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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF CONTRA COSTA**

16 Mark S., by and through his guardian ad litem,
17 Anna S., Rosa T., by and through her guardian
ad litem Sofia L., and Jessica Black, Michell
18 Redfoot, and Dr. Nefertari Royston, as
taxpayers,

19 Plaintiffs and Petitioners,

20 v.

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

25 Defendants and Respondents.

Case No.: MSN21-1755

UNLIMITED JURISDICTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO COMPEL
FURTHER PRODUCTION OF
DOCUMENTS FROM DEFENDANT
PITTSBURG UNIFIED SCHOOL
DISTRICT, AND FOR MONETARY
SANCTIONS IN THE AMOUNT OF
\$11,959.70; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of Amanda Schwartz,
Declaration of Malhar Shah, and Separate
Statement filed; [Proposed] Order lodged
concurrently]

Date:
Dept.: 39
Time:

27
28 **NOTICE OF MOTION AND MOTION TO COMPEL FURTHER PRODUCTION OF
DOCUMENTS AND FOR MONETARY SANCTIONS; MEMORANDUM OF POINTS AND
AUTHORITIES**

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 10

II. FACTUAL BACKGROUND..... 10

III. THE COURT SHOULD GRANT PLAINTIFFS’ MOTION..... 14

 A. Good Cause Exists to Compel the Further Production from PUSD. 14

 B. The District’s Boilerplate Objections Lack Basis in Law or Fact 15

 1. The District Failed to Support its Privilege-Based Objections 16

 2. The District’s Objections Based on Third-Parties Privacy Rights Can Be
 Addressed by Narrow Redactions and the Joint Protective Order..... 17

 3. The District’s Vague and Ambiguous Objections are Improper 18

 4. The District’s Objections on Overbreadth are Improper 21

 5. The District’s Burdensome Objection is Improper 23

 6. The District’s Compound Objection Lacks Legal Foundation. 23

 C. The Court Should Compel Defendants to Produce Data Sets Following the
 Court’s Earlier Guidance Regarding “Locked” Files. 23

IV. PLAINTIFFS ARE ENTITLED TO MONETARY SACTIONS 24

V. CONCLUSION..... 25

TABLE OF AUTHORITIES

Page(s)

Cases

Aerojet-General Corp. v. Transp. Indem. Ins.,
18 Cal. App. 4th 996 (1993)16

Associated Brewers Distrib. Co.,
65 Cal.2d at 58815

Beesley v. Superior Court,
58 Cal.2d 205 (1962)15

Briggs v. County of Maricopa,
No. CV-18-02684-PHX-EJM, 2021 U.S. Dist. LEXIS 83683 (D. Ariz. Apr.
30, 2021)22

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No. CIV S-03-2415 JAM KJM P, 2009 U.S. Dist. LEXIS 4747 (E.D. Cal. Jan.
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No. CV 19-06962-DDP, 2020 U.S. Dist. LEXIS 250110 (C.D. Cal. Oct. 20,
2020)17

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7 Cal.4th 1 (1994)17

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95 Cal. App. 4th 92 (2002)14, 15

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188 Cal. App. 3d 313 (1986)23

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145 F.R.D. 683 (E.D. Cal. 1993)18

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10	Statutes	
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13	Cal. Civ. Proc. Code § 2017.010	21
14	Cal. Civ. Proc. Code § 2023.010	8
15	Cal. Civ. Proc. Code § 2023.030	8
16	Cal. Civ. Proc. Code § 2030.060(f)	23
17	Cal. Civ. Proc. Code § 2031.240	8
18	Cal. Civ. Proc. Code, § 2031.240(c)(1)	15, 16
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20	Cal. Civ. Proc. Code, § 2031.310(b)(1)	14
21	Cal. Civ. Proc. Code, § 2031.310(d).....	23
22	Cal. Civ. Proc. Code § 2031.310(h).....	8, 24
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 25 *Pittsburg Unified School District* 1619

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that in Department 39 of the above-captioned Court, located
3 at 725 Court Street Martinez, Martinez, CA 94553, on a date and time to be determined by this
4 Court, Plaintiffs Mark S., by and through his guardian ad litem Anna S., Rosa T., by and through
5 her guardian ad litem Sofia L., and Jessica Black, Michell Redfoot, and Dr. Nefertari Royston as
6 taxpayer plaintiffs (collectively “Plaintiffs”) will and hereby does move for an order compelling
7 the further production of documents from Pittsburg Unified School District (“District” or “PUSD”
8 or “the Defendant”) in response to Plaintiffs’ First Set of Requests for Production (“RFP”).

9 In particular, Plaintiffs move for an order compelling production of documents with respect
10 to 14 requests—RFP Nos. 1, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 18A, and 21, as follows:

11 • **RFP Nos. 1, 3, & 9-10:** Defendant produced multiple data sheets in either locked excel or
12 pdf format that omit multiple data points. Plaintiffs seek production of these data sheets in an
13 unlocked, excel format and additional data sheets containing the omitted data points.

14 • **RFP No. 11:** Defendant has failed to produce any documents. Plaintiffs seek an order
15 compelling a production in response to this request.

16 • **RFP No. 12-16:** Defendant has failed to produce any documents. Plaintiffs seek an order
17 requiring Defendant to negotiate with Plaintiff to identify search terms and custodians for
18 responsive emails; Plaintiffs also seek all non-e-mail documents reflecting the Defendant’s
19 complaint investigations, and policies and procedures considered and adopted by Defendant
20 related to these requests.

21 • **RFP No. 17:** Defendant’s production shows it has withheld multiple documents relating to
22 the District’s assessment or implementation of the audit of its special education program.
23 Defendants seek an order compelling production of these documents.

24 • **RFP No. 18:** Defendant produced responsive documents containing CAASPP test scores
25 for the 2015-19 academic years but omitted scores from the 2021-22 academic year. Defendants
26 seek an order compelling the production of the CAASPP test scores for the 2021-22 academic
27 year.

1 • **RFP No. 18A:** Defendant has failed to produce any documents. Plaintiffs seek an order
2 compelling a production in response to this request.

3 • **RFP No. 21:** Defendant has failed to produce any documents. Plaintiffs seek an order
4 requiring Defendant to negotiate with Plaintiff to identify a sample of Individualized Education
5 Programs (“IEP”) across grade levels, school sites, and placements to facilitate a production in
6 response to this request. Once such a sample is identified, Defendant shall produce the sample
7 Individualized Education Program documents pursuant to the Protective Order Governing
8 Discovery entered by the Court on March 14, 2022.

9 This motion is made pursuant to sections 2031.310 of the California Code of Civil
10 Procedure (“CCP”) on the grounds that Defendant’s objections to the RFPs, and its refusal to
11 produce complaint documents are without legal or factual basis, are without substantial
12 justification, and have not been advanced in good faith. Additionally, to the extent Defendant
13 withholds any such documents responsive to Plaintiffs’ RFPs that this Court compels Defendant
14 to produce, Plaintiffs request that Defendant produce a privilege log in accordance with CCP
15 2031.240.

16 Notice is further given that Plaintiffs seek an order awarding them monetary sanctions
17 against Defendant and Defendant’s counsel in the amount of \$11,959.70 sanctions pursuant to
18 CCP sections 2023.010, 2023.030 and 2031.310(h), based on the reasonable fees and costs
19 incurred by Plaintiffs in bringing this motion.

20 This motion is based on this notice, the attached Memorandum of Points and Authorities,
21 the attached Declaration of Amanda Schwartz pursuant to CCP section 2016.010, the Declaration
22 of Malhar Shah, the accompanying Separate Statement, and such additional argument or evidence
23 as may be presented prior to or at the hearing of this matter.

24
25 DATED: August 2, 2022

26
27 By: 

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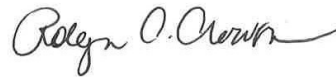
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In September 2021 Plaintiffs Mark S., by and through his guardian ad litem Anna S., Rosa
4 T., by and through her guardian ad litem Sofia L., and Jessica Black, Michell Redfoot, and Dr.
5 Nefertari Royston as taxpayer plaintiffs (collectively “Plaintiffs”) brought California
6 constitutional and statutory challenges against the Pittsburg Unified School District (“PUSD” or
7 “the District” or “Defendant”). After requesting documents to further this litigation more than
8 seven months ago, patiently granting multiple extensions, and numerous attempts to meet and
9 confer, Plaintiffs now move for an order compelling the District’s further production of documents
10 in response to Plaintiffs’ first set of Requests for Production. As detailed below, the Defendant
11 cannot carry its burden to justify its refusal to respond to these requests in full.

12 **II. FACTUAL BACKGROUND**

13 On December 3, 2021, Plaintiffs served Plaintiffs’ First Set of Requests for Production of
14 Documents (Set One) (“RFPs”) on the District. Declaration of Amanda Schwartz in Support of
15 Motion to Compel Responses to Requests for Production of Documents (“Schwartz Decl.”) ¶ 2.
16 The RFPs consist of 22 narrowly-tailored document requests relating to issues central to this
17 litigation. After Plaintiffs granted the Defendant two extensions to respond to the RFPs, the District
18 served *unverified* responses and objections on March 4, 2022 and failed to produce any documents
19 despite agreeing to produce documents in response to RFP Nos 1-11 and 17-20. *Id.* ¶ 4.
20 Defendant’s responses contained a boilerplate repetition of general objections to all 22 requests.
21 The District’s specific objections similarly failed to justify the District’s limited responses.
22 Further, despite raising privilege objection, the District did not produce a privilege log.

23 Plaintiffs’ counsel emailed Katherine Alberts and Jimmie Johnson, counsel for the District,
24 on March 30, April 5, and April 7, 2022 describing the deficiencies in the District’s responses and
25 requesting to meet and confer. Schwartz Decl. ¶ 5. The District’s counsel failed to respond.
26 Schwartz Decl. ¶ 5. On April 11, 2022, Plaintiffs’ counsel sent a 10-page follow-up letter to the
27 District’s counsel again requesting to meet and confer and detailing Plaintiffs’ view that the

1 District's objections and responses were improper, not code-compliant, and mischaracterized
2 central issues in the litigation. *Id.* ¶ 7. The District's counsel, Ms. Alberts, responded on April 11
3 that she was unavailable to meet until more than two weeks later, on April 26. *Id.* ¶ 8. On April
4 11, Plaintiffs' counsel responded to Ms. Alberts, noting that Plaintiffs' counsel had copied her
5 colleague, Jimmie Johnson, and a third email address at the firm (service@leonealberts.com) on
6 all previous requests to meet and confer, and asked to meet and confer with other attorneys at the
7 law firm if Ms. Alberts was unavailable until April 26. *Id.* ¶ 8. The District's counsel did not
8 respond on April 11. On April 12, Plaintiffs' counsel emailed Mr. Johnson to follow up and extend
9 the deadlines for the meet and confer and for Plaintiffs' motion to compel. Mr. Johnson replied on
10 April 12 that he did not have authority to meet and confer because Ms. Alberts is solely responsible
11 for all discovery matters. Ms. Alberts responded by email on April 14 and provided her availability
12 to schedule a meet and confer on April 26. *Id.* ¶ 9. On April 26, the parties met and conferred and
13 the District agreed to produce some of the requested data. *Id.* ¶ 10. On April 28, the District agreed
14 by email to produce some documents responsive to RFP Nos. 1, 2, 5, 6, and 17 by May 5, 2022;
15 produce policies and procedures regarding complaints of violations of rights of disabled students
16 and discrimination based on race/ethnicity, national origin, language status or disability in
17 response to RFP Nos. 15-16; refused to produce any documents responsive to RFP No. 21; and
18 stated that it would produce limited documents responsive to RFP Nos. 12-14. *Id.* ¶ 11.

19 On April 28, 2022, Plaintiffs' counsel emailed the District's counsel regarding the
20 District's continued refusal to produce documents, verified responses, or properly address RFP
21 Nos. 3, 4, 7, 8, 9, 10, 11, 18, 18A, 19, and 20. Schwartz Decl. ¶ 12. Plaintiffs' counsel requested
22 that the District attend an informal discovery conference with the Court to address the ongoing and
23 intractable dispute. The informal discovery conference was scheduled for June 7, 2022. *Id.* ¶ 13.

24 On May 10, 2022, six months after receiving Plaintiffs' RFPs, the District made its first
25 production, which consisted of only six documents total: four PDF documents and two excel sheets
26 (Bates numbered PUSD 1-877). These documents appear related to student disciplinary records,
27 school demographic information, and test results for the California Assessment of Student
28

1 Performance and Progress, the English Language Proficiency Tests, and California English
2 Language Development Tests, among similar materials. The District has not identified to which
3 requests the documents were responsive. Schwartz Decl. ¶ 14-15, 17. Plaintiffs speculate that
4 they relate to Request Nos. 1, 2, 5, 6, and 17.

5 On June 6, 2022 at 8:45 p.m., the District made its second production, which did not resolve
6 any previous production deficiencies. The District did not identify to which requests the documents
7 were responsive. Furthermore, the majority of those documents produced were not produced in a
8 native format and missing key breakdown demographic and statistical categorization that were
9 included in the initial Request for Production. On June 7, 2022, the Court continued the informal
10 discovery conference. Schwartz Decl. ¶ 16.

11 Immediately following the June 10, 2022, Informal Discovery Conference, Plaintiffs
12 emailed Ms. Alberts requesting her availability to meet and confer following the Court's guidance
13 and instructions. Schwartz Decl. ¶ 18. This request specifically addressed (1) the District's
14 production of data sets, namely that the data must be provided in a form, preferably native, that
15 allows Plaintiffs to filter and/or otherwise manipulate the data for the purposes of data analysis,
16 (2) the requirement that the District supplement its responses to identify which of Plaintiffs'
17 Requests its documents are offered in response, (3) the lack of a provided privilege log where the
18 District objects to the production on the basis of attorney-client privilege, (4) the timeline for when
19 the District would provide supplemental responses, (5) parameters for the District to produce
20 complaints of discrimination and a sample of IEP documents in response to Plaintiffs' Requests
21 12-16 and 21, and (6) an ESI protocol which had previously been sent in March 2022. *Id.* ¶ 18.

22 Also on June 10, Ms. Alberts stated that she would be out of the country the following
23 week, would not return until June 21, and she would try to get an additional production to Plaintiffs
24 by the end of the month. With respect to the spreadsheets, Ms. Alberts asked Plaintiffs to review
25 the spreadsheets to inform her what else needed to be done with them. Schwartz Decl. ¶ 18. On
26 the same date, Plaintiffs inquired as to whether another individual from her office would be able
27 to meet regarding discovery issues and effectuate the discovery process in a timely manner.

1 Schwartz Decl. ¶ 18. Also on June 10, Ms. Alberts responded, stating “[t]he court did not say that
2 our recent production designation [w]as not compliant. The Court said we have the right to lock
3 the ability to change cell content.” *Id.* ¶ 18. Ms. Alberts also stated that no one from her firm
4 would be able to address production issues in her absence, but that if Plaintiffs communicated what
5 was needed with the spreadsheets, she may be able to produce the following week. *Id.* ¶ 21-23.

6 On June 13, Plaintiffs reiterated the need for both unlocked spreadsheets and the need to
7 meet to facilitate the production of a sample of IEPs and emails. Plaintiffs also provided a non-
8 exhaustive list of the issues with the spreadsheets. Schwartz Decl. ¶ 19. On June 17, following a
9 lack of response from Ms. Alberts, Plaintiffs reached out to Mr. Johnson, who stated that he had
10 no information or knowledge regarding these discovery issues. *Id.* ¶ 20.

11 Plaintiffs emailed both Ms. Alberts and Mr. Johnson again to follow up on June 21.
12 Schwartz Decl. ¶ 21. On June 22, Ms. Alberts responded, stating she had not been able to review
13 Plaintiffs’ request for documents conforming with the Court’s guidance and stated that she needed
14 time to research whether there was a way to lock down cell contents and still allow for calculations.
15 Ms. Alberts also provided that she was available the following Tuesday to meet. *Id.* ¶ 21. On June
16 23, Plaintiffs confirmed availability for this time and received no response from Ms. Alberts.
17 Plaintiffs followed up on June 28 and again received no response from Ms. Alberts. *Id.* ¶ 21.

18 On July 5, Plaintiffs provided the District an IEP production recommendation, *i.e.*, that the
19 District could send a random sample of 7 IEPs per placement, per school, per grade so long as each
20 IEP included all related documents such as assessments, amendments, and goals and was de-
21 identified to protect student confidentiality. On July 5, Ms. Alberts stated that she would review
22 the substance of Plaintiffs’ communications. Schwartz Decl. ¶ 22.

23 At this juncture, more than seven months after initial Requests for Production were served,
24 the District has not produced documents in accordance with the Court’s guidance issued at the
25 informal discovery conference on June 10. Specifically, Defendant has not produced spreadsheets
26 in a native format that allows Plaintiffs to filter or manipulate the data for the purposes of data
27 analysis. Furthermore, the spreadsheets produced by Defendant PUSD do not fully comply with
28

1 Plaintiffs’ requests. Defendant has failed to agree upon an ESI protocol, a proposal of which was
2 sent by Plaintiffs on March 25. Nor has the District provided a privilege log.

3 **III. THE COURT SHOULD GRANT PLAINTIFFS’ MOTION**

4 Plaintiffs move to compel the District’s further production of documents with respect to 14
5 RFP requests, summarized as follows:

- 6 • **RFP Nos. 1, 3, & 9-10:** Defendant produced multiple data sheets in either locked excel or
7 pdf format that omit multiple data points. Plaintiffs seek production of these data sheets in an
8 unlocked, excel format and additional data sheets containing the omitted data points.
- 9 • **RFP No. 11:** Defendant has failed to produce any documents.
- 10 • **RFP No. 12-16:** Defendant has failed to produce any documents. Plaintiffs seek an order
11 requiring Defendant to negotiate with Plaintiff to identify search terms and custodians for
12 responsive emails; Plaintiffs also seek all non-e-mail documents reflecting the Defendant’s
13 complaint investigations, and policies and procedures considered and adopted by Defendant.
- 14 • **RFP No. 17:** Defendant’s production shows it has withheld multiple documents of the
15 District’s assessment or implementation of the audit of its special education program.
- 16 • **RFP No. 18:** Defendant produced responsive documents containing CAASPP test scores
17 for the 2015-19 academic years but omitted scores from the 2021-22 academic year.
- 18 • **RFP No. 18A:** Defendant has failed to produce any documents.
- 19 • **RFP No. 21:** Defendant has failed to produce any documents. Plaintiffs seek an order
20 requiring Defendant to negotiate with Plaintiff to identify a sample of Individualized Education
21 Programs across grade levels, school sites, and placements.

22 **A. Good Cause Exists to Compel the Further Production from PUSD.**

23 On a motion to compel further document production, a court must determine whether the
24 moving party has shown “good cause” to justify the production of the documents. Cal. Civ. Proc.
25 Code, § 2031.310(b)(1). A party makes this showing by presenting specific facts demonstrating
26 the information’s relevance. *Kirkland v. Superior Court*, 95 Cal. App. 4th 92, 98 (2002).
27 Relevance is established if the matter “might reasonably assist a party in evaluating its case,

1 preparing for trial, or facilitating a settlement.” *Id.* at 97-98 (internal quotation marks and citation
2 omitted). If good cause is shown for discovery, a court must grant the motion to compel unless the
3 respondent proffers objections and carries its burden to justify them. *See Beesley v. Superior Court*,
4 58 Cal.2d 205, 209 (1962).

5 Here, Plaintiffs have good cause to justify the production of documents. As described in
6 detail below, this Motion addresses 14 narrowly-tailored document requests relating to issues
7 central to this litigation. Because the District has failed to identify “a legitimate privilege issue”
8 that prevents it from producing any particular document,¹ Plaintiffs need only present facts that
9 demonstrate these documents are relevant to the subject matter of their case. *TBG Ins. Servs. Corp.*
10 *v. Superior Court*, 96 Cal. App. 4th 443, 448 (2002). Because the documents Plaintiffs seek are
11 also needed for trial preparation, Plaintiffs must be able to review all non-privileged responsive
12 documents in order “to prevent surprise at trial,” *Associated Brewers Distrib. Co.*, 65 Cal.2d at
13 588, and “eliminate the need for guesswork about [Defendant’s] evidence,” *Kirkland*, 95 Cal. App.
14 4th at 97 (quoting *Glenfeld Dev. Corp. v. Superior Court*, 53 Cal. App. 4th 1113, 1119 (1997)).

15
16 **B. The District’s Boilerplate Objections Lack Basis in Law or Fact.**

17 The District raised the same three boilerplate objections to the 14 relevant requests for
18 production of documents without adequate legal or factual support: **1)** Privilege and the attorney
19 work-product doctrine; **2)** Third-party privacy rights; and **3)** Vagueness and ambiguity.
20 Additionally, the District raised boilerplate objections to individual requests without adequate
21 legal and factual support on the following grounds: **4)** Overbroad and not reasonably likely to lead
22 to admissible evidence; **5)** Burdensomeness; and **6)** Compoundness. These objections are improper
23 and cannot prevent the District from producing the non-privileged, responsive documents that
24 Plaintiffs seek.

25 ¹ The District’s response to all of Plaintiffs’ RFPs asserted a general objection based on
26 attorney-client privilege. But even after repeated requests for a privilege log, Schwartz Decl. ¶
27 17, 25, the District has failed to identify any document that has been withheld on this basis or to
otherwise “provide sufficient factual information for other parties to evaluate the merits of” this
claim as it relates to these RFPs (Cal. Civ. Proc. Code, § 2031.240(c)(1)).

1 **1. The District Failed to Support its Privilege-Based Objections.**

2 “The attorney-client privilege only protects disclosure of communications”—not
3 disclosure of “underlying facts upon which” communications are based nor independent witnesses
4 or their discovery. *Aerojet-General Corp. v. Transp. Indem. Ins.*, 18 Cal. App. 4th 996, 1004
5 (1993). Under California law, “[i]f an objection is based on a claim of privilege or a claim that the
6 information sought is protected work product, the response shall provide sufficient factual
7 information for other parties to evaluate the merits of that claim, including, if necessary, a privilege
8 log.” Cal. Civ. Proc. Code § 2031.240(c)(1).

9 The District objected to all 14 RFPs at issue on the basis that they seek privileged
10 documents or are otherwise protected from disclosure under the attorney-work product doctrine.
11 The District did not produce a privilege log to assist Plaintiffs in assessing the merit of these
12 objections, nor has it even attempted to explain how all 14 requests seek privileged material. None
13 of Plaintiffs’ requests seek privileged information. Instead, they seek information related to
14 operations of the District’s special education and student discipline programs, which are not
15 programs subject to constant oversight by counsel. Any privilege implications should be minimal,
16 if not nonexistent.

17 The District also asserts four additional privileges—closed session privilege, deliberative
18 process privilege, mental impression privilege, and official information privilege—against each of
19 Plaintiffs’ Requests. None of these are privileges under which information is protected against
20 discovery under the California Evidence Code, which lists the exclusive evidentiary privileges
21 under state law. *See* Cal. Evid. Code § 911(b); *Zurich Am. Ins. Co. v. Superior Court*, 155 Cal.
22 App. 4th 1485, 1494 (2007) (“Evidentiary privileges are creatures of statute. California courts are
23 powerless to judicially carve out exceptions.”) (internal citations omitted); Cal. Evid. Code §§ 930-
24 1063 (describing fifteen categories of privileges). Thus, Defendant’s asserted privileges are
25 improper and irrelevant objections against the disclosure of information.

1 **2. The District’s Objections Based on Third-Parties Privacy Rights Can Be**
2 **Addressed by Narrow Redactions and the Joint Protective Order.**

3 The availability of redactions under the protective order defeats the District’s third-party
4 privacy objections. The District objects to RFP Nos. 1, 3, 9-14, 17-18A, and 21 based on its
5 assertion that some documents may include “privileged, confidential information of third parties,”
6 the disclosure of which may violate state and federal privacy rights. But infringement on the state
7 constitutional right to privacy can be justified by a “compelling interest”. *Williams v. Superior*
8 *Court*, 3 Cal.5th 531, 556 (2017) (quoting *Hill v. Nat’l Collegiate Athletic Ass’n*, 7 Cal.4th 1, 34
9 (1994)).

10 Here, no such infringement exists because the requested data and documents need not
11 include information sufficient to reasonably identify a specific student. Moreover, the
12 constitutionally protected “privacy and confidentiality of records can be adequately protected by
13 a protective order.” *Zurich Am. Ins. Co. v. Sealink Ins. Servs. Corp.*, No. CV 16-4301 R(JCX),
14 2018 U.S. Dist. LEXIS 235530, at *3 (C.D. Cal. Mar. 16, 2018). The parties’ protective order
15 specifically addresses how the parties will designate, limit disclosure of, and seal in court
16 proceedings “confidential and/or proprietary information subject to protection” by state and federal
17 law that safeguards “education records, privacy, and confidentiality.” Protective Order Governing
18 Disc. 1. Although the Family Educational Rights and Privacy Act (“FERPA”) restricts disclosure
19 of protected educational information in some circumstances, courts permit disclosure “so long as
20 redactions are applied and disclosure is governed by [a] protective order[.]” *Doe v. Manhattan*
21 *Beach Unified Sch. Dist.*, No. CV 19-06962-DDP (RAOx), 2020 U.S. Dist. LEXIS 250110, at *14
22 (C.D. Cal. Oct. 20, 2020); *see also* 20 U.S.C. § 1232g(b)(2)(B) (allowing educational agency to
23 release personally identifiable information if “such information is furnished in compliance with
24 judicial order” upon condition that parents and students are notified of the order in advance).

25 Moreover, even if an infringement exists, Plaintiffs have a compelling interest in discovery
26 of truthful information. Courts have repeatedly found the “necessity in judicial proceedings for
27 ascertaining the truth is sufficiently compelling to justify disclosure of constitutionally protected

1 information when narrowly limited to information directly relevant to the issues and when good
2 cause and materiality to the action establish that the need for disclosure outweighs the right to
3 privacy.” *Cutter v. Brownbridge*, 183 Cal. App. 3d 836, 843 (1986). For example, the court in
4 *Pagano v. Oroville Hospital* found disclosure of hospital patient records, in a suit brought against
5 the hospital for conspiracy to eliminate the plaintiff obstetrician as a competitor, subject to a
6 protective order against disclosure of patient and physician identities. 145 F.R.D. 683, 696-99
7 (E.D. Cal. 1993) (overruling on other grounds recognized by *Chatman v. Felker*, No. CIV S-03-
8 2415 JAM KJM P, 2009 U.S. Dist. LEXIS 4747, at *25 (E.D. Cal. Jan. 23, 2009)). As in *Pagano*,
9 “the discovery and admissibility of relevant truthful information are an individual right of the
10 [Plaintiffs], as well as a significant public interest.” *Id.* at 699.

11 **3. The District’s Vague and Ambiguous Objections are Improper.**

12 The District cannot justify its failure to adequately respond to Plaintiffs requests on the
13 grounds of vagueness and ambiguity. The District objected to each of the 14 RFPs at issue on the
14 grounds that various terms are “vague and ambiguous” and even “incomprehensible,” including:
15 “documents” (RFP Nos. 1, 3, 9-18A, 21), “sufficient to identify” (RFP Nos. 1, 3, 11), “mental
16 health assessment” (RFP No. 9), “evaluation” (RFP No. 9), “crisis intervention” (RFP No. 9),
17 “placement for evaluation and treatment in a facility” (RFP No. 9), “suspended” (RFP No. 10),
18 “in-school suspensions” (RFP No. 10), “alternative education settings” (RFP No. 11), “community
19 day school programs” (RFP No. 11), “continuation school programs” (RFP No. 11), “county
20 community school programs” (RFP No. 11), “juvenile hall school programs” (RFP No. 11),
21 “independent study” (RFP No. 11), “relating to” (RFP Nos. 12-17, 18A, 21), “complaints” (RFP
22 Nos. 12-13), “about” (RFP Nos. 12-13), “constituting” (RFP No. 13), “regarding” (RFP Nos. 13-
23 14), “investigation” (RFP No. 14), “considered by” (RFP Nos. 15-16), “with respect to” (RFP Nos.
24 15-16), “reported complaints” (RFP Nos. 15-16), “concerning” (RFP Nos. 17, 18A), “your [the
25 District’s] assessment” (RFP No. 17), “consider” (RFP No. 17), “sufficient to establish” (RFP Nos.
26 18, 19), “any advanced level courses and college preparation courses or programs” (RFP No. 18A),
27 “practices” (RFP No. 18A), and “coordination” (RFP No. 21).

1 These boilerplate objections are improper. The breadth of these terms have clear, specific,
2 and widely understood definitions known to the District under the California Education Code, the
3 California Welfare & Institutions Code, and guidance the California Department of Education
4 provides to every local educational agency in the state.² The District itself uses these terms on its
5 own website and in its own parent-student handbooks.³ Other terms to which the District objects,
6 such as “about,” “regarding,” “constituting,” “relating to,” “concerning,” “consider” and “with
7 respect to,” are widely understood through standard dictionary definition. For many of these
8 objections, the District states that it will not withhold a response based on this objection and will
9 use a “good faith interpretation of the aforementioned terms” and the definition of “documents”
10 found in the California Evidence Code section 250.

11 Further, the District refuses to produce any documents responsive to RFP Nos. 12-16 based
12 in part on its objection that the terms “relating to,” “constituting,” “with respect to,” “considered
13 by [the District],” “regarding,” “about,” “complaints,” “investigation,” and “reported complaints”
14 describe a scope of possible documents that is “beyond definition and outside the scope of this
15 action.” This is improper. As noted above, common sense and standard dictionary definitions

16 ² See, e.g., Cal. Welfare & Inst. Code § 5150 (governing “detention of mentally disordered persons
17 for evaluation and treatment”); Cal. Welfare & Inst. Code § 5585.52 (defining “clinical evaluation”
18 of minors); Cal. Educ. Code § 48900; Cal. Dept. of Educ., *Letter from SSPI Tony Thurmond to All
19 County and District Superintendents and Charter School Administrators* (Aug. 19, 2021),
20 <https://www.cde.ca.gov/nr/el/le/yr21ltr0819.asp> (discussing “suspension”); Cal. Educ. Code §
21 58500 (defining “alternative schools”); Cal. Educ. Code § 48660 *et seq.* (defining “community
22 day schools”); Cal. Educ. Code § 48430 *et seq.* (defining “continuation education schools and
23 classes”); Cal. Educ. Code § 48645 *et seq.* (providing for the administration and operation of
24 “public schools in juvenile halls”); Cal. Dept. of Educ., *Letter from SSPI Tony Thurmond to All
25 County and District Superintendents and Charter School Administrators* (July 15, 2021),
26 <https://www.cde.ca.gov/sp/eo/is/changesisab130.asp>; Cal. Educ. Code §§ 51745-51749.6
27 (governing “independent study”); Cal. Educ. Code § 52240 (describing “advanced placement
28 courses”); Cal. Educ. Code 99151 (defining “standardized test”).

23 ³ See, e.g., Janet Schulze, *The Student Rights and Responsibilities Handbook 2021-2022 Pittsburg
24 Unified School District* 16
25 [https://www.pittsburg.k12.ca.us/cms/lib/CA01902661/Centricity/Domain/58/Student%20Handb
26 ook%2021-22%20ENGLISH-%20V.5.pdf](https://www.pittsburg.k12.ca.us/cms/lib/CA01902661/Centricity/Domain/58/Student%20Handbook%2021-22%20ENGLISH-%20V.5.pdf) (referring to “documents”); *id.* at 46 (referring to
27 “evaluation”); *id.* at 71 (referring to “suspended”); *id.* at 72 (referring to “on-campus
28 suspensions”); *id.* at 22, 53, 54 (referring to “alternative schools and programs”); *id.* at 22, 23
(referring to “community day school programs”); *id.* at 23 (referring to “continuation school
programs”); *id.* at 23, 53 (referring to “independent study”); *id.* at 83 (referring to “complaints”);
id. at 18, 25, 35 (referring to “advanced placement courses”).

1 apply. The District itself uses the term “complaints” and “investigation” in its own Board policies
2 outlining “nondiscrimination in District programs and activities.”⁴

3 The District has also improperly limited the terms in Plaintiffs’ RFP No. 9. This request
4 seeks data relating to the number of students at the District referred for assessments under
5 California Welfare & Institutions Code sections 5150 and 5585. The District claims that terms in
6 this request are “vague and ambiguous,” based on a mischaracterization of prior discussions with
7 Plaintiffs’ counsel. The District’s response to RFP No. 9 states “[b]ased on meet and confer
8 discussions with Plaintiffs’ counsel, the District will define these terms and limit its response to
9 those students known to the District who were subject to a California Welfare & Institutions Code
10 section 5150.” Plaintiffs never agreed, at the February 25, 2022 or any other meet and confer, that
11 the District could limit its response to only those students referred under section 5150. Schwartz
12 Decl. ¶ 26. In fact, California Welfare & Institutions Code section 5585 governs “civil
13 commitment of minors,” which is highly probative to Plaintiffs’ claims that the District
14 disproportionately refers Black students for “mental health evaluation” under both statutes.

15 Similarly, the District improperly limited the terms in Plaintiffs’ RFP No. 11. This request
16 seeks data relating to students at the District who were transferred into alternative education
17 settings and their demographic information. The District’s response to RFP No. 11 states that
18 “[f]ollowing meet and confer with Plaintiffs’ counsel, the District will define these terms and limit
19 its response to alternative education settings to which students are transferred after being expelled
20 from the District.” During the parties’ February 25 discussion, Plaintiffs’ counsel never agreed to
21 limit the District’s response to only those expelled students. On the contrary, Plaintiffs’ counsel
22 agreed to limit the response to **transfers** “arising out of a disciplinary incident,” which is a much
23 broader scope. Schwartz Decl. ¶ 26. In fact, Plaintiffs’ Amended Writ and Complaint cites an

24 _____
25 ⁴ See, e.g., Pittsburg Unified Sch. Dist., *Board Policy Manual, Policy 5145.3:*
26 [https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030783&revid=IpraPIQkbuAl](https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030783&revid=IpraPIQkbuAlBsU0YERmPg==&ptid=amIgTZiB9plushNjl6WXhfiOQ==&secid=9slshUHzTHxaaYMVf6zKpJz3Q==&PG=6&IRP=0)
27 [BsU0YERmPg==&ptid=amIgTZiB9plushNjl6WXhfiOQ==&secid=9slshUHzTHxaaYMVf6zK](https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030783&revid=IpraPIQkbuAlBsU0YERmPg==&ptid=amIgTZiB9plushNjl6WXhfiOQ==&secid=9slshUHzTHxaaYMVf6zKpJz3Q==&PG=6&IRP=0)
28 [pJz3Q==&PG=6&IRP=0](https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030783&revid=IpraPIQkbuAlBsU0YERmPg==&ptid=amIgTZiB9plushNjl6WXhfiOQ==&secid=9slshUHzTHxaaYMVf6zKpJz3Q==&PG=6&IRP=0) (describing District process “[u]pon receiving a complaint of
discrimination” which includes an obligation that “the Coordinator shall immediately investigate
the complaint”).

1 illustrative example of a Black student, J.T., who was disciplined with lunch detention and then
2 involuntarily transferred to an academically-inferior alternative school after his mother
3 complained about the lunch detention. First Amended Verified Petition for Writ of Mandate and
4 Complaint for Declaratory and Injunctive Relief (“First Amended Petition” or “FAP”) ¶ 77.
5 Student J.T. was never expelled, but he was involuntarily transferred. *Id.* The District must
6 broaden the scope of its response to RFP No. 11 to include all students who were transferred into
7 alternative education settings arising from any student disciplinary incident.

8 **4. The District’s Objections on Overbreadth are Improper.**

9 RFP Nos. 10-18 and 21 request five sets of documents that directly relate to Plaintiffs’
10 claims and require production. Defendant’s objection to these requests on relevance grounds
11 contradict broad California discovery law, which permits discovery of “any matter, not privileged,
12 *that is relevant to the subject matter involved in the pending action or to the determination of any*
13 *motion made* in that action, if the matter either is itself admissible in evidence or appears
14 *reasonably calculated to lead to the discovery of admissible evidence.”* Cal. Civ. Proc. Code §
15 2017.010 (emphasis added).

16 First, the requests in RFP No. 10 and 11 for disaggregated suspension, expulsion, and
17 transfer data directly relate to Plaintiffs’ disproportionate discipline claims. Plaintiffs allege the
18 District disproportionately disciplines students based on race, ethnicity, English learner status, and
19 disability and consequently transfer these students to alternative education settings. FAP ¶ 111.
20 These claims not only relate, but necessitate, production of the requested data to substantiate
21 Plaintiffs’ claims that the District utilizes a discriminatory discipline system.

22 Second, RFP Nos. 12-16’s requests for complaints of discrimination, the District’s
23 investigation of these complaints, and policies and procedures adopted or considered in response
24 directly relate to Plaintiffs’ discrimination claims. As previously reviewed, Plaintiffs allege the
25 District systemically discriminates and disproportionately identifies, segregates, and disciplines
26 students based on their race, disability, and language status, and fails to provide adequate
27 instruction to disabled students. FAP ¶ 46. Complaints and investigations of discrimination would
28

1 support perceptions of discriminatory practices by teachers, administrators, parents, and other
2 stakeholders. Similarly, the District’s investigations and policies and procedures considered or
3 adopted relate to Plaintiffs’ theory that the violations persist at the District.

4 In accordance with this Court’s guidance at the Informal Discovery Conference, Plaintiffs
5 offered to narrow these requests by negotiating search terms and email custodians. Schwartz Decl.
6 ¶ 19. Courts have found even broader email requests relevant to systemic discrimination claims.
7 For example, the court in *Briggs v. County of Maricopa* found a request that Defendant perform
8 keyword searches of emails of ten managers relevant to Plaintiffs’ claim that Defendant had an
9 unconstitutional policy and practice of wealth-based discrimination. No. CV-18-02684-PHX-
10 EJM, 2021 U.S. Dist. LEXIS 83683, at *7 (D. Ariz. Apr. 30, 2021).

11 Third, RFP No. 17’s request for documents surrounding the audit of the District’s special
12 education program directly relates to Plaintiffs’ systemic discrimination claims. Indeed, the audit
13 and Plaintiffs’ complaint identify numerous overlapping flaws in every component of the District’s
14 special education system. *See, e.g.*, FAP ¶¶ 25, 46, 58, 66-67. Accordingly, the District’s
15 consideration and adoption of *all* of the audit’s recommendations directly relate to whether these
16 violations persist. But the documents produced describe the District’s actions at a vague and
17 generalized level, while proving the existence of additional responsive documents. For example,
18 the PowerPoint presentation titled “All of Our Students Succeed” states that a “committee”
19 “developed a plan to match the 6 identified themes from the Stetson Report.” PUSD0001105. But
20 the District failed to produce the committee’s plan or meeting notes.

21 Fourth, RFP No. 18’s request for disaggregated “CAASPP” test scores directly relate to
22 Plaintiffs’ claims that the District fails to provide adequate educational instruction. Plaintiffs cite
23 these test scores, which measure proficiency in the statewide academic content standards, as
24 evidence that the District fails to provide adequate instruction. FAP ¶ 72. Indeed, Plaintiffs’
25 constitutional theory argues that the District must provide all students the opportunity to meet the
26 state academic content standards.

1 Finally, the Court should reject the District’s overbreadth objection to RFP No. 21’s request
2 for IEPs because they are relevant to Plaintiffs’ systemic claims. The District’s objection ignores
3 that treatment of individual students directly relates to Plaintiffs’ systemic claims. Moreover,
4 following this Court’s guidance at the informal discovery conference, Plaintiffs offered to narrow
5 these requests by negotiating a sample of IEPs.

6 **5. The District’s Burdensome Objection is Improper.**

7 To support an objection based on burdensomeness, a defendant must show the requested
8 electronically stored “information is from a source that is not reasonably accessible because of
9 undue burden or expense.” Cal. Civ. Proc. Code, § 2031.310(d). The defendant must further
10 present evidence regarding “the quantum of work required,” *Williams v. Superior Court*, 3 Cal.5th
11 531, 549 (2017), to demonstrate that “the ultimate effect of the burden is incommensurate with the
12 result sought.” *Mead Reinsurance Co. v. Superior Ct.*, 188 Cal. App. 3d 313, 321 (1986). For
13 example, in *Mead Reinsurance Co.*, the court found the undue burden objection warranted where
14 the objecting party showed that it would require the review of over 13,000 claims files requiring
15 five claims adjusters working full time for six weeks. *Id.* at 318.

16 In raising this objection to each RFP, the District has not attempted to provide any evidence
17 of the time or quantum of work that would be required to produce the requested documents.
18 Moreover, because all of Plaintiffs’ request seek electronically stored information, these
19 documents presumptively should be easier to search for and retrieve.

20 **6. The District’s Compound Objection Lacks Legal Foundation.**

21 Unlike California Code of Civil Procedure section 2030.060(f), which prohibits compound
22 special interrogatories, there is no similar statutory limitation regarding requests for production of
23 documents. Thus, District’s objection to RFP No. 18A as compound is legally unsound.

24 **C. The Court Should Compel Defendants to Produce Data Sets Following the**
25 **Court’s Earlier Guidance Regarding “Locked” Files.**

26 At the Informal Discovery Conference, this Court offered guidance to the District to
27 provide Plaintiffs with data sets that could be used for the purposes of data analysis, and that these

1 data sets could be provided in both a locked and unlocked format. Despite numerous attempts to
2 meet and confer, and proposed solutions provided via email, no additional data sets have been
3 provided to date. While Ms. Alberts stated she would “inquire as to what needed to be done” with
4 the files, she has continued to insist that “[t]he Court said we have the right to lock the ability to
5 change cell content.” Absent sufficient cause for locking certain data and cells on Excel
6 spreadsheets, spreadsheets should be produced in the manner in which they were maintained in
7 the ordinary course of business. *Williams v. Sprint/United Mgmt. Co.*, 230 F.R.D. 640, 655 (2005).
8 This does not preclude defendants from using other, less intrusive methods, e.g., “hash marks[,]”
9 unique to particular files that would show if the spreadsheets were significantly altered in the data
10 manipulation process. *Id.* The District has failed to allege any “sufficient cause” that would
11 preclude their ability to produce spreadsheets in a native format.

12 **IV. PLAINTIFFS ARE ENTITLED TO MONETARY SANCTIONS**


13 The court shall impose monetary sanctions against, “any party, person, or attorney who
14 unsuccessfully . . . opposes a motion to compel further response to a demand” absent substantial
15 justification. *See* CCP §§ 2031.310(h). Plaintiffs’ requests that attorney’s fees be awarded against
16 the District in the amount of \$11,959.70 for engaging in the misuses of the discovery process
17 described in this Motion. There is simply no excuse or justification for the District’s refusal to
18 produce documents that it assured it would, nor can the District stand on boilerplate objections to
19 avoid producing documents to those RFPs to which it raises only objections. The Declaration of
20 Amanda Schwartz attests to the efforts expended on the part of Plaintiffs, the moving party, to
21 avoid this Motion. The purpose of discovery sanctions is to prevent abuse of the discovery process
22 and correct the problem presented. *See Do v. Superior Court*, 109 Cal. App. 4th 1210, 1213 (2003).
23 It is evident from the facts presented that the District will not comply with this authorized method
24 of discovery absent a court order and the imposition of sanctions.


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V. **CONCLUSION**

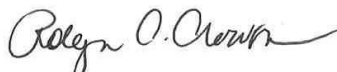
For the foregoing reasons, Plaintiffs respectfully request the court grant this Motion, and award Plaintiffs monetary sanctions in the amount of \$11,959.70 against Defendants and Defendants counsel.

DATED: August 3, 2022

By: 
Malhar Shah
Claudia Center
DISABILITY RIGHTS EDUCATION AND
DEFENSE FUND


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Amanda C. Schwartz
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STEPTOE & JOHNSON LLP

PROOF OF SERVICE

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

On August 3, 2022, I served the following listed document(s): **PLAINTIFFS’ NOTICE OF MOTION AND MOTION TO COMPEL FURTHER PRODUCTION OF DOCUMENTS FROM DEFENDANT PITTSBURG UNIFIED SCHOOL DISTRICT, AND FOR MONETARY SANCTIONS IN THE AMOUNT OF \$11,959.70; MEMORANDUM OF POINTS AND AUTHORITIES** by the methods indicated below, on the parties in this action:

State of California Deputy Attorney General California Department of Justice 455 Golden Gate Avenue # 11000 San Francisco, CA 94102	Andrew.Edelstein@doj.ca.gov Jacquelyn.Young@doj.ca.gov
Tony Thurmond, in his official capacity as State Superintendent of Public School Instruction 1430 N Street, Suite 5111 Sacramento, CA 95814	
State Board of Education 1430 N Street, Suite 5111 Sacramento, CA 95814	VCale@cde.ca.gov LGarfinkel@cde.ca.gov
California Department of Education 1430 N Street, Suite 5111 Sacramento, CA 95814	
Pittsburg Unified School District c/o Katherine Alberts 1390 Willow Pass Rd #700 Concord, CA 94520	kalberts@leonealberts.com jjohnson@leonealberts.com service@leonealberts.com

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the document(s) to be sent from e-mail address mhernandez@steptoe.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY ELECTRONIC SERVICE: I served the document(s) on the persons listed in the Service List by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onlegal.com.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 3, 2022, at Los Angeles, California.

s/s Melissa Hernandez

MELISSA HERNANDEZ