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9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF CONTRA COSTA**

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

15 v.

16 STATE OF CALIFORNIA; TONY  
THURMOND, in his official capacity as  
17 STATE SUPERINTENDENT OF PUBLIC  
INSTRUCTION; STATE BOARD OF  
18 EDUCATION; CALIFORNIA  
DEPARTMENT OF EDUCATION; and  
19 Pittsburg Unified SCHOOL DISTRICT, DOES  
1-100, INCLUSIVE  
20 Defendants and Respondents.

Case No. N21-1755

UNLIMITED JURISDICTION

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT-RESPONDENT  
PITTSBURG UNIFIED SCHOOL  
DISTRICT'S MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Date: July 21, 2022

Time: 9:00 a.m.

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**TABLE OF CONTENTS**

1

2 INTRODUCTION .....7

3 BACKGROUND AND PROCEDURAL HISTORY.....7

4 LEGAL STANDARD.....9

5 ARGUMENT.....10

6 I. Taxpayer Plaintiffs Have Standing Conferred Under California Code of Civil  
7 Procedure Section 526a to Raise the First, Second, and Third Causes of Action. ....10

8 A. California Case Law Clearly Supports Taxpayer Plaintiffs’ Standing to Allege the  
9 First, Second, and Third Causes of Action. ....11

10 B. Taxpayer Plaintiffs Are Not Relegated to One Cause of Action Based on Their  
11 (Unchallenged) Taxpayer Standing. ....12

12 II. Student Plaintiffs Have Standing to Bring the First and Second Causes of Action as  
13 They Are Pled in the FAP.....14

14 A. Pittsburg Unified’s Motion Fails to Challenge any “Causes of Action” .....14

15 B. Student Plaintiffs Have Pled Facts Sufficient to Support Their Standing to Bring  
16 Their First and Second Causes of Action .....16

17 i. Student Plaintiffs Allege They Have Personally Suffered from Pittsburg  
18 Unified’s Unlawful Discrimination on the Basis of Race, Ethnicity, National  
19 Origin, and Disability Status.....16

20 ii. Student Plaintiffs Additionally Assert Public Interest Mandamus Standing in  
21 All Claims and Counts in the FAP.....19

22 CONCLUSION.....21

23

24

25

26

27

28

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Adams v. Paul*,  
11 Cal. 4th 583 (1995) .....16

*Agric. Lab. Rels. Bd. v. Exeter Packers, Inc.*,  
184 Cal. App. 3d 483 (1986) .....20

*Alliance Mortg. Co. v. Rothwell*,  
10 Cal. 4th 1226 (1995) .....10

*Associated Builders & Contractors, Inc. v. S.F. Airports Comm’n*,  
21 Cal. 4th 352 (1999) .....20

*Bach v. McNelis*,  
207 Cal. App. 3d 852 (1989) .....10

*Barker v. Hull*,  
191 Cal. App. 3d 221 (1987) .....9

*Blair v. Pitchess*,  
5 Cal. 3d 258 (1971) .....10, 11, 14

*Blumhorst v. Jewish Family Servs. of L.A.*,  
126 Cal. App. 4th 993 (2005) .....17

*Brown v. Bd. of Educ. of Topeka*,  
347 U.S. 483 (1954) .....18

*Rogers v. Paul*,  
382 U.S. 198 (1965) .....18

*Cal. DUI Lawyers Ass’n v. Cal. Dep’t of Motor Vehicles*,  
20 Cal. App. 5th 1247 (2018) .....11

*Cal. Taxpayers Action Network v. Taber Constr., Inc.*,  
12 Cal. App. 5th 115 (2017) .....12, 14

*Citizens for Unif. Laws v. Cnty. of Contra Costa*,  
233 Cal. App. 3d 1468 (1991) .....20

*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*,  
68 Cal. App. 4th 445 (1998), as modified on denial of reh’g (Jan. 6, 1999) .....16

*Collins v. Thurmond*,  
41 Cal. App. 5th 879 (2019) .....18

1 *Common Cause v. Bd. of Supervisors*,  
2 49 Cal. 3d 432 (1989) .....19

3 *Connerly v. State Pers. Bd.*,  
4 92 Cal. App. 4th 16 (2001) .....11

5 *Crawford v. Bd. of Educ.*,  
6 17 Cal.3d 280 (1976) .....18

7 *Crestview Mobile Home Ests., LLC v. Baca*,  
8 No. D074222, 2019 WL 7161804 (Cal. Ct. App. Dec. 24, 2019) .....17

9 *Davis v. Fresno Unified Sch. Dist.*,  
10 57 Cal. App. 5th 911 (2020) .....12, 14

11 *Davis v. Fresno Unified Sch. Dist.*,  
12 237 Cal. App. 4th 261, *as modified* (June 19, 2015) .....12

13 *Doe v. Albany Unified Sch. Dist.*,  
14 190 Cal. App. 4th 668 (2010) .....21

15 *Elder v. Pac. Bell Tel. Co.*,  
16 205 Cal. App. 4th 841 (2012) .....15

17 *Fire Ins. Exch. v. Superior Court*,  
18 116 Cal. App. 4th 446 (2004) .....10, 14

19 *Fragante v. City of Honolulu*,  
20 888 F. 2d 591, 595 (9th Cir. 1989), *cert. denied*, 494 U.S. 10810 (1990).....19

21 *Grutter v. Bollinger*,  
22 539 U.S. 306 (2003).....18

23 *Gutierrez v. Municipal Court*,  
24 838 F.2d 1031, 1039 (9th Cir. 1988), *vacated as moot*, 490 U.S. 1016 (1989).....19

25 *Harman v. City of San Francisco*,  
26 7 Cal. 3d 150, 496 P.2d 1248 (1972) .....19

27 *Lance Camper Mfg. Corp. v. Republic Indem. Co. of Am.*,  
28 44 Cal. App. 4th 194 (1996) .....9

*Lilienthal & Fowler v. Superior Court*,  
12 Cal. App. 4th 1848 (1993) .....15

*Love v. Keays*,  
491 P.2d 395 .....13

*McKeon v. Hastings Coll. of the Law*,  
185 Cal. App. 3d 877 (1986) .....20

1 *G.B. ex rel. N.B. v. Tuxedo Union Free Sch. Dist.*,  
2 751 F. Supp. 2d 552 (S.D.N.Y. 2010), *aff'd sub nom. G.B. v. Tuxedo Union*  
3 *Free Sch. Dist.*, 486 F. App'x 954 (2d Cir. 2012) .....18

4 *Sandoval v. Hagan*,  
5 7 F. Supp. 2d 1234 (M.D. Ala. 1998) .....19

6 *Simpson v. City of Los Angeles*,  
7 40 Cal. 2d 271 (1953) .....20

8 *Torres v. City of Yorba Linda*,  
9 13 Cal. App. 4th 1035 (1993) .....13

10 *TRIM, Inc. v. County of Monterey*,  
11 86 Cal. App. 3d 539 (1978) .....14

12 *Van Atta v. Scott*,  
13 27 Cal. 3d 424 (1980) .....11, 13

14 *Veera v. Banana Republic, LLC*,  
15 6 Cal. App. 5th 907 (2016) .....16

16 *Virginia G. v. ABC Unified Sch. Dist.*,  
17 15 Cal. App. 4th 1848 (1993) .....10

18 *Weatherford v. City of San Rafael*,  
19 395 P.3d 274 (Cal. 2017) .....11, 13

20 **Constitution**

21 Cal. Const. art. I, § 7(a) & art. IV, § 16(a).....12, 13, 15

22 **Statutes**

23 Cal. Civ. Proc. Code § 431.30(d).....7

24 Cal. Civ. Proc. Code § 438 .....9, 10, 14, 15

25 Cal. Civ. Proc. Code § 483 .....15

26 Cal. Civ. Proc. Code § 526a..... *passim*

27 Cal. Civ. Proc. Code § 1085 .....8, 20

28 Cal. Civ. Proc. Code § 1086 .....20

California Education Code Section 56000 *et seq.* .....8, 13

1 **INTRODUCTION**

2 Plaintiffs have brought California Constitutional and statutory challenges against  
3 Defendant Pittsburg Unified School District (“Pittsburg Unified” or the “District”) based on the  
4 District’s persistent and systematic failure to provide equal educational opportunity to its  
5 students based on race, ethnicity, national origin, and disability status. In their First Amended  
6 Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief  
7 (“First Amended Petition” or “FAP”), Plaintiffs provided comprehensive and detailed allegations  
8 about the severe inequities and discrimination Pittsburg Unified has inflicted on its students of  
9 color and students with disabilities. In response to Plaintiffs’ FAP, the District filed an  
10 inadequate Answer with a general denial insufficient to controvert the verified FAP. Defendant  
11 Pittsburg Unified’s Answer to FAP (4/25/2022) at 2 (“General Denial”); Cal. Civ. Proc. Code  
12 (“CCP”) § 431.30(d) (stating that if the complaint is verified, denial of the allegations shall be  
13 made positively or according to the information and belief of the defendant). The District failed  
14 to demur to the FAP within the statutorily-prescribed deadline, but now attempts to rectify its  
15 omission by seeking, through a Motion for Judgment on the Pleadings (“Motion”), to wordsmith  
16 Plaintiffs’ FAP. Pittsburg Unified’s Motion is an unsupportable and inconsequential critique of  
17 the form of Plaintiff’s FAP. It is premised on an unreasonably narrow theory of harm that is  
18 unsupported by prevailing case law and fails to provide any relevant legal authority from which  
19 this Court can, or should, determine judgment on the pleadings. Plaintiffs have alleged standing  
20 to bring all causes of action in the FAP and denial of the District’s Motion is well-supported by  
21 both statute and decades of well-established case law.

22 **BACKGROUND AND PROCEDURAL HISTORY**

23 Plaintiffs are two English learner students with disabilities at Pittsburg Unified  
24 (collectively “Student Plaintiffs”), through their guardians ad litem; and three taxpayer Plaintiffs  
25 who are parents of current and former Pittsburg Unified students and/or current and former staff  
26 at Pittsburg Unified (collectively “Taxpayer Plaintiffs”). FAP ¶¶ 22-29. As detailed in the FAP,  
27 each Plaintiff has been harmed by the District’s systematic and longstanding refusal to address  
28 the discriminatory policies and practices taking place at Pittsburg Unified. FAP ¶¶ 16-17, 59-60,

1 68-69, 71, 76-78, 83-94, 103, 133.

2 Plaintiffs collectively allege that Pittsburg Unified maintains policies and practices  
3 contrary to law that (1) disproportionately identify Black and English learner students as eligible  
4 for special education, including with more significant or restrictive disabilities, FAP ¶¶ 11, 13,  
5 46, 47-49; (2) disproportionately place students found eligible for special education, and  
6 particularly Black and English learner students, in segregated special education classrooms, FAP  
7 ¶¶ 12, 46, 54-60, 84-86; (3) disproportionately discipline students with disabilities, students of  
8 color, and particularly disabled students of color, FAP ¶¶ 15-17, 60, 75-78, 80-81; and (4) refuse  
9 to offer and fail to provide research-based instruction and interventions tied to the state academic  
10 content standards. FAP ¶¶ 14, 64-72, 88, 91. The FAP makes clear the significant harm caused  
11 by these policies and practices: fewer than 5% of disabled students in the District read, write, and  
12 perform math functions at grade level, FAP ¶ 14; the District ranks among the worst in the state  
13 in segregating disabled students, FAP ¶¶ 12, 54-56; and the District consistently overidentifies  
14 and disproportionately disciplines students of color with disabilities, FAP ¶¶ 11, 15, 18, 46-48,  
15 75-78, 81. These factual allegations underlie Plaintiffs’ five legal causes of action against the  
16 District:<sup>1</sup> *First*, the District violated its students’ California Constitutional rights to Equal  
17 Protection (“First Cause of Action”); *Second*, the District violated California Education Code  
18 Section 56000 (“Second Cause of Action”); *Third*, Plaintiffs are entitled to Declaratory Relief  
19 (“Third Cause of Action”); *Fourth*, the District illegally expended taxpayer funds pursuant to  
20 California Code of Civil Procedure 526a (“Fourth Cause of Action”); and *Fifth*, Plaintiffs seek a  
21 writ of mandate made pursuant to California Code of Civil Procedure 1085 (“Fifth Cause of  
22 Action”). The Plaintiffs collectively bring each cause of action except for the Fourth Cause of  
23 Action, which is only brought by the Taxpayer Plaintiffs.

24 On January 12, 2022, the District filed a demurrer to Plaintiffs’ original Verified Petition  
25 for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“Petition”). On March  
26

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27 <sup>1</sup> Plaintiffs also make claims against the California Department of Education, State Board of  
28 Education, State Superintendent of Public Instruction, and the State of California, but for the  
purposes of this Opposition Plaintiffs address claims and allegations as made against the District.



1 10, 2022, the Court issued an Order denying the demurrer in part and sustaining it in part with  
2 leave to amend, ordering, *inter alia*, Plaintiffs to “amend their Petition to state which Plaintiffs  
3 are bringing each cause of action.” Order at 3. On March 25, 2022, Plaintiffs filed their FAP,  
4 amending the original Petition to make clear which Plaintiffs are bringing each cause of action.  
5 On April 25, 2022, the District filed an Answer to the FAP. On June 20, 2022, the District filed  
6 the Motion for Judgment on the Pleadings at issue here.<sup>2</sup> In its Motion, Pittsburg Unified seeks to  
7 do two things: (1) remove Taxpayer Plaintiffs as plaintiffs with standing to bring the First,  
8 Second, and Third Causes of Action; and (2) strike some language from Plaintiffs’ First and  
9 Second Causes of Action under a presumption that only students with specific identity  
10 characteristics have standing to bring these claims. Pittsburg Unified does not bring any  
11 challenge to Plaintiffs’ Fourth or Fifth Causes of Action.

#### 12 LEGAL STANDARD

13 A motion for judgment on the pleadings may only be made by a defendant moving on the  
14 grounds that (1) the court has no jurisdiction over the subject of the cause of action alleged in the  
15 complaint; or (2) the complaint does not state facts sufficient to constitute a cause of action  
16 against that defendant. CCP § 438(c)(B). Such a motion “performs the function of a general  
17 demurrer.” *Barker v. Hull*, 191 Cal. App. 3d 221, 224 (1987). In ruling on a motion for judgment  
18 on the pleadings, “[a]ll facts alleged in the complaint are deemed admitted, and [the court]  
19 give[s] the complaint a reasonable interpretation by reading it as a whole and all of its parts in  
20 their context.” *Lance Camper Mfg. Corp. v. Republic Indem. Co. of Am.*, 44 Cal. App. 4th 194,  
21 198 (1996). A plaintiff’s properly-pled allegations are accepted as true, and “must be liberally  
22 construed with a view to attaining substantial justice among the parties . . . [and] to determine  
23 whether the facts alleged provide the basis for a cause of action against defendants under any

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24  
25 <sup>2</sup> Plaintiffs informed the District that “all claims are brought by all Plaintiffs, except for the fifth  
26 cause of action and the seventh cause of action” prior to the first demurrer. Order at 3. It is  
27 unclear why the District elected not to raise its substantive challenges then and avoid the Court  
28 and parties needing to undergo this second round of briefing and oral argument. It is further  
unclear why the District failed to raise these arguments in a second demurrer, as the Court  
provided in its Order, and instead filed a motion for judgment on the pleadings two months after  
the responsive pleadings were due. *See* Order at 3, 15.



1 the pleadings as to Taxpayer Plaintiffs’ First through Third Causes of Action.

2           **A. California Case Law Clearly Supports Taxpayer Plaintiffs’ Standing to**  
3           **Allege the First, Second, and Third Causes of Action.**

4           Taxpayer Plaintiffs fall within the broad class of individuals authorized to challenge  
5 Defendants’ unlawful action. CCP section 526a broadly allows taxpayers to prosecute  
6 wrongdoing by government agencies. Under the statute, any resident of a “local agency” who,  
7 “within one year before the commencement of the action, has paid, a tax that funds the defendant  
8 local agency” may bring “[a]n action to obtain a judgment, restraining and preventing any illegal  
9 expenditure of, waste of, or injury to, the estate, funds, or other property of [the] local  
10 agency[.]” CCP § 526a(a). Qualifying taxes include income tax, sales tax, property tax, or a  
11 business license tax. *Id.* § 526a(a)(1)-(4).

12           The statute is liberally construed, as its purpose “is to enable a large body of the citizenry  
13 to challenge governmental action which would otherwise go unchallenged in the courts because  
14 of the standing requirement.” *Blair*, 5 Cal. 3d at 267-68 (citations and quotation marks omitted);  
15 *see also Weatherford v. City of San Rafael*, 395 P.3d 274, 280 (Cal. 2017). A taxpayer plaintiff  
16 who can show government employees are “spending their time carrying out” illegal or  
17 unconstitutional acts is entitled to relief. *Blair*, 5 Cal. 3d at 269 (concluding that “if an action  
18 meets the requirements of section 526a, it presents a true case or controversy.”). “No showing of  
19 special damage to a particular taxpayer is required as a requisite for bringing a taxpayer suit.”  
20 *Connerly v. State Pers. Bd.*, 92 Cal. App. 4th 16, 17 (2001) (noting that “restrictive federal rules  
21 of justiciability do not necessarily apply in state courts”). By eliminating this barrier to bringing  
22 suit, the statute provides a “general citizen remedy for controlling illegal governmental activity.”  
23 *Van Atta v. Scott*, 27 Cal. 3d 424, 447 (1980) (citation omitted), undercut by later constitutional  
24 amendment as stated in *Weatherford*, 395 P.3d at 279. “Cases that challenge the legality or  
25 constitutionality of governmental actions fall squarely within the purview of section 526a.” *Cal.*  
26 *DUI Lawyers Ass’n v. Cal. Dep’t of Motor Vehicles*, 20 Cal. App. 5th 1247, 1261 (2018). Here,  
27 Taxpayer Plaintiffs allege in the FAP that they are taxpayers who have paid taxes within the last  
28 year that fund Pittsburg Unified, and they seek to enjoin Pittsburg Unified from expending time

1 and resources on an unconstitutional, unlawful special education and discipline program. FAP ¶¶  
2 26-29, 125. They therefore have standing under CCP section 526a to prosecute this action.

3 **B. Taxpayer Plaintiffs Are Not Relegated to One Cause of Action Based on**  
4 **Their (Unchallenged) Taxpayer Standing.**

5 CCP section 526a confers standing to bring causes of action regarding the underlying  
6 illegal activity by government agencies, including school districts; it is not intended to limit  
7 taxpayers to bring only one single cause of action. For example, in *Davis v. Fresno Unified*  
8 *School District*, the California Court of Appeal allowed the taxpayer plaintiff to proceed on four  
9 causes of action that did not use the term “taxpayer action.” 237 Cal. App. 4th 261, 273, 302, *as*  
10 *modified* (June 19, 2015); *see Davis v. Fresno Unified Sch. Dist.*, 57 Cal. App. 5th 911, 922-23  
11 (2020) (noting appellate court reversal and remand with instructions to overrule defendants’  
12 demurrer despite fact that taxpayer did not use the term “taxpayer action”); *Cal. Taxpayers*  
13 *Action Network v. Taber Constr., Inc.*, 12 Cal. App. 5th 115, 145 (2017) (reversing trial court’s  
14 ruling sustaining demurrer as to taxpayer plaintiff’s fourth cause of action for conflict of interest  
15 related to a school district lease-leaseback agreement).

16 This precedent confirms Taxpayer Plaintiffs ability to bring additional causes of action.  
17 The FAP alleges Pittsburg Unified discriminates against students of color, disabled students, and  
18 English learners in the District’s special education and discipline programs, FAP ¶¶ 11-14, 46,  
19 47-49; 54-60; 75-78, 80-81; 84-86, and the First and Second Causes of Action allege that this  
20 discrimination violates the California Constitution and Education Code. The Fourth Cause of  
21 Action, brought by Taxpayer Plaintiffs only, incorporates and expands upon all previous  
22 paragraphs in the FAP to allege the underlying legal violations needed to assert a claim of illegal  
23 waste under section 526a. Indeed, as a matter of claim construction, it is logical that taxpayer  
24 plaintiffs must first allege the underlying causes of action describing the violations of law  
25 committed by the government agency to then assert a claim of illegal waste conferred in CCP  
26 section 526a.

27 Furthermore, Taxpayer Plaintiffs’ Third Cause of Action properly alleges a claim for  
28 declaratory relief for violations of Article I, Section 7(a) and Article IV, Section 16(a) of the

1 California Constitution and California Education Code Section 56000 *et seq.*; FAP ¶ 122. Claims  
2 for declaratory and injunctive relief are properly brought by taxpayer plaintiffs under  
3 longstanding California Supreme Court precedent. *Weatherford*, 395 P.3d at 279 (stating that  
4 “section 526a makes plaintiffs eligible to seek a range of remedies beyond mandamus”); *Van*  
5 *Atta*, 27 Cal. 3d at 449-50 (holding taxpayer plaintiffs are authorized to seek declaratory relief  
6 under section 526a in addition to injunctive relief, damages, and mandamus to obtain a judgment  
7 restraining and preventing illegal waste of public funds), *Love v. Keays*, 491 P.2d 395, 397  
8 (declaratory and injunctive relief). The District cites no statute or case law to support its incorrect  
9 assertion that Taxpayer Plaintiffs cannot seek declaratory relief.

10 The District apparently misapprehends taxpayer standing, claiming that section 526a only  
11 confers a right to taxpayers to pursue a claim under section 526a. PUSD MPA at 3 (“In other  
12 words, while Taxpayer Plaintiffs may be permitted to bring a claim under Section 526a, they do  
13 not likewise have standing to bring any other cause of action unless they can satisfy the  
14 traditional standing requirements.”). The District cites no legal support for this assertion. Of the  
15 eight cases cited by the District in its argument that Taxpayer Plaintiffs lack proper standing to  
16 bring the First through Third Causes of Action, four do not even involve government entities but  
17 were instead brought against private defendants; and only three cases involve taxpayer plaintiffs  
18 or any discussion of taxpayer standing under CCP section 526a. Those three cases are inapposite  
19 and distinguishable.

20 First, *Torres v. City of Yorba Linda* held that paying sales tax is insufficient to confer  
21 standing under section 526a. 13 Cal. App. 4th 1035, 1048 (1993). Here, Taxpayer Plaintiffs  
22 allege they have paid property and income taxes in addition to sales taxes. FAP ¶ 26-28, 125.  
23 Moreover, the California Legislature in 2018 clarified section 526a to explicitly confer standing  
24 based on payment of sales tax. *See* CCP § 526a (a)(2). Second, *TRIM, Inc. v. County of Monterey*  
25 held that taxpayer plaintiffs insufficiently alleged a cause of action under section 526a because  
26 they failed to plead facts indicating public officials committed “waste” as statutorily defined,  
27 instead pleading facts indicating mistake by public officials in matters involving the exercise of  
28 judgment or discretion. 86 Cal. App. 3d 539, 543 (1978). Here, Taxpayer Plaintiffs allege

1 “waste” through illegal expenditure of tax funds on unlawful, unconstitutional activity rather  
2 than “mistake” or matters involving the lawful exercise of judgment or discretion. Finally,  
3 Pittsburg Unified relies on *Blair v. Pitchess*, which actually supports Plaintiffs’ assertion that the  
4 primary purpose of section 526a is to allow a more relaxed standing requirement in state law  
5 than restrictive federal rules of justiciability. 5 Cal. 3d at 267-68.

6 Here, Taxpayer Plaintiffs have pled their causes of action in the FAP in the same way as  
7 other taxpayer plaintiffs whose claims have been upheld by California appellate courts at all  
8 levels. *See, e.g., Davis*, 57 Cal. App. 5th at 921-23 (noting appellate court reversal and remand  
9 with instructions to overrule defendants’ demurrer despite fact that taxpayer “did not use the  
10 term ‘taxpayer action’”); *Blair*, 5 Cal. 3d at 265 n.3, 268-269 (holding that taxpayer plaintiffs  
11 whose petition set forth causes of action under the U.S. and California Constitutions properly  
12 brought their action against defendants under section 526a); *Cal. Taxpayers Action Network*, 12  
13 Cal. App. 5th at 145 (overruling demurrer as to taxpayer plaintiff’s cause of action for violations  
14 of the California Education Code).

15 Ultimately, the District’s challenge to the Taxpayer Plaintiffs’ standing for the First  
16 through Third Causes of Action constitutes an ill-advised critique of the FAP’s form with  
17 minimal, if any, consequence. The District’s Motion does not seek judgment or resolution of any  
18 of Plaintiffs’ First through Third Causes of Action, does not challenge Plaintiffs’ Fourth or Fifth  
19 Causes of Action, and does not suggest the FAP fails to state facts implicating Pittsburg Unified.  
20 The Motion should therefore be denied. CCP § 438(c)(1)(B). As such, the District’s (incorrect)  
21 assertion that Plaintiffs’ claims are merely improperly pled as to the Taxpayer Plaintiffs cannot  
22 support judgment on the pleadings as a matter of law. *See Fire Ins. Exch. v. Superior Court*, 116  
23 Cal. App. 4th 446, 452 (2004).

## 24 **II. Student Plaintiffs Have Standing to Bring the First and Second Causes of Action as** 25 **They Are Pled in the FAP.**

### 26 **A. Pittsburg Unified’s Motion Fails to Challenge any “Causes of Action”**

27 The District’s weak attempt to muddle the terms “cause of action” and “count” highlights  
28 its failure to seek judgment on the pleadings only as to “the entire complaint . . . or as to any of

1 the causes of action stated therein.” CCP § 438(c)(2)(A). In fact, the District seeks to isolate and  
2 exclude *factual allegations*, not any causes of action that Student Plaintiffs, Mark S. and Rosa T.,  
3 along with Taxpayer Plaintiffs, bring to challenge the District’s ongoing harmful and wasteful  
4 education practices. Plaintiffs’ causes of action are wholly distinguishable from *Lilienthal &*  
5 *Fowler v. Superior Court*, 12 Cal. App. 4th 1848, 1854 (1993), cited by the District, where the  
6 Court of Appeal found two “causes of action,” pled as one, could be separately subject to  
7 summary judgment as “[t]here [was] no dispute that the two matters have no relation to each  
8 other and involve legal services performed at different times, with different and distinct  
9 obligations, and distinct and separate alleged damages . . . .” Such is not the case here, where  
10 Plaintiffs’ First and Second Causes of Action, respectively, challenge (1) Pittsburg Unified’s  
11 failure to meet its duty under the California Constitution to ensure equal educational  
12 opportunities; and (2) Pittsburg Unified’s failure to ensure that students receive a Free  
13 Appropriate Public Education in the Least Restrictive Environment. The facts alleged under each  
14 of these causes of action *do* relate to each other, involve educational services performed at the  
15 *same* time, under the *same* obligations held by Pittsburg Unified, and seeking the *same* injunctive  
16 relief.

17 Unlike in *Lilienthal*, Pittsburg Unified’s Motion fails to seek judgment on *any* of  
18 Plaintiffs’ “causes of action.” Permitting Pittsburg Unified to surgically excise factual allegations  
19 supporting Plaintiffs’ First and Second Causes of Action through CCP section 483 would be  
20 counter to the statute’s goal of judicial economy. This, on its own, is a sufficient reason for the  
21 Court to deny Pittsburg’s Motion. *See Elder v. Pac. Bell Tel. Co.*, 205 Cal. App. 4th 841, 856  
22 n.14 (2012) (reversing a sustained demurrer because plaintiff’s first amended complaint alleged  
23 facts that sufficiently demonstrated substantive causes of action and “[o]rdinarily, a general  
24 demurrer does not lie as to a portion of a cause of action and if any part of a cause of action is  
25 properly pleaded, the demurrer will be overruled.”) (quoting *Fire Ins. Exch.*, 116 Cal. App. 4th at  
26 452).

1           **B.     Student Plaintiffs Have Pled Facts Sufficient to Support Their Standing to**  
2           **Bring Their First and Second Causes of Action**

3           As with a demurrer, a motion for judgment on the pleadings “provisionally admits all  
4 material issuable facts properly pleaded,” including allegations pertaining to standing. *See City of*  
5 *Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 68 Cal. App. 4th 445, 459, 486  
6 (1998), *as modified on denial of reh’g* (Jan. 6, 1999) (holding that a demurrer was improperly  
7 granted where plaintiffs’ pleadings were sufficient to allege standing). Here, Student Plaintiffs  
8 Mark S. and Rosa T. allege standing to bring the First and Second Causes of Action based on  
9 two independent theories. First, Student Plaintiffs have pled a personal interest in the litigation’s  
10 outcome, and they are therefore real parties in interest, because they have suffered a significant  
11 injury from Pittsburg Unified’s systemic violations of the fundamental rights of students of color  
12 (including Black, Native American, and multiracial students), English learner students, and  
13 disabled students. Second and alternatively, Student Plaintiffs additionally assert public interest  
14 mandamus standing through the Fifth Cause of Action, and on that basis, also meet the  
15 requirements to bring these claims as beneficially-interested youth seeking redress to protect  
16 themselves and other students of color, English learners, and disabled students from the  
17 District’s unlawful actions.

18           The District cannot use a motion for judgment on the pleadings to seek to strike  
19 Plaintiffs’ well-pled factual allegations that the District’s special education and discipline  
20 program unconstitutionally discriminates against and segregates students based on their race,  
21 ethnicity, national origin, and disability status. *See Adams v. Paul*, 11 Cal. 4th 583, 593 (1995)  
22 (affirming that “actual injury is generally a question of fact”); *Veera v. Banana Republic, LLC*, 6  
23 Cal. App. 5th 907, 918 (2016) (holding that whether plaintiffs suffered injury in fact was a  
24 triable issue inappropriate at the summary judgment phase).

25           **i.     Student Plaintiffs Allege They Have Personally Suffered from**  
26           **Pittsburg Unified’s Unlawful Discrimination on the Basis of Race,**  
27           **Ethnicity, National Origin, and Disability Status.**

28           As a threshold matter, Student Plaintiffs have properly alleged that they have been



1 harmed firsthand by the discrimination perpetrated by the District. Mark S. and Rosa T. are  
2 current students at Pittsburg Unified who have suffered injury from the District’s discriminatory  
3 conduct and have a real interest in the ultimate adjudication of the issues presented. FAP ¶ 50  
4 (describing how unlawful segregation creates unequal educational environments that inhibit *all*  
5 students’ academic and social development); *id.* at ¶¶ 45-49 (describing how overidentification  
6 and improper assessment of students leads to unlawful segregation of non-disabled students); *id.*  
7 at ¶¶ 73-81 (describing how disproportionate discipline practices leads to unlawful segregation  
8 of Black, multiracial, and Native American students); *see Crestview Mobile Home Ests., LLC v.*  
9 *Baca*, No. D074222, 2019 WL 7161804, at \*10 (Cal. Ct. App. Dec. 24, 2019) (holding that a  
10 plaintiff had standing because, absent an injunction, plaintiff would have been harmed by the  
11 loss of a fully operational utility system).<sup>3</sup>

12 Pittsburg Unified argues in its Motion that because Student Plaintiffs themselves do not  
13 identify as Black, Native American, or multiracial, or because each of them have experienced  
14 only some of Pittsburg Unified’s unlawful practices alleged in the FAP, they lack standing to  
15 pursue certain claims. PUSD MJOP at 7-8 (“Obviously, neither Mark S. [n]or Rosa T. can bring  
16 these causes of action raised in the first court because (1) neither allege to be Black, Native  
17 American, nor multiracial . . .”). Unlike in *Blumhorst v. Jewish Family Services of Los Angeles*,  
18 126 Cal. App. 4th 993, 1001 (2005), cited by the District, Student Plaintiffs allege that as current  
19 students, they *are* victims of Pittsburg Unified’s unconstitutional practices. *See* FAP ¶¶ 7, 68-71,  
20 84-89, 90-92 (Student Plaintiffs placed in segregated classrooms and deprived of access to  
21 statewide academic content standards).

22 Further, the District’s overly narrow theory of harm contravenes prevailing case law,  
23 ignoring that discrimination against some students harms an entire school community. The  
24 District’s assertion that Student Plaintiffs must be Black, Native American, or multiracial to  
25 challenge racial discrimination against those students lacks any supported case citations in the  
26

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27 <sup>3</sup> Furthermore, Taxpayer Plaintiffs also have standing to challenge the District’s unlawful  
28 discrimination and segregation pursuant to CCP section 526a, regardless of their racial, ethnic,  
national origin or disability status.

1 District’s briefing. Indeed, the weight of case law over the last several decades clearly establishes  
2 that *all* students suffer a legally cognizable injury from unlawful segregation and discrimination  
3 in their schools. Nearly five decades ago, the California Supreme Court recognized that  
4 “[a]lthough the principal victims of a racially segregated education are the minority students, it is  
5 no less true that racially segregated schools inflict considerable harm on white students and  
6 society generally.” *Crawford v. Bd. of Educ.*, 17 Cal.3d 280, 303 n.15 (1976) (citing *Hart v.*  
7 *Cnty. Sch. Bd. of Brooklyn, N.Y. Sch. D. #21*, 383 F. Supp. 699, 740 (E.D.N.Y. 1974)). Indeed,  
8 California law so abhors racial segregation that any affected student can compel the State to  
9 remedy de-facto racial segregation at the local level. *See Collins v. Thurmond*, 41 Cal. App. 5th  
10 879, 897-99 (2019) (holding that taxpayer plaintiffs, organizational plaintiffs, and student  
11 plaintiffs stated a claim under California’s equal protection clause and observing “that racial  
12 segregation of any kind in school harms students by depriving them of an equal educational  
13 opportunity”). Nearly seven decades ago, federal courts similarly recognized that “[s]eparate  
14 educational facilities are inherently unequal.” *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483,  
15 495 (1954); *c.f. Rogers v. Paul*, 382 U.S. 198, 200 (1965) (holding that students in segregated  
16 grades had sufficient interest to challenge racial allocation of faculty because it denied them  
17 equality of educational opportunity); *see also G.B. ex rel. N.B. v. Tuxedo Union Free Sch. Dist.*,  
18 751 F. Supp. 2d 552, 579-80 (S.D.N.Y. 2010) (describing the benefits to all students of  
19 mainstreaming disabled students in general education settings), *aff’d sub nom. G.B. v. Tuxedo*  
20 *Union Free Sch. Dist.*, 486 F. App’x 954 (2d Cir. 2012). Moreover, the United States Supreme  
21 Court has held States have a compelling interest in the academic and social benefits that flow to  
22 all students from a diverse student body. *See, e.g., Grutter v. Bollinger*, 539 U.S. 306, 328  
23 (2003)

24 Finally, Pittsburg Unified improperly attempts to excise factual allegations and thereby  
25 erase the identities of Student Taxpayers as English learners subject to discrimination on the  
26 basis of national origin. PUSD MPA at 7 (“neither Mark S. nor Rosa T. can bring these causes of  
27 action because (1) neither allege to have been discriminated on the basis of their race or national  
28 origin – in fact the FAP is entirely silent upon their national origins”). Both Student Taxpayers

1 have pled that they are English learner students. FAP 22, 23. As such, they are personally  
2 harmed by discrimination against English learner students, which is a form of discrimination on  
3 the basis of national origin.”<sup>4</sup> Accordingly, Mark S. and Rosa T. have pled facts sufficient to  
4 allege that their “stake in the resolution of [the] complaint assumes the proportions necessary to  
5 ensure that [they] will vigorously present [their] case.” *Harman v. City of San Francisco*, 7 Cal.  
6 3d 150, 159, 496 P.2d 1248, 1254 (1972) (citing *Baker v. Carr*, 369 U.S. 186, 204 (1962)); *see*  
7 *also Common Cause v. Bd. of Supervisors*, 49 Cal. 3d 432, 439 (1989) (stating that “[t]he  
8 purpose of a standing requirement is to ensure that the courts will decide only actual  
9 controversies between parties with a sufficient interest in the subject matter of the dispute to  
10 press their case with *vigor*.”) (emphasis added).

11 **ii. Student Plaintiffs Additionally Assert Public Interest Mandamus**  
12 **Standing in All Claims and Counts in the FAP.**

13 In addition to pleading that Student Plaintiffs Mark S. and Rosa T. are real parties in  
14 interest in challenging Pittsburg Unified’s unlawful discrimination, Student Plaintiffs also assert  
15 public interest mandamus standing as a second basis to bring the First and Second Causes of  
16 Action. In its Motion, Pittsburg Unified does not challenge any Plaintiffs’ standing to bring a  
17 writ of mandate under the Fifth Cause of Action. If even one plaintiff can show standing to bring  
18 a cause of action, the merits of the case are before the Court, and there is no need to further  
19

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20 <sup>4</sup> *Sandoval v. Hagan*, 7 F. Supp. 2d 1234, 1280-81 (M.D. Ala. 1998) (citing *Lau v. Nichols*, 414  
21 U.S. 563, 568-69 (1974) (recognizing a “significant overlap and inherent correlation between  
22 language and national origin”); *Yniguez v. Arizonans for Off. Eng.*, 69 F.3d 920, 947-48 (9th Cir.  
23 1995) (noting that “[s]ince language is a close and meaningful proxy for national origin,  
24 restrictions on the use of languages may mask discrimination against specific national origin  
25 groups or, more generally, conceal nativist sentiment”), *vacated on other grounds*, 520 U.S. 43  
26 (1997); *United States v. Alcantar*, 897 F. 2d 436, 440 (9th Cir. 1990) (recognizing “how closely  
27 tied Spanish language is to Hispanic identity”); *Fragante v. City of Honolulu*, 888 F. 2d 591, 595  
28 (9th Cir. 1989) (citing with approval EEOC guidelines defining national origin discrimination to  
include discrimination based on the “linguistic characteristics of a national origin group”), *cert.*  
*denied*, 494 U.S. 1081 (1990); *Gutierrez v. Municipal Court*, 838 F.2d 1031, 1039 (9th Cir.  
1988), *vacated as moot*, 490 U.S. 1016 (1989) (noting that “[t]he cultural identity of certain  
minority groups is tied to the use of their primary tongue,” and that “rules which have a negative  
effect on . . . non-English speakers, may be mere pretexts for intentional national origin  
discrimination.”)).

1 analyze the issue. *See Simpson v. City of Los Angeles*, 40 Cal. 2d 271, 276 (1953); *Citizens for*  
2 *Unif. Laws v. Cnty. of Contra Costa*, 233 Cal. App. 3d 1468, 1473 (1991); *McKeon v. Hastings*  
3 *Coll. of the Law*, 185 Cal. App. 3d 877, 892 (1986). Therefore, Student Plaintiffs only briefly  
4 address this issue.

5 To state a cause of action for a writ of mandate, a plaintiff must plead: (1) a clear duty to  
6 act by the defendant; (2) a beneficial interest in the defendant's performance of that duty; (3) the  
7 defendant's ability to perform the duty; (4) the defendant's failure to perform that duty or abuse  
8 of discretion if acting; and (5) that "no other plain, speedy, or adequate remedy" exists. *Agric.*  
9 *Lab. Rels. Bd. v. Exeter Packers, Inc.*, 184 Cal. App. 3d 483, 489 (1986); CCP § 1085 ("A writ  
10 of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to  
11 compel the performance of an act which the law specially enjoins, as a duty resulting from an  
12 office, trust, or station"); CCP § 1086 ("The writ must be issued in all cases where there is not a  
13 plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the  
14 verified petition of the party beneficially interested.").

15 A challenge to a plaintiff's standing to bring a writ of mandate implicates the "beneficial  
16 interest" prong. A beneficial interest pursuant to CCP section 1086 is defined broadly. It exists  
17 where petitioners "have 'some special interest to be served or some particular right to be  
18 preserved or protected over and above the interest held in common with the public at large.'" *Associated Builders & Contractors, Inc. v. S.F. Airports Comm'n*, 21 Cal. 4th 352, 361-62  
19 (1999) (citing *Carsten v. Psych. Examining Comm. of Bd. of Med. Quality Assurance*, 27 Cal. 3d  
20 793, 796 (1980)). Here, Student Plaintiffs have a clear and obvious special interest in eliminating  
21 discrimination in their schools that rises over and above the interests of the general public. *See*  
22 *Doe v. Albany Unified Sch. Dist.*, 190 Cal. App. 4th 668, 684-85 (2010) (holding a student  
23 petitioner attending a school that failed to provide required physical instruction minutes had a  
24 beneficial interest in enforcing the requirement). As discussed, discrimination in schools  
25 adversely impacts all students by, among other things, harming school climate, undermining  
26 relationships, and reducing the benefits of a diverse school community. Further, a petitioner need  
27 not even establish a personal beneficial interest to have standing to bring a writ of mandate when  
28

1 a public right is at stake. *See id.* at 685. Here, the rights of students to be free from discrimination  
2 in schools, or even merely to ensure that a particular statute is being enforced, qualifies as such a  
3 right. *See id.*

4 **CONCLUSION**

5 For all of the foregoing reasons, the Plaintiff respectfully request that the Court deny  
6 Pittsburg Unified’s motion for judgment on the pleadings. In the alternative, should the Court  
7 find any amendment necessary, Plaintiffs request leave to amend their FAP.

8 Dated: July 8, 2022



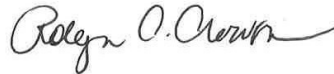
9 Malhar Shah  
10 Claudia Center  
11 DISABILITY RIGHTS EDUCATION AND  
DEFENSE FUND



12 Linnea Nelson  
13 Grayce Zelphin  
14 Brandon Greene  
15 AMERICAN CIVIL LIBERTIES UNION  
16 FOUNDATION OF NORTHERN  
17 CALIFORNIA



18 Ana G. Nájera Mendoza  
19 Victor Leung  
20 AMERICAN CIVIL LIBERTIES UNION  
21 FOUNDATION OF SOUTHERN  
22 CALIFORNIA



23 Robyn Crowther  
24 Amanda C. Schwartz  
25 Geoffrey Warner  
26 STEPTOE & JOHNSON LLP

1 PROOF OF SERVICE

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

5 On July 8, 2022, I served the following listed document(s): **PLAINTIFFS’ OPPOSITION TO**  
6 **DEFENDANT-RESPONDENT PITTSBURG UNIFIED SCHOOL DISTRICT’S MOTION**  
7 **FOR JUDGMENT ON THE PLEADINGS** by the methods indicated below, on the parties in  
8 this action:

<p>7 State of California Deputy Attorney General 8 California Department of Justice 455 Golden Gate Avenue # 11000 9 San Francisco, CA 94102</p>	<p><a href="mailto:Andrew.Edelstein@doj.ca.gov">Andrew.Edelstein@doj.ca.gov</a> <a href="mailto:Jacquelyn.Young@doj.ca.gov">Jacquelyn.Young@doj.ca.gov</a></p>
<p>10 Tony Thurmond, in his official capacity as State Superintendent of Public School Instruction 1430 N Street, Suite 5111 11 Sacramento, CA 95814</p> <p>12 State Board of Education 1430 N Street, Suite 5111 13 Sacramento, CA 95814</p> <p>14 California Department of Education 1430 N Street, Suite 5111 15 Sacramento, CA 95814</p>	<p><a href="mailto:L.Garfinkel@cde.ca.gov">L.Garfinkel@cde.ca.gov</a></p>
<p>16 Pittsburg Unified School District c/o Katherine Alberts 1390 Willow Pass Rd #700 17 Concord, CA 94520</p>	<p><a href="mailto:kalberts@leonealberts.com">kalberts@leonealberts.com</a> <a href="mailto:jjohnson@leonealberts.com">jjohnson@leonealberts.com</a> <a href="mailto:service@leonealberts.com">service@leonealberts.com</a></p>

18  **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the document(s) to be  
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23 I declare under penalty of perjury under the laws of the State of California that the above  
24 is true and correct.

25 Executed on July 8, 2022, at Los Angeles, California.

26 \_\_\_\_\_  
27 *s/s Melissa Hernandez*  
28 MELISSA HERNANDEZ