (Jan. 31, 2022), available at: [http://ousd.granicus.com/player/clip/2040?view\\_id=4&redirect=true](http://ousd.granicus.com/player/clip/2040?view_id=4&redirect=true) (“Jan. 31 Meeting”).

<sup>4</sup> “I am embarrassed to say that there has been no equity analysis that I know of, to date.” Constituent Meeting with Dr. Gary Yee, President, OUSD Bd. of Educ., *Recording*, at 34:15-34:23 (Feb. 4, 2022), on file with complainants.

Schools (EDS), Asian/Pacific Islander Youth Promoting Advocacy and Leadership (AYPAL), Equity Allies (EA), and Parent Voices Oakland (PVO).

J4OS represents thousands of students, parents, caregivers, and teachers throughout Oakland, including many parents, students, and teachers who are directly impacted by OUSD's planned closures. Among them are:

- **Rochelle Jenkins**, a Black Oakland resident and parent of Zoraya and Zariah, two sixth-grade students at Parker Elementary School that the District intends to close in June 2022. Zoraya and Zariah are currently able to walk to school with their elder brother, but if Parker is closed as planned, they will not have safe transportation to an alternative OUSD school.
- **DeAdrian Jones**, a Black Oakland resident and parent of Monae, an eight-year-old student at Parker Elementary School. DeAdrian is unsure how Monae will get transportation to a new school, as Parker is walking distance from their home and Monae would be in increased danger walking to a new school that is much farther away.
- **Azlinah Tambu**, an Oakland resident and parent of two Black students at Parker Elementary School. Parker is their neighborhood school, and Azlinah is able to walk her daughters Samira and Nasirah to the school when her car is not working. There are no other OUSD elementary schools within safe walking distance of their home.
- **Ariel Loudd**, a Black Oakland resident and parent of two children assigned to Grass Valley Elementary School, which the District intends to close next year. Her children used to be enrolled at Howard Elementary School, but they changed schools after Howard was targeted for closure and then co-located with the Francophone Charter School. Ariel plans to homeschool her children because of the impending Grass Valley closure and continuous disruptions by OUSD school closures.
- **Monique Marshall**, a Black Oakland resident and parent. Two of her children, Isaiah and Messiah, attend Brookfield Elementary School, which the District intends to close next year. Brookfield is a five-minute walk from their home and, if it closes, Isaiah and Messiah will no longer be able to attend an OUSD school and will be homeschooled.
- **Holly Shogbesan** is a Black OUSD teacher and parent of Ayo, a kindergartener who attends Carl B. Munck Elementary School, which the District intends to close next year. Currently, Ayo takes an OUSD bus after school to Montera Middle School, where Holly works, because Ayo is unable to attend an after-school program due to his need for additional support not provided after school. Closing Carl B. Munck will make transportation very difficult for Ayo and his family, will likely exacerbate Ayo's disability, and may force Holly to leave her current job.
- **Gia Stevenson**, a Black Oakland resident and parent. Gia has one child who graduated from Brookfield Elementary School and one child, Gianna, who is currently enrolled there. Because they live close to Brookfield, Gianna currently walks to school with her brother

and father. If Brookfield closes, Gianna will have no safe way to get to an alternative OUSD school.

- **Joel Velasquez**, an Afro-Latino Oakland resident and parent of three children. Two of his children, Teyolia and Zaquiell, attended Lakeview Elementary School until 2012, when the District closed Lakeview and allowed a charter school to open in its place. Teyolia and Zaquiell were then transferred to Westlake Middle School and La Escuelita Elementary School, respectively. Both of those schools have since been targeted and considered for closure. For Joel, the school closure of Lakeview “broke up the community” to the detriment of his children’s education, as relationships were severed and only around 25 percent of Lakeview students went to the assigned receiving school, which was six miles away in East Oakland.
- **Sheila**, a Black Oakland resident and parent of James, a student currently enrolled in the Sojourner Truth Independent Study Program. James attended Charles P. Howard Elementary School until the District closed the Special Day Class Program there and James was transferred to Burckhalter Elementary School, where he had a traumatic experience. Sheila moved James to Sankofa Academy but then heard that it may be closed because it was a majority-Black school in a gentrifying neighborhood. James is currently enrolled in an independent study program due to COVID concerns. The constant disruption of Black special education students in OUSD due to school closures and program relocations makes Sheila unsure when or if James will return to an in-person school setting.

## II. Historical Background

### A. The Historical Rise and Current Push Out of the Black Community in Oakland

The City of Oakland, California was first inhabited by the Costanoan or Chochenyo-speaking Ohlone people before being colonized, and it has since undergone several dramatic demographic shifts.<sup>5</sup> In recent history, from the 1940s until 1980s, Oakland became recognized as the cornerstone of Black American progress and resistance. However, more recent still, from 2000 to the present, Oakland has become synonymous with skyrocketing housing prices, rapid gentrification, and a declining Black population.<sup>6</sup> The history of Black Oakland, and city policies stemming from anti-Black racism, are directly responsible for the demographic decline of

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<sup>5</sup> The Eds. of Encyclopedia Britannica, *Oakland: California, United States*, BRITANNICA (last updated Mar. 1, 2022), available at: <https://www.britannica.com/place/Oakland-California>; Michell Schwarzer, *Hella Town: Oakland’s History of Development and Disruption* 8 (UNIV. OF CAL. PRESS, Sept. 28, 2021).

<sup>6</sup> Andrew Chamings, *Study: San Francisco and Oakland are the most gentrified cities in the US*, SFGATE (July 6, 2020), available at: <https://www.sfgate.com/local/article/San-Francisco-Oakland-most-gentrified-cities-in-US-15389147.php>.



Oakland’s Black community and are directly tied to—and exacerbated by—the closure of Oakland’s historically-Black schools.<sup>7</sup>

The first East Bay census, taken in 1852 when the city was founded, recorded that five African American men,<sup>8</sup> one African American woman, and eight foreign-born Black men lived in Oakland.<sup>9</sup> Once the transcontinental railroad was completed in 1869 with Oakland as its western terminus, the city’s African American population grew steadily.<sup>10</sup> Leading up to the Second World War, the city became home to Black migrants seeking work in the city’s factories and escaping from the Jim Crow South. Oakland employers’ willingness to hire Black workers and a desire to escape from explicit segregation in the American South were a strong draw, and the city quickly benefited. From 1940 to 1950, Oakland’s Black population grew by over five hundred percent (from 8,462 to 47,562) and by 1960, it reached 83,618.<sup>11</sup> By 1980, Oakland had become nearly majority Black.<sup>12</sup>

The early 1940s spike in new Black residents led to the development of West Oakland’s historic Seventh Street corridor, a centerpiece of Black commerce and culture in the 1940s that included a bustling commercial district lined with Black-owned businesses. A vibrant nightlife scene that drew nationally known musicians, such as B.B. King and Sarah Vaughn, helped foster the city’s legendary jazz scene and the birth of West Coast blues.<sup>13</sup> The city was diverse, and white and Black Oakland residents of differing socioeconomic statuses frequently lived in close proximity. However, in Oakland, as in cities across the nation, the 1940s and 50s federal housing policy of redlining quickly altered the city’s multi-racial trajectory. One map, prepared by the federally-backed Home Owners’ Loan Corporation (“HLOC”) in 1937 described Oakland as: “occasionally there are several blocks which are practically free of coloreds or Orientals, but...certain

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<sup>7</sup> “Historically Black” schools are defined as “an OUSD school with 40% or more of African American students enrolled in 2020-21.” Resolution of the Board of Education of the OUSD, Res. No. 2021-0037, Reparations for Black Students (Second Revision, As Amended) 5 (adopted Mar. 24, 2021) (“Reparations for Black Students Resolution”), available at <https://drive.google.com/file/d/1bFdXHfR32fCBpD0rCJITgEkkrCzEqyGL/view>.

<sup>8</sup> Throughout this letter “Black” and “African American” are used interchangeably, with the term used to conform to the usage in the source(s) cited.

<sup>9</sup> Dorothy Lazard, *African Americans Establish a Growing Community in Early Oakland*, MEDIUM (Feb. 26, 2019), available at: <https://medium.com/@Oakland/african-americans-establish-a-growing-community-in-early-oakland-cd946b519aee#:~:text=In%20those%20early%20days%2C%20African,African%20American%20population%20grew%20steadily>.

<sup>10</sup> *Id.*

<sup>11</sup> Nicole Montoji, *Understanding Rising Inequality and Displacement in Oakland*, KCET (Sept. 13, 2017), available at: <https://www.kcet.org/shows/city-rising/understanding-rising-inequality-and-displacement-in-oakland>.

<sup>12</sup> Schwarzer, *supra* n.5.

<sup>13</sup> CITY OF OAKLAND, *Oakland’s History of Resistance to Racism*, available at: <https://www.oaklandca.gov/topics/oaklands-history-of-resistance-to-racism> (last accessed Apr. 6, 2022).

blocks...are nearly 100% Negro and constantly spreading.”<sup>14</sup> Based on that assessment, large swaths of Oakland were assigned the HOLC’s worst loan-risk grade, meaning people in the area could not qualify for federally guaranteed loans to buy, build, or renovate housing.<sup>15</sup> This explicitly excluded the Black community from the wealth-building opportunity of homeownership.

Redlining, combined with other discriminatory policies, such as racial covenants,<sup>16</sup> quickly eroded the early progress and success of a burgeoning Black middle class in the Bay area, as it pulled investments and resources out of Oakland while restricting the movement of Black residents into other areas.<sup>17</sup> White Oakland residents began to abandon mixed-race neighborhoods, seeking residence in suburbs where loans were accessible to them and where property sale to Black Oaklanders was prohibited. These neighborhoods typically also required access to expensive automobile transportation. Census data shows that Oakland’s white population fell from 86 percent of all residents in 1950 to 59 percent by 1970—equivalent to a loss of 115,285 residents and much of the city’s tax base.<sup>18</sup> This exodus of money from Oakland spurred a wave of urban decay.<sup>19</sup>

In what was framed as an attempt to prevent decline caused by “white flight” or suburbanization, policymakers sought to remake the city through what has become known as “Urban Renewal.” Development initiated under this banner caused many Black families to lose their homes through eminent domain, by which the government claimed properties—often owned by Black residents—to clear the way for new infrastructure intended to serve the “public good.”<sup>20</sup> Urban Renewal projects in the 1960s through 1980s devastated Oakland’s low-income communities of color, further perpetuating racial segregation and inequality. City officials constructed freeways, train tracks, and federal buildings that literally destroyed homes and tore neighborhoods apart.<sup>21</sup> In response to this inequity, Oakland became home to massive demonstrations and civil unrest that

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<sup>14</sup> Brock Winstead, *There Goes the Neighborhood, Again: A gentrifier digs deep into his new home’s past in pursuit of its true historic owners.*, THE SLATE GROUP (Feb. 9, 2015), available at: [http://www.slate.com/articles/news\\_and\\_politics/history/2015/02/gentrification\\_in\\_oakland\\_a\\_new\\_arrival\\_digs\\_deep\\_into\\_california\\_s\\_history.html](http://www.slate.com/articles/news_and_politics/history/2015/02/gentrification_in_oakland_a_new_arrival_digs_deep_into_california_s_history.html).

<sup>15</sup> *Id.*

<sup>16</sup> During the late-nineteenth and twentieth century, racially-restrictive deeds were a ubiquitous part of real estate transactions. Covenants were embedded in property deeds all over the country to keep people who were not white from buying or even occupying land. Eli Moore, et al., *roots, race, & place: A History of Racially Exclusionary Housing in the San Francisco Bay Area*, HAAS INST. FOR A FAIR AND INCLUSIVE SOC’Y 35 (Oct. 2, 2019), available at: [https://escholarship.org/content/qt2j08r197/qt2j08r197\\_noSplash\\_eecbec55456f21df8cb302a7b292855a.pdf?t=qc30qt](https://escholarship.org/content/qt2j08r197/qt2j08r197_noSplash_eecbec55456f21df8cb302a7b292855a.pdf?t=qc30qt).

<sup>17</sup> Angela Rowen, *Black Oakland’s Story*, A CHANGING OAKLAND, available at: <https://oaklandherenow.com/blackoakland> (last accessed Apr. 6, 2022).

<sup>18</sup> Montoji, *supra* n.11.

<sup>19</sup> CITY OF OAKLAND, *supra* n.13.

<sup>20</sup> Montoji, *supra* n.11.

<sup>21</sup> Sam Levin, *‘We’re being pushed out’: the displacement of black Oakland*, THE GUARDIAN (June 1, 2018), available at: <https://www.theguardian.com/us-news/2018/jun/01/from-black-panthers-to-bbq-becky-the-displacement-of-black-oakland>.

paved the way for the Civil Rights Acts, which made it a federal crime to discriminate against someone based on their race, color, sex, religion, or national origin in employment and housing. Community groups born in the 1960s like the Black Panther Party, Oakland Community Organizations (PICO/OCO), Unity Council, Intertribal Friendship House, and many others organized and demanded protections and equal access to jobs, housing, employment, transportation, and services.<sup>22</sup> These organizations set the national tone for Black community empowerment, and many of them were systematically targeted by law enforcement.<sup>23</sup>

By 1980, the majority of Oaklanders were people of color. According to the census, the city was 47 percent Black/African American, 8.3 percent Asian or Pacific Islander, 9.5 percent Hispanic/Latino, and 0.8 percent Native American compared to 38.6 percent white. Racial inequalities clearly manifested in both population outcomes and the city's built environment—which divided racial groups geographically, with white residents in the Oakland hills and Black residents segregated in West Oakland and the flatlands.<sup>24</sup> In terms of family income, the average among Whites was \$27,535 compared to \$16,908 among Blacks/African Americans, \$18,550 among Hispanics/Latinos, \$17,365 among Native Americans, and \$23,666 among Asians or Pacific Islanders. Communities of color also faced higher unemployment rates; for example, unemployment during this time among the Black and Latino populations reached 12.8 percent and 11.7 percent, respectively, compared to 5.6 percent among the White population.<sup>25</sup>

From the 1990s to 2010s, the dot-com boom jolted the Bay Area housing market and, combined with eventual retraction from redlining policies (officially made illegal in 1968) and rising crime, pushed middle-class Black Oaklanders to leave the city to pursue better schools and housing opportunities outside of the Bay Area region. Meanwhile, the rapid growth of the Silicon Valley-based technology industry drew in more and more skilled and well-resourced residents (predominantly white), which further escalated housing prices. Oakland's Black population declined steadily from 44 percent in 1990 to 36 percent in 2000 to 28 percent in 2010 to 24 percent in 2020. From 2000 to 2010, Oakland's Black population decreased by 24 percent, a loss of 33,502 residents; and a loss of 54,003 residents and a 33.6 percent decline since 1990.<sup>26</sup>

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<sup>22</sup> Howard Zinn, *A Peoples History of the United States* 126-210 (LONGMAN GROUP UK LIMITED, 1980), available at: [https://library.uniteddiversity.coop/More\\_Books\\_and\\_Reports/Howard\\_Zinn-A\\_peoples\\_history\\_of\\_the\\_United\\_States.pdf](https://library.uniteddiversity.coop/More_Books_and_Reports/Howard_Zinn-A_peoples_history_of_the_United_States.pdf); NATIONAL ARCHIVES, *The Great Migration (1910-1970)* (June 28, 2021), available at: <https://www.archives.gov/research/african-americans/migrations/great-migration>.

<sup>23</sup> Law enforcement agencies attempted to “disrupt, discredit, and neutralize” Black organizers via unscrupulous tactics, such as the Federal Bureau of Investigation’s COINTELPRO project. Mike German, *The FBI has a history of targeting black activists. That’s still true today*, THE GUARDIAN (June 26, 2020), available at: <https://www.theguardian.com/commentisfree/2020/jun/26/fbi-black-activism-protests-history>.

<sup>24</sup> Montoji, *supra* n.11; Schwarzer, *supra* n.5, at 8.

<sup>25</sup> Montoji, *supra* n.11.

<sup>26</sup> Kalima Rose & Margaretta Lin, *A Roadmap Toward Equity: Housing Solutions for Oakland, California*, CITY OF OAKLAND DEP’T OF HOUSING & CMTY. DEV.’S STRATEGIC INITIATIVES UNIT

Unfortunately, for those Black Oaklanders that did not leave the city, the number of evictions soared and furthered wealth extraction as landlords used the Ellis Act, owner move-in provisions, capital improvement projects, and other tactics to circumvent Oakland's rent control and tenant protection ordinances. This created an eviction crisis, which has led to unprecedented double-digit increases in houselessness and to a further weakening of the economic position and social mobility of longstanding Black Oakland residents struggling to meet rent increases. This economic and social strain has been exacerbated, and Black population decline encouraged, by Oakland's recent history of school closures squarely concentrated among neighborhoods with majority Black populations (discussed at length below). Such closures of neighborhood schools in Black communities have been directly linked to an increase and acceleration of gentrification and Black push out, which is unarguably the reality in Oakland.<sup>27</sup>

## **B. Oakland School Board Initiatives and School Closures 2000-2019**

### **1. OUSD Policies Set Black Students and Black Schools up for Failure by Underfunding and Mismanagement**

Over the past two decades there have been a number of reforms targeting OUSD. One of the most prominent reforms, and one that is a precipitating factor for the current economic situation the District finds itself in, is the Small Schools Initiative. The District supposedly implemented the Small Schools Initiative to support students in low-socioeconomic and predominantly Black communities. However, OUSD's systematic underfunding and neglect of this initiative, in fact, laid the groundwork for its current targeting of smaller, predominantly Black schools for closure and further disruption **because** they are small and under-resourced.

The genesis of the Small Schools Initiative in Oakland can be traced back to the organizing efforts of Oakland Community Organizations (OCO) and the Bay Area Coalition for Equitable Schools (BayCES).<sup>28</sup> OCO and BayCES derived the idea for "small autonomous schools" in part from a similar initiative in New York City.<sup>29</sup> In 1996, BayCES launched a Small Schools Initiative with

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& POLICYLINK 8 (July 7, 2015), available at: <https://www.policylink.org/sites/default/files/pl-report-oak-housing-070715.pdf>.

<sup>27</sup> Francis A. Pearman, II. & Danielle Marie Greene, *School Closures and the Gentrification of the Black Metropolis*, STANFORD CTR. FOR EDUC. POL'Y AND ANALYSIS (Feb. 2022), available at: <https://cepa.stanford.edu/sites/default/files/wp21-02-v022022.pdf>.

<sup>28</sup> Eva Gold, et al., *Strong Neighborhoods, Strong Schools: The Indicators Project on Education Organizing*, RSCH. FOR ACTION 7 (Mar. 2002), available at: [https://www.researchforaction.org/wp-content/uploads/2021/07/Gold\\_E\\_Strong\\_Neighborhoods\\_Strong\\_Schools\\_OCO-1.pdf](https://www.researchforaction.org/wp-content/uploads/2021/07/Gold_E_Strong_Neighborhoods_Strong_Schools_OCO-1.pdf).

<sup>29</sup> A number of OCO members read Deborah Meier's book, which spotlights successes at Central Park East schools in East Harlem, New York to advocate for the creation of smaller schools elsewhere. Deborah Meier, *The Power of Their Ideas: Lessons for America from a Small School in Harlem* (BEACON PRESS, Aug. 16, 2002); Roberta Furger, *Oakland's Big Plans: Small-School Reform*, EDUTOPIA (Apr. 29, 2003), available at: <https://www.edutopia.org/oaklands-big-plans-small-schools>.



the goal of “creating smaller, more personalized schools in which each student would be known well and fully supported to learn and thrive.”<sup>30</sup> By spring of 2000, BayCES had formulated a small schools policy proposal and OCO was working with elected and school officials to garner support for the project.<sup>31</sup>

In 2000, the OUSD School Board unanimously approved a small schools proposal known as the New Small Autonomous Schools policy.<sup>32</sup> Through this policy, the District aimed to create ten new small, autonomous schools with between 250-500 students over a three year period.<sup>33</sup> The policy gave the new small schools authority over “budget, governance, calendar and schedule, and curriculum/instruction...as well as staffing and facilities design.”<sup>34</sup> With the passage of the New Small Autonomous Schools policy, BayCES’s Small Schools Initiative became OUSD’s official school reform agenda. Following the passage of the Small Schools Initiative agenda, the District opened nine schools over the course of three years—more than it had opened in the previous twenty years.<sup>35</sup> To support the District’s implementation efforts, BayCES and OCO received funding from a variety of philanthropic sources, including a \$15.7 million grant from the Bill & Melinda Gates Foundation.<sup>36</sup>

In 2003, just three years into implementation of the Small Schools Initiative, the District was placed in receivership by the State of California.<sup>37</sup> This takeover came at the revelation of a \$35 million deficit. Over \$17 million in budget cuts were approved and over six hundred teachers, counselors and supporting staff were laid off.<sup>38</sup> The District was extended a line of credit of over

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<sup>30</sup> BAY AREA COAL. FOR EQUITABLE SCHS., *Transforming Urban Schools*, available at: [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiTwOXChL\\_2AhU2GzQIHQyeDOEQFnoECAUQAQ&url=https%3A%2F%2Fwww.guidestar.org%2FViewEdoc.aspx%3FDocId%3D1208123%26approved%3DTrue&usg=AOvVaw2Z9rIO9lQE3rimTmeez8HX](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiTwOXChL_2AhU2GzQIHQyeDOEQFnoECAUQAQ&url=https%3A%2F%2Fwww.guidestar.org%2FViewEdoc.aspx%3FDocId%3D1208123%26approved%3DTrue&usg=AOvVaw2Z9rIO9lQE3rimTmeez8HX) (last accessed Apr. 6, 2022).

<sup>31</sup> Gold, *supra* n.28, at 9.

<sup>32</sup> Seema Shah, et al., *Building a Districtwide Small Schools Movement: Oakland Community Organizations*, ANNENBERG INST. FOR SCH. REFORM 14 (Apr. 2009), available at: <https://www.yumpu.com/en/document/read/16901018/building-a-districtwide-small-schools-movement-annenberg->.

<sup>33</sup> EDUC. RES. INFO. CTR., *New Small Autonomous Schools District Policy. Revised.*, (May 16, 2000), available at: <https://eric.ed.gov/?id=ED467119>.

<sup>34</sup> Lili Allen & Adria Steinberg, *Big Buildings, Small Schools: Using a Small Schools Strategy for High School Reform*, JOBS FOR THE FUTURE (Dec. 2004), <https://files.eric.ed.gov/fulltext/ED486156.pdf>.

<sup>35</sup> Matthew Green, *Why Does Oakland Have so Many Small Schools?*, KQED (Feb., 15, 2019), available at: <https://www.kqed.org/news/11726682/why-does-oakland-have-so-many-small-schools>.

<sup>36</sup> Shah, *supra* n.32, at 14.

<sup>37</sup> Sawson Morrar, *Oakland Unified’s journey: When the state stepped in, ‘we lost all local control’*, THE SACRAMENTO BEE (May 20, 2019), available at: <https://www.sacbee.com/news/local/education/article230409779.html>.

<sup>38</sup> *Id.*

\$100 million dollars—“the largest school district bailout in California history.”<sup>39</sup> While the District was in state receivership, from 2003 to 2009, twelve school campuses were permanently closed and several additional rounds of layoffs occurred.<sup>40</sup> These events led some Oaklanders to see the state as an occupying or colonizing force.<sup>41</sup>

While the Small Schools Initiative was being implemented and receiving substantial financial support from philanthropic organizations, the District proceeded with a parallel reform introduced in 2004: Results Based Budgeting (“RBB”). This new budgeting format, in part a response to the District being under state receivership, was promoted as “a strategy to increase equity, transparency, autonomy, and accountability throughout the district.”<sup>42</sup> Functionally, this meant that student funding allocations changed significantly: “RBB directs dollars to schools and gives each school community the flexibility to decide how it will spend its dollars.”<sup>43</sup> The impact of RBB, also known as Student Centered Funding, is that schools with lower enrollment receive less funding, which starts a downward spiral of under-resourcing schools, causing more families to leave, which causes even greater under-resourcing and lost enrollment.<sup>44</sup>

The combination of the Small Schools Initiative and RBB created the perfect storm. From 2000 to 2009, the District opened 49 new schools.<sup>45</sup> This proliferation was in addition to the dramatic increase of 38 new independent charter schools within the District.<sup>46</sup> Though the Small Schools Initiative had some successes, the exodus of students to the newly opened charter schools would prove disastrous for the most under-resourced communities of Oakland.<sup>47</sup>

“...by 2009, just as the district regained local control, it again found itself sliding into deep financial trouble, in large part because thousands of students were transferring into the many charter schools that had recently emerged throughout

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*; Eight Cities, *Oakland, California*, BELLWETHER EDUC. PARTNERS, available at: <https://www.eightcities.org/blog/oakland-california> (last accessed: Apr. 7, 2022).

<sup>41</sup> Morrar, *supra* n.37.

<sup>42</sup> OUSD, *Results-Based Budgeting*, available at: [https://www.ousd.org/cms/lib07/CA01001176/Centricity/Domain/14/ousd\\_RBB\\_caselet\\_rev1.pdf](https://www.ousd.org/cms/lib07/CA01001176/Centricity/Domain/14/ousd_RBB_caselet_rev1.pdf) (last accessed Apr. 6, 2022).

<sup>43</sup> *Id.*

<sup>44</sup> Jack Ross, *Will LAUSD’s New Funding Plan Help the ‘School Choice’ Movement?*, CAPITAL & MANN (Sept. 10, 2021), available at: <https://capitalandmain.com/will-lausds-new-funding-plan-help-the-school-choice-movement>.

<sup>45</sup> Green, *supra* n.35.

<sup>46</sup> *Id.*; OUSD, *Oakland Charter School Openings, Closures, and Authorizer Changes*, available at: [https://dashboards.ousd.org/views/OaklandCharterSchoolsDashboard/OpeningsClosures?%253AshowAppBanner%3Dfalse%26%253Adisplay\\_count%3Dn%26%253AshowVizHome%3Dn%26%253Aorigin%3Dviz\\_share\\_link%26%253AisGuestRedirectFromVizportal%3Dy%26%253Aembed%3Dy&sa=D&source=docs&ust=1649273337598074&usg=AOvVaw25bqbnY1SjY8v7XH24cBI4](https://dashboards.ousd.org/views/OaklandCharterSchoolsDashboard/OpeningsClosures?%253AshowAppBanner%3Dfalse%26%253Adisplay_count%3Dn%26%253AshowVizHome%3Dn%26%253Aorigin%3Dviz_share_link%26%253AisGuestRedirectFromVizportal%3Dy%26%253Aembed%3Dy&sa=D&source=docs&ust=1649273337598074&usg=AOvVaw25bqbnY1SjY8v7XH24cBI4) (last accessed Apr. 7, 2022).

<sup>47</sup> Green, *supra* n.35.

Oakland, taking with them critical state funding tied to enrollment, and leaving some of the newly created schools with an increasing number of empty seats.”<sup>48</sup>

At present, the District has 39 charter schools that serve over 16,000 students.<sup>49</sup> This is among the highest rates of any school district in California.<sup>50</sup> In the course of the great charter school expansion, the District’s non-charter student population dropped by 45 percent.<sup>51</sup> A 2018 report by In the Public Interest, *Breaking Point: The Cost of Charter Schools for Public School Districts*, estimated that “charter schools cost Oakland Unified \$57.3 million per year. That’s \$1,500 less in funding for each student that attends a neighborhood school.”<sup>52</sup>

Though it was noble in its inception, the Small Schools Initiative ultimately failed to deliver on the promises made to Black and Brown OUSD families. The rapid increase of small schools paired with additional fiscal mismanagement and an invasive expansion of extractive charter schools exacerbated these failures by first creating small schools for the purpose of greater equity, and then watching them wither on the vine as economic pushout decimated families and as others were convinced to test the magical cure offered by charter reformers. Despite the rhetoric of equity, the implementation of RBB and the expansion of the Small Schools Initiative created the very environment which now “justifies” the shuttering of schools that serve a high concentration of Black and Brown students. By tying school resources to enrollment in a city experiencing historic economic pushout of Black residents, the District created and implemented a tool that starved those schools of the resources needed to function. Moreover, the District itself admitted that as recently as two years ago, it allocated funds in a manner that “penalized schools with more than 50% Black students, causing significant strain on the school based investments available to support Black students[.]”<sup>53</sup> Now, the District is shuttering the schools, further destabilizing the communities these initiatives were supposedly designed to serve. Collectively, these actions represent a massive miscarriage of the trust and dignity of Black and Brown Oakland families who are now being asked for further sacrifice as the schools they have come to love are stripped away from them. Intervention is needed to thwart further harm.

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<sup>48</sup> *Id.*

<sup>49</sup> OUSD, *Oakland Charter Schools Over Time*, available at: [https://dashboards.ousd.org/views/OaklandCharterSchoolsDashboard/SchoolsOverTime?%3AshowAppBanner=false&%3Adisplay\\_count=n&%3AshowVizHome=n&%3Aorigin=viz\\_share\\_link&%3AisGuestRedirectFromVizportal=y&%3Aembed=y](https://dashboards.ousd.org/views/OaklandCharterSchoolsDashboard/SchoolsOverTime?%3AshowAppBanner=false&%3Adisplay_count=n&%3AshowVizHome=n&%3Aorigin=viz_share_link&%3AisGuestRedirectFromVizportal=y&%3Aembed=y) (last accessed Apr. 7, 2022).

<sup>50</sup> Julia McEvoy, *Despite Tensions, Some Oakland Charter School Teachers Join Picket Line in Solidarity*, KQED (Feb. 27, 2019), <https://www.kqed.org/news/11728844/despite-obvious-tensions-some-oakland-charter-school-teachers-join-picket-line-in-solidarity>.

<sup>51</sup> *Id.*

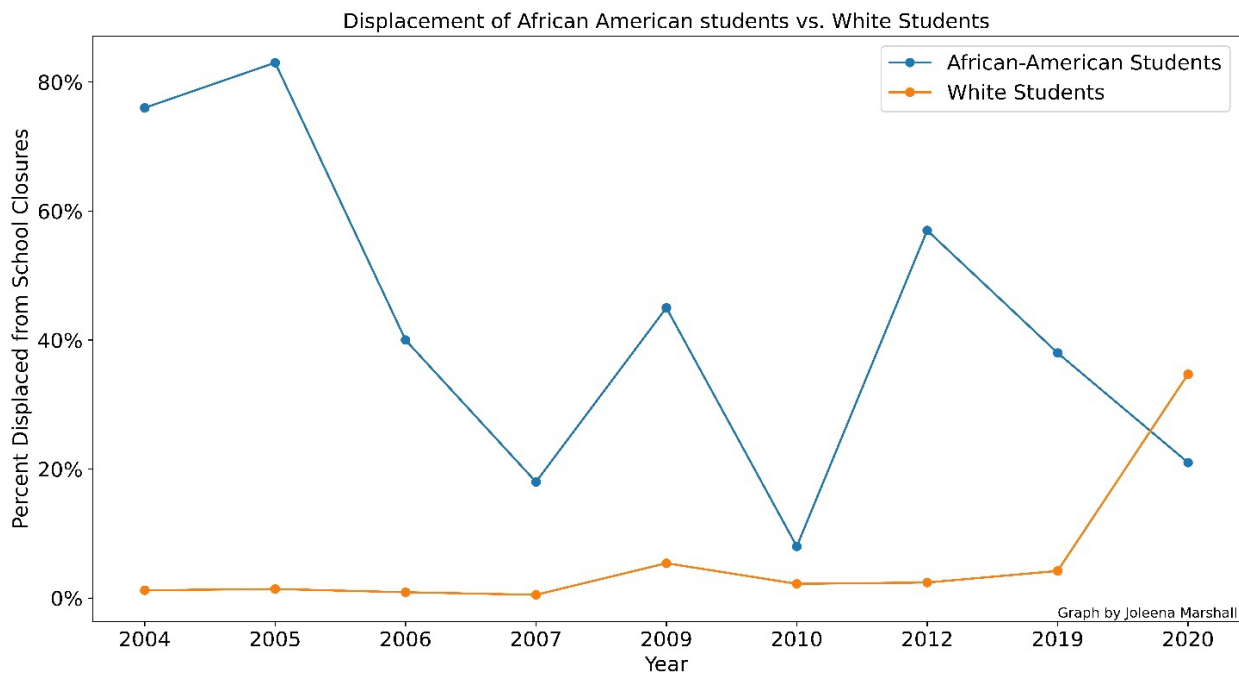
<sup>52</sup> IN THE PUBLIC INTEREST, *Report: The Cost of the Charter Schools for Public School Districts* (May 8, 2018), available at: <https://inthepublicinterest.org/report-the-cost-of-charter-schools-for-public-school-districts/>.

<sup>53</sup> Reparations for Black Students Resolution, *supra* n.7.

## 2. OUSD's Failed Policies Caused Underfunding Which OUSD Used to Justify Closures of Predominantly Black Schools from 2004-2019

OUSD has used the failure of the policies described above to target schools serving greater numbers of Black students over the last two decades for closure, merger, and redesign, at the cost of massive disruption in the lives of Black students and their families.

The disparate impact of previous District school closures on Black students is unmistakable. In 2004, 76 percent of students displaced by school closures were Black students while 1.2 percent were white students. In 2005, 83 percent of students displaced by school closures were Black students while 1.4 percent were white students. In 2006, 40 percent of students displaced by school closures were Black students, while less than 1 percent were white students. In 2007, 18 percent of students displaced by school closures were Black students, while less than 1 percent were white students. In 2009, 45 percent of students displaced by school closures were Black students, while 5.4 percent were white students. In 2010, 8 percent of students displaced by school closures were Black students, while 2.4 percent were white students. In 2012, 57 percent of students displaced by school closures were Black students, while 4.2 percent were white students. In 2019, 38 percent of students displaced by school closures were Black students, while 4.2 percent were white students. These numbers consistently demonstrate that Black students were disproportionately impacted by school closures over the last decade and a half, as compared to their districtwide enrollment and as compared to white students.



Previous OUSD school closures have caused trauma and chaos for Black Oakland parents and students over the past decade. For example:

**Ariel Loudd** saw directly how the previous disruption caused by co-location impacted the overall school climate, and is concerned about reliving these same experiences if the planned school closures move forward. Her children were previously enrolled at Howard Elementary, which was

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EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Farah Brelvi

SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111

FRESNO OFFICE: PO Box 188 Fresno, CA 93707 • SACRAMENTO METRO OFFICE: PO Box 189070 Sacramento, CA 95818  
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG



co-located with the Francophone Charter School, causing major disruption at every level in the school. In her own words:

“My experience at Howard is that the co-location increased aggression in children because they felt like their school was being invaded. The same will be true as new kids from closed schools are pushed into other schools. It will cause conflict, especially as schools begin to be overcrowded as a result of closures.”

**Joel Velasquez** has two children who attended Lakeview Elementary until 2012, when the District closed the school and allowed a charter school to open there instead. He has experienced his children internalizing the impacts of school closures. In his own words:

“My two older children attended Lakeview Elementary from kindergarten until it closed in 2012. My younger daughter, Zelnavieh, had grown up going to family events at Lakeview and thinking of it as ‘her school’ but never had the opportunity to attend. For the kids, it felt like they didn’t close the school, they just destroyed Lakeview and substituted a charter. After the sit-in, after the closure, they were told this is not your school, you were kicked out...but walk by and see it all the time. You see other kids playing on your playground. It was a constant reminder of what they lost.”

The confluence of socio-economic factors, which have led to an exodus of Black Oaklanders to the outer suburbs, have not only contributed to the population/enrollment justifications for closures offered by the District but have also eroded the Black social and political power needed to stop them. As Azlinah Tambu, the mother of two Black children at Parker Elementary, expresses it:

“The most hurtful thing to me is that it is so obvious what is happening. Gentrification is happening in deep East Oakland, the community is being priced out of the neighborhood. You need a 750 credit score and income that is three months’ rent to get an apartment. They are fixing up Bancroft and they don’t want us here. This is brazen robbery. It’s inequitable.”

This amplifies the impact of the current closures—closures that are already traumatizing for those who lived through previous iterations. The harm being inflicted upon Black Oaklanders is at once present as well as historic and perpetual.

### **III. The District’s February 2022 School Closures Plan Follows Its Previous Practice of Unlawfully Discriminating Against Black Students and Families.**

Following the previous two decades of OUSD’s policies and school closures targeting Black schools, OUSD now plans to close several more schools that serve predominantly Black students. The District’s current school closures plan was ill-conceived, made without critical input from the school community, hastily presented to the school community, and rashly approved by the School Board just ten days after it was first publicly introduced. Worse still, the District has once again willfully targeted Black students and families in its plans for school closures. In a school district where Black students are 21.7 percent of students enrolled districtwide, **most of the schools slated**

**for closure are majority-Black and six of the seven** schools slated for closure are either majority-Black or are schools where Black students are enrolled at higher-than-districtwide percentages. Behind these numbers are the stories of countless Black students and their families, who suffer lasting damage each day this school closures plan remains in place.

**A. The District shielded its school closures plan from public view and failed to follow its own policy to conduct a racial equity analysis or consult with key community leaders.**

Over the course of the last year, the District has hidden its plans to close specific schools and failed to engage with or gather input from the school community about those plans. The District has harmed Black students, their families, and their communities by excluding them from meaningful input on these decisions. The District’s failures in this regard demonstrate continued anti-Black racism.

In June 2021, the District Board first heard a presentation from Superintendent Johnson-Trammell that claimed to describe the process in which schools will be identified for closure, merger, or redesign in 2022 and 2023.<sup>54</sup> At that meeting, the Superintendent requested that the timeline for her to present a proposed list of closures be extended to September 2021. On August 3, 2021, the District held a meeting with members of J4OS. District staff presented a “dashboard” of schools ranked by “quality, equity, and sustainability” metrics that would be used to determine which schools would be placed on the closures list. It became clear during that meeting that the District had ranked several historically Black schools<sup>55</sup> poorly on some of those measures, and those schools would likely be placed on the closures list. When pressed on this point during the meeting, however, District staff refused to share any information about schools that would likely be placed on the closures list, and even refused to share the dashboard with the J4OS beyond displaying it on the computer screen. J4OS members understood that, per the Reparations for Black Students Resolution, the Superintendent was required to work with the Black Students and Families Thriving Task Force (“Reparations Task Force”) “to develop an equity impact analysis of any proposed closures, mergers or consolidations of OUSD schools, prior to any vote on school changes pursuant to the Blueprint for Quality Schools.”<sup>56</sup> J4OS members therefore rightfully expected the District would work with the Reparations Task Force to conduct that equity impact analysis prior to voting to close specific schools.

Working with members of J4OS, on September 16, 2021, the ACLU requested records pursuant to the Public Records Act (“PRA”) about the District’s evaluation of schools for closure, merger, or redesign from 2020 to the present. Six days later, the School Board considered a resolution to delay a vote on further school closures until September 2022, which failed to pass. As set forth in

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<sup>54</sup> Board Cover Memorandum from Kyla Johnson-Trammell, et al. to OUSD Bd. of Educ., Implementing Resolution 2021-0128: Advancing District’s Citywide Plan (June 23, 2021), on file with complainants.

<sup>55</sup> Defined as “an OUSD school with 40% or more of African American students enrolled in 2020-21,” Reparations for Black Students Resolution, *supra* n.7, at 1-2.

<sup>56</sup> *Id.*

Board Resolution 2122-0026 (passed December 9, 2020), a Board vote was then triggered on October 27, 2021 to make budget reductions “in lieu of” school closures. The Board ultimately approved \$6 million in budget reductions at that time, thus meeting the conditions from Board Resolution 2122-0026 in full.

In November 2021, the Alameda County Office of Education issued a “letter of going concern” claiming the District must identify additional budget reductions to remain solvent. From September through November, the District failed to produce any records responsive to the ACLU’s PRA request. Finally, on December 8, 2021, nearly three months after the ACLU submitted its PRA request, the District produced a mere four documents: two PowerPoint presentations and two Board Memoranda on the Blueprint for Quality Schools from School Board meetings in May and June 2021.

Shockingly, given the repeated requests for information from the ACLU and others about the District’s school closure plan and the Board-approved requirement that the Superintendent work with the Reparations Task Force to develop a racial equity analysis “prior to any vote on school changes pursuant to the Blueprint for Quality Schools,” the Board approved a resolution on January 12, 2022, directing the Superintendent to compile a list of schools that could be closed as early as the end of the current school year. The January 12 Resolution was presented during a regular School Board meeting, which meant that the Resolution to close schools must have been drafted prior to the agenda posting on Sunday, January 9. The terms of the January 12 Resolution exempted the Superintendent from following prior Board policies on engaging with the Reparations Task Force or other community members. It also exempted the District from creating an equity impact analysis in collaboration with the Reparations Task Force (as required by the Reparations for Black Students Resolution passed in 2021) prior to voting on a school closures plan. Explicitly exempting itself from these requirements of the Reparations for Black Students Resolution makes clear the District’s knowledge that the school closures would result in disproportionate harm to Black students, and the District’s intent to do so despite that.

On January 19, 2022, the ACLU sent the District a letter detailing the legal deficiencies in its PRA response and demanding that the District “provide all remaining responsive documents as soon as possible, particularly given that this is a matter of urgent public concern for hundreds of District families.” Up to the present time, the District has failed to produce any other documents to the ACLU in response to the September 2021 PRA request. Thus, in developing its school closure plan—which would have a serious negative impact on hundreds of OUSD families—the District withheld crucial information from the public, completely failed to consult with the Reparations Task Force or other community leaders, and failed to conduct a racial equity analysis.<sup>57</sup> Such engagement is crucial to assure Black students and families can collaborate in decision-making

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<sup>57</sup> Board President Gary Yee admitted in a meeting with his constituents that no equity analysis was conducted at any point on the impact of the proposed closures: “I am embarrassed to say that there has been no equity analysis that I know of, to date” Constituent Meeting with Dr. Gary Yee, *supra* n.4, at 34:15-34:23.

with the District on budget actions that fundamentally impact Black students and their right to educational equity.

Instead, the Board did not officially release the proposed list of fifteen schools to be closed or merged until over two weeks later, on January 31, 2022. The District did not even inform its own principals that their schools were slated for closure until at least January 17. On February 8, 2022, late in the evening and with over two hundred community members waiting to give public comment,<sup>58</sup> the Board voted to close seven schools and eliminate middle-school grades from two additional schools (a significantly different proposal than the original list of schools proposed by the District on January 31). Thus, less than ten days after first presenting its school closures plan, the Board shut down and ignored opposition from District parents, students, teachers, and community. Instead, it approved the current school closures plan despite the profound disparate racial impact and deeply inequitable process of reaching that decision. Moreover, the ostensible reason for making this harmful decision—a purported fiscal crisis—was undercut by the fact that District administrators admitted in their presentation that any financial savings would not be realized for two academic years. Knowing this, it is clear that the District could engage in a community informed process on how to balance its budget without needing to rush into an ill-conceived and harmful decision to close two majority-Black schools (Parker Elementary and Community Day School) within the next few months.

No equity analysis was done on the impact of the proposed closures, despite the Board directing the District Superintendent in March 2021 “to work with the [Black Student and Families Thriving Task Force] to develop an equity impact analysis of any proposed closures, mergers or consolidations of OUSD schools, prior to any vote on school changes pursuant to the Blueprint for Quality Schools.”<sup>59</sup> Instead, the District chose in February 2022 to sidestep this crucial racial equity requirement, which was previously won in 2021 after vigorous advocacy by school community leaders trying to disrupt the District’s years-long pattern of racially discriminatory school closures. The result of the District’s most recent failure to conduct an equity analysis or to meaningfully engage with Black school community leaders in developing its school closures plan demonstrates why the school community demanded it in the first place.

## **B. The District’s school closures plan disproportionately harms Black students and Black families.**

Black students are disproportionately impacted by the District’s planned school closures in stark terms. Looking first at the data, **six of the seven** schools slated for closure are either majority-Black schools or are schools where Black students are enrolled in higher-than-average percentages: Community Day School (69%), Grass Valley Elementary (65%), Parker Elementary (52%), Carl B. Munck Elementary (51%),<sup>60</sup> Horace Mann Elementary (29%), and Brookfield

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<sup>58</sup> OUSD Bd. of Educ. Meeting, *Video*, at 7:48:00 (Feb. 8, 2022), available at: <http://ousd.granicus.com/player/clip/2050?&redirect=true>.

<sup>59</sup> Reparations for Black Students Resolution, *supra* n.7.

<sup>60</sup> Carl B. Munck Elementary School houses Hintil Kuu Ca, a full-time preschool and afterschool program formed in the 1970s to create better educational opportunities and a more inclusive



Elementary (23%).<sup>61</sup> **Three of the six** majority-Black non-charter elementary schools in the entire District are slated to be closed.<sup>62</sup> Black students are 41 percent of students whose schools will close, which is almost **double** the expected rate compared to the districtwide enrollment of Black students.<sup>63</sup> By comparison, only 2.2 percent of white students in the District are directly impacted by the closures, which is **less than one-quarter** of the expected rate given that white students are 9.8 percent of students enrolled districtwide.<sup>64</sup> Even District Superintendent Johnson-Trammell acknowledged the disparate adverse impact on Black students during a School Board meeting on January 31, 2021 when she stated, “This is not easy for me to present this information, especially knowing that African-American students and families will be the **most affected** by these recommendations” (emphasis added).<sup>65</sup>

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environment for Indigenous students. The name, which translates to “the Indian children’s place” in the Pomo language, rings true today as the school has a disproportionately high number of Indigenous students and remains an important cultural and historical indigenous landmark. Parents and staff at Hintil Kuu Ca are thus deeply and rightly concerned that the stability of this important District preschool is threatened by the planned closure of Carl B. Munck, as Hintil Kuu Ca has been threatened by previous District school closures as well. Katy Murphy, *Oakland’s American Indian child center might close at the end of the month*, EAST BAY TIMES (July 26, 2010), available at: <https://www.eastbaytimes.com/2010/07/26/oaklands-american-indian-child-center-might-close-at-the-end-of-the-month/>.

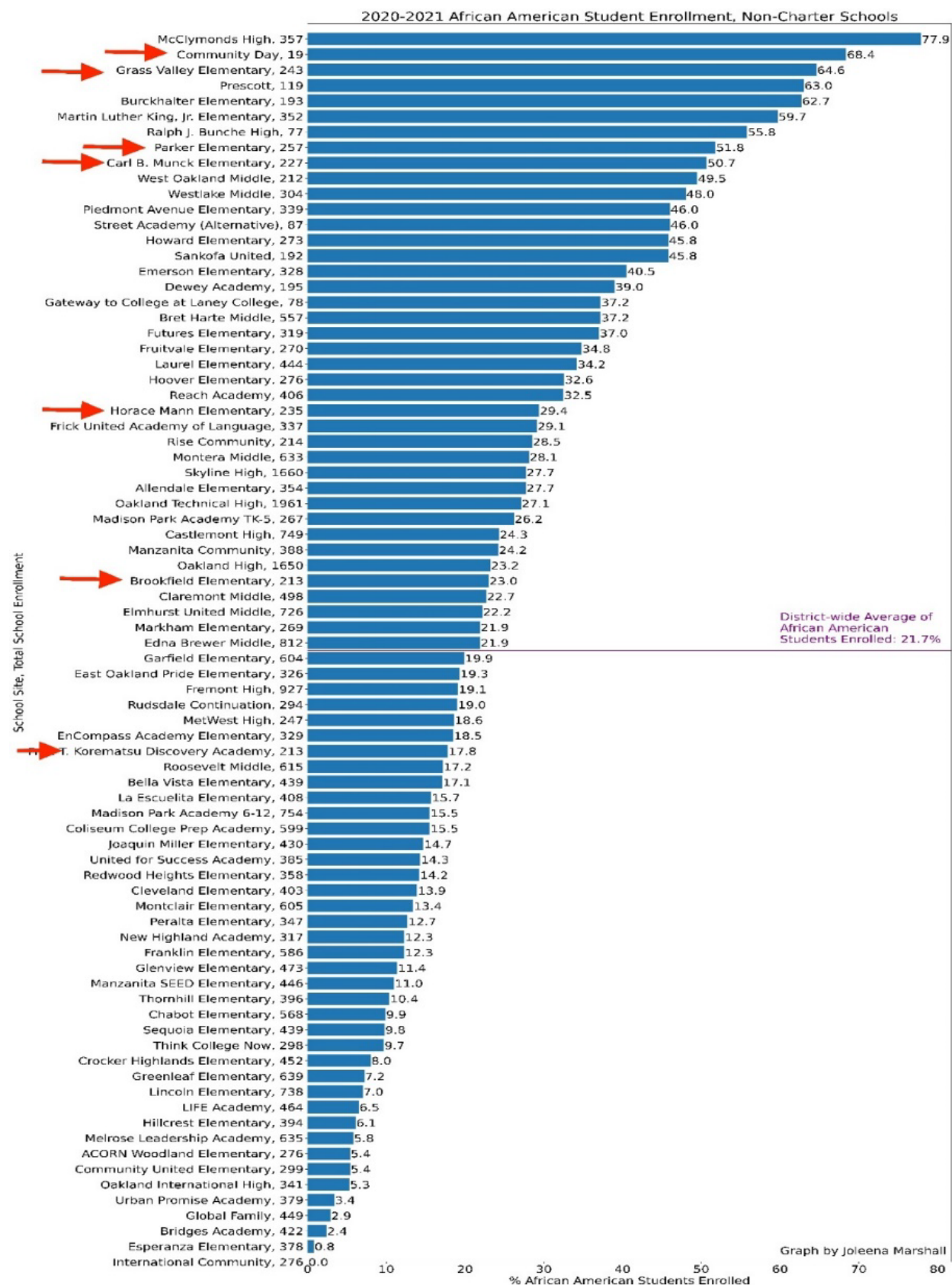
<sup>61</sup> DataQuest, *supra* n.2 (listing enrollment by ethnicity broken down by each school in the District and districtwide Black student enrollment at 21.7 percent).

<sup>62</sup> Among non-charter schools, Black students were over 50 percent of students enrolled at the following District elementary schools in 2020-2021: Parker Elementary, Carl B. Munck Elementary, Martin Luther King, Jr. Elementary, Prescott School, Grass Valley Elementary, and Burckhalter Elementary. *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> OUSD Bd. of Educ. Meeting, *supra* n.3, at 12:24-12:31.



**American Civil Liberties Foundation of Northern California**

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Farah Brelvi

SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111

FRESNO OFFICE: PO Box 188 Fresno, CA 93707 • SACRAMENTO METRO OFFICE: PO Box 189070 Sacramento, CA 95818

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

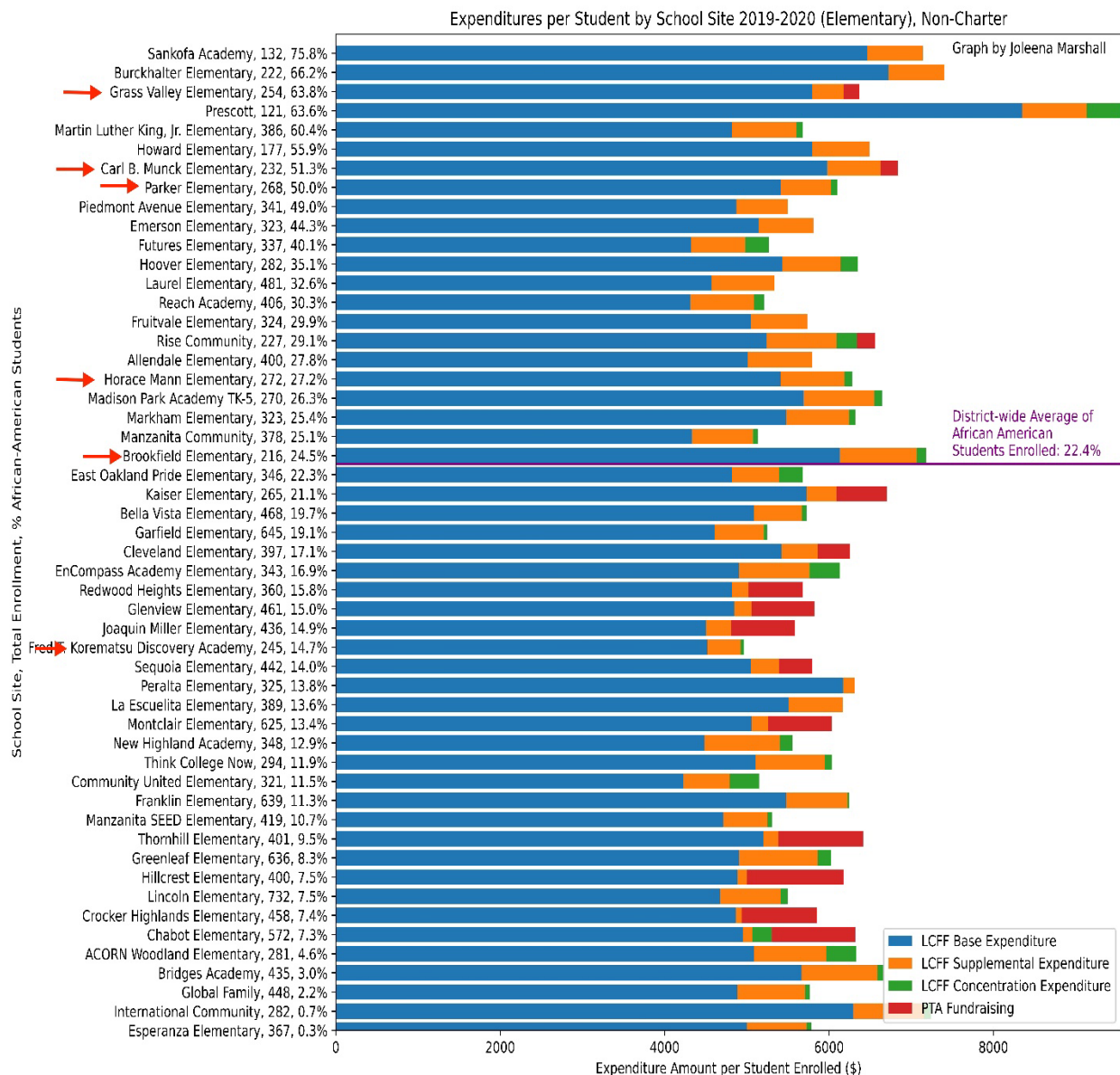
Size was the ostensibly neutral metric used by the District to determine which schools to close.<sup>66</sup> Smaller schools, which the District has deemed fiscally unsustainable, were placed on the closure list. Yet, smaller schools where white students attend in higher-than-average percentages, in wealthier areas, were not considered for closure. For example, Redwood Heights Elementary has only 358 students, but was not placed on the “closures” list. At Redwood Heights, white students comprise 35 percent of total enrollment, which is over three times the districtwide average for white students. Similarly, Thornhill Elementary has only 396 students, but was not considered for closures. At Thornhill, white students are 40 percent of students enrolled, which is four times the districtwide average for white students. Hillcrest Elementary has only 394 students, of whom 50 percent are white. The District did place Hillcrest on the school closures list, but only for grades sixth through eighth. This is odd, given the District claims its justification for closing schools is to eliminate those that are “fiscally unsustainable” due to their size. Closing three grades at Hillcrest Elementary will make it even smaller, which undermines the District’s rationale. Additionally, the Parent-Teacher Associations (PTAs) at Redwood Heights, Thornhill, and Hillcrest raise significant private donations to fund educational services at the schools. The California PTA (the umbrella organization for school site PTAs) filed tax data in 2019 indicating that only eleven non-charter elementary schools received PTA donations exceeding \$50,000.<sup>67</sup> Hillcrest, Thornhill, and Redwood Heights were among the schools that raised the most money through private parent donations.<sup>68</sup>

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<sup>66</sup> Kyla Johnson-Trammell, et al., *Recommendation for School Consolidations*, OUSD (Jan. 31, 2022), on file with complainants.

<sup>67</sup> Ken Schwencke, et al., *Nonprofit Explorer*, PROPUBLICA (last updated Mar. 31, 2022), available at: <https://projects.propublica.org/nonprofits/>.

<sup>68</sup> This analysis presumes that **only** those schools that filed IRS Form 990 data for “PTA California Congress of Parents Teachers & Students Inc.” raised funds through their school site PTAs. For those school site PTAs which did not file a full Form 990, Form 990PF, or Form 990EZ, but which indicated a PTA exists (Grass Valley Elementary, Carl B. Munck Elementary, RISE Community, and Cleveland Elementary), this analysis presumes \$50,000 in PTA funds were raised. \$50,000 is the maximum threshold before an obligation to file the Form 990, Form 990PF, or Form 990EZ is triggered. In reality, the amount of PTA funds raised at each of those schools was likely less than \$50,000. In 2019, Hillcrest Elementary reported \$470,843 in PTA funds raised; Thornhill Elementary reported \$415,217 in PTA funds raised, and Redwood Heights reported \$238,950 in PTA funds raised. Nonprofit Explorer, *PTA California Congress of Parents, Teachers, & Students, Inc.: Hillcrest Elementary PTA*, PROPUBLICA, available at: <https://projects.propublica.org/nonprofits/organizations/946172363> (last accessed Apr. 8, 2022); Nonprofit Explorer, *Thornhill Parent-Faculty Club*, PROPUBLICA, available at: <https://projects.propublica.org/nonprofits/organizations/942529197> (last accessed Apr. 8, 2022); Nonprofit Explorer, *PTA California Congress of Parents, Teachers, & Students, Inc.: Redwood Heights Elementary PTA*, PROPUBLICA, available at: <https://projects.propublica.org/nonprofits/organizations/946173811> (last accessed Apr. 8, 2022) (combining “contributions” and “net fundraising” to arrive at total).



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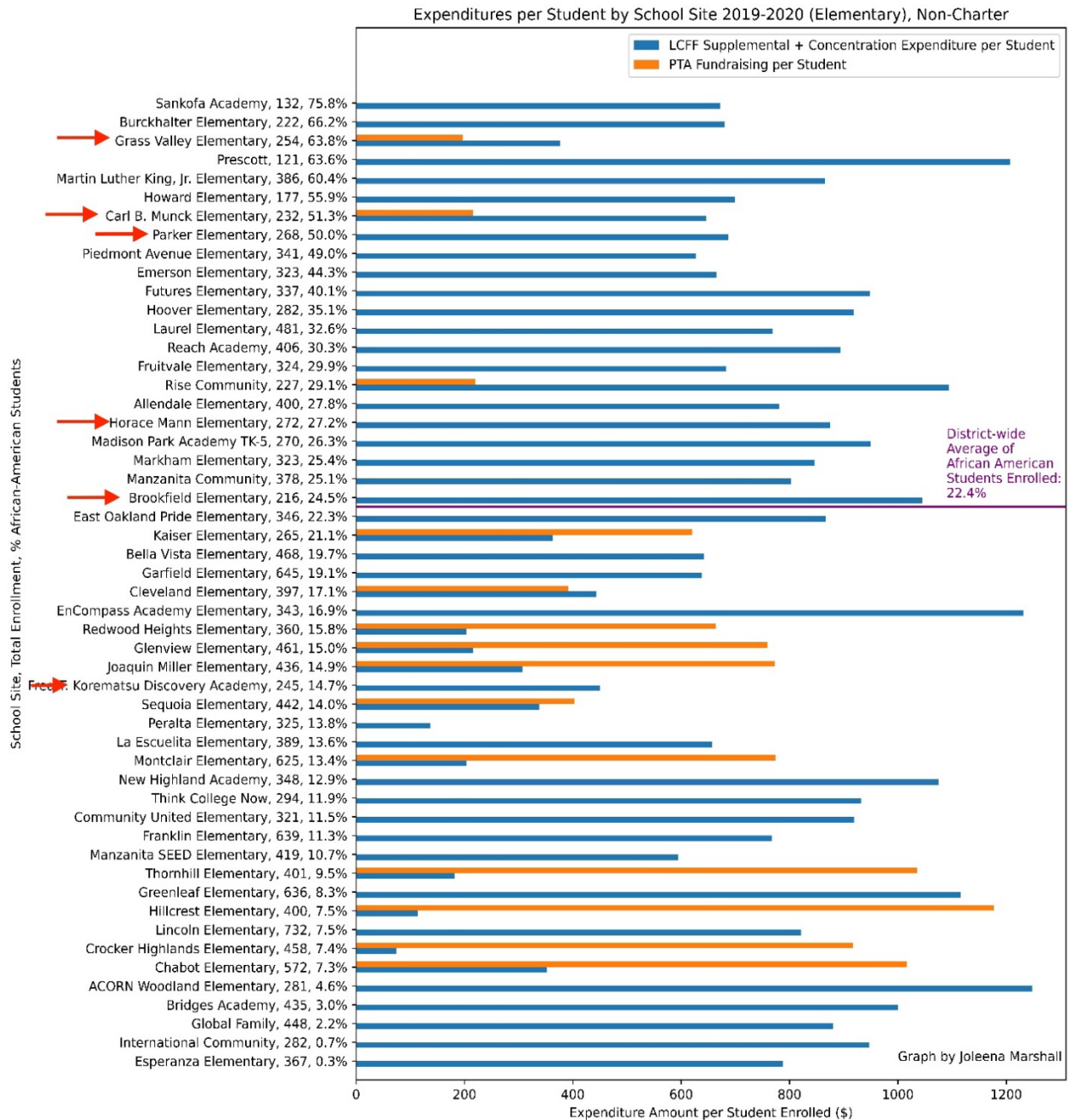
EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Farah Brelvi

SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111

FRESNO OFFICE: PO Box 188 Fresno, CA 93707 • SACRAMENTO METRO OFFICE: PO Box 189070 Sacramento, CA 95818

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG





### C. The harm caused by OUSD's school closures is stark.

As importantly, the individual stories of impacted Black students and their families illustrate how these closures harm children and youth, their families, and their communities.

#### 1. Rochelle Jenkins, Parent of Zoraya and Zariah

Zoraya and Zariah (twelve-year-old twin sisters) are Black students who attend Parker Elementary, their neighborhood school just a fifteen-minute walk from their home. Zoraya and Zariah love

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SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111

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TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

attending Parker, where they have been for four years. According to Rochelle, their mother, the staff at Parker “really care about their students and get to know each and every one of their students. My twins have a support system with their teachers.” This is crucial to Rochelle as Zoraya and Zariah are entering their more vulnerable middle school years, when they need adults to look out for them. The family moved from Fresno four years ago, and the transition was difficult for the twins. Parker made that transition easier, as the twins found a school community and friends whom they trust. Zoraya and Zariah were able to participate in two high-quality afterschool programs at Parker (Girls, Inc. and Higher Ground) that “brought them out of their shell” and gave them greater confidence as students. Rochelle greatly values the fact that Parker is a majority-Black school:

“Parker has Black teachers and staff, and the principal is Black. That is really important. It is important for kids to see themselves in people in power. My girls are growing up to be strong Black girls because they see other strong Black role models at Parker.”

Zoraya and Zariah are extremely upset that the District is planning to close Parker. The twins organized a protest against the closure to raise community awareness of what is happening. Rochelle is deeply concerned about the negative impact Parker’s closure will have on Zoraya and Zariah. Rochelle works two jobs and does not have any way to get her daughters to school except walking, which they would be unable to do at a new school. Rochelle does not know how her daughters will get to school if they are not attending Parker. Zoraya and Zariah will not have access to the Girls, Inc. afterschool program at a new school. Moreover, because the District has targeted smaller, majority-Black schools for closure, the twins’ options for going to another majority-Black school are severely limited. This means they are more likely to be enrolled in a school that does not have the same supportive environment for Black students like them. Rochelle sees the school closures as part of a pattern of anti-Black racism in the District:

“They are trying to push Black students into the school to prison pipeline. They don’t care about educating our kids. They should be ashamed of themselves. From day one I have said: no school closures, do not push us out, this is gentrification, classism, no middle class anymore. You want us out of the way.”

## **2. Azlinah Tambu, Parent of Samira and Nasirah**

Samira (eleven-years-old) and Nasirah (five-years-old) attend Parker Elementary, which is slated to be closed at the end of the current school year. Parker is their neighborhood school just a fifteen-minute walk from their home. Samira has attended Parker since transitional kindergarten and has deep connections with its students and staff. In fact, Samira has known several of her classmates since they were babies at a neighborhood daycare close to Parker. Azlinah feels her children are safer in the smaller environment of Parker, and that Samira in particular is better supported in the tight-knit and familiar school community of Parker as she enters her middle-school years. It is also important to Samira and Nasirah’s academic success that they attend a majority-Black school where a majority of the school staff are Black. As Azlinah expresses it:

“The majority-Black staff at Parker make our children feel seen and heard and special. It is important to Samira and Nasirah to see adults in positions of power at

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SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111

FRESNO OFFICE: PO Box 188 Fresno, CA 93707 • SACRAMENTO METRO OFFICE: PO Box 189070 Sacramento, CA 95818  
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

their school who look like them. Parker empowers Black students—they show my children who they are.”

As a single mother, Azlinah relies on her daughters attending the same school, which is a short distance away from their home, to be able to get to work on time every day.

If Parker Elementary is closed, Samira and Nasirah will have to attend separate schools that are much farther away from their home. This will significantly impact Azlinah’s ability to get to work on time, especially if her car is not working. Azlinah is not comfortable putting her young daughters on the AC Transit bus by themselves to get to school; but if they walk, they are in increased danger due to having to cross major thoroughfares where there is a significantly greater risk of pedestrian accidents and gun violence. As importantly, Azlinah says:

“Samira and Nasirah will be ripped away from the friends and school staff who know them. Especially for Samira, she is at the age she needs her friends and adults who know her to make good choices and stay on track in school.”

Azlinah is very concerned that her children will not have the same support system, which they both very much need for their success, at a new and larger school that will almost certainly not be a majority-Black school. She is also troubled by the impact of these closures on other Black students: “Don’t close any historically-Black schools. This is inequitable.” Although the District promised families impacted by the school closures that it would support them to find the best possible receiving schools, and despite the fact that Parker is slated to be closed in just two months, nobody from the District has called her or emailed her at all about enrolling her daughters in a receiving school.

### **3. DeAdrian Jones, Parent of Monae**

Monae (eight-years-old) is a Black student who attends Parker Elementary. Parker is Monae’s neighborhood school, which is a five-to-ten-minute walk from her home. She has attended Parker since kindergarten. The teachers and staff at Parker have always been supportive of Monae, and she is very close with them. DeAdrian and Monae have a close relationship with Principal Colbert. Two years ago, Monae’s father passed away and the whole school community came together to support the family. That emotional support was and continues to be very important for Monae’s mental health and well-being. It is important to the family that Parker is a majority-Black school. As DeAdrian puts it, “It is good for Monae to see adults that look our family who are excited about school.”

If Parker Elementary is closed, Monae will have to walk much farther to get to school. As an AC Transit bus driver herself, DeAdrian is not comfortable putting her young daughter on public transportation to get to school; but if Monae walks to her new school, which she cannot do by herself, she will be in increased danger due to having to traverse unfamiliar neighborhoods and major thoroughfares where there is a significantly greater risk of pedestrian accidents. DeAdrian can drive Monae to school occasionally, but most times her work schedule does not allow for that and DeAdrian does not know how Monae will get to school on those days.

Monae is very unhappy about Parker closing. Monae's friendships with her classmates will be significantly disrupted by the closure because her friends were assigned by the District to a different receiving elementary school than Monae was. DeAdrian is deeply concerned that Monae will have to "start all over again without a support system," and then move to a middle school in just a few years. "Too many transitions are problematic and unstable." Although the District promised families impacted by the school closures that it would support them to find the best possible receiving schools, and despite the fact that Parker is slated to be closed in just two months, the District simply assigned Monae to Howard Elementary. The family had no time to tour Howard, no time to talk to friends or family, and no time to plan for Monae's transportation to Howard. Monae's teacher at Parker helped DeAdrian navigate the online SchoolMint system to enroll Monae in a different school, but no District staff reached out to assist the family.

#### **4. Monique Marshall, Parent of Isaiah and Messiah**

Isaiah (eight-years-old) and Messiah (five-years-old) are Black students who currently attend Brookfield Elementary, which is their neighborhood school just a five-minute walk from home. Both students have excelled at Brookfield. Messiah, in particular, used to be a more scared and anxious child. Being at Brookfield has really helped him gain confidence. Messiah receives speech therapy, has learned to write, and now is able to communicate much more effectively. Messiah has grown so comfortable in school that he even hugs people now, which he never would have done before. Monique, their mother, attributes Isaiah and Messiah's academic success to the smaller, inclusive community and dedicated school staff at Brookfield. Both students participate in special programs at Brookfield and have a deep connection with Brookfield staff and students.

Monique is extremely concerned about how Isaiah and Messiah will be harmed by closing Brookfield. The family will have to walk much farther to get to the next-closest elementary school, through an unfamiliar neighborhood with a higher crime rate, major thoroughfares where there is much more traffic, no sidewalks in some areas, and a much greater likelihood of pedestrian accidents. Isaiah and Messiah will not have the benefit of the school community they have grown attached to at Brookfield, and it is unclear whether they will receive the same academic and special education services that they benefit from at Brookfield. Because of these concerns, Monique, who is on disability leave, plans to homeschool Isaiah and Messiah if Brookfield closes, to keep them safe and in an environment where they are getting the attention they need for their academic progress and success. Monique says:

"OUSD is targeting Black students to close schools. It is taking choice away from Black parents by closing schools that our students attend. My children deserve to go to school with the community they have."

Although the District promised families impacted by the school closures that it would support them to find the best possible receiving schools, Monique has not had any communication from the District about the proposed closure of Brookfield. She has tried to call the District, but no one has responded to her.



## **5. Holly Shogbesan, Parent of Ayo**

Ayo (five-years-old) is a Black kindergartner who is autistic and attends Carl B. Munck Elementary. Ayo is in a Special Day Class where he loves, and is loved by, his teachers, aides, and fellow students in his tight-knit school community. It is important to his mother, Holly, that Ayo attend a majority-Black school, where the students and staff look like him and he has the opportunity to develop strong school relationships, both of which are crucial for Black and Brown students to succeed in school. Due to his disability, Ayo does not do well in crowds or surrounded by a lot of people, which is why Carl B. Munck's smaller size is vital to making Ayo feel comfortable enough to focus on his learning. Although Ayo is not a hugger by nature, through the safe and inclusive environment created at Carl B. Munck, he has come to feel so close to his classmates that he sometimes even hugs them. Ayo is unable to attend the afterschool program due to his need for more support not provided after school, but he is able to take a school bus from Carl B. Munck to meet his mother at the school where she teaches, which creates stability in their schedules that is essential to the family's well-being.

Holly is deeply worried about the impact on Ayo if Carl B. Munck is closed. Because the District has targeted smaller, majority-Black schools for closure, Ayo's options for going to another small, majority-Black school are severely limited. This means Ayo is likely to be enrolled in a much larger school that does not have the same welcoming or inclusive environment for Black students like him. Transitions are also especially difficult for Ayo due to his autism. If Carl B. Munck closes in June 2023, Ayo will be forced to transition to a new school for the last year of his K-second-grade Special Day Class, and then transition again to a new third-fifth-grade Special Day Class in a new and unfamiliar school environment. To reduce the number of transitions, ideally Ayo would transfer to the same school to which his current Special Day Class teacher transfers; but there is no way for the family or Ayo's teacher to know which school that will be before the enrollment period expires, so Holly has no way to know which school to choose to best support Ayo. Moreover, it is highly likely that Ayo will have to spend a significant amount of time traveling on the afternoon bus to meet Holly at the school where she teaches, which would be detrimental to his well-being as a young child. Instead, Holly may need to change her jobsite in order to be able to pick Ayo up and care for him after school. Although the District promised families impacted by the school closures that it would support them to find the best possible receiving schools, nobody from the District has reached out to Holly to answer questions or to give the family desperately needed assistance to navigate the process of transitioning Ayo to a new school.

## **6. Ariel Loudd, Parent of Ah'Miya and Evan**

Ah'Miya (ten-years-old) and Evan (five-years-old) are Black students who attended Grass Valley Elementary until very recently. Prior to Grass Valley, Ah'Miya attended Howard Elementary, into which the Francophone Charter School of Oakland was co-located during the 2019-2020 school year. Moving the Francophone Charter School into Howard Elementary caused severe disruption at Howard as the school became overcrowded (at one point, Ah'Miya's classroom was moved to a storage closet) and students became increasingly aggressive with each other. Ah'Miya's mother, Ariel, also heard from school staff at Howard that it might close. To mitigate the disruption to Ah'Miya's education, Ariel transferred Ah'Miya to Grass Valley Elementary. Ah'Miya loved attending Grass Valley and loves her friends there. Now, the family is facing further disruption as

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SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111

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yet another school where their students attend—Grass Valley—will be closed. When Ariel found out in February 2022 that the District plans to close Grass Valley, she decided to homeschool her children rather than subject Ah'Miya to yet another traumatic disruption of their school environment.

Based on their previous experience at Howard Elementary, Ariel firmly believes that if her children transfer to yet another elementary school, the receiving school(s) will become overcrowded and cause significant conflict between and among students and teachers. Ariel notes that:

Co-location shows the differences between families' economic differences and creates a narrative for students that some families are "better" and other families are "worse." The same could be true as kids are forced into new [receiving] schools [due to the District's school closures plan].

Ariel, Ah'Miya, and Evan are now, once again, feeling significant emotional and mental strain due to the "constant change and uncertainty" caused by the seemingly endless churn of closures, mergers, and co-locations of District schools which have impacted Ah'Miya twice already in the few years she has been in school. Ah'Miya came home crying when she found out Grass Valley was closing, and has been sad for weeks. "This is hurtful to Ah'Miya and Evan emotionally."<sup>69</sup>

## **7. Gia Stevenson, Parent of Gianna**

Gianna (ten-years-old) is a Black student who attends Brookfield Elementary, her neighborhood school just a ten-minute walk from her home. Many of Gianna's family members, including her older brother who now attends McClymonds High School, and her mother Gia, attended Brookfield. Gianna loves her teachers, friends, and school community at Brookfield. Gianna's brother received a full scholarship for academics and athletics at California Polytechnic State University, and Gia attributes his academic achievements in part to the supportive learning environment he experienced in elementary school at Brookfield. Gia is grateful that Gianna has benefitted from that same environment that is setting Gianna up for academic success.

Gia is not sure if there is another school she is comfortable sending Gianna to if Brookfield closes. "It's an amazing school, why would they want to close it?" Gianna feels strongly that the District's decision to close Brookfield reflects the District's attitude that "they don't care about Brookfield kids." Although the District promised families impacted by the school closures that it would support them to find the best possible receiving schools, Gianna has not heard from anyone at the District.

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<sup>69</sup> More of Ariel's story can be found at: Tony Daquipa, *One Family's Journey Through OUSD School Closures*, OAKLAND VOICES (Feb. 17, 2022), <https://oaklandvoices.us/2022/02/17/one-family-journey-through-ousd-school-closures/>.

**IV. The District’s February 2022 Resolution to Close Predominantly Black Schools Violates Constitutional and Other Civil Rights Protections for its Students, as well as Laws Requiring Public Transparency.**

**A. The District’s closures violate Black students’ fundamental right to education and discriminates on the basis of race, ethnicity, and wealth in violation of the California Constitution.**

Under the California Constitution’s equal protection clause, classifications based on race and wealth (among other protected categories) trigger strict scrutiny. Cal. Const., art. I, §7(a), art. IV, § 16(a); *In re Marriage Cases*, 43 Cal.4th 757, 784 (2008); *Serrano v. Priest*, 18 Cal.3d 728, 766 n.45 (1976) (*Serrano II*). Additionally, students’ right to basic educational equity in public schools is a “fundamental interest.” Cal. Const., art. IX, § 5; *Butt v. State*, 4 Cal.4th 668, 686 (1992) (affirming that “access to a public education is a uniquely fundamental personal interest in California”). Education is “the lifeline of both the individual and society.” *Serrano v. Priest*, 5 Cal.3d 584, 605, 616-17 (1971). School districts are obligated to deliver California’s promise of access to educational opportunity. *O’Connell v. Superior Court*, 141 Cal.App.4th 1452, 1473 n.14 (2006). Heightened scrutiny of state action applies where the fundamental right to education is impinged and there is disparate impact between at least two categories of students. Evidence of intentional discrimination is not required.<sup>70</sup>

Here, as detailed above on pages 16 and 17, Black students are disproportionately impacted by the District’s planned school closures in stark terms. **Six of the seven schools** slated for closure are either majority-Black or are schools where Black students are enrolled at higher-than-districtwide percentages. Black students are 41 percent of students whose schools will close—almost double the expected rate since Black students are only 21.7 percent of students enrolled districtwide.<sup>71</sup> Even District Superintendent Johnson-Trammell acknowledged the disparate adverse impact on Black students during a School Board meeting on January 31, 2021.<sup>72</sup> By comparison, only 2.2 percent of white students in the District are directly impacted by the closures, which is less than one-quarter of the expected rate given that white students are 9.8 percent of students enrolled districtwide.<sup>73</sup>

This adverse racial impact is part of a larger pattern of school closures in the District over nearly two decades. Since 2004, schools serving greater numbers of Black students have been targeted for closure, merger, and redesign at the cost of massive disruption in the lives of Black students and their families. In 2004, 76 percent of students displaced by school closures were Black students (nearly twice the districtwide enrollment rate of Black students that year), while 1.2 percent were

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<sup>70</sup> *Butt*, 4 Cal.4th at 681 (affirming that the State is required to take steps to correct disparities between districts “even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents.”); *Collins v. Thurmond*, 41 Cal.App.5th 879, 896–897 (2019).

<sup>71</sup> DataQuest, *supra* n.2.

<sup>72</sup> Jan. 31 Meeting, *supra* n.3, at 12:24-12:31.

<sup>73</sup> DataQuest, *supra* n.2.

white students (one-fifth of the districtwide enrollment rate of white students that year).<sup>74</sup> In 2005, 83 percent of students displaced by school closures were Black students (over twice the districtwide enrollment rate of Black students that year), while 1.4 percent were white students (one-quarter of districtwide enrollment rate of white students that year).<sup>75</sup> In 2006, 40 percent of students displaced by school closures were Black students (slightly above the districtwide enrollment rate of Black students that year), while less than 1 percent were white students (less than one-sixth of the districtwide enrollment rate of white students that year).<sup>76</sup> In 2009, 45 percent of students displaced by school closures were Black students (13 percentage points higher than the districtwide enrollment rate of Black students that year), while 5.4 percent were white students (two percentage points lower than the districtwide enrollment rate of white students that year).<sup>77</sup> In 2012, 57 percent of students displaced by school closures were Black students (17 percentage points higher than the districtwide enrollment rate of Black students that year), while 2.4 percent were white students (one-quarter of the districtwide enrollment rate of white students that year).<sup>78</sup> In 2019, 38 percent of students displaced by school closures were Black students (16 percentage points higher than the districtwide enrollment rate of Black students that year), while 4.2 percent were white students (less than one-half of the districtwide enrollment rate of white students that year).<sup>79</sup> These numbers consistently demonstrate that Black students have been disproportionately impacted by school closures over the last decade and a half as compared to their districtwide enrollment and as compared to white students.

This disparate impact on Black students and families both demonstrates racial bias **and** deprives Black students of their fundamental right to education. School closures disrupt and damage student learning because:

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<sup>74</sup> Educ. Demographics Unit, *California Public School Enrollment – District Report*, CAL. DEP'T OF EDUC., available at:

<https://dq.cde.ca.gov/dataquest/DistEnr2.asp?cChoice=DistEnrEt2&cYear=2004-05&cLevel=District&ctopic=Enrollment&myTimeFrame=S&TheName=Oakland&cSelect=0161259--OAKLANDUNIFIED&submit1=Submit> (last accessed Apr. 6, 2022) (showing 41.2 percent of District students were Black students in 2004-2005 and 6 percent were white students).

<sup>75</sup> *Id.* (showing 39.9 percent of District students were Black students in 2005-2006 and 6 percent were white students).

<sup>76</sup> *Id.* (showing 38.2 percent of District students were Black students in 2006-2007 and 6 percent were white students).

<sup>77</sup> *Id.* (showing 32.5 percent of District students were Black students in 2009-2010 and 7.4 percent were white students).

<sup>78</sup> *Id.* (showing 30.5 percent of District students were Black students in 2011-2012 and 8.8 percent were white students).

<sup>79</sup> *Id.* (showing 22.4 percent of District students were Black students in 2019-2020 and 10.3 percent were white students).



**1. Families have insufficient time to find a new school for their students that provide the educational environment the student needs and is located in a place that does not cause a tremendous burden of travel on the family.**

- Azlinah Tambu's daughters, Samira and Nasirah, attend Parker Elementary, which is their neighborhood school just a fifteen-minute walk from their home. They will have to attend two separate schools if Parker is closed, and school transportation will be extremely difficult for the family. Azlinah is also very concerned that her children will not have the same support system at a new and larger school that will almost certainly not be a majority-Black school. Nobody from the District has called or emailed Azlinah to assist her to enroll her daughters in a receiving school.
- Rochelle Jenkins's daughters, Zoraya and Zariah, attend Parker Elementary, which is their neighborhood school just a fifteen-minute walk from their home. At Parker, Zoraya and Zariah have a supportive school community and friends whom they trust. Rochelle is very concerned her daughters will not receive the same support at a new school and she does not know how her daughters will get to school if they are not attending Parker.
- DeAdrian Jones's daughter, Monae, attends Parker Elementary, which is her neighborhood school just a five-to-ten-minute walk from her home. If Parker Elementary is closed, Monae will have to walk much farther to get to school. The District assigned Monae to Howard Elementary. The family had no time to tour Howard, no time to talk to friends or family, and no time to plan for Monae's transportation to Howard. DeAdrian is not comfortable putting her young daughter on public transportation to get to school; but walking through unfamiliar areas and across busy streets is dangerous for Monae as well.
- Holly Shogbesan's son, Ayo, attends Carl B. Munck Elementary. Carl B. Munck's smaller size is vital to making Ayo feel comfortable enough to focus on his learning. Ayo's options for going to another small, majority-Black school are severely limited. This means Ayo is likely to be enrolled in a much larger school that does not have the same welcoming or inclusive environment for Black students with disabilities like him. Nobody from the District has reached out to Holly to assist her to navigate the process of transitioning Ayo to a new school.
- Gia Stevenson's daughter, Gianna, attends Brookfield Elementary, which is her neighborhood school just a ten-minute walk from her home. Gia does not know where she will send Gianna if Brookfield closes. Gianna has not received any support—or even communication—from the District to help her family with this decision.

**2. School staff have insufficient time to ensure student records and services, including those required through Individualized Education Plans (IEPs) or Section 504 Plans, are not interrupted or lost in the transition to a new school. Disabled students are particularly vulnerable to this harm, as their special education assessment are likely to be delayed and special education services are interrupted (or even stopped altogether) when the students and staff are displaced.**

- Holly's son, Ayo, is autistic and has an IEP at Carl B. Munck. Given Holly's experience with the District failing to provide her with any assistance or support to find a new school for Ayo that will meet his needs and the District's rushed and poorly-thought-out process to date, she is deeply concerned that the Ayo's school records will be lost and his special education services disrupted if Carl B. Munck is closed.
- Monique Marshall's sons, Messiah and Isaiah, attend Brookfield Elementary and both receive speech therapy. Monique has not had any communication from the District about what will happen to Messiah if Brookfield closes, even though she has called to request assistance. She is deeply concerned that Messiah's school records will be lost and his special education services disrupted if he transitions to a new school.

**3. Students are forced to adjust to an unfamiliar school environment that may be less welcoming or inclusive than their current school. Studies have found that schools receiving greater numbers of students due to school closures often cannot maintain the quality of education for all students due to the pressures of supporting a significant influx of new students.<sup>80</sup>**

- Azlinah's daughters, Samira and Nasirah, attend Parker Elementary. Because the District has targeted majority-Black elementary schools for closure, Azlinah is very concerned that her children will not have the same support system, which they both need for their success in school, at a new and larger school that will almost certainly not be a majority-Black school.
- Rochelle's daughters, Zoraya and Zariah, attend Parker Elementary. Rochelle greatly values the fact that Parker is a majority-Black school, and she is deeply concerned their new school will not have the same caring environment for Black students.
- DeAdrian's daughter, Monae, attends Parker Elementary. She has received a tremendous amount of support from the school community, especially after the death of her father two

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<sup>80</sup> JOURNEY FOR JUSTICE ALLIANCE, *Death by a Thousand Cuts: Racism, School Closures, and Public School Sabotage* 12 (May 2014), available at: <https://search.issuelab.org/resource/death-by-a-thousand-cuts-racism-school-closures-and-public-school-sabotage.html> (finding that school closures place an enormous burden on schools that receive displaced students due to difficulties with integration, trauma, and overcrowding).

years ago. That emotional support, and the fact that Parker is a majority-Black school, is very important for Monae's mental health, well-being, and educational success. Because the District has targeted majority-Black elementary schools for closure, Monae's options for attending another majority-Black school are severely limited. DeAdrian is deeply concerned that Monae's new school will not have the same welcoming or inclusive environment for Black students.

- Holly's son, Ayo, attends Carl B. Munck. Transitions are especially difficult for Ayo due to his autism. If Carl B. Munck closes, Ayo will be forced to transition to a new school for the last year of his K-second-grade Special Day Class, and then transition again to a new third-fifth-grade Special Day Class in a new and unfamiliar school environment. Holly is worried that at a new school Ayo will not have the same safe and inclusive environment, and continuum of special education services, that he receives at Carl B. Munck, which have allowed him to thrive in and enjoy school.
- Monique's sons, Messiah and Isaiah, currently attend Brookfield Elementary. If Brookfield closes, Isaiah and Messiah will not have the benefit of the school community they have known. It is unclear that they will receive the same academic and special education services that they benefit from at Brookfield.

**4. Student academic achievement and other measures of student success suffer as a result of the above listed harms, leading to even more mobility as families search for a better school.**

Studies nationally of the impact of school closures have directly connected decreased student achievement to the disruptions caused by those closures.<sup>81</sup> Indirect evidence abounds that the same is true in Oakland. Specifically, OUSD school closures have overwhelmingly impacted Black students, as described above, yet overall achievement of Black/African American students has not improved over time, as demonstrated in a variety of publicly available databases.<sup>82</sup> The District has also been identified by the California Collaborative for Educational Excellence as requiring

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<sup>81</sup> *Ibid.*; Matt Barnum, *Five things we've learned from a decade of research on school closures*, CHALKBEAT (Feb. 5, 2019), available at: <https://www.chalkbeat.org/2019/2/5/21106706/five-things-we-ve-learned-from-a-decade-of-research-on-school-closures>.

<sup>82</sup> OUSD, *High School Readiness*, available at: [https://dashboards.ousd.org/views/HighSchoolReadinessExternal\\_15609813964760/Comparison?iframeSizedToWindow=true&:embed=y&:showAppBanner=false&:display\\_count=no&:showVizHome=no&:origin=viz\\_share\\_link](https://dashboards.ousd.org/views/HighSchoolReadinessExternal_15609813964760/Comparison?iframeSizedToWindow=true&:embed=y&:showAppBanner=false&:display_count=no&:showVizHome=no&:origin=viz_share_link) (last accessed Apr. 7, 2022); OUSD, *Students Receiving Suspensions – by Year*, available at: [https://dashboards.ousd.org/views/SuspendedOSSStudents\\_0/Comparison?iframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay\\_count=no&%3AshowVizHome=no#1](https://dashboards.ousd.org/views/SuspendedOSSStudents_0/Comparison?iframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay_count=no&%3AshowVizHome=no#1) (last accessed Apr. 7, 2022); OUSD, *Attendance Group Snapshot*, available at: [https://dashboards.ousd.org/views/ChronicAbsence\\_0/Comparison?:embed=y&:display\\_count=no&:render=false#40](https://dashboards.ousd.org/views/ChronicAbsence_0/Comparison?:embed=y&:display_count=no&:render=false#40) (last accessed Apr. 7, 2022).

intervention because of its persistent low outcomes for Black students.<sup>83</sup> In 2019, the NAACP filed an administrative petition against the District for failing to improve literacy rates among Black elementary school students.<sup>84</sup> Given the consistent targeting of Black communities, collectively this evidence demonstrates the failures of previous school closures in the District to improve student academic achievement for **any** group of students, least of all Black students. Unfortunately, the District refuses to publicly release information tracking the academic outcomes of Black students displaced by school closures, despite repeated requests from the Committee to Empower Excellence in Black Student Education,<sup>85</sup> a subgroup of the state-mandated Local Control Accountability Plan Parent-Student Advisory Committee (PSAC),<sup>86</sup> and the Community Advisory Committee for Special Education (CAC).<sup>87</sup> The District's continuing refusal to provide access to the relevant data highlights the urgent need for an investigation and audit by the Attorney General.

- Joel Velasquez has two children who attended Lakeview Elementary until 2012, when the District closed the school and allowed a charter school to open there instead. Joel's youngest daughter, Zelnavieh, missed out on going to Lakeview, a school that she spent her whole life visiting before it closed. The deep relationships the family developed at Lakeview were severed and it was hard to re-establish connections and get the resources Zelnavieh needed when she suffered from academic and social setbacks as a result of Lakeview's closure.

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<sup>83</sup> CAL. COLLABORATIVE FOR EDUC. EXCELLENCE, *2020-2021 Mt. Diablo Unified School District: Systemic Instructional Review* (Mar. 2021), available at: <https://ccee-ca.org/wp-content/uploads/2021/03/MDUSD-SIR-Report.pdf>; CAL. COLLABORATIVE FOR EDUC. EXCELLENCE, *After Systemic Instructional Review (SIR): Path to Attaining Pupil Achievement Outcomes* (Feb. 24, 2021), available at: <http://ousd.legistar.com/gateway.aspx?M=F&ID=97872.pptx> (showing OUSD has a longstanding history of failing Black students).

<sup>84</sup> Administrative Petition to Improve Literacy Scores Among Oakland Public School Students from the NAACP to the OUSD Bd. of Educ. (Jan. 26, 2021), available at: [https://docs.google.com/document/d/1qRKkxReR\\_5Gp7-m\\_Q8ji5uFcOUF\\_OUH\\_C5LMm-sIIqg/edit](https://docs.google.com/document/d/1qRKkxReR_5Gp7-m_Q8ji5uFcOUF_OUH_C5LMm-sIIqg/edit).

<sup>85</sup> See OUSD Bd. of Educ. Meeting, *Video*, at 55:45 (June 16, 2021), available at: [http://ousd.granicus.com/player/clip/1922?view\\_id=4&redirect=true](http://ousd.granicus.com/player/clip/1922?view_id=4&redirect=true).

<sup>86</sup> OUSD BD. OF EDUC., *Meeting Minutes Long – Final 10* (Mar. 4, 2020), available at: <https://ousd.legistar.com/View.aspx?M=M&ID=765663&GUID=67B6BFF2-27B7-4B2B-B398-0A8D3DC07C4B>

<sup>87</sup> OUSD COMTY. ADVISORY COMM. FOR SPECIAL EDUC., *The Vision for OUSD Schools Must Center Disabled Students and their Families* (Feb. 7, 2022), available at: <http://ousd.legistar.com/gateway.aspx?M=F&ID=102251.pptx>.



**5. Supportive community services that are often provided by neighborhood schools, particularly in lower-income communities, vanish when schools close.<sup>88</sup> For example, while District schools were closed in the 2019-2020 and 2020-2021 school years due to the COVID-19 pandemic, schools served a critical function as community food banks as the economy cratered. When these services disappear, communities that are already burdened with other forms of instability are further weakened.**

- Rochelle's twin daughters, Zoraya and Zariah, attend Parker. At Parker, they have been able to participate in two high-quality afterschool programs: Girls, Inc. and Higher Ground. These programs have greatly benefitted both girls by giving them greater confidence as students. Zoraya and Zariah will not have access to the Girls, Inc. afterschool program at a new school.

**6. The same communities are unfairly burdened with school closures again and again, thus exacerbating and amplifying all of the harms listed immediately above.**

- Joel Velasquez is the parent of Teyolia, Zaquiell, and Zelnavieh. Teyolia and Zaquiell attended Lakeview Elementary until it closed in 2012, at which point the District made promises to Lakeview families to persuade them to transfer their students to Burckhalter Elementary. "The District did not keep their promises. They did not provide transportation or a welcoming school. Only about 25 percent of Lakeview students went to Burckhalter. It broke up the community and sent all of the children to different places. It was devastating." The family then had to send Teyolia and Zaquiell to separate schools, as Teyolia was transferred to Westlake Middle School and Zaquiell was transferred to La Escuelita Elementary. Furthermore, Teyolia was subjected to yet another educational disruption when Westlake was destabilized by a charter school co-location, re-traumatizing the entire family.
- Sheila is the parent of James. James started at Charles P. Howard Elementary, but OUSD suddenly closed his SDC program. James then transferred to Burckhalter Elementary, but had a traumatic experience. James ended up at Sankofa Academy, but Sheila heard it was targeted for closure and under attack. This terrified her because then they would have to find another school, which meant more disruption and trauma. James is currently in the Independent Study program.
- Ariel Loudd is the parent of Ah'Miya and Evan. Ah'Miya was enrolled at Howard and left because of the destabilization caused by the talk of school closures and the colocation of Francophone charter school. Ah'Miya then enrolled at Grass Valley which is now closing.

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<sup>88</sup> JOURNEY FOR JUSTICE ALLIANCE, *supra* n.80, at 19.

Thus, the planned District school closures have seriously and disproportionately harmed, and will continue to harm, Black students and their families, violating Black students' fundamental right to equal educational opportunity under the California Constitution.

Additionally, the District's school closures plan discriminates against students on the basis of wealth. As described above on page 19, smaller schools that serve wealthier families, such as Redwood Heights Elementary, Thornhill Elementary, and Hillcrest Elementary—where school site PTAs are able to raise significantly more funds from private donations by students' families—were not targeted for permanent closure. Smaller schools serving low-income families, such as Parker Elementary, Brookfield Elementary and Horace Mann Elementary—which reported no donations from school site PTAs through the California PTA—were disproportionately targeted for closure.

**B. The District violates Black students' rights to non-discrimination under California Government Code Section 11135 through its school closures plan.**

California Government Code Section 11135 protects against discrimination by “any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.” Section 11135 does not require intentional discrimination to establish liability. It provides an explicit private right of action to challenge a state-funded program's disparate impacts resulting from the program based in race, ethnicity, and disability status, among other protected categories.<sup>89</sup> The framework of the claim is:

(1) a plaintiff establishes a prima facie case if the defendant's facially neutral practice causes a disproportionate adverse impact on a protected class; (2) to rebut, the defendant must justify the challenged practice; and (3) if the defendant meets its rebuttal burden, the plaintiff may still prevail by establishing a less discriminatory alternative.

*Darensburg v. Metro. Transp. Comm'n*, 636 F.3d 511, 520 (9th Cir. 2011). Here, the District's facially neutral practice, its school closures plan, has a much greater impact on Black students districtwide. The Office of the Attorney General has asserted its authority to prosecute claims under Section 11135 against California school districts on several occasions since 2019.<sup>90</sup>

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<sup>89</sup> See Cal. Code Regs. tit. 2, § 11154(i)(1) (West Jan. 1, 2017) (prohibiting a recipient of state funds, “in carrying out any program or activity directly, or through contractual, licensing or other arrangements,” to use “criteria or methods of administration that have the purpose **or effect** of subjecting a person to discrimination on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability”) (emphasis added).

<sup>90</sup> Compl. for Inj. Relief, *The People of the State of California v. Barstow Unified Sch. Dist.*, 43 Cal.App.4th (1996), available at: <https://oag.ca.gov/system/files/attachments/press-docs/BUSD%20File-Stamped%20Complaint.pdf>; Compl. for Inj. Relief, *The People of the State of California v. Oroville City Elementary Sch. Dist.*, available at: <https://oag.ca.gov/system/files/attachments/press-docs/OCESD%20File->

Here, the District's school closures plan is facially neutral and causes a disparate impact on a protected class. As described in detail above on pages 16 and 17, Black students are significantly disproportionately impacted by the current school closures plan. As described above on pages 12 to 17, the District's school closures have adversely impacted, and will continue to harm, Black students and their families more than any other racial group in the District. Even Superintendent Johnson-Trammell has admitted the disparate impact on Black students.<sup>91</sup> Together, these facts establish a prima facie case of disparate impact discrimination based on race.

The District has argued that its current plan to close seven schools, notwithstanding the disparate adverse impact on Black students, is justified as a fiscal matter due to declining enrollment over time and that State funding is tied to enrollment numbers. District families and advocates recognize that the District was (until recently) under pressure from the Alameda County Office of Education to approve "budget-balancing solutions" for longer-term fiscal health.<sup>92</sup> However, it is extremely unclear that the District's school closures plan will save any significant amount of money, particularly when it is balanced against the detrimental cost of those closures to District students and families. In 2019, the District estimated that closing Roots Academy would only save between \$345,000-381,000 per year.<sup>93</sup> The closures plan introduced in the January 12, 2022 Resolution, which would have closed eight schools and merged or consolidated another seven, was estimated to save the District \$4-15 million.<sup>94</sup> The current plan is more limited in that it proposes to close seven schools and merge or consolidate three others. The District has not issued a cost-savings estimate on its current school closures plan, but it will doubtless fall far short of the \$40-50 million the District claims it must cut from its 2022-2023 budget "to address projected deficits." Even more importantly, on March 31, 2022, the Alameda County Office of Education rescinded its

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Stamped%20Complaint.pdf; Compl. for Inj. Relief, *The People of the State of California v. Oroville Union High Sch. Dist.*, available at: <https://oag.ca.gov/system/files/attachments/press-docs/OUHSD%20File-Stamped%20Complaint.pdf>; Compl. for Inj. Relief, *The People of the State of California v. Mojave Unified Sch. Dist.*, available at: <https://oag.ca.gov/system/files/attachments/press-docs/Mojave%20USD%20-%20Redacted%20Complaint.pdf>; Compl. for Inj. Relief, *The People of the State of California v. Stockton Unified Sch. Dist.*, available at: <https://oag.ca.gov/system/files/attachments/press-docs/filed-complaint-01.18.19.pdf>; *The People of the State of California v. Sausalito Marin City Sch. Dist.*, available at: <https://oag.ca.gov/system/files/attachments/press-docs/SMCSD%20Filed%20Complaint.pdf>.

<sup>91</sup> Jan. 31 Meeting, *supra* n.3, at 12:24-12:31.

<sup>92</sup> Letter from L. K. Monroe, Superintendent of Schools, Alameda County Office of Education to Shanthi Gonzales, President, OUSD Board of Education (Nov. 8, 2021), available at: <https://oaklandside.org/wp-content/uploads/2021/11/21-2676-Presidents-Report-November-17-2021.pdf>.

<sup>93</sup> Dr. Kyla Johnson Trammel & Yvette Renteria, *Blueprint for Quality Schools – Cohort 2 Proposal: Roots Closure & CCPA Expansion*, OUSD (Jan. 23, 2019), available at: [https://drive.google.com/file/d/13RKt-Wi1YX6GVqfeRIJo4ExCa\\_4xpotw/view](https://drive.google.com/file/d/13RKt-Wi1YX6GVqfeRIJo4ExCa_4xpotw/view).

<sup>94</sup> *Id.*

“going concern” letter from November 2021 “effective immediately.”<sup>95</sup> As noted by Board Director Mike Hutchinson, “OUSD is not in financial crisis...We have large reserves...The finances are actually better than they’ve been in a long time.”<sup>96</sup> This undercuts the District’s justification for these discriminatory school closures.

The District must use a less discriminatory alternative to address its purported financial problems than balancing its budget on the backs of Black students and families who have been impacted for decades by systemic underfunding of their schools and endemic racism in the education system, and who are now the most vulnerable to pushout from their communities in Oakland due to systemic discrimination in housing, employment, and the consequent weakening of their civic and political strength. To comply with the law, the District must rescind its current school closures plan and engage in a community-informed process to consider the range of options available to address the District’s financial troubles and to reach difficult decisions with transparency and basic consideration for lower-income Black and Brown students and families. The District must also conduct an equity analysis prior to making any decision to close, consolidate, or redesign schools. Assemblymember Mia Bonta has publicly expressed concern about the discriminatory impact of the school closures and introduced a bill in February 2022 to give the District more time to make decisions about how to balance its budget while allowing the District to access \$10 million in one-time funds.<sup>97</sup> Therefore, the District’s assertion that its fiscal problems are “urgent” are overstated.

### C. California Brown Act Violation

California Government Code § 54950 *et seq.* (“The Brown Act”) is intended to promote transparency in government operations. The Brown Act “provides for open meetings for local legislative bodies,” including school boards. Cal. Gov. Code § 54952(b); *see also Kolter v. Comm’n on Prof’l Competence of Los Angeles Unified Sch. Dist.*, 170 Cal.App.4th 1346, 1350 (2009) (holding that the Brown Act applies to school districts). California courts have established that education decisions are “a matter of public concern.” *Carlson v. Paradise Unified Sch. Dist.*, 18 Cal.App.3d 196, 199 (1971). If a violation of the Act is suspected, any interested person may sue a legislative body to determine if an action taken by that body violated the Act and is therefore null and void. Cal. Gov’t Code § 54960.1 (West 2022), subdiv. (a); *Ingram v. Flippo*, 74 Cal.App.4th 1280, 1287 (1999).

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<sup>95</sup> Letter from L.K. Monroe, Superintendent of Schools, Alameda County to Gary Yee, President, OUSD Bd. of Educ. re 2021-22 Second Interim Budget Report (Mar. 31, 2022), available at: <https://www.facebook.com/MikeHutchinson4SchoolBoard/photos/pcb.5016960888419978/5016986475084086>; Rick Hurd, *Oakland Unified School District no longer ‘going concern’ for Alameda County Office of Education*, EAST BAY TIMES (Apr. 2, 2022), available at <https://www.eastbaytimes.com/2022/04/02/oakland-unified-school-district-no-longer-going-concern-for-alameda-county-office-of-education/>.

<sup>96</sup> *Id.*

<sup>97</sup> Ashley McBride, *Calls to stop OUSD closure plan grow*, THE OAKLANDSIDE (Feb. 17, 2022), available at: <https://oaklandside.org/2022/02/17/calls-to-stop-ousd-closure-plan-grow/>.



A complaint based on a Brown Act violation must allege:

(1) that a legislative body of a local agency violated one or more enumerated Brown Act statutes; (2) that there was “action taken” by the local legislative body in connection with the violation; and (3) that before commencing the action, plaintiff made a timely demand of the legislative body to cure or correct the action alleged to have been taken in violation of the enumerated statutes, and the legislative body did not cure or correct the challenged action.

*Bell v. Vista Unified School Dist.* 82 Cal.App.4th 672, 684 (2000) quoting *Boyle v. City of Redondo Beach*, 70 Cal.App.4th 1109, 1117 (1999).

OUSD’s introduction of and subsequent vote on the amendment to the school closure resolution at the February 8 Board meeting may have violated the Brown Act. The law mandates that in an open meeting “[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda.” Cal. Gov’t Code § 54954.2 (West 2022). In order to act on items not included in the posted agenda, members must agree by a two-thirds vote, or a unanimous vote if not all members are present, that an “emergency situation” has arisen and that “there is a need to take immediate action.” Cal. Gov’t Code § 54954.2. (West 2022), subdiv. (b). The posted agenda for the February 8 meeting included Resolution No. 2122-0030.<sup>98</sup> However, no information about Eng’s amendment detailing the new school closure plan, which the Board eventually approved, was included in the original published meeting agenda. This is similar to *Santa Barbara Sch. Dist. v. Superior Court*, where parents sued a school district under a statutory predecessor to the Brown Act for its adoption of a different desegregation/integration plan than the one they presented to the public. 13 Cal.3d 315 (1975). The school board in Santa Barbara posted an agenda informing the public that the school’s desegregation plans would be presented and the school board would adopt one of the plans; however, the board adopted a different plan. *Id.* at 334-335. The court found that the school board had adopted a plan that “differed radically” from any of the plans it had previously presented, leading the court to find the Board’s agenda “fatally misleading.” *Id.* at 335-336.

Additionally, the February 8 Board meeting was designated as a “special meeting.”<sup>99</sup> The Brown Act includes additional stipulations for special meetings. Specifically, the business to be discussed at the meeting must be posted at least twenty-four (24) hours before the special meeting time. Cal. Gov’t Code § 54956(a) (West 2022). Here, the contents of the resolution amendment were not included in the original posted agenda, and the Board did not follow the proper procedure for approving a non-agenda item; therefore, the passage of the amended school closure resolution may have violated the Brown Act.

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<sup>98</sup> Board of Educ., *Meeting Agenda Long - Final*, OUSD (Feb. 8, 2022), available at: <https://ousd.legistar.com/View.ashx?M=A&ID=927644&GUID=47E1B362-2A80-420E-AA21-FCF8F9233779>.

<sup>99</sup> *Id.*

#### **D. California Public Records Act (PRA) Violations**

The District has refused to provide public records in response to California Public Records Act (“PRA”) requests submitted by the ACLU and J4OS and failed to provide records within the statutory deadlines, making OUSD subject to a writ pursuant to California Gov. Code § 6258. Under constitutional and statutory law in California, access to public records is “a fundamental and necessary right of every person.”<sup>100</sup> Public entities, such as OUSD, must respond to records requests under the PRA within ten (10) days of receipt. Cal. Gov’t. Code § 6253(c). The definition of “public records” includes any documents, datasets, databases, publications, memoranda, writings, electronic data, mail, electronic mail, media files, nonstandard documents, or other forms of communication. *Coronado Police Officers Ass’n v. Carroll*, 106 Cal.App.4th 1001, 1006 (2003) (noting that the definition of “public record” under the PRA is “intended to cover every conceivable kind of record that is involved in the governmental process”). Non-disclosure may only be justified in one of two ways: (1) if the requested information falls under one of the PRA’s explicit exemptions, or (2) if “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” §§ 6254, 6255(a). In either case, non-disclosure must be explained in writing. § 6255.

In September 2021, the ACLU, working with J4OS, submitted a PRA request to the District for documents related to the District’s consideration of school closures, merger, or redesign from 2020 up to the present. Nearly three months later, the District provided **only four documents**. On January 19, 2022, the ACLU sent the District a letter detailing the legal deficiencies in its PRA response, describing multiple specific responsive, disclosable documents that—at a minimum—the District should have provided to the ACLU but did not, and demanding that the District “provide all remaining responsive documents as soon as possible, particularly given that this is a matter of urgent public concern for hundreds of District families.” In response, the District sent an email stating that it would “review your concerns and get back to you by the end of February.” The District failed to communicate at all to the ACLU in February or March. On March 22, the ACLU sent an email to the District demanding to know when it would receive responsive documents. On April 4, the District responded by email, stating “OUSD will look into this and get back to you,” but failed to provide a timeframe by which the ACLU could expect to receive responsive documents.

The District’s actions violate its obligations to “promptly” disclose records. Cal. Gov’t Code § 6253(b). The ACLU and J4OS have now been waiting for over six months for the District to disclose public records related to its evaluation of schools for closure, merger, and redesign. Even more concerning, the District has failed to produce responsive public documents that are critical to public transparency. There has been a long process through which the District has considered and discussed the “Citywide Plan Map,” the “Citywide Plan Map Process,” and associated District plans for school closures, mergers, and redesign through team meetings, shared document review, and submission emails leading up to final presentations to the Board, in addition to questions asked

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<sup>100</sup> Cal. Gov’t Code § 6250; *see also* Cal. Const., art. I, § 3(b)(1) (“the people have the right of access to information concerning the conduct of the people’s business, and therefore...the writings of public officials and agencies shall be open to public scrutiny.”).

by Board members and District staff responses to those questions. In fact, individual school principals were notified in Spring 2020 that their schools may be slated for closure, merger, or redesign, and there are associated documents shared with those school principals. This process **must** have created disclosable, non-exempt records, such as emails and memos. Moreover, on August 3, 2021, the District held a meeting with members of J4OS. District staff presented a “dashboard” of schools ranked by “quality, equity, and sustainability” metrics in the Citywide Plan Map that would be used to determine which schools would be placed on the closures list. Those databases and related records are clearly responsive to the ACLU’s PRA request. *Sander v. State Bar of Cal.*, 58 Cal.4th 300 (holding that a database is subject to disclosure as a public record under the PRA). However, **none** of these documents, even documents which were disclosed by alternative means to the ACLU and J4OS and are known to exist, were produced. Accordingly, the District has blatantly violated its legal duty to produce documents under the PRA.

## V. Remedies Requested

We respectfully request the California Department of Justice Bureau of Children’s Justice to investigate the District’s actions described above and require the District to develop and implement plans to accomplish the following remedies, at a minimum:

- Rescind the District’s February 8, 2022 school closures resolution effective immediately and restore enrollment to the schools impacted by the proposed closures for the upcoming 2022-2023 school year.
- Require the District work with the Reparations Task Force to develop a racial equity impact analysis of any proposed closures, mergers or consolidations of District schools prior to any School Board vote on school changes, as required by the March 2021 Reparations for Black Students Resolution, and to incorporate that racial equity analysis into any future decisions regarding possible school closures.
- Require the District engage in a community informed process about future structural changes to address budget reductions, with particular outreach to community leaders in the District’s Black Students and Families Thriving Task Force, the J4OS Black Working Group, and groups active in the Reparations for Black Students campaign.
- Require the District comply with District Resolution 1819-0718, requiring “that no closure, merger, or consolidation would occur without inclusion of a planning period (no less than a school year or 9 months) between the vote to approve the action and its implementation, unless a recommendation has been brought forward by a team representing multiple stakeholders from the impacted school communities to accelerate the implementation.”<sup>101</sup>
- Require the District conduct an external audit of its finances to determine if the District is appropriately spending its resources and if school closures will save the District money in the short-term and long-term, and to present less-discriminatory budget-saving alternatives

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<sup>101</sup> Resolution of the Board Of Education of OUSD, Res. No. 1819-0718, Improving Community Engagement for Proposed School Changes (Mar. 13, 2019), on file with complainants.

that do not cause disproportionate harm to any group based on race, ethnicity, wealth, or any other protected category under California constitutional and civil rights law.

- Require the District produce all disclosable, responsive documents requested in 2021 by the ACLU pursuant to the Public Records Act.
- Require the District fully implement the Reparations for Black Students Resolution, including but not limited to:
  - 1) Creating and funding the Black Thriving Fund;
  - 2) Creating a “publicly-available transparency dashboard which monitors the Black Thriving Fund expenditures as well as the progress of each site’s planning, implementation, and success with the Black Student Thriving Plan;”
  - 3) Identifying and investing in “Historically Black Schools, defined as an OUSD school with 40% or more of African American students enrolled in 2020-21 and transform them into Black Thriving Community Schools with available wrap-around services and supports needed to achieve the thriving indicators developed by the [Reparations] Task Force to ensure that Black students thrive;”
  - 4) Implementing the Black Student Thriving Plan “that sets criteria for the continuous monitoring of all OUSD schools with 10 or more Black or African American students enrolled...to determine whether academic or socioemotional resources are effectively creating Black Student Academic Growth and Achievement, including distributions as needed from the publicly and privately raised resources included in the Black Thriving Fund;” and
  - 5) Increasing and maintaining “the necessary mandated infrastructures and resources to develop the engagement, leadership, and decision making power of Black Students, Black families, and communities.”<sup>102</sup>

Respectfully submitted,



**AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA**

Linnea Nelson, Senior Staff Attorney, Racial & Economic Justice Program  
Statewide Education Equity Team Lead

Grayce Zelphin, Senior Staff Attorney, Racial & Economic Justice Program

Brandon Greene, Director, Racial & Economic Justice Program

cc: Superintendent Kyla Johnson-Trammell, Oakland Unified School District  
superintendent@ousd.org

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<sup>102</sup> Reparations for Black Students Resolution, *supra* n.7, at 3-6.