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

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

19 Plaintiffs and Petitioners,

20 v.

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

26 Defendants and Respondents.  
27  
28

Case No. MSN21-1755

Hon. Edward G. Weil

UNLIMITED JURISDICTION

**SEPARATE STATEMENT IN SUPPORT  
OF MOTION TO COMPEL FURTHER  
RESPONSES TO PLAINTIFFS' FIRST SET  
OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS TO DEFENDANT  
PITTSBURG UNIFIED SCHOOL  
DISTRICT**

[Notice of Motion and Motion, Memorandum of  
Points and Authorities, Declaration of Amanda  
Schwartz, and Declaration of Malhar Shah filed,  
[Proposed] Order lodged concurrently]

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*Attorneys for Plaintiffs-Petitioners*

1                                    **SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL**

2                    Pursuant to California Rule of Court § 3.1345, Plaintiffs respectfully submit this Separate  
3 Statement of Items in Dispute in further support of their Motion to Compel Further Responses to First Set  
4 of Requests for Production of Documents Nos. 1, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 18A and 21<sup>1</sup>  
5 (“RFPs” or “Requests”) of Defendant Pittsburg Unified School District (“District” or “Defendant”).

6                    **I.        SUMMARY OF ADDITIONAL DOCUMENTS SOUGHT BY PLAINTIFFS’ MOTION**  
7                    **TO COMPEL**

8                    Plaintiffs move to compel production of documents with respect to 14 requests—RFP Nos. 1, 3,  
9 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 18A, and 21. Specifically, as summarized in more detail in section  
10 VI, Plaintiffs seek the following documents or categories of documents for each request:

- 11                    • **RFP No. 1:** Defendant produced multiple data sheets in either locked excel or pdf format.  
12                                       The data sheets for the 2015-16 and 2016-17 academic years omit data points for primary  
13                                       and secondary eligibility criterion. Plaintiffs seek production of these data sheets in an  
14                                       unlocked, excel format with the omitted data points;
- 15                    • **RFP No. 3:** Defendant produced multiple data sheets in either locked excel or pdf format.  
16                                       All of these data sheets omit data points for the percentage of time the student was placed  
17                                       in the general education setting, English learner status, and disability category. Plaintiffs  
18                                       seek production of these data sheets in an unlocked, excel format and additional data sheets  
19                                       containing the omitted data points;
- 20                    • **RFP No. 9:** Defendant produced a data sheet in a locked excel format. This data sheet also  
21                                       omits referrals made under California Welfare and Institutions Code § 5185. Plaintiffs  
22                                       seek production of these data sheets in an unlocked, excel format and additional data sheets  
23                                       containing the omitted data point;

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27                    <sup>1</sup> Plaintiffs seek to compel further responses and production of documents for a total of 14 Requests.

- 1           • **RFP No. 10:** Defendant produced multiple data sheets in either locked excel or pdf format.  
2           Plaintiffs seek production of these data sheets in an unlocked, excel format.
- 3           • **RFP No. 11:** Because Defendant has failed to produce any documents, Plaintiffs seek all  
4           responsive documents.
- 5           • **RFP No. 12:** Defendant has failed to produce any documents. Plaintiffs seek an order  
6           requiring Defendant to negotiate in good faith with Plaintiff to identify search terms and  
7           custodians for responsive emails. Plaintiffs also seek all non-e-mail documents reflecting  
8           the Defendant’s investigation of complaints;
- 9           • **RFP No. 13:** Defendant has failed to produce any documents. Plaintiffs seek an order  
10          requiring Defendant to negotiate in good faith with Plaintiffs to identify search terms and  
11          custodians for responsive emails; . Plaintiffs also seek all non-e-mail documents reflecting  
12          the Defendant’s investigation of complaints;
- 13          • **RFP No. 14:** Defendant has failed to produce any documents. Plaintiffs seek an order  
14          requiring Defendant to negotiate in good faith with Plaintiff to identify search terms and  
15          custodians for responsive emails. Plaintiffs also seek all non-e-mail documents reflecting  
16          the Defendant’s investigation of violations;
- 17          • **RFP No. 15:** Because Defendant has failed to produce any documents, Plaintiffs seek all  
18          responsive documents. Plaintiffs also seek all other non-e-mail documents reflecting  
19          policies and procedures considered and adopted by Defendant in response to complaints;
- 20          • **RFP No. 16:** Because Defendant has failed to produce any documents, Plaintiffs seek all  
21          responsive documents. Plaintiffs also seek all other non-e-mail documents reflecting  
22          policies and procedures considered and adopted by Defendant in response to complaints;
- 23          • **RFP No. 17:** Defendant produced multiple documents that do not describe with sufficient  
24          detail the District’s assessment or implementation of the audit conducted by Stetson &  
25          Associates. But these documents prove the existence of additional responsive documents,  
26          such as meeting notes, plans, and communications from the committee designated to

1 develop a plan to match themes from the audit report. Plaintiffs seek these and additional  
2 responsive documents;

- 3 • **RFP No. 18:** Defendant produced responsive documents containing CAASPP test scores  
4 for the 2015-19 academic years. The test was not administered in the 2020-21 academic  
5 year. Plaintiffs seek these test scores for the 2021-22 academic year;
- 6 • **RFP No. 18A:** Because Defendant has failed to produce any documents, Plaintiffs seek all  
7 responsive documents;
- 8 • **RFP No. 21:** Defendant has failed to produce any documents. Plaintiffs seek an order  
9 requiring Defendant to negotiate in good faith with Plaintiffs to identify a sample of  
10 Individualized Education Programs (“IEPs”) across grade levels, school sites, and  
11 placements.

## 12 **II. OBJECTIONS AND RESPONSES RE: DEFINITIONS**

### 13 **a. The District’s Objections to Plaintiffs’ Definitions and Terms**

14 Defendant District objects to the following of Plaintiffs’ defined terms as used in Plaintiffs’ RFPs:

- 15 1. “Documents” – **Defendants Response:** Defendant District objects to this term in every Request  
16 as vague, ambiguous, and “incomprehensible.” These terms do not apprise a person of ordinary  
17 intelligence what is required so as to permit an intelligent response. *Cembrook v. Superior Court*  
18 56 Cal.2d 423, 430 (1961) (terms of discovery request must permit intelligent response). With  
19 regard to the term “documents,” the District will employ the same definition of that term as  
20 adopted by the California Judicial Council for Form Interrogatories – General, specifically: “a  
21 writing, as defined in Evidence Code section 250. . . .”
- 22 2. “Relating to,” “regarding,” and “concerning” – **Defendants Response:** Defendant objects to  
23 these terms as “undefined and limitless,” vague, and ambiguous in its responses to Request Nos.  
24 12-17, 18A, and 20-21. That which constitutes “relating to,” “regarding,” or “concerning” is a  
25 subjective judgment which may give rise to significant disputes between the parties as to what  
26 constitutes a responsive document. The District will withhold a response based upon the

1 objection to the terms “relating to” and “regarding” as the scope of possible documents is beyond  
2 definition and outside the scope of this action. With regard to the term “concerning,” the District  
3 will not withhold a response based upon this objection; and to the extent it provides any response  
4 subject to other objections, will respond based upon its good faith interpretation of the term.

5 Defendant further objects to the following of Plaintiffs’ terms contained in the RFPs as undefined:

6 3. “Sufficient to identify” (RFPs 1-11) and “sufficient to establish” (RFPs 18, 19) – **Defendants**  
7 **Response:** Defendant objects to these terms as vague and ambiguous. That which constitutes  
8 “sufficient to identify” or “sufficient to establish” is a subjective judgment which may give rise  
9 to disputes between the parties. These terms do not apprise a person of ordinary intelligence what  
10 is required so as to permit an intelligent response. *Cembrook, supra*, 56 Cal.2d at 430.

11 Notwithstanding, the District will not withhold a response based upon this objection; and to the  
12 extent it provides any response subject to other objections, will respond based upon its good faith  
13 interpretation of the terms.

14 4. “About” (RFPs 12-13), “constituting” (RFP 13), “with respect to” (RFPs 15-16) and  
15 “concerning” (RFPs 17, 18A) – **Defendants Response:** Defendant objects to these terms as  
16 “undefined and limitless,” vague and ambiguous. These terms do not apprise a person of  
17 ordinary intelligence what is required so as to permit an intelligent response. *Cembrook, supra*,  
18 56 Cal.2d at 430. That which constitutes “about,” “constituting,” “with respect to” and  
19 “concerning” is a subjective judgment which may give rise to significant disputes between the  
20 parties as to what constitutes a responsive document. The District will withhold a response to  
21 RFPs 12-16 based upon its objection to “about,” “constituting,” and “with respect to” as the  
22 scope of possible documents is beyond definition and outside the scope of this action. The  
23 District will not withhold a response based upon its objection to the term “concerning”; and to  
24 the extent it provides any response subject to other objections, will respond based upon its good  
25 faith interpretation of the term.

- 1 5. “Considered by” (RFPs 15-16) and “consider” (RFP 17) – **Defendants Response:** Defendant  
2 objects to these terms as vague and ambiguous. These terms could have several meanings,  
3 including only formal proposals voted upon by the District board, any unspoken thought that  
4 may have passed through any District employee or Board member’s head, etc. The District will  
5 withhold a response based upon its objection to the term “considered by.” The District will not  
6 withhold a response based upon its objection to the term “consider”, and to the extent it provides  
7 any response subject to other objections, will respond based upon its good faith interpretation of  
8 the term.
- 9 6. “Practices” (RFP 18A) – **Defendants Response:** Defendant objects to this term as vague and  
10 ambiguous. These terms do not apprise a person of ordinary intelligence what is required so as to  
11 permit an intelligent response. *Cembrook, supra*, 56 Cal.2d at 430. This term could have several  
12 different meanings, including only formal written practices, impromptu practices followed by  
13 only one or a few employees without supervisory knowledge, etc. Notwithstanding, the District  
14 will not withhold a response based upon this objection; and to the extent it provides any response  
15 subject to other objections, will respond based upon its good faith interpretation of the term.
- 16 7. “Complaints” (RFPs 12-13) and “reported complaints” (RFP 15-16) – **Defendants Response:**  
17 Defendant objects to these terms as vague and ambiguous. These terms could have several  
18 different meanings, including only formal written complaints, impromptu verbal informal  
19 complaints, etc. Defendant will withhold a response based on its objection to these terms as the  
20 scope of the possible documents is beyond definition and outside the scope of this action.
- 21 8. “Your [the District’s] assessment” (RFP 17) – **Defendants Response:** Defendant objects to this  
22 term as vague and ambiguous. This term does not apprise a person of ordinary intelligence what  
23 is required so as to permit an intelligent response. *Cembrook, supra*, 56 Cal.2d at 430. The term  
24 could have several meanings, including only formal assessments approved by the District Board  
25 through formal vote, any unspoken assessment that may have passed through any District  
26 employee or Board member’s head, etc. Notwithstanding, the District will not withhold a

1 response based upon this objection; and to the extent it provides any response subject to other  
2 objections, will respond based upon its good faith interpretation of the term.

3 9. “Mental health assessment,” “evaluation,” “crisis intervention,” and “placement for evaluation  
4 and treatment in a facility” (RFP 9) – **Defendants Response:** Defendant objects to these terms as  
5 vague and ambiguous. These terms do not apprise a person of ordinary intelligence what is  
6 required so as to permit an intelligent response. *Cembrook, supra*, 56 Cal.2d at 430. Defendant  
7 further objects that these terms are overly broad. Based on meet and confer discussions with  
8 Plaintiffs’ counsel, the District will define these terms and limit its response to those students  
9 known to the District who were subject to a California Welfare & Institutions Code section 5150.

10 10. “Suspended” and “in-school suspensions” – **Defendants Response:** Defendant objects to these  
11 terms as vague and ambiguous. It is uncertain whether the term “in-school suspensions” would  
12 include those forms of discipline traditionally referred to as “detention” and will define this term  
13 as not including informal discipline, such as detention, but rather actual suspensions served at  
14 school as opposed to at home. Notwithstanding, the District will not withhold a response based  
15 upon this objection; and to the extent it provides any response subject to other objections, will  
16 respond based upon its good faith interpretation of the terms, construing in-school suspensions as  
17 meaning actual suspension served at school.

18 11. “Alternative education settings,” “community day school programs,” “continuation school  
19 programs,” “juvenile hall school programs,” “county community school programs,” and  
20 “independent study” – **Defendants Response:** Defendant objects to these terms as vague and  
21 ambiguous. These terms do not apprise a person of ordinary intelligence what is required so as to  
22 permit an intelligent response. *Cembrook, supra*, 56 Cal.2d at 430. The District and Plaintiffs  
23 could have completely different meanings. Thus, preventing the District from properly  
24 responding. Following meet and confer with Plaintiffs’ counsel, the District will define these  
25 terms and limit its response to alternative education settings to which students are transferred  
26 after being expelled from the District.



1 12. “Any advanced level courses and college preparation courses or programs” (RFP 18A) –

2 **Defendants Response:** Defendant objects to this term as vague and ambiguous. This term does  
3 not apprise a person of ordinary intelligence what is required so as to permit an intelligent  
4 response, *Cembrook, supra*, 56 Cal.2d at 430, and provides no guidance as to how to objectively  
5 determine whether a particular class is considered “advanced” or “college preparation.”

6 Notwithstanding, the District will not withhold a response based upon this objection; and to the  
7 extent it provides any response subject to other objections, will respond based upon its good faith  
8 interpretation of the term.

9 13. “Coordination” (RFP 21) – **Defendants Response:** Defendant objects to this term as vague and  
10 ambiguous. This term does not apprise a person of ordinary intelligence what is required so as to  
11 permit an intelligent response, *Cembrook, supra*, 56 Cal.2d at 430, and provides no guidance as  
12 to what it means in any regard. Notwithstanding, the District will not withhold a response based  
13 upon this objection; and to the extent it provides any response subject to other objections, will  
14 respond based upon its good faith interpretation of the terms.

15 **b. Plaintiffs’ Responses to District’s Objection to Plaintiffs Definitions and Terms**

16 Defendant District’s boilerplate objections to the terms defined and contained in Plaintiffs’  
17 Requests are improper and evasive. Plaintiffs’ definitions of “documents,” “relating to,” “regarding,”  
18 and “concerning” are clear, comprehensive, and standard definitions used in common litigation practice.  
19 Other terms to which the District objects, such as “about,” “regarding,” “constituting,” “relating to,”  
20 “concerning,” “consider” and “with respect to,” are widely understood through standard dictionary  
21 definition. The District appears to object to nearly every term in the English language commonly used to  
22 describe a category of things. The remainder of the terms, which relate to ordinary educational practice  
23 and administration of schools in California, have clear, specific, and widely-understood definitions  
24 known to the District under the California Education Code, the California Welfare & Institutions Code,  
25 and guidance from the California Department of Education provided to every local educational agency  
26

1 the state.<sup>2</sup> Indeed, the District itself uses these terms on its own website and in its own parent-student  
2 handbooks.<sup>3</sup>

3 **III. GENERAL OBJECTIONS & RESPONSES**

4 **a. Defendant District’s General Objections to Plaintiffs’ RFPs**

- 5 1. Defendant District objects to each of Plaintiffs’ 14 RFPs at issue “on the grounds that the  
6 Requests seek the production of documents subject to the closed session privilege, deliberative  
7 process privilege, mental impression privilege, official information privilege, attorney-client  
8 privilege, and/or attorney work produce doctrine.”
- 9 2. The District objects to 12 of the 14 RFPs at issue (all except for RFP Nos. 15-16) “on the  
10 grounds that the Requests seek the production of documents which include privileged,  
11 confidential information of third parties, the disclosure of which would violate the constitutional  
12 privacy rights of individuals and also statutory privacy rights including, but not necessarily  
13 limited to, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 C.F.R. Part 99  
14 (“FERPA”). Based on this objection, the District will not produce any documents outside the  
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17 <sup>2</sup> See, e.g., Cal. Welf. & Inst. Code §§ 5150 (governing “detention of mentally disordered person for  
18 evaluation and treatment”), § 5585 (defining “clinical evaluation” of minors); Cal. Educ. Code §§ 48430  
19 *et seq.* (defining “continuation education schools and classes”), 48660 *et seq.* (defining “community day  
20 schools”), 48645 *et seq.* (providing “for the administration and operation of public schools in juvenile  
21 halls”), 48900, 51745-51749.6 (governing “independent study”), 52240 (describing “advanced placement  
22 courses”), 58500 (defining “alternative schools”), 99151 (defining “standardized test”); Letter from Tony  
23 Thurmond, State Superintendent to All County and District Superintendents and Charter School  
24 Administrators re State Guidance for New Laws on Discipline (Aug. 19, 2021), available at:  
25 <https://www.cde.ca.gov/nr/el/le/yr21ltr0819.asp> (“suspended”); Letter from Tony Thurmond, State  
26 Superintendent to All County and District Superintendents and Charter School Administrators re Changes  
27 to Independent Study Requirements (July 15, 2021), <https://www.cde.ca.gov/sp/eo/is/changesisab130.asp>.

28 <sup>3</sup> See, e.g., Janet Schulze, The Student Rights and Responsibilities Handbook 2021-2022 Pittsburg Unified  
School District, PUSD at 16 (referring to “documents”), 55 (referring to “evaluation”), 71-72 (referring  
to “suspended”), 68 (referring to “suspensions”), 21, 53, 54 (referring to “alternative education”), 22, 23  
(referring to “Community Day School”), 23 (referring to “continuation program”), 23, 53 (referring to  
“independent study”), 83 (referring to “complaints”), 19, 25, 35 (referring to “advanced placement”),  
[https://www.pittsburg.k12.ca.us/cms/lib/CA01902661/Centricity/Domain/58/Student%20Handbook%20  
21-22%20ENGLISH-%20V.5.pdf](https://www.pittsburg.k12.ca.us/cms/lib/CA01902661/Centricity/Domain/58/Student%20Handbook%2021-22%20ENGLISH-%20V.5.pdf).

1 provisions of a protective order, and will additionally redact any information that it believes  
2 could be used to identify specific students.”

- 3 3. The District additionally objects to Plaintiffs RFPs 1, 3, 9-11, and 18 “on the grounds that the  
4 Requests seek to have the District create documents that do not currently exist. The Code of  
5 Civil Procedure does not require a party to create documents to respond to requests for  
6 production. Cal. Civ. Proc. Code (“CCP”) § 2031.010(a); § 2031.230 (authorizing party to  
7 respond by asserting inability to respond due to requested document never existing).”
- 8 4. The District additionally objects to Plaintiffs’ RFPs 10-18 and 21 “on the grounds that each of  
9 those nine Requests seek documents beyond the scope of discovery permitted by Code of Civil  
10 Procedure section 2017.010, which limits the scope of discovery to matters that are either  
11 themselves ‘admissible in evidence or appear[] reasonably calculated to lead to the discovery of  
12 admissible evidence.’”

13 **b. Plaintiffs’ Responses to Defendants’ General Objections**

- 14 1. **None** of the District’s general objections “[i]dentify with particularity any document,  
15 tangible thing, land, or electronically stored information falling within any category of item  
16 in the demand to which an objection is being made,” as required by CCP § 2031.240(b)(1).  
17 Additionally, the District asserts privileges under the California Public Records Act which  
18 are inapplicable to this proceeding.
- 19 2. With respect to the District’s general objection that Plaintiffs’ Requests seek the production  
20 of privileged documents or documents that are otherwise protected from disclosure under the  
21 attorney-work product doctrine, the District **did not** produce a privilege log to assist  
22 Plaintiffs assess the merit of these objections, nor has it even attempted to explain how the 14  
23 requests at issue seek privileged material. Simply put, it cannot. The requests seek  
24 information related to operations of the District’s special education and student discipline  
25 programs, which are **not** programs subject to constant oversight by counsel. Any privilege  
26 implications should be minimal, if not nonexistent. Indeed, the attorney-client privilege

1 protects only disclosure of communications; it does not protect disclosure of underlying facts  
2 upon which communications are based, and it does not extend to independent witnesses or  
3 their discovery. *Aerojet-General Corp. v. Transp. Indemnity Ins.*, 18 Cal.App.4th 996, 1004  
4 (1993). In addition, under California law, the party asserting the attorney-client privilege in  
5 response to a discovery request bears the initial burden of demonstrating that the  
6 communication falls within the privilege. *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620  
7 (2007). “If an objection is based on a claim of privilege or a claim that the information  
8 sought is protected work product, the response shall provide sufficient factual information for  
9 other parties to evaluate the merits of that claim, including, if necessary, a privilege log.”  
10 CCP § 2031.240(c)(1). As noted above, although the District raised this objection to every  
11 request, it has failed to produce a privilege log to permit Plaintiffs from assessing its  
12 privilege claims and there is not “sufficient factual information” to evaluate the privilege  
13 claims without one. *Id.*

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

24 With respect to the District’s general objection that RFP Nos. 1, 3, 9-14, 17-18A, and  
25 21 seek the production of documents which may violate the privacy rights of third parties, the  
26 parties have jointly filed a proposed protective order which was entered as an order of the

1 Court on March 14, 2022. *See* Protective Order Governing Discovery (March 14, 2022). As  
2 noted by the Court during the June 10, 2022 Informal Discovery Conference, the terms of  
3 that Order specifically address how the parties will designate, limit disclosure of, and seal in  
4 court proceedings “confidential and/or proprietary information subject to protection” by state  
5 and federal law that safeguards “education records, privacy, and confidentiality.” Thus, this  
6 objection has already been addressed by agreement between the parties and entry of an Order  
7 by the Court to ensure disclosure of documents do not violate state and federal privacy rights.  
8 *See also* 20 U.S.C. § 1232g(b)(2)(B) (allowing educational agency to release personally  
9 identifiable information in education records if “such information is furnished in compliance  
10 with judicial order” upon condition that parents and students are notified of the order in  
11 advance); *Doe v. Manhattan Beach Unified Sch. Dist.*, No. CV 19-06962-DDP (RAOx),  
12 2020 U.S. Dist. LEXIS 250110 (C.D. Cal. Oct. 20, 2020) (same). Moreover, Plaintiffs both  
13 expect and encourage the District to comply with its obligations to protect the privacy of its  
14 students to the extent such productions do not impede discovery. Limited redactions of  
15 student information are sufficient to protect student privacy.

- 16 3. The District’s general objection that Plaintiffs’ Requests 1, 3, 9-11, and 18 seek to have the  
17 District create documents that do not currently exist is a non-starter, as none of Plaintiffs’  
18 requests seek such an action.
- 19 4. The District’s general objection that Plaintiffs’ Requests 10-18 and 21 seek documents not  
20 likely to lead to the discovery of admissible evidence and are thereby beyond the scope of  
21 discovery permitted by Code of Civil Procedure section 2017.010 is similarly meritless.  
22 California law is broad in scope; it permits discovery of “any matter, not privileged, that is  
23 relevant to the subject matter involved in the pending action or to the determination of any  
24 motion made in that action, if the matter either is itself admissible in evidence or appears  
25 **reasonably calculated to lead to the discovery of admissible evidence.**” CCP § 2017.010  
26 (emphasis added). As noted in more detail below, the District’s objection to Request Nos. 10-

1 18 incorrectly summarize the “underlying allegations” in the litigation and incorrectly limit  
2 the District’s responses to documents relating **only** to special education students. Plaintiffs’  
3 claims clearly allege that the District unlawfully discriminates against students with and  
4 without disabilities, i.e., “special education students” and “non-special education students.”<sup>4</sup>

5 RFP Nos. 10-18 and 21 request five sets of documents that directly relate to  
6 Plaintiffs’ claims and require production. Because Plaintiffs’ narrowly tailored requests seek  
7 documents directly related to the Complaint’s discrimination claims, the Court should reject  
8 the District’s overbreadth objections.

9 First, the requests in RFP Nos. 10 and 11 for disaggregated suspension, expulsion,  
10 and transfer data directly relate to Plaintiffs’ disproportionate discipline claims. Plaintiffs  
11 allege the District disproportionately disciplines students based on race, ethnicity, and  
12 disability and consequently transfer these students to alternative education settings. First  
13 Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and  
14 Injunctive Relief (“First Amended Petition” or “FAP”) ¶ 111. The FAP supports these  
15 allegations by tying data to District policies and practices, including the District’s flawed  
16 restorative justice program. FAP ¶ 79. These claims not only relate, but necessitate

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19  
20 <sup>4</sup> See Verified Pet. for Writ of Mandate and Comp. for Declaratory and Inj. Relief ¶¶ 15-17, 60, 75-78, 81  
21 (alleging, with statistical support and through individual student stories, that Black, Native American, and  
22 multiracial, students are routinely disproportionately disciplined); ¶¶ 11, 13, 46-49 (alleging, with  
23 statistical support and through individual student stories, that Black, multiracial, and English learner  
24 students are disproportionately identified as having disabilities, or more severe disabilities); First Am.  
25 Comp. (same); Mem. of P&A in Supp. of Defs.’ CDE, Tony Thurmond, and SBE’s Dem. to Pls.’ Compl.  
26 14 (noting that a portion of Plaintiffs’ allegations on the equal protection claim relate to disproportionate  
27 discipline of non-disabled students of color); Order on Dems. & Stay Mot. ¶¶ 20:3-11 (“Here, it is alleged  
28 that the ‘State Defendants have also violated the rights of Plaintiffs by . . . failing to exercise meaningful  
oversight over school districts, including Pittsburg Unified, where disabled, Black, Native American,  
multiracial, and English learners are de facto segregated and/or provided inferior academic instruction;  
and where Black, Native American, multiracial and disable students, and students at the intersections of  
those identifies, are targeted for harassment and discriminatory policy”).

1 production of the requested data to substantiate Plaintiffs’ claims that the District utilizes a  
2 discriminatory discipline system.

3 Second, RFP Nos. 12-16’s requests for formal and informal complaints of  
4 discrimination, the District’s investigation of these complaints, and policies and procedures  
5 adopted or considered in response directly relate to Plaintiffs’ discrimination claims. As  
6 previously reviewed, Plaintiffs allege the District systemically discriminates and  
7 disproportionately identifies, segregates, and disciplines students based on their race,  
8 disability, and language status, and fails to provide adequate instruction to disabled students.  
9 FAP ¶ 46. Complaints of discrimination would support perceptions of discriminatory  
10 practices by teachers, administrators, parents, and other stakeholders. Similarly, the District’s  
11 investigations and policies and procedures considered or adopted relate to Plaintiffs’ theory  
12 that the violations persist at the District.

13 In accordance with this Court’s guidance at the Informal Discovery Conference,  
14 Plaintiffs offered to narrow these requests by negotiating search terms and email custodians.  
15 FAP ¶ 19. Courts have found even broader email requests relevant to systemic discrimination  
16 claims. For example, the court in *Briggs v. Cty. of Maricopa* found a request that Defendant  
17 perform keyword searches of emails of ten managers relevant to Plaintiffs’ claim that  
18 Defendant had an unconstitutional policy and practice of wealth-based discrimination. No.  
19 CV-18-02684-PHX-EJM, 2021 U.S. Dist. LEXIS 83683, at \*6-7 (D. Ariz. Apr. 30, 2021).  
20 Similarly, the court in *U.S. E.E.O.C. v. Fisher Sand & Gravel, Co.* found a request for *all*  
21 emails between an employer and employee directly relevant to systemic gender  
22 discrimination claims. No. 2:12-cv-00649-JCM-CWH, 2012 U.S. Dist. LEXIS 128973, at \*5  
23 (D. Nev. Sep. 11, 2012); *see also Love v. Permanente Med. Grp.*, No. C-12-05679 DMR,  
24 2013 U.S. Dist. LEXIS 116615, at \*18 (Aug. 15, 2013 N.D. Cal.) (finding email  
25 correspondence to and from employer regarding “chemical dependency services” and  
26

1 employees' hospital and psychiatric duties relevant to plaintiff's claims of retaliation and  
2 systemic problems in requiring performance of those duties).

3 Third, the request for documents in RFP No. 17 surrounding the audit of the District's  
4 special education program directly relates to Plaintiffs' claims of systemic discrimination.  
5 Indeed, the audit and Plaintiffs' complaint identify numerous overlapping flaws in the  
6 District's special education system, such as the District's failure to provide disabled students  
7 with adequate support in the general education classroom. FAP ¶ 25. Moreover, contrary to  
8 Defendant's framing of this lawsuit, Plaintiffs challenge every component of the District's  
9 special education program and identified flaws relating to assessment, identification,  
10 placement, instruction, and discipline of disabled students. Compl. ¶¶ 46, 58, 66-67.  
11 Accordingly, the District's consideration and adoption of *all* of audit's recommendations  
12 directly relate to whether these violations persist. But the documents in the production  
13 describe the District's actions surrounding the audit at a vague and generalized level, while  
14 proving the existence of additional responsive documents. For example, the PowerPoint  
15 presentation titled "All of Our Students Succeed" states that a "committee" "developed a  
16 plan to match the 6 identified themes from the Stetson Report". PUSD0001105. But the  
17 District failed to produce the committee's plan or meeting notes, or notes and emails  
18 reflecting the School Board's consideration of the committee's recommendations.

19 Fourth, RFP No. 18's request for disaggregated California Assessment of Student  
20 Performance and Progress ("CAASPP") test scores directly relate to Plaintiffs' claims that  
21 the District fails to provide adequate educational instruction. Plaintiffs cite students'  
22 performance on the "CAASPP", which measures proficiency in the statewide academic  
23 content standards, as evidence that the District fails to provide adequate instruction. FAP  
24 ¶ 72. Indeed, Plaintiffs' constitutional theory argues that the District must provide all  
25 students the opportunity to meet the state academic content standards. The disaggregated  
26 CAASPP score will directly substantiate Plaintiffs' legal theory.



1 Finally, the Court should reject the District’s overbreadth objection to Plaintiffs’  
2 request for individual student records because they are relevant to Plaintiffs’ systemic claims.  
3 RFP No. 21 seeks “all documents relating to the communication and coordination of  
4 Individual Education Programs in the Special Education Program in each academic year,  
5 including identification and maintenance of student goals and goal status reports.” The  
6 District contests that the request is “overly broad as to scope and unduly burdensome given  
7 the lack of discoverability of the requested information” since “as this is a systemic claim  
8 none of these individual level records or communications could lead to the discovery of  
9 admissible evidence.” But the District’s treatment of individual students directly relates to  
10 the District’s pattern and practice of misidentifying or overidentifying Black and English  
11 learner students with disabilities or more severe disabilities, and failing to provide disabled  
12 students an opportunity to meet statewide academic content standards, a free appropriate  
13 public education, and an education in the least restrictive environment. Moreover, following  
14 this Court’s guidance at the Informal Discovery Conference, Plaintiffs offered to narrow  
15 these requests by negotiating a sample of IEP per grade and placement.

16 **IV. PLAINTIFFS’ SPECIFIC REQUESTS, DEFENDANT’S RESPONSES, DOCUMENTS**  
17 **OMITTED BY DEFENDANT, AND REASONS WHY FURTHER RESPONSE**  
18 **SHOULD BE COMPELLED**

19 **REQUEST FOR PRODUCTION NO. 1:**

20 For each school year from the 2015-16 school year to the present, documents containing  
21 quantitative data sufficient to identify the number of Individuals with Exceptional Needs at PUSD who  
22 are placed in the general education setting for greater than 80%, less than 40%, between 40 and 79% of  
23 the day, or in separate schools; including, for each student, an identification number unique to each  
24 student and data regarding their (i) race/ethnicity; (ii) gender; (iii) English learner status; (iv) special  
25 education eligibility criterion; (v) grade; and (vi) school site.

26 **DISTRICT’S RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

1 The District objects to RFP 1 through its general objections, listed above, that the Request seeks  
2 1) the production of documents subject to evidentiary privileges; 2) documents which include privileged,  
3 confidential information of third parties; and 3) seek to have the District create documents that do not  
4 currently exist. The District states it will produce all non-privileged, responsive documents in its  
5 possession, custody or control, based upon its good faith interpretation of the aforementioned terms and  
6 subject to any limitations addressed above.

7 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

8 Plaintiffs' responses to the District's general objections are described above. To the extent there  
9 are unique arguments to objections raised to a particular Requests, Plaintiffs identify that issue through  
10 appropriate headings.

11 **A. The District Produced Incomplete Documents Noncompliant with Formatting**  
12 **Requirements that Render the Production Useless**

13 As an initial matter, despite Plaintiffs' request for all documents to be provided in both native and  
14 standard production format, the District produced all but one responsive document in pdf and "locked"  
15 excel format. Because it failed to object to the form of production specified in Plaintiffs' requests, the  
16 District waived this objection. *See* CCP 2031.210(d). Nevertheless, District failed to produce documents  
17 in the format identified in Plaintiffs' requests. *See* CCP § 2031.030(a)(2). In their current form, the  
18 documents produced prohibit Plaintiffs' from performing any meaningful analysis—Plaintiffs cannot  
19 conduct statistical analysis on PDF documents and Defendants effectively converted documents in excel  
20 format to PDF by "locking" the document and preventing any change. The District must provide these  
21 documents in the form specified in Plaintiffs' RFP.

22 Even if Defendant produced the documents in the proper format, each document omits numerous  
23 datapoints that render them incomplete. The request sought ten data points: for every individual with  
24 exceptional needs in the District, **1)** the percentage of time the student placed in the general education  
25 setting, **2)** unique identification numbers, **3)** race, **4)** ethnicity, **5)** gender, **6)** English learner status, **7)**  
26 primary special education eligibility criterion, **8)** secondary special education eligibility criterion (if

1 applicable), 9) grade, and 10) school site. But in every document produced, Defendant has either omitted  
2 multiple data points and/or locked the document. The following list summarizes the documents Defendant  
3 produced and their flaws:

4 **For the 2015-16 school year**, Defendant produced the following three documents:

- 5 1. CONFIDENTIAL - PUSD 2489 2015-16 SY SEIS Data.xlsx;
- 6 2. CONFIDENTIAL - PUSD 2488 2015-16 SY SpEd Aeries Data.xlsx; and
- 7 3. CONFIDENTIAL PUSD 273-875 (2015-2022 SpEd-For ACLUCase).pdf.

8 In addition to being locked, these documents omit the following data points: 1) unique identification  
9 numbers, and 2) secondary special education eligibility criterion.

10 **For the 2016-17 school year**, Defendant produced the following three documents:

- 11 1. CONFIDENTIAL - PUSD 2491 2016-2017 SEIS data.xlsx;
- 12 2. CONFIDENTIAL - PUSD 2490 2016-17 SY SpEd AERIES Data.xlsx; and
- 13 3. CONFIDENTIAL PUSD 273-875 (2015-2022 SpEd-For ACLUCase).pdf.

14 In addition to being locked, these documents contain and omit the following information: 1) primary  
15 special education eligibility criterion; and 2) secondary special education eligibility criterion.

16 **For the 2017-18 school year**, Defendant produced the following two documents:

- 17 1. CONFIDENTIAL - PUSD 2492 2017-2018 SEIS data.xlsx; and
- 18 2. CONFIDENTIAL PUSD 273-875 (2015-2022 SpEd-For ACLUCase).pdf.

19 These documents contain all requested information, but remain locked.

20 **For the 2018-19 school year**, Defendant produced the following two documents:

- 21 1. CONFIDENTIAL - PUSD 2493 2018-2019 SEIS DATA.xlsx; and
- 22 2. CONFIDENTIAL PUSD 273-875 (2015-2022 SpEd-For ACLUCase).pdf

23 These documents contain all requested information, but remain locked.

24 **For the 2019-20 school year**, Defendant produced the following three documents:

- 25 1. CONFIDENTIAL - PUSD 2494 2019-2020 SEIS DATA.xlsx;
- 26 2. CONFIDENTIAL - PUSD 2495 2019-2020 SPED AERIES DATA.xlsx; and

1 3. CONFIDENTIAL PUSD 273-875 (2015-2022 SpEd-For ACLUCase).pdf.

2 These documents contain all requested information, but remain locked.

3 **For the 2020-21 school year**, Defendant produced the following three documents:

- 4 1. CONFIDENTIAL - PUSD 2497 2020-2021 SEIS DATA.xlsx;
- 5 2. CONFIDENTIAL - PUSD 2496 2020-2021 SPED AERIES DATA.xlsx; and
- 6 3. CONFIDENTIAL PUSD 273-875 (2015-2022 SpEd-For ACLUCase).pdf.

7 These documents contain all requested information, but remain locked.

8 **For the 2021-22 school year**, Defendant produced the following three documents:

- 9 1. CONFIDENTIAL - PUSD 2499 2021-2022 SEIS DATA.xlsx;
- 10 2. CONFIDENTIAL - PUSD 2498 2021-2022 SPED AERIES DATA.xlsx; and
- 11 3. CONFIDENTIAL PUSD 273-875 (2015-2022 SpEd-For ACLUCase).pdf.

12 These documents contain all requested information, but remain locked.

13 Plaintiffs cannot complete their analysis without complete data sets in their native, unlocked  
14 format, and the Defendant has not indicated that it has produced all responsive, non-privileged documents.  
15 Declaration of Amanda Schwartz in Support of Motion to Compel Responses to Requests for Production  
16 of Documents (“Schwartz Decl.”) ¶ 25. Moreover, the District’s boilerplate and specific objections cannot  
17 justify their withholding of these documents.

18 **REQUEST FOR PRODUCTION NO. 3:**

19 For each school year from the 2015-16 school year to the present, documents containing  
20 quantitative data sufficient to identify the number of students with Section 504 Plans at PUSD in the  
21 general education setting for greater than 80%, less than 40%, and between 40 and 79% of the day, and in  
22 separate schools, including, for each student, an identification number unique to each student and data  
23 regarding their (i) race/ethnicity; (ii) gender; (iii) English learner status; (iv) disability category; (v) grade  
24 level; and (vi) school site.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

1 The District objects to RFP 3 through its general objections, listed above, that the Request seeks  
2 1) the production of documents subject to evidentiary privileges; 2) documents which include privileged,  
3 confidential information of third parties; and 3) seek to have the District create documents that do not  
4 currently exist. The District states it will produce all non-privileged, responsive documents in its  
5 possession, custody or control, based upon its good faith interpretation of the aforementioned terms and  
6 subject to any limitations addressed above.

7 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

8 Plaintiffs’ responses to the District’s general objections are described above. To the extent there  
9 are unique arguments to objections raised to a particular Requests, Plaintiffs identify that issue through  
10 appropriate headings.

11 **A. The District Produced an Incomplete Document Noncompliant with Formatting**  
12 **Requirements that Render the Production Useless**

13 As with Request No. 1, despite Plaintiffs’ request for all documents to be provided in both native  
14 and standard production format, the District produced all responsive documents in pdf and “locked” excel  
15 format. Because it failed to object to the form of production specified in Plaintiffs’ requests, the District  
16 waived this objection. *See* CCP 2031.210(d). Nevertheless, District failed to produce the two responsive  
17 documents in the format identified in Plaintiffs’ requests. *See* CCP § 2031.030(a)(2). In their current form,  
18 the documents produced prohibit Plaintiffs’ from performing any meaningful analysis—Plaintiffs cannot  
19 conduct statistical analysis on PDF documents and Defendants effectively converted documents in excel  
20 format to PDF by “locking” the document and preventing any change. The District must provide these  
21 documents in the form specified in Plaintiffs’ RFP Request.

22 Even if Defendant produced the documents in the proper format, each document omits numerous  
23 datapoints that render them incomplete. The request sought ten data points: for every student with a  
24 Section 504 Plan, **1)** the percentage of time the student placed in the general education setting, **2)** unique  
25 identification numbers, **3)** race, **4)** ethnicity, **5)** gender, **6)** English learner status, **7)** disability category, **9)**  
26 grade, and **10)** school site. But both of the documents produced omit the following data points: **1)** the

1 percentage of time the student placed in the general education setting, 2) English learner status, and 3)  
2 disability category. Plaintiffs cannot complete their analysis without complete data sets in their native,  
3 unlocked format, and the Defendant has not indicated that it has produced all responsive, non-privileged  
4 documents. Schwartz Decl. ¶ 25.

5 **REQUEST FOR PRODUCTION NO. 9:**

6 For each school year from the 2015-16 school year to the present, documents containing qualitative  
7 data sufficient to identify the number of students at PUSD referred for a mental health assessment,  
8 evaluation, crisis intervention, or placement for evaluation and treatment in a facility, including but not  
9 limited to under California Welfare & Institutions Code section 5150 or section 5585, disaggregated by  
10 race/ethnicity, gender, English learner status, Special Education Eligibility Criterion, the disability  
11 qualifying the student for a 504 Plan (if applicable), grade level, and school site.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

13 The District objects to RFP 9 through its general objections, listed above, that the Request seeks  
14 1) the production of documents subject to evidentiary privileges; 2) documents which include privileged,  
15 confidential information of third parties; and 3) seek to have the District create documents that do not  
16 currently exist. The District states it will produce all non-privileged, responsive documents in its  
17 possession, custody or control, based upon its good faith interpretation of the aforementioned terms and  
18 subject to any limitations addressed above.

19 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

20 Plaintiffs' responses to the District's general objections are described above. To the extent there  
21 are unique arguments to objections raised to a particular Requests, Plaintiffs identify that issue through  
22 appropriate headings.

23 **A. The District Produced an Incomplete Document Noncompliant with Formatting**  
24 **Requirements that Render the Production Useless**

25 As with RFP Nos. 1 and 3, despite Plaintiffs' request for all documents to be provided in both  
26 native and standard production format, the District produced the responsive document in "locked" excel

1 format. Because it failed to object to the form of production specified in Plaintiffs’ requests, the District  
2 waived this objection. *See* CCP 2031.210(d). Nevertheless, District failed to produce the two responsive  
3 documents in the format identified in Plaintiffs’ requests. *See* CCP § 2031.030(a)(2). In their current  
4 form, the documents produced prohibit Plaintiffs’ from performing any meaningful analysis—Plaintiffs  
5 cannot conduct statistical analysis on PDF documents and Defendants effectively converted documents in  
6 excel format to PDF by “locking” the document and preventing any change. The District must provide  
7 these documents in the form specified in Plaintiffs’ RFP Request.

8 Even if Defendant produced the document in the proper format, it omitted a datapoint based on an  
9 improper limitation of terms. The District’s response to Request No. 9 states “[b]ased on meet and confer  
10 discussions with Plaintiffs’ counsel, the District will define those terms and limit its response to those  
11 students known to the District who were subject to a California Welfare & Institutions Code section 5150.”  
12 Plaintiffs made no such agreement. Schwartz Decl. ¶ 26. While the parties conferred on February 25,  
13 2022, prior to the District submitting its March 4, 2022 responses and objections, and discussed Request  
14 No. 9, Plaintiffs never agreed that the District could limit its response to only those students referred under  
15 Section 5150. Schwartz Decl. ¶ 26. In fact, California Welfare & Institutions Code Section 5585 governs  
16 “civil commitment of minors,” which is highly probative to Plaintiffs’ claims that the District  
17 disproportionately refers Black students for “mental health evaluation” under both statutes. Request No.  
18 9 includes students subject to a 5150 referral and/or a 5585 referral.

19 Because Defendant’s produced documents in a locked format that improperly omits referrals under  
20 Section 5585, Plaintiffs cannot complete their analysis. Moreover, Defendant has not indicated that it has  
21 produced all responsive, non-privileged documents. Schwartz Decl. ¶ 25.

22 **REQUEST FOR PRODUCTION NO. 10:**

23 For each school year from the 2015-16 school year to the present, documents containing  
24 quantitative data sufficient to identify the number of students at PUSD who were suspended, including in-  
25 school and out-of-school suspensions, and expelled in each academic year; including, for each student, an  
26 identification number unique to each student and data regarding their: (i) race/ethnicity; (ii) gender; (iii)

1 English learner status; (iv) whether the student is an Individual with Exceptional Needs; (v) whether the  
2 student has a Section 504 Plan; (vi) Special Education Eligibility Criterion; (vii) Section 504 Plans of each  
3 disability category; (viii) whether the student has been identified as having a disability; (ix) grade level;  
4 and (x) school site.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

6 The District objects to RFP 10 through its general objections, listed above, that the Request seeks  
7 1) the production of documents subject to evidentiary privileges; 2) documents which include privileged,  
8 confidential information of third parties; 3) to have the District create documents that do not currently  
9 exist; and 4) documents beyond the scope of discovery permitted by Code of Civil Procedure section  
10 2017.010, which limits the scope of discovery to matters that are either themselves “admissible in evidence  
11 or appear[] reasonably calculated to lead to the discovery of admissible evidence.” The District states it  
12 will produce all non-privileged, responsive documents in its possession, custody or control, based upon  
13 its good faith interpretation of the aforementioned terms and subject to any limitations addressed above.

14 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

15 Plaintiffs’ responses to the District’s general objections are described above. To the extent there  
16 are unique arguments to objections raised to a particular Requests, Plaintiffs identify that issue through  
17 appropriate headings.

18 **A. The District’s Failure to Comply with Formatting Requirements Renders the Production**  
19 **Useless**

20 Despite Plaintiffs’ request for all documents to be provided in both native and standard production  
21 format, the District produced all responsive documents in pdf and “locked” excel format. Because it failed  
22 to object to the form of production specified in Plaintiffs’ requests, the District waived this objection. *See*  
23 CCP 2031.210(d). Nevertheless, District failed to produce the two responsive documents in the format  
24 identified in Plaintiffs’ requests. *See* CCP § 2031.030(a)(2). In their current form, the documents produced  
25 prohibit Plaintiffs’ from performing any meaningful analysis—Plaintiffs cannot conduct statistical  
26 analysis on PDF documents and Defendants effectively converted documents in excel format to PDF by



1 “locking” the document and preventing any change. The District must provide these documents in the  
2 form specified in Plaintiffs’ RFP Request. Plaintiffs cannot complete their analysis without data sets in  
3 their native, unlocked format.

4 **B. The District’s Objections on the Grounds That Request Nos. 10-18A and 21 are Overly**  
5 **Broad and Not Reasonably Likely to Lead to Admissible Evidence Are Improper.**

6 Numerous pleadings filed in this action demonstrate Plaintiffs’ claims do not exclude “non-special  
7 education students,” including: (1) the Writ and Complaint filed in September 2021, (2) Defendant  
8 California Department of Education’s demurrer filed in January 2022, (3) Plaintiffs’ extensive briefing  
9 filed in February 2022 in opposition to demurrers from all Defendants, (4) the Court’s March 9 Order  
10 sustaining in part and denying in part Defendants’ demurrers, and (5) Plaintiffs’ First Amended Writ and  
11 Complaint filed in March 2022. Verified Petition for Writ of Mandate and Complaint for Declaratory and  
12 Injunctive Relief (9/10/2021) (“Petition”); Memorandum of Points and Authorities in Support of  
13 Defendant and Respondent Pittsburg Unified School District’s Demurrer to Verified Petition for Writ of  
14 Mandate and Complaint for Declaratory and Injunctive Relief (1/11/2022); Plaintiffs’ Opposition to  
15 Demurrer Filed By Defendants California Department of Education, State Board of Education, and State  
16 Superintendent Tony Thurmond and Joined by Defendant State of California (1/30/2022) (“Plaintiffs’  
17 Opposition to Demurrer”); Order after hearing on February 24, 2022 (3/9/2022) (“Court’s Order on  
18 Demurrer”); and Plaintiff’s First Amended Verified Writ of Mandate and Complaint for Declaratory and  
19 Injunctive Relief (3/25/2022) (“First Amended Writ and Complaint”).

20 The District’s responses to Request Nos. 10-18A and 21 incorrectly summarize the “underlying  
21 allegations” in the litigation and incorrectly limit the District’s responses to documents relating only to  
22 special education students. Plaintiffs’ claims clearly allege that the District unlawfully discriminates  
23 against students with and without disabilities, i.e., “special education students” and “non-special education  
24 students.”

25 Plaintiffs’ requests were crafted to be as focused as possible at this stage of litigation, given the  
26 scope of discrimination claims alleged on behalf of students of color, English learner students, and

1 students with disabilities. The District is required to make a good faith effort in searching all documents  
2 in its custody, possession, or control which may be responsive to Plaintiffs' requests and risks exposing  
3 itself to sanctions by refusing to respond at all to discovery requests that are clearly relevant to the subject  
4 matter involved in the pending action. CCP § 2023.010(d)-(f).

5 **REQUEST FOR PRODUCTION NO. 11:**

6 For each school year from the 2015-16 school year to the present, documents containing  
7 quantitative data sufficient to identify the number of students at PUSD who were transferred into  
8 alternative education settings, on a temporary or permanent basis, including community day school  
9 programs, continuation school programs, county community school programs, juvenile hall school  
10 programs, and independent study in each academic year; including, for each student, an identification  
11 number unique to each student and data regarding their: (i) race/ethnicity; (ii) gender; (iii) English learner  
12 status; (iv) whether the student is an Individual with Exceptional Needs; (v) whether the student has a  
13 Section 504 Plan; (vi) Special Education Eligibility Criterion; (vii) Section 504 Plans of each disability  
14 category; (viii) whether the student has been identified as having a disability; (ix) grade level; and (x)  
15 school site.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

17 The District objects to RFP 11 through its general objections, listed above, that the Request seeks  
18 1) the production of documents subject to evidentiary privileges; 2) documents which include privileged,  
19 confidential information of third parties; 3) to have the District create documents that do not currently  
20 exist; and 4) documents beyond the scope of discovery permitted by Code of Civil Procedure section  
21 2017.010, which limits the scope of discovery to matters that are either themselves "admissible in evidence  
22 or appear[] reasonably calculated to lead to the discovery of admissible evidence." The District states it  
23 will produce all non-privileged, responsive documents in its possession, custody or control, based upon  
24 its good faith interpretation of the aforementioned terms and subject to any limitations addressed above.

25 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

1 Plaintiffs' responses to the District's general objections are described above. To the extent there  
2 are unique arguments to objections raised to a particular Requests, Plaintiffs identify that issue through  
3 appropriate headings.

4 **A. The District Has Not Produced Documents and Improperly Limited the Request's Scope**

5 As an initial matter, the District agreed to produce documents responsive to Request No. 11. The  
6 RFPs required the District to "produce Documents responsive to the Requests within thirty (30) days from  
7 the date of service" as requested by the RFPs. CCP § 2031.030(c)(2) (defining a reasonable time for  
8 compliance at least 30 days after service of demand) Schwartz Decl. ¶ 4. The District made no objection  
9 to the production date required by the demand, and thus was required to both respond and produce  
10 documents by March 4, 2022. *See* CCP § 2031.280(b) ("[D]ocuments shall be produced on the date  
11 specified in the demand [pursuant to CCP § 2031.030] unless an objection has been made to that date).  
12 To date, no documents have been produced in response to this request. Further, the District's responses  
13 are unverified. *See* CCP § 2031.250(a). Thus, the District cannot challenge the timeliness of Plaintiffs'  
14 motion. *See* CCP § 2031.310 (setting motion to compel deadline 45-day deadline on receipt of a "verified  
15 response").

16 Moreover, the District's create an improper limitation of the phrases "alternative education  
17 settings," "community day school programs," "continuation school programs," "county community  
18 school programs," "juvenile hall school programs," and "independent study" in Plaintiffs' Requests No.  
19 11, which it claims are "vague and ambiguous" based on a mischaracterization of prior discussions with  
20 Plaintiffs' counsel. The District's states "[f]ollowing meet and confer with Plaintiffs' counsel, the District  
21 will define these terms and limit its response to alternative education settings to which students are  
22 transferred after being expelled from the District."

23 During the parties' February 25, 2022 discussion, Plaintiffs' counsel never agreed to limit the  
24 District's response to only those expelled students—on the contrary, Plaintiffs' counsel agreed to limit the  
25 response to transfers "arising out of a disciplinary incident," which is a much broader scope than the  
26 extremely limited number of students whom the District has expelled. Schwartz Decl. ¶ 26. In fact,

1 Plaintiffs' Writ and Complaint cites an illustrative example of a Black student, J.T., who was disciplined  
2 with lunch detention and then involuntarily transferred to an academically inferior alternative school after  
3 his mother, Taxpayer Plaintiff Dr. Nefertari Royston (who worked at the District as a school psychologist  
4 at the time), challenged the lunch detention. FAP ¶ 77. Student J.T. was never expelled, but he was  
5 involuntarily transferred; these facts are relevant to Plaintiffs' claims and carry high probative value. FAP  
6 ¶ 77.

7 The District must broaden the scope of its response to Request No. 11 to include all students who  
8 were transferred into alternative education settings arising from a student disciplinary incident, and not  
9 just those students who were transferred after being expelled by the District.

10 **REQUEST FOR PRODUCTION NO. 12:**

11 All Documents constituting or relating to complaints about or complaints to You regarding  
12 violations or alleged violations of the rights of students with disabilities in PUSD in each academic year  
13 from the 2015-16 school year to the present.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

15 The District objects to RFP 11 through its general objections, listed above, that the Request seeks  
16 1) the production of documents subject to evidentiary privileges; 2) documents which include privileged,  
17 confidential information of third parties; 3) to have the District create documents that do not currently  
18 exist; and 4) documents beyond the scope of discovery permitted by Code of Civil Procedure section  
19 2017.010, which limits the scope of discovery to matters that are either themselves "admissible in evidence  
20 or appear[] reasonably calculated to lead to the discovery of admissible evidence." Based on this objection,  
21 the District will withhold its response until the scope of the request is tailored to the issues in the lawsuit.

22 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

23 Plaintiffs' responses to the District's general objections are described above. To the extent there  
24 are unique arguments to objections raised to a particular Requests, Plaintiffs identify that issue through  
25 appropriate headings.

26 **A. The District**

1           **A. The District Has Not Produced Documents and Refuses to Work With Plaintiffs to**  
2           **Narrow This Request**

3           Despite the Court’s guidance during the Informal Discovery Conference and Plaintiffs’ agreement  
4 to narrow the scope of this request to key words and custodians, Schwartz Decl. ¶ 19, the District has not  
5 produced any documents in response to this request or worked with Plaintiffs to narrow this request.  
6 Defendant objected that the terms “relating to,” “constituting,” “with respect to,” “considered by [the  
7 District],” “regarding,” “about,” “complaints,” “investigation,” and “reported complaints” describe a  
8 scope of possible documents that is “beyond definition and outside the scope of this action.” This is  
9 improper.

10           As noted above, common sense and standard dictionary definitions apply. The District itself uses  
11 the term “complaints” and “investigate” in its own Board policies outlining “Nondiscrimination in District  
12 Programs and Activities.”<sup>5</sup> While Plaintiffs offered to clarify any purported ambiguity in any of these  
13 terms, the District did not respond. The District should be required to produce all non-privileged  
14 documents responsive to Request Nos. 12-16 that it withheld on the basis of its improper “vague and  
15 ambiguous” objection.

16           **REQUEST FOR PRODUCTION NO. 13:**

17           All Documents constituting or relating to complaints about or complaints to You regarding  
18 discrimination or alleged discrimination against students in PUSD on the basis of race/ethnicity, national  
19 origin, language status, or disability in each academic year from the 2015-16 school year to the present.

20           **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

21  
22  
23  
24           <sup>5</sup> See, e.g., PUSD, PUSD Board Policy Manual, Policy No. 5145.3: Nondiscrimination/Harassment (last  
25 revised Nov. 13, 2013),  
26 <https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030783&revid=IpraPlQkbuAIBsU0YE RmPg==&ptid=amIgtZiB9plushNjl6WXhfiOQ==&secid=9slshUHzTHxaaYMVf6zKpJz3Q==&PG=6 &IRP=0> (describing District process “[u]pon receiving a complaint of discrimination” which includes an  
27 obligation that “the Coordinator shall immediately investigate the complaint”).

1 The District further objects to this request on the grounds that it seeks documents beyond the scope  
2 of discovery permitted by Section 2017.010. Section 2017.010 limits the scope of discovery to matters  
3 that are either themselves “admissible in evidence or appear[] reasonably calculated to lead to the  
4 discovery of admissible evidence.” Here, the underlying allegations are limited to asserting that PUSD  
5 incorrectly determines how much time special education students are segregated from the general student  
6 population, discipline of special education students, and how it matches educational skill sets with  
7 appropriate levels of instruction. Yet, this request would include complaints regarding non-special  
8 education students, as well as complaints regarding a host of issues entirely unrelated to the claims raised  
9 in this litigation which would be unlikely to lead to the discovery of admissible evidence. Based on this  
10 objection, the District will withhold its response until the scope of the request is tailored to the issues in  
11 the lawsuit.

12 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

13 To date, no documents have been produced. Plaintiffs incorporate herein the “Reasons Why  
14 Further Response Should Be Compelled” as provided in Request No. 12.

15 **REQUEST FOR PRODUCTION NO. 14:**

16 All Documents relating to the investigation by You regarding violations or alleged violations of  
17 the rights of students with disabilities or discrimination or alleged discrimination against students in PUSD  
18 on the basis of race/ethnicity, national origin, language status, or disability in each academic year from  
19 the 2015-16 school year to the present.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

21 The District further objects to this request on the grounds that it seeks documents beyond the scope  
22 of discovery permitted by Section 2017.010. Section 2017.010 limits the scope of discovery to matters  
23 that are either themselves “admissible in evidence or appear[] reasonably calculated to lead to the  
24 discovery of admissible evidence.” Here, the underlying allegations are limited to asserting that PUSD  
25 incorrectly determines how much time special education students are segregated from the general student  
26 population, discipline of special education students, and how it matches educational skill sets with

1 appropriate levels of instruction. Yet, this request would include complaints regarding (1) any type of  
2 alleged right of students with disabilities, and (2) complaints regarding discrimination suffered by non-  
3 special education students, both of which are unlikely to lead to the discovery of admissible evidence.  
4 Based on this objection, the District will withhold its response until the scope of the request is tailored to  
5 the issues in the lawsuit.

6 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

7 To date, no documents have been produced. Accordingly, to the extent responsive documents  
8 include an overly burdensome number of e-mails, Plaintiffs incorporate herein the “Reasons Why Further  
9 Response Should Be Compelled” as provided in Request No. 12 regarding Plaintiffs’ attempts to negotiate  
10 search terms and e-mail custodians. Plaintiffs also seek all other non-e-mail documents reflecting the  
11 District’s investigation of violations of the rights of students.

12 **REQUEST FOR PRODUCTION NO. 15:**

13 All Documents relating to written policies or procedures adopted or considered by You with  
14 respect to your response to reported complaints of the violations or alleged violations of the rights of  
15 students with disabilities, including systemic violations, in PUSD schools.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

17 The District further objects to this request on the grounds that it seeks documents beyond the scope  
18 of discovery permitted by Section 2017.010. Section 2017.010 limits the scope of discovery to matters  
19 that are either themselves “admissible in evidence or appear[] reasonably calculated to lead to the  
20 discovery of admissible evidence.” Here, the underlying allegations are generally limited to asserting that  
21 PUSD incorrectly determines how much time special education students are segregated from the general  
22 student population, discipline of special education students, and how it matches educational skill sets with  
23 appropriate levels of instruction. Yet, this request would include policies regarding responding to  
24 complaints regarding a host of issues entirely unrelated to the claims raised in this litigation which would  
25 be unlikely to lead to the discovery of admissible evidence. On this ground, the District will limit its  
26 response to only those documents relating to responding to complaints about the District concerning how

1 much time special education students are segregated from the general student population, discipline,  
2 and/or matching educational skill sets with appropriate levels of instruction.

3 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

4 To date, no documents have been produced. Accordingly, to the extent responsive documents  
5 include an overly burdensome number of e-mails, Plaintiffs incorporate herein the “Reasons Why Further  
6 Response Should Be Compelled” as provided in Request No. 12 regarding Plaintiffs’ attempts to negotiate  
7 search terms and e-mail custodians. Plaintiffs also seek all non-e-mail documents reflecting the District’s  
8 investigation of violations of the rights of students. Plaintiffs also seek all other non-e-mail documents  
9 reflecting policies and procedures considered and adopted by Defendant in response to complaints.

10 **REQUEST FOR PRODUCTION NO. 16:**

11 All Documents relating to written policies or procedures adopted or considered by You with  
12 respect to your response to reported complaints of discrimination on the basis of race/ethnicity, national  
13 origin, language status, or disability against students, including systemic violations, in PUSD schools.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

15 The District further objects to this request on the grounds that it seeks documents beyond the  
16 scope of discovery permitted by Section 2017.010. Section 2017.010 limits the scope of discovery to  
17 matters that are either themselves “admissible in evidence or appear[] reasonably calculated to lead to  
18 the discovery of admissible evidence.” Here, the underlying allegations are limited to asserting that  
19 PUSD incorrectly determines how much time special education students are segregated from the general  
20 student population, who to discipline, and how it matches educational skill sets with appropriate levels  
21 of instruction. Yet, this request would include policies regarding responding to complaints concerning  
22 non-special education students which would be unlikely to lead to the discovery of admissible evidence.  
23 On this ground, the District will limit its response to only those documents relating to policies regarding  
24 responding to complaints concerning special education students.

25 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**



1 To date, no documents have been produced. Accordingly, to the extent responsive documents  
2 include an overly burdensome number of e-mails, Plaintiffs incorporate herein the “Reasons Why Further  
3 Response Should Be Compelled” as provided in Request No. 12 regarding Plaintiffs’ attempts to negotiate  
4 search terms and e-mail custodians. Plaintiffs also seek all non-e-mail documents reflecting the District’s  
5 investigation of violations of the rights of students. Plaintiffs also seek all other non-e-mail documents  
6 reflecting policies and procedures considered and adopted by Defendant in response to complaints.

7 **REQUEST FOR PRODUCTION NO. 17:**

8 All Documents relating to the audit of your special education system through Stetson &  
9 Associates, including but not limited to documents concerning your decision to conduct the audit; the  
10 audit’s findings and recommendations; your assessment of the audit; and steps you took to implement or  
11 consider recommendations from the audit.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

13 The District further objects to this request on the grounds that it seeks documents beyond the  
14 scope of discovery permitted by Section 2017.010. Section 2017.010 limits the scope of discovery to  
15 matters that are either themselves “admissible in evidence or appear[] reasonably calculated to lead to  
16 the discovery of admissible evidence.” Here, the underlying allegations are limited to asserting that  
17 PUSD incorrectly determines how much time special education students are segregated from the general  
18 student population, who to discipline, and how it matches educational skill sets with appropriate levels  
19 of instruction. Yet, this request would include documents regarding a host of issues entirely unrelated to  
20 the claims raised in this litigation which would be unlikely to lead to the discovery of admissible  
21 evidence. On this ground, the District will limit its response to only those documents relating to how  
22 much time special education students are segregated from the general student population, discipline,  
23 and/or matching educational skill sets with appropriate levels of instruction.

24 The District will produce all non-privileged, responsive documents in its possession, custody or  
25 control, based upon its good faith interpretation of the aforementioned terms and subject to any  
26 limitations addressed above.

1 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

2 Plaintiffs incorporate herein the “Reasons Why Further Response Should Be Compelled” as  
3 provided in Request Nos. 1 and 10.

4 **A. The District Has Failed to Produce Numerous Responsive Documents**

5 Defendant unduly limited its production to publicly available documents describing the District’s  
6 actions related to the Stetson report at a vague and generalized level. For example, the Defendant  
7 produced the following 23 documents:

- 8 1) The original Stetson report;
- 9 2) Ten agendas of the District Board of Education that reference the Stetson report and Local  
10 Control Accountability Plan;
- 11 3) A one-page, bullet-point summary titled “2017-18 Special Education Program Update”;
- 12 4) Three copies of a PowerPoint presentation titled “All of Our Students Succeed”;
- 13 5) Five “Notices of Public Hearing” for the adoption of the District’s Local Control  
14 Accountability Plan;
- 15 6) The District’s 2018-19 Local Accountability Plan and Annual Update;
- 16 7) A PowerPoint presentation titled “Public Hearing 2017–18 LCAP & Budget”;
- 17 8) The District’s 2017-18 Local Accountability Plan and Annual Update;
- 18 9) The District’s 2016-17 Local Accountability Plan and Annual Update;
- 19 10) The District Board of Education’s PowerPoint presentation describing the 2018-19 Local  
20 Accountability Plan and Budget for a public hearing;
- 21 11) A three-page document listing the different special education placements throughout the  
22 district, the grades they serve, and the staffing;
- 23 12) A table describing the number of students in each special education eligibility category in  
24 December of each year 2013-17;
- 25 13) A one-page table listing the titles of trainings provided to District staff, the date, and school  
26 site;

- 1           **14)** The District’s 2019-20 Local Accountability Plan and Annual Update,
- 2           **15)** Two copies of a PowerPoint presentation titled “LCAP Board Workshop” describing how the
- 3                 District’s LCAP is created;
- 4           **16)** Two copies of a PowerPoint presentation titled “LCAP Community Meetings February—
- 5                 May 2019” describing the LCAP process and areas of needed improvement for the District;
- 6           **17)** The District Board of Education’s PowerPoint presentation describing the 2019-20 Local
- 7                 Accountability Plan and Budget for a public hearing;
- 8           **18)** A document titled “LCFF Budget Overview for Parents;”
- 9           **19)** A PowerPoint presentation titled “Public Hearing 2019–20 LCAP & Budget”;
- 10          **20)** One agenda of the District Board of Education related to the District’s designation as
- 11                 “significantly disproportionate” and compliance steps;
- 12          **21)** A PowerPoint presentation titled “Comprehensive Coordinated Early Intervening Services
- 13                 (CCEIS)—Pittsburg Unified School District CCEIS Board Meeting Update October 14,
- 14                 2021”;
- 15          **22)** A PowerPoint presentation titled “Comprehensive Coordinated Early Intervening Services
- 16                 (CCEIS)—Pittsburg Unified School District CCEIS Board Meeting Update October 27,
- 17                 2021”; and
- 18          **23)** A document titled “2021 Significant Disproportionality Comprehensive Coordinated Early
- 19                 Intervening Services (CCEIS) Plan”).

20           While none of these documents describe the District’s assessment or implementation of the audit  
21 with sufficient detail, they prove the existence of additional responsive documents. For example, the  
22 PowerPoint presentation titled “All of Our Students Succeed” states that a “committee” “developed a  
23 plan to match the 6 identified themes from the Stetson Report”. PUSD0001105. But the District failed to  
24 produce the committee’s plan or meeting notes, or notes and emails reflecting Board’s consideration of  
25 the committee’s recommendations. Nor has the District produced documents reflecting which  
26 recommendations the Board adopted, the communication of those recommendations to District

1 leadership, or leadership’s plans to implement those recommendations. As a further example, the  
2 document titled “2017-2018 Special Education Program Update” lists new special education classes, but  
3 none of the documents describe district or school-wide plans for these classrooms, including the students  
4 meant to be served, instructional philosophy, or the services and supports offered. Similarly, the  
5 District’s “Local Control Accountability Plan,”—a “tool for local educational agencies to set goals, plan  
6 actions, and leverage resources to meet those goals to improve student outcomes”<sup>6</sup>—describes budgetary  
7 expenditures for professional development to be provided by Stetson & Associates. But these plans fail  
8 to describe the topics, length, or content of the trainings. Plaintiffs accordingly seek all other documents  
9 in Defendant’s control that reflect the District’s decision to conduct the audit, the audit’s findings and  
10 recommendations, the District’s assessment of the audit, and steps the District took to implement or  
11 consider recommendations from the audit.

12 **REQUEST FOR PRODUCTION NO. 18:**

13 For each school year from the 2015-16 school year to the present, documents containing  
14 quantitative data sufficient to establish or identify all CAASPP scores received by PUSD students in  
15 each academic year, disaggregated by race, gender, English learner status, whether the student is an  
16 Individual with Exceptional Needs, whether the student has a Section 504 Plan, and whether the student  
17 has a disability.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

19 The District further objects to this request to the extent it seeks to have the District create  
20 documents that do not currently exist. The Code of Civil Procedure does not require a party to create  
21 documents to respond to requests for production. CCP § 2031.010 (a) (requirement to produce  
22 documents in “possession, custody, or control”); CCP § 2031.230 (authorizing party to respond by  
23 asserting inability to respond due to requested document never existing).

24 \_\_\_\_\_  
25 <sup>6</sup> California Department of Education, *Local Control and Accountability Plan (LCAP)*,  
26 <https://www.cde.ca.gov/re/lc/#:~:text=The%20LCAP%20is%20a%20tool,and%20evaluation%20of%20an%20LCAP> (last visited Jul. 29, 2022).

1 The District further objects to this request on the grounds that it seeks documents beyond the  
2 scope of discovery permitted by Section 2017.010. Section 2017.010 limits the scope of discovery to  
3 matters that are either themselves “admissible in evidence or appear[] reasonably calculated to lead to  
4 the discovery of admissible evidence.” Here, the underlying allegations are limited to asserting that  
5 PUSD incorrectly determines how much time special education students are segregated from the general  
6 student population, discipline of special education students, and how it matches educational skill sets  
7 with appropriate levels of instruction. Yet, this request would include the CAASPP scores of non-special  
8 education students which would be unlikely to lead to the discovery of admissible evidence. On this  
9 ground, the District will limit its response to only those documents relating to the CAASPP scores of  
10 special education students.

11 The District will produce all non-privileged, responsive documents in its possession, custody or  
12 control, based upon its good faith interpretation of the aforementioned terms and subject to any  
13 limitations addressed above.

14 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

15 Plaintiffs incorporate herein the “Reasons Why Further Response Should Be Compelled” as  
16 provided in Request Nos. 1 and 10.

17 **A. The District Produced an Incomplete Document**

18 While the Defendant produced requested CAASPP data for the 2015-19 school years, it failed to  
19 produce that data for the 2021-22 school year. Plaintiffs cannot complete their analysis without complete  
20 data sets in their native, unlocked format, and the Defendant has not indicated that it has produced all  
21 responsive, non-privileged documents.

22 **REQUEST FOR PRODUCTION NO. 18A<sup>7</sup>:**

23  
24  
25 \_\_\_\_\_  
26 <sup>7</sup> The discovery device included two requests for production numbered 18. To avoid confusion, the parties  
27 will identify the first of these requests at “18,” and the second as “18[A]”.

1 All Documents relating to policies, procedures, and data concerning students with disabilities in  
2 (1) Advanced Placement courses; (2) honors courses; (3) Puente program, Puente Project, and Puente  
3 High School Program; (4) AVID program; and (5) any advanced level courses and college preparation  
4 courses or programs, including policies, procedures, practices, or criteria governing admission into these  
5 courses and programs.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18A:**

7 The District further objects to this request on the grounds that it is compound. Rather than one type  
8 of document, this request seeks (1) documents relating to policies and procedures of various courses; and  
9 then (2) demographic information concerning special education students in those various courses. Based  
10 upon this objection, the District will produce documents regarding the former, but not the latter.

11 The District further objects to this request to the extent it seeks to have the District create  
12 documents that do not currently exist. The Code of Civil Procedure does not require a party to create  
13 documents to respond to requests for production. CCP § 2031.010 (a) [requirement to produce documents  
14 in “possession, custody, or control”]; CCP § 2031.230 (authorizing party to respond by asserting inability  
15 to respond due to requested document never existing).

16 The District will produce all non-privileged, responsive documents in its possession, custody or  
17 control, based upon its good faith interpretation of the aforementioned terms and subject to any limitations  
18 addressed above.

19 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

20 Plaintiffs incorporate herein the “Reasons Why Further Response Should Be Compelled” as  
21 provided in Request Nos. 1 and 10. To date, no documents have been produced.

22 Moreover, the District’s objection that request no. 18[A] is compound is improper. Unlike  
23 California Code of Civil Procedure § 2030.060(f) which prohibits compound special interrogatories, there  
24 is no similar statutory limitation regarding requests for production of documents. Thus, District’s objection  
25 to Request No. 18[A] on the grounds that is compound is legally unsound. The District must produce  
26

1 documents regarding both (1) documents relating to policies and procedures of various courses; and (2)  
2 demographic information concerning special education students in those various courses.

3 **REQUEST FOR PRODUCTION NO. 21:**

4 All Documents relating to the communication and coordination of Individual Education Programs  
5 in the Special Education Program in each academic year, including identification and maintenance of  
6 student goals and goal status reports.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

8 The District further objects to this request on the grounds is overly broad as to scope and unduly  
9 burdensome given the lack of discoverability of the requested information. This request basically calls for  
10 the production of all documents and communications regarding each of the District's 1200 special  
11 education students over the past seven school years, including private IEP documentation and private  
12 communications. It is impossible to estimate the volume of records this request seeks, but it could easily  
13 be a hundred thousand pages or more. Moreover, as this is a systemic claim none these individual level  
14 records or communications could lead to the discovery of admissible evidence. Based on this objection,  
15 the District will not respond to this Request.

16 The District further objects to this request on the grounds that it seeks documents beyond the scope  
17 of discovery permitted by Section 2017.010. Section 2017.010 limits the scope of discovery to matters  
18 that are either themselves "admissible in evidence or appear[] reasonably calculated to lead to the  
19 discovery of admissible evidence." Here, the underlying allegations are generally limited to asserting that  
20 PUSD incorrectly determines how much time special education students are segregated from the general  
21 student population, who to discipline, and how it matches educational skill sets with appropriate levels of  
22 instruction. Yet, this request would include every IEP document for every PUSD student regardless of  
23 whether that student has raised any complaints of incorrect segregation, discipline, or levels of instruction  
24 which would be unlikely to lead to the discovery of admissible evidence. Based on this objection, the  
25 District will not respond to this Request.

26 **REASONS WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

1 Plaintiffs incorporate herein the “Reasons Why Further Response Should Be Compelled” as  
2 provided in Request Nos. 1 and 10. To date, no documents have been produced.

3 **A. The District Has Not Produced Documents and Refuses to Work With Plaintiffs to**  
4 **Narrow This Request.**

5 Despite the Court’s guidance during the Informal Discovery Conference and Plaintiffs’ agreement  
6 to narrow the scope of this request to a sample of IEPs per grade and placement, Schwartz Decl. ¶ 17, the  
7 District has not produced any documents in response to this request or worked with Plaintiffs to narrow  
8 this request. Accordingly, the District’s objection that Request No. 21 is overly broad and unduly  
9 burdensome is improper. The District objects that the request is “overly broad as to scope and unduly  
10 burdensome given the lack of discoverability of the requested information” since “as this is a systemic  
11 claim none of these individual level records or communications could lead to the discovery of admissible  
12 evidence.” The District apparently misapprehends the nature of what constitutes a systemic claim and how  
13 to prove up systemic claims. The District’s treatment of individual students is relevant. It is highly  
14 probative to prove or disprove (1) the District’s pattern and practice of misidentifying or overidentifying  
15 Black and English learner students with disabilities or more severe disabilities, and (2) the District’s  
16 pattern and practice of failing to provide disabled students access to statewide academic content standards,  
17 a free appropriate public education, and an education in the least restrictive environment.

18 The District has also wholly neglected to substantiate its burdensome objection. To support an  
19 objection based on burdensomeness, a defendant must demonstrate that the requested electronically stored  
20 “information is from a source that is not reasonably accessible because of undue burden or expense.” CCP  
21 § 2031.310(d). The defendant must further present evidence regarding “the quantum of work required,”  
22 *Williams v. Superior Court*, 3 Cal.5th 531, 549 (2017), to demonstrate that “the ultimate effect of the  
23 burden is incommensurate with the result sought.” *Mead Reinsurance Co. v. Superior Court*, 188 Cal.  
24 App. 3d 313, 321 (1986). For example, in *Mead Reinsurance Co.*, the court found the undue burden  
25 objection warranted where the objecting party showed that it would require the review of over 13,000  
26



1 claims files requiring five claims adjusters working full time for six weeks. *bId.* at 318. . Here, there has  
2 been no such showing whatsoever.

3  
4  
5 Dated: August 3, 2022

Respectfully submitted,

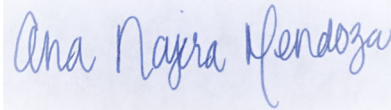


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6 Malhar Shah  
7 Claudia Center  
8 DISABILITY RIGHTS EDUCATION AND  
9 DEFENSE FUND



10 Linnea Nelson  
11 Brandon Greene  
12 Grayce Zelphin  
13 AMERICAN CIVIL LIBERTIES UNION  
14 FOUNDATION OF NORTHERN CALIFORNIA



15 Ana G. Nájera Mendoza  
16 Victor Leung  
17 AMERICAN CIVIL LIBERTIES UNION  
18 FOUNDATION OF SOUTHERN CALIFORNIA



19 Robyn Crowther  
20 Amanda Schwartz  
21 Geoffrey L. Warner  
22 STEPTOE & JOHNSON LLP

*Attorneys for Plaintiffs-Petitioners*

**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) **SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT PITTSBERG UNIFIED SCHOOL DISTRICT** by method 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	<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>
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  California Department of Education 1430 N Street, Suite 5111 Sacramento, CA 95814	<a href="mailto:VCale@cde.ca.gov">VCale@cde.ca.gov</a> <a href="mailto:LGarfinkel@cde.ca.gov">LGarfinkel@cde.ca.gov</a>
Pittsburg Unified School District c/o Katherine Alberts 1390 Willow Pass Rd #700, Concord, CA 94520	<a href="mailto:kalberts@leonealberts.com">kalberts@leonealberts.com</a>

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the document(s) to be sent from the email address [mhernandez@steptoe.com](mailto: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](http://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