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

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

18 Plaintiffs and Petitioners,

19 v.

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

25 Defendants and Respondents.

Case No. MSN21-1755

UNLIMITED JURISDICTION

**THIRD AMENDED VERIFIED
PETITION FOR WRIT OF
MANDATE (CCP § 1085) AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF (CCP §
526(A))**

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THIRD AMENDED PET. FOR WRIT OF MANDATE AND COMPL. FOR DECLARATORY
AND INJ. RELIEF

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1 **INTRODUCTION**

2 1. This is a Petition for Writ of Mandate pursuant to California Code of Civil
3 Procedure Section 1085 and a Complaint for Declaratory and Injunctive Relief and Statutory
4 Damages under the Unruh Act (“Writ and Complaint”) against the State of California, the State
5 Board of Education, the California Department of Education, State Superintendent of Public
6 Instruction Tony Thurmond in his official capacity (collectively “the State”), and the Pittsburg
7 Unified School District (“the District or “Pittsburg Unified”), (collectively “Defendants”).

8 2. The United States and California Constitutions agree that public education is the
9 institution by which all children receive equal opportunity to better their circumstances, become
10 meaningful participants in our democracy, and identify and realize their dreams for a fulfilling
11 life. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 495 (1954). The California Constitution
12 goes further, recognizing education as a “fundamental right,” perhaps the most vital of all
13 fundamental rights, to be obstructed only upon a showing that there is a compelling interest for
14 doing so. *Butt v. State*, 4 Cal.4th 668, 692-93 (1992).

15 3. No court has ever so much as suggested that it be otherwise for disabled students.
16 To the contrary, the California legislature has enacted a statutory scheme to confirm this
17 conclusion. *See* Cal. Educ. Code § 56000 *et seq.*; *Hayes v. Comm’n on State Mandates*, 11
18 Cal.App.4th 1564, 1592 (1992) (declaring that Section 56000 requires the State and local
19 educational agencies “to do [nothing] more than the Constitution already required of them[.]”).
20 These laws, borne of the unfortunate reality that children with disabilities are too often treated as
21 if they were second-class students not entitled to the same degree of respect as students without
22 disabilities, spell out the scope and nature of their entitlements to an education that enables them
23 to reach their potential, no different from their peers without disabilities. Recognizing, too, that
24 there are lifelong consequences to being unnecessarily segregated from students without
25 disabilities, or to being misidentified in the first place as students with disabilities, the law
26 properly demands that educators meet their obligations without delay to a student’s educational
27 progress. Time and precision matter. The responsibilities of our statewide system of education
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1 are not just to these students and their families, but also to the larger community, to put an end to
2 societal discrimination against individuals with disabilities once and for all.

3 4. The California Supreme Court has accordingly recognized that students possess
4 two interrelated educational rights through the California Constitution:

5 a) First, students have the right to equal access to a public education system
6 that meets the prevailing statewide standards. *Butt*, 4 Cal.4th 686-87. This includes an
7 education that “will equip [them] with the substantive knowledge and skills they need to
8 succeed in life,” *O’Connell v. Superior Court*, 141 Cal.App.4th 1452, 1478 (2006),
9 including “instruction in phonics, reading comprehension, creative writing, [and]
10 handwriting skills...” *Butt*, 4 Cal.4th 687 n.16. To fulfill this constitutional promise, the
11 State has adopted academic content standards, including the Common Core standards, in
12 the areas of English Language Arts and Mathematics.¹ This established the prevailing
13 statewide standard by describing the “content students need to master by the end of each
14 grade level”² and extends to all students, including disabled students. *See* Cal. Educ.
15 Code § 56000 *et seq.* The constitutional right to education therefore guarantees all
16 disabled students a Free Appropriate Public Education tied to the statewide academic
17 content standards, including the special education services and tools needed to access the
18 relevant content.

19 b) Second, students have the constitutional right to attend integrated schools
20 where students of different racial identities, national origins, and disability statuses can
21 interact and learn together. The California Supreme Court has repeatedly recognized that
22 students’ fundamental right to education requires the State to eliminate de facto
23 segregation in public schools. *Crawford v. Board of Education*, 17 Cal.3d 280, 291

25 ¹ *See* Cal. Educ. Code §§ 60210(b), 60605; CAL. BD. OF EDUC., *Content Standards* (July 12,
26 2021), available at: <https://www.cde.ca.gov/be/st/ss/>.

27 ² CAL. STATE BD. OF EDUC., *California Common Core State Standards* (Mar. 2013) 10, 20, 26,
28 31, 46, 55, 65, 70, 80, 85, available at:
<https://www.cde.ca.gov/be/st/ss/documents/finalelaccsstandards.pdf> (hereinafter “California
Common Core Standards”).

1 (1976); *Collins v. Thurmond*, 41 Cal.App.5th 879, 896 (2019). “[I]n the field of public
2 education the doctrine of ‘separate but equal’ has no place. Separate educational facilities
3 are inherently unequal.” *Brown*, 347 U.S. 483, 495.

4 5. Tragically, these legal and moral responsibilities have not been met. The result is
5 that disabled students in California, particularly Black and English learner³ students, are
6 receiving the equivalent of no or grossly inferior educations. They attend schools that, in
7 practice, are schools in name only, doubly toxic because their counterparts on the same campuses
8 are receiving meaningful education as the Constitution and law mandates. The message is clear:
9 students with disabilities are not worthy of the same treatment; and, functionally speaking, they
10 can do with less or even no education, consigned to a life without the skills that a public
11 education provides and the respect they should command by virtue of their character. In failing
12 to deliver legally mandated education, the statewide system of public education creates and
13 perpetuates the ugliest societal stereotypes and biases. In other words, it is the educational
14 system that works the most severe and consequential harms on these children’s lives.

15 6. This lawsuit is brought to identify and remediate systemic mistreatment of
16 disabled students, particularly Black and English learner students, in Pittsburg Unified and to
17 hold both the District and the State of California accountable to their duties to provide these
18 young persons with equal educational opportunities long denied them. As detailed in this Writ,
19 Defendants routinely disproportionately discipline and segregate disabled students, particularly
20 Black disabled students, into inferior special education classrooms where little to no learning
21 occurs. Defendants fail to provide disabled students of color with legally required supports and
22 services needed to access general education classrooms and avoid punitive discipline.
23 Defendants also overidentify Black and English learner students as having disabilities, including

24 ³ The term “English learner” includes individuals whose native language is one other than
25 English or who come from an environment where a language other than English has had a
26 significant impact on the individual’s English language proficiency, and whose difficulties in
27 speaking, reading, writing, or understanding English language may be sufficient to deny the
28 individual the ability to meet the State academic standards, the ability to successfully achieve in
classrooms where the language of instruction is English, or the opportunity to participate fully in
society. Cal. Educ. Code § 306(a) (citing 20 U.S.C. § 7801(20)).

1 more severe disabilities, contributing to their disproportionate segregation. Throughout the
2 District and especially in segregated classrooms, disabled children, including Plaintiffs Mark S.
3 and Rosa T., are not provided evidence-based instruction or otherwise taught to read, write,
4 communicate, or perform math functions at their grade level, regardless of their abilities and
5 potential. Defendants justify the continued segregation of these students based on their hindered
6 academic performances and unsupported disability-related behaviors, perpetuating the cycle of
7 re-segregation.

8 7. These systemic deficiencies are in plain sight, tragically a matter of public record.
9 For example, Plaintiff Mark S., an English learner student with autism, has been unlawfully
10 segregated into a special education classroom where he does not receive meaningful educational
11 instruction. When he should have been learning how to read and write in second grade, his
12 teachers instead chose to show him videos, including Disney movies, with no educational value,
13 and directed him to do arts and crafts, effectively denying him a basic education. As a result,
14 Mark S. is now in third grade, but is reading and writing at a pre-kindergarten to kindergarten
15 level. Similarly, Defendants have denied meaningful instruction, in both her general education
16 and special education classrooms, to Plaintiff Rosa T., an English learner student with a Specific
17 Learning Disability. She is now repeating the twelfth grade to graduate and is several years
18 below her grade level in reading and writing. Mark S. and Rosa T.’s experiences are the result of
19 the State and District’s failures to provide access to equal educational opportunity to students on
20 account of their disability, race, and national origin.

21 **I. The District’s Discriminatory Special Education System**

22 8. The California Education Code requires that disabled students receive specially
23 designed instruction, services, and supports to meet their unique academic and social-emotional
24 needs. These can include individualized classroom instruction, education in social-emotional
25 skills, and behavioral supports and services. Schools’ failure to systematically provide these
26 services leaves disabled students especially vulnerable to academic regression. Without the
27 services and supports they need to access learning, disabled students are “entirely excluded from
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1 public schools.” *Timothy O. v. Paso Robles Unified School Dist.*, 822 F.3d 1105, 1119 (9th Cir.
2 2016).

3 9. Despite longstanding laws and precedents requiring schools to meet disabled
4 students’ unique needs, the State has allowed the District to segregate students with disabilities,
5 and particularly Black and English learner students with disabilities, into inferior separate
6 classrooms. The State has also allowed the District to engage in other exclusionary practices to
7 unlawfully segregate students with disabilities, and Black and English learner students with
8 disabilities in particular. Those practices include failing to provide legally-required services,
9 accommodations, and modifications to allow disabled students the opportunity to access, and
10 thrive in, the general education setting.

11 10. The District and the State’s publicly reported data provide ample evidence of the
12 systemic scope of these issues:

13 11. First, the District disproportionately identifies Black and English learner students
14 as having disabilities, including more severe disabilities. For example, in the 2017-18 school
15 year, Black students in the District were identified at the highest rate as having disabilities, at a
16 rate of 14 students identified as disabled per 100 Black students.⁴ That same year, English
17 learner students were 2.5 times more likely to be categorized as having disabilities than non-
18 English learners, and the gap worsened the following school year.⁵ In the 2018-19 school year,

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20 ⁴ C.R. Data Collection, *Pittsburg Unified: Students with Disabilities served under IDEA (Survey*
21 *Year: 2017)*, U.S. DEP’T OF EDUC. (2017), available at:
22 <https://ocrdata.ed.gov/profile/9/district/30471/studentswithdisabilitiesidea> (“CRDC Students
23 with Disabilities Report”). By comparison, the ratio for white students was 12.4 per 100; for
24 Native American students 10.7 per 100; for multi-racial students 9.4 per 100; for Latine students
25 8.4 per 100; for Asian students 6.6 per 100; and for Hawaiian/Pacific Islander students 4.4 per
26 100.

27 ⁵ In 2017-2018, the District reported 13.7 English learner students with disabilities for every 100
28 English learner students, and 5.4 non-English learner students with disabilities for every 100
non-English learner students. *Id; compare DataQuest, Pittsburg Unified District Language*
29 *Group Data – Districtwide for 2018-19*, CAL. DEP’T OF EDUC. (2019), available at:
30 [https://data1.cde.ca.gov/dataquest/lc/DistrictLC.aspx?cSelect=0761788--0761788--](https://data1.cde.ca.gov/dataquest/lc/DistrictLC.aspx?cSelect=0761788--0761788--Pittsburg+Unified&cYear=2018-19)
31 [Pittsburg+Unified&cYear=2018-19](https://data1.cde.ca.gov/dataquest/lc/DistrictLC.aspx?cSelect=0761788--0761788--Pittsburg+Unified&cYear=2018-19) with DataQuest, *2018-19 Enrollment by English Language*
32 *Acquisition Status (ELAS) and Grade, Pittsburg Unified District Report*, CAL. DEP’T OF EDUC.

1 Black and multiracial students were significantly more likely to be identified as having
2 disabilities than white students.⁶ And for three school years in a row from 2017-20, Black
3 students were disproportionately identified with emotional disturbance disorder and “other health
4 impairment.”⁷

5 12. On measures of placement into special education classrooms, the District was
6 among the most segregated school districts in the state for students with disabilities. In the 2017-
7 18 school year, 74% of school districts statewide had a better rate than Pittsburg Unified of “in
8 regular [general education] class less than 40%” of the time, 82% of districts statewide had a
9 better rate than the District of “in regular class more than 80%” of the time, and 93% of districts
10 statewide had a better rate than the District of placing students in separate schools.⁸ Sadly,
11 because California has the worst rate in the entire nation for segregating disabled students into
12 special education classrooms for over half of the school day,⁹ these statistics indicate Pittsburg
13 Unified is one of the very worst school districts in the nation on this measure. Alarminglly, the
14

15 _____
16 (2019), available at:

17 <https://data1.cde.ca.gov/dataquest/longtermel/ELAS.aspx?cds=0761788&agglevel=District&year=2018-19> (toggle settings “Students With Disabilities: Yes” and “Students With Disabilities: No”).

18 ⁶ Compare Data Quest, *2018-19 Enrollment by Ethnicity – Pittsburg Unified Report*, CAL. DEP’T OF EDUC. (2019), available at:

19 <https://data1.cde.ca.gov/dataquest/dqcensus/EnrEthLevels.aspx?cds=0761788&agglevel=district&year=2018-19> with CAL. DEP’T OF EDUC., *Special Education Enrollment by Ethnicity and Disability, Pittsburg Unified* (Dec. 1, 2018), available at:

20 <https://data1.cde.ca.gov/dataquest/SpecEd/SEEnrEthDis3.asp?Disttype=S&cSelect=0761788--PITTSBURG%5eUNIFIED&cChoice=SEEthDis3c&cYear=2018-19&cLevel=Dist&ReptCycle=December> (showing that the proportions of Black and multiracial students with disabilities were significantly higher than white students with disabilities when compared to the proportion in each racial subgroup without disabilities).

21 ⁷ Khou Her Ha, *Pittsburg USD: Special Education*, PITTSBURG UNIFIED SCH. DIST. (Apr. 14, 2021), available at:

22 [https://go.boarddocs.com/ca/pittsburg/Board.nsf/files/C24SD571D29D/\\$file/SPED%20Update%20Board%20%204_14_2021%20\(4\).pdf](https://go.boarddocs.com/ca/pittsburg/Board.nsf/files/C24SD571D29D/$file/SPED%20Update%20Board%20%204_14_2021%20(4).pdf).

23 ⁸ See CAL. DEP’T OF EDUC., *Annual Performance Report Measures* (Sept. 2, 2020), available at: <https://www.cde.ca.gov/sp/se/ds/leadatarpts.asp>.

24 ⁹ U.S. DEP’T OF EDUC., *2017-18 Child Count and Educational Environments*, available at: <https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bcc>.

1 State fails to publicly disclose key data that would allow the public to understand the scope of
2 the problem and advocate for equal educational opportunity in districts such as Pittsburg Unified.

3 13. Students have been deeply harmed by these practices, which are infected with
4 racial, ethnic, and disability bias. For example, the District interpreted a very young Black
5 student's attention deficit hyperactivity disorder as symptomatic of autism, and then segregated
6 the student into a special education classroom without first conducting an assessment, in
7 violation of law and professional norms. These policies and practices reinforce the unwarranted
8 feelings of shame and humiliation disabled students of color experience as they are deemed unfit
9 to learn alongside their peers, unwelcome in and unsupported by their schools. These students
10 are at high risk of extreme and ongoing anxiety, significantly lower self-esteem, and decreased
11 ability to access an adequate education.¹⁰

12 14. State-mandated literacy and mathematics test results, among other indicators,
13 confirm that disabled students at Pittsburg Unified are receiving an inferior education compared
14 to students in other districts. The percentage of disabled students in the District scoring at or
15 above established statewide standards on the state-mandated tests are under 5% and 4%
16 respectively in literacy and mathematics, which is significantly worse than statewide averages
17 for disabled students.¹¹ Pittsburg Unified's refusal to teach disabled students basic academic
18 skills places the District into the lowest rung of districts across California.

19 **II. The District's Discriminatory Discipline System**

20 15. Further, Defendants perpetuate excessive and exclusionary discipline on Black
21 students for innocuous and age-appropriate behavior and on disabled students for behavior

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23 ¹⁰ Thomas Hehir ET AL., *A Summary of the Evidence on Inclusive Education*, ABT ASSOC.S (Aug.
24 2016) 7-8, 12-19, available at: [https://alana.org.br/wp-](https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf)
25 [content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf](https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf).

26 ¹¹ See CAL. ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS, *English Language*
27 *Arts/Literacy and Mathematics: Pittsburg Unified School District* (2019), available at:
28 [https://caaspp-](https://caaspp-elpac.cde.ca.gov/caaspp/DashViewReport?ps=true&lstTestYear=2019&lstTestType=B&lstGroup=2&lstSubGroup=128&lstGrade=13&lstSchoolType=A&lstCounty=07&lstDistrict=61788&lstSchool=0000000&lstFocus=a)
[elpac.cde.ca.gov/caaspp/DashViewReport?ps=true&lstTestYear=2019&lstTestType=B&lstGroup=2&lstSubGroup=128&lstGrade=13&lstSchoolType=A&lstCounty=07&lstDistrict=61788&lstSchool=0000000&lstFocus=a](https://caaspp-elpac.cde.ca.gov/caaspp/DashViewReport?ps=true&lstTestYear=2019&lstTestType=B&lstGroup=2&lstSubGroup=128&lstGrade=13&lstSchoolType=A&lstCounty=07&lstDistrict=61788&lstSchool=0000000&lstFocus=a).

1 caused by their disabilities. In the 2017-18 school year, the District suspended or expelled Black
2 students at more than twice their rate of enrollment.¹² From 2011-2019, the District had the
3 fourth-largest gap between Black and white students in the state for instructional days lost due to
4 suspension for “disruption/defiance,” a subjective offense uniquely prone to racially biased
5 interpretation.¹³ According to data received through the Public Records Act, in the 2016-17
6 school year, Black students were subjected to “5150s”—referrals wherein students are
7 transported to psychiatric wards due to purported mental health crises—at nearly three times
8 their rate of enrollment in the District. In the subsequent school year, according to data obtained
9 through the Public Records Act, students with disabilities were three times more likely than
10 students without disabilities to receive a disciplinary removal. At the intersection of race and
11 disability, the same data revealed that Black and multiracial disabled students in the District were
12 disciplinarily excluded from school at twice the rate of white and Latine disabled students,
13 flowing from an arbitrary and biased discipline system that allows staff to make decisions and
14 impose punishments unchecked, excessively punishing minor transgressions by Black,
15 multiracial, Native American, and disabled students. The State is aware of this discrimination,
16 but refuses to take steps to protect Black, multiracial, Native American, and disabled students
17 from it.

18 16. Students in the District are traumatized and damaged by these discriminatory
19 policies and practices. For example, when she was 11 years old, L.G., a Black student with
20 disabilities, was suspended for more than 20 days during her first semester of sixth grade for age-

22 ¹² C.R. Data Collection, *Pittsburg Unified: Discipline Report (Survey Year: 2017)*, DEP’T OF
23 EDUC. (2017), available at: <https://ocrdata.ed.gov/profile/9/district/30471/disciplinereport>.

24 ¹³ Daniel J. Losen & Paul Martinez, *Is California Doing Enough to Close the School Discipline*
25 *Gap?*, THE U.C.L.A. CTR. FOR C.R. REMEDIES AT THE C.R. PROJECT (June 22, 2020) 26,
26 available at: [https://www.civilrightsproject.ucla.edu/research/k-12-education/school-](https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/is-california-doing-enough-to-close-the-school-discipline-gap/Final_CA_Report_06_29_2020-revised-for-post.pdf)
27 [discipline/is-california-doing-enough-to-close-the-school-discipline-](https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/is-california-doing-enough-to-close-the-school-discipline-gap/Final_CA_Report_06_29_2020-revised-for-post.pdf)
28 [gap/Final_CA_Report_06_29_2020-revised-for-post.pdf](https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/is-california-doing-enough-to-close-the-school-discipline-gap/Final_CA_Report_06_29_2020-revised-for-post.pdf) (finding that “where racial disparities
are their widest, suspensions for disruption/defiance often remain a major contributor” and
finding that Pittsburg Unified had the fourth-largest gap in California between Black and white
students for lost instructional days due to suspension for “disruption/defiance”).

1 appropriate minor misbehavior, and one school staffer used racially-coded language to portray
2 L.G. as “intimidating” and “disrespectful,” claiming in an email to L.G.’s mother, Plaintiff
3 Jessica Black, that “I often observe her ‘mean mugging’ myself and students to intimidate them”
4 as a purported rationalization for excluding L.G. from his class. Studies show that teachers’
5 negative perception of a student’s facial expression is precisely the kind of subjective perception
6 most likely to be inaccurate and invalid when a white adult “interprets” a Black child’s facial
7 expression.¹⁴ The District perpetuates implicit biases and stereotypes that portray Black youth as
8 violent and aggressive, which leads to unjustified restraint and exclusion. One day, L.G. walked
9 out of her sixth-grade classroom in frustration because of a teacher’s discriminatory treatment
10 toward her. Shockingly, District staff “5150’d” her in response: they called the police, forced
11 L.G. to be strapped to a gurney, and had her transported to a psychiatric hospital. The District’s
12 treatment of L.G. only worsened after that, until it ultimately pushed L.G. out of the District
13 altogether and into an independent study program when she was 13 years old. L.G. was then
14 isolated from her school peers for three school years during a crucial phase of her social-
15 emotional development.

16 17. The District also routinely disciplined B.T., a Black student, throughout his time
17 in District schools for innocuous activities. When B.T. was in sixth grade, the District disciplined
18 him with an office referral—for which he missed educational time in the classroom—for
19 mistakenly standing in the wrong line (the “girls’ line”) outside of a classroom. This office
20 referral was placed in B.T.’s school record and later impacted his application to an academically
21 rigorous high school program in the District. Another time, the District disciplined B.T. with an
22 office referral for throwing a piece of paper in the trash can. In eighth grade, the District
23 disciplined B.T. for wearing a jacket with a picture of “Goofy,” the Disney character, whom the
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25 ¹⁴ Amy G. Halberstadt ET AL., *Racialized Emotion Recognition Accuracy and Anger Bias of*
26 *Children’s Faces*, JOURNAL OF THE AMER. PSYCH. ASS’N (2020), available at:
27 <https://www.apa.org/pubs/journals/releases/emo-emo0000756.pdf> (finding in a study of
28 racialized emotion recognition accuracy where 178 prospective teachers were asked to evaluate
72 children’s facial expressions that “[b]oth Black boys and Black girls were falsely seen as
angry more often than White boys and White girls.”).

1 science teacher arbitrarily deemed “offensive.” B.T. was also disciplined multiple times that year
2 for wearing a jacket that was burnt orange because it was *close* to the color red, which was
3 prohibited under the dress code. These experiences made B.T. feel less safe in school from
4 arbitrary, hostile, and exclusionary treatment from the District, when instead, District staff
5 should have been focused on teaching and supporting B.T. as a student.

6 18. The racially biased perception that Black students’ minor misbehavior is “serious”
7 also contributes to the misidentification of Black students as having more severe disabilities, as
8 described above. The District’s disciplinary practices not only communicate damaging
9 stereotypes against Black students and students with disabilities, but also risk these students
10 internalizing the underlying message that they do not belong in school, where they are subject to
11 a hostile educational environment. The District’s actions and failures create real and lasting
12 harms, including emotional trauma, stigmatization, and isolation of Black students and students
13 with disabilities. This injures not only the students who are dehumanized and discriminated
14 against, but all students in District schools who witness and are implicitly taught to normalize
15 such discriminatory treatment.

16 19. The causation for these unconscionable disparities is readily discernible:
17 inadequate training and monitoring, lack of adequate resources, and discriminatory attitudes and
18 practices. Black, English learner, and disabled students are pitted against their peers as if a
19 constitutionally and statutorily sufficient education is impossible to be afforded to both and as if
20 there is a rigid segregative division to be enforced. All students—including disabled students of
21 all races—are entitled to a meaningful opportunity to be educated side-by-side with their peers in
22 an inclusive, general education environment, free from the daily fear of excessive and disparate
23 exclusionary discipline.

24 20. It is well established that the State of California has a critical role in establishing
25 and operationalizing a system of accountability that identifies and roots out the systemic
26 deficiencies named here and more fully described in the narratives presented. As discussed in
27 *Butt v. State of California*, and reinforced numerous times in other judicial decisions, the State—
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1 through its officers, who hold constitutional responsibilities for the delivery of public
2 education—has a non-delegable duty to respect and protect the fundamental educational rights of
3 all students. This duty mandates the State ensure that students receive an education basically
4 equivalent to that received by students who have been afforded a real opportunity to learn state-
5 mandated curricula and seek higher education and meaningful careers and life paths. COVID-19-
6 related school closures only heightened the stakes for these students, who spent over a year even
7 more isolated from their peers. Without meaningful systemic reforms, these students will
8 continue to be isolated and deprived of an equal education.

9 21. Plaintiffs bring this lawsuit to hold the State and District accountable for their
10 refusal to fulfill their constitutional and statutory obligations to District students. This action is
11 brought by parents, students, and taxpayers who seek to ensure that the State and District provide
12 students with educational equity that is their fundamental right under the California Constitution.

13 PARTIES

14 **I. PLAINTIFFS**

15 **A. Students Attending Pittsburg Unified School District**

16 22. **Plaintiff Mark S.** is a ten-year-old Latino English learner student who qualifies
17 for special education services because he has autism. He is in third grade at Willow Cove
18 Elementary School, having attended District schools since 2016. The District placed Mark S. in a
19 highly restrictive special education setting known as a Special Day Class since he began
20 attending District schools six years ago. He has strong academic skills but has been unable to
21 progress academically due to “District programming [that] has not provided [him] with the kinds
22 of instruction or tools he has needed in order to make meaningful educational progress in several
23 core academic skill areas,” as concluded in an independent evaluation provided to the District by
24 a qualified neuropsychologist.

25 23. **Plaintiff Rosa T.** is an eighteen-year-old Latina English learner student who
26 qualifies for special education services because she has a Specific Learning Disability. She also
27 has Anxiety Disorder, Mood Disorder, and Insomnia Disorder. Rosa T. has been unable to

1 progress academically due to Defendants’ failures to provide evidence-based instruction in
2 general and special education classrooms and Mental Health Services. The District has placed
3 Rosa T. in a restrictive special education setting based on her academic struggles.

4 24. **Plaintiff Anna S.** is the mother of Plaintiff Mark S. and has filed simultaneously
5 with this Writ and Complaint a petition with the Court to act as Mark S.’s guardian ad litem.

6 25. **Plaintiff Sofia L.** is the mother of Plaintiff Rosa T. and has filed simultaneously
7 with this Writ and Complaint a petition with the Court to act as Rosa T.’s guardian ad litem.

8 **B. Taxpayer Plaintiffs**

9 26. **Plaintiff Michell Redfoot** is a taxpayer residing in Solano County who works in
10 Pittsburg, California. She teaches a Special Day Class at Willow Cove Elementary School in
11 Pittsburg Unified. She has been a special education teacher for fifteen years, including
12 approximately twelve years in the District. Ms. Redfoot holds an Education Specialist Teaching
13 Credential (Moderate/Severe) to teach special education students. She is deeply concerned about
14 the District’s policies and practices that treat disabled students unfairly and send the message to
15 disabled students of color, particularly Black students, that they are undeserving of equal
16 educational opportunity. She is also alarmed that the State is aware of pervasive discrimination
17 in District schools but has failed to take any meaningful steps to stop it.

18 27. **Plaintiff Dr. Nefertari Royston** is a taxpayer residing in Pittsburg, California.
19 She has been a school psychologist for eight years. She was employed by the District from
20 approximately 2018-20. Three of her children currently attend District schools, and one recently
21 graduated from Pittsburg High School. All of her children have experienced discrimination as
22 Black students in District schools. Dr. Royston is deeply concerned about the District’s policies
23 and practices that treat Black students unfairly and send the message to disabled students of
24 color, particularly Black students, that they are undeserving of equal educational opportunity.
25 She is also alarmed that the State is aware of pervasive discrimination in District schools but has
26 failed to take any meaningful steps to stop it.

1 28. **Plaintiff Jessica Black** is a taxpayer residing in Pittsburg, California. She is the
2 mother of two Black students who previously attended District schools. Her daughter, L.G.,
3 experienced years-long discrimination in the District on the basis of her race and disability. Ms.
4 Black is deeply concerned that the District has acted with impunity, for many years, in
5 egregiously violating the rights of Black students with and without disabilities and that the State
6 has effectively shielded the District from being held accountable for those violations. She does
7 not want any other student to endure the unfair and racist treatment her daughter suffered for
8 years in District schools.

9 29. Plaintiffs **Michell Redfoot**, **Dr. Nefertari Royston**, and **Jessica Black** pay taxes to
10 the City of Pittsburg, the City and County in which they reside, and to the State of California.

11 **II. DEFENDANTS**

12 30. **Defendant State of California** is the legal and political entity with the ultimate
13 responsibility for educating all California public school students, including the responsibility to
14 establish and maintain the system of common schools and free education, under Article IX,
15 Section 5 of the California Constitution, and to assure that all California public school students
16 receive their individual and fundamental right to an equal education, under the equal protection
17 clauses of the California Constitution, Article I, Section 7(a), and Article IV, Section 16(a).

18 31. **Defendant State Board of Education** and its members are responsible for
19 determining the policies governing California's schools and for adopting rules and regulations
20 for the supervision and administration of all local school districts. Pursuant to California
21 Education Code Sections 33030-32, Defendant State Board of Education is required to supervise
22 local school districts to ensure they comply with State and federal law requirements concerning
23 educational services.

24 32. **Defendant California Department of Education** is the department of State
25 government responsible for administering and enforcing the laws related to education. Pursuant
26 to California Education Code Sections 33300-16, the California Department of Education is
27 responsible for revising and updating budget manuals, forms, and guidelines; cooperating with
28

1 federal and state agencies in prescribing rules and regulations, and instructions required by those
2 agencies; and assessing the needs and methods of collecting and disseminating financial
3 information. The California Department of Education bears ultimate responsibility for Pittsburg
4 Unified.

5 33. **Defendant Tony Thurmond**, sued here solely in his official capacity, is the State
6 Superintendent of Public Instruction for the State of California, a Constitutional Officer of the
7 State charged with the supervision of all California schools and school districts, the Secretary
8 and Executive Officer for the State Board of Education, and the Chief Executive Officer of the
9 California Department of Education. As such, he is obligated to take all necessary steps to ensure
10 that school districts comply with the California Constitution and State laws. Pursuant to
11 California Education Code Sections 33301-03, he is the Director of Education in whom all
12 executive and administrative functions of the California Department of Education are vested.
13 Pursuant to California Education Code Section 33112(a), he shall superintend the schools of this
14 state. He is responsible for ensuring that children within the State of California receive a free and
15 equal public education and a Free Appropriate Public Education, and for administering,
16 monitoring, and enforcing the law regarding special education programs. *See* Cal. Educ. Code,
17 §§ 56120 *et seq.*, 56125, 56600.6.

18 34. **Defendant Pittsburg Unified School District** is, and at all times mentioned
19 herein was, a school district duly organized and existing under the laws of the State of California
20 and is charged with providing a public education and education-related services to students
21 within its jurisdiction. Defendant District is, and at all times mentioned herein was, a local
22 agency as that term is defined in California Code of Regulation Title 2 Section 11150, that
23 receives state financial assistance from the State of California and is funded directly by the State
24 of California to provide educational services to children who reside and/or are enrolled in public
25 schools within its boundaries. Defendant District is responsible for providing school children
26 with full and equal access to the public education programs and activities it offers in compliance
27

1 with the requirements of federal and state laws and regulations. Its responsibilities include
2 making and implementing educational decisions for the schools within its jurisdiction.

3 35. **Does 1 through 100**, inclusive are, on the basis of information and belief, agents
4 for the named Defendants. The identities of said Does are currently unknown, and when they
5 became known, the Writ and Complaint will be amended to add them.

6 **JURISDICTION AND VENUE**

7 36. Plaintiffs' claims arise under state law. This Court has jurisdiction under
8 California Code of Civil Procedure Sections 525-526 and 1085.

9 37. Venue in this Court is proper under California Code of Civil Procedure Section
10 393 because most Defendants, including the District, are located in Contra Costa County, funds
11 distributed by State Respondents were expended by the District in Contra Costa County, and the
12 facts giving rise to the causes of action or some parts of the causes alleged in this Writ and
13 Complaint arose in Contra Costa County.

14 **FACTUAL ALLEGATIONS**

15 **I. Defendants' Legal Duties to Provide Educational Equity to All Students**

16 38. Access to education is a "uniquely fundamental personal interest in California"
17 and belongs to each individual student. *Butt*, 4 Cal.4th at 681. All California students possess a
18 fundamental constitutional right to "equal access to a public education system that will teach
19 them the skills they need to succeed as productive members of modern society." *O'Connell*, 141
20 Cal.App.4th at 1482; *Serrano v. Priest*, 5 Cal.3d. 584, 608-09 (1971). A constitutional violation
21 of basic educational equity occurs where "the actual quality of the [school's] program, viewed as
22 a whole, falls fundamentally below prevailing statewide standards" that effects disparate
23 treatment upon a group of students. *Butt*, 4 Cal.4th at 685-87. Any action that has a real and
24 appreciable impact on a student's fundamental right to education is subject to strict scrutiny.
25 *Serrano v. Priest*, 18 Cal.3d 728, 761, 767-768 (1976). This right encompasses the right to
26 access essential skills students are expected to learn at each grade level, such as reading, writing,
27 and mathematics literacy. *O'Connell*, 141 Cal.App.4th at 1482.

1 39. California accordingly adopted academic content standards in 1997, including
2 Common Core standards, in the areas of English Language Arts and Mathematics to create a
3 “uniform and specific vision of what students should know how and be able to do” in each
4 subject area, describing the “content students need to master by the end of each grade level[.]”¹⁵
5 In 2010, the State Board of Education adopted the standards in the areas of English Language
6 Arts and Literacy in History/Social Studies, Science, Technical Subjects, and Math. This law set
7 the prevailing statewide standard because, in the State’s words, these standards “fulfill[]
8 California’s vision that all students graduate from our public school system as lifelong learners
9 and have the skills and knowledge necessary to be ready to assume their position in our global
10 economy.”¹⁶

11 40. California also passed California Education Code Section 56000 (“Section
12 56000”) to fulfill disabled students’ fundamental right to a basic education and established the
13 prevailing constitutional statewide standard for these students. Section 56000, which
14 incorporates and supplements the federal Individuals with Disabilities Education Act, guarantees
15 disabled students a Free Appropriate Public Education, meaning special education tied to
16 California’s statewide academic content standards. *See* 20 U.S.C. § 6311(b)(1)(A)-(D); *see also*
17 20 U.S.C. § 6311(b)(2), (C)(4)(A); 7 S. Rep. No. 108-185, at 17-18 (2003). Schools must
18 therefore provide disabled students with individually tailored services and supports to enable
19 them to meet these standards. “[F]or most children, a [Free Appropriate Public Education] will

20 ¹⁵ *See* CAL. STATE BD. OF EDUC., *English-Language Arts Content Standards for California*
21 *Public Schools* (Dec. 1997), available at:
22 <https://www.cde.ca.gov/be/st/ss/documents/elacontentstnds.pdf> (hereinafter “California 1997
23 Content Standards”); California Common Core Standards, *supra* n.2. The Common Core
24 standards are only one component of a robust and complete education. A robust and complete
25 education also includes instruction where students, in particular diverse students, receive
26 culturally responsive teaching. *See, e.g.*, Linda Darling-Hammond & Channa M. Cook-Harvey,
27 *Educating the Whole Child Improving School Climate to Support Student Success*, LEARNING
28 POL’Y INST. (Sept. 2018) 22, available at:
[https://learningpolicyinstitute.org/sites/default/files/product-](https://learningpolicyinstitute.org/sites/default/files/product-files/Educating_Whole_Child_REPORT.pdf)
26 [files/Educating_Whole_Child_REPORT.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/Educating_Whole_Child_REPORT.pdf) (explaining that culturally responsive teaching that
27 employs an “intellectually demanding curriculum” “become the basis for meaningful
28 relationships and favorable academic results”).

¹⁶ California Common Core Standards, *supra* n.2 v.

1 involve...individualized special education calculated to achieve advancement from grade to
2 grade.” *Andrew F. v. Douglas Cnty.*, 137 S. Ct. 988, 1000 (2017).

3 41. A violation of students’ constitutional rights also occurs when a policy or practice
4 has a “substantial disparate impact on the minority children of its schools, causing de facto
5 segregation of the schools and an appreciable impact to a district’s educational quality, and no
6 action is taken to correct that policy when its impacts are identified.” *Collins v. Thurmond*, 41
7 Cal.App.5th 879, 896-97 (2019). Evidence of intentional discrimination is not required to state a
8 cognizable claim. *Butt*, 4 Cal.4th at 681 (holding that the State is required to take steps to correct
9 disparities between districts “even when the discriminatory effect was not produced by the
10 purposeful conduct of the State or its agents.”); *Collins*, 41 Cal.App.5th at 896-897.

11 42. The State bears the “ultimate responsibility for public education [that] cannot be
12 delegated to any other entity,” including “ensur[ing] basic educational equality under the
13 California Constitution.” Cal. Const. Art. IX, § 5; Cal. Const. Art. I, § 7; *Butt*, 4 Cal.4th at 681.
14 Public education is an obligation which the State assumed by the adoption of the Constitution.
15 *Butt*, 4 Cal.4th at 680, 685. The Constitution prohibits the State from maintaining and operating
16 the common public school system in a way that denies educational equity to the students and
17 requires the State to intervene when a local district’s policies or practices “deny its students basic
18 educational equality, unless the State can demonstrate a compelling reason for failing to do so.”
19 *Id.* at 680, 685, 692. The State therefore has a clear, present, ministerial, and non-discretionary
20 duty to prevent and correct any deprivations of students’ fundamental right to education.

21 43. Although the State is ultimately responsible for delivering California’s promise of
22 access to educational opportunity and “the State’s ultimate responsibility for public education
23 cannot be delegated to any other entity,” *id.* at 681, local school districts, as agencies of the State,
24 also have a duty to provide basic educational equity to all children enrolled in their schools. *See*
25 *O’Connell*, 141 Cal.App.4th at 1473 n.14. The District therefore also has a clear, present,
26 ministerial, and non-discretionary duty to prevent and correct any deprivations of students’
27 fundamental right to education.

1 **II. The District and State Have Created and Perpetuated a School System that**
2 **Discriminates Against Students on the Basis of Race, National Origin, and**
3 **Disability.**

4 44. For years, the District has maintained policies and made decisions that 1)
5 overidentified Black and English learner students as having more severe disabilities; 2)
6 disproportionately segregated Black and English learner students with disabilities into inferior
7 separate classrooms; 3) failed to provide evidence-based instruction tied to California’s statewide
8 academic content standards, as a matter of District policy, to disabled students in general and
9 special education classrooms; and 4) disproportionately excluded Black, multiracial, and Native
10 American students with and without disabilities through exclusionary discipline. The State is
11 aware of these policies and practices, and the resulting egregious discriminatory impact on
12 students, but has consistently refused to acknowledge the scope and harm of all four systemic
13 practices and remedy systemic violations of the rights of students of color, English learner, and
14 disabled students in Pittsburg Unified.

15 **A. The District Overidentifies Black and English Learner Students as Having**
16 **Disabilities, Including Severe Disabilities.**

17 45. Under Section 56000, school districts have a clear, present, ministerial, and non-
18 discretionary duty to ensure that all children who need special education and related aids and
19 services are evaluated. Cal. Educ. Code § 56337; 5 C.C.R. §§ 3030(b)(10)(A)-(C). Pursuant to
20 these evaluation duties, the District must comprehensively evaluate students in all areas related
21 to the suspected disability. Cal. Educ. Code § 56320(f). The assessments must be conducted in
22 the student’s native language to determine whether they are eligible for special education and
23 related aids and services. Cal. Educ. Code § 56320(b)(1); 5 C.C.R. § 3023(a). The District must
24 also select and administer assessments so as not to be racially or culturally discriminatory. Cal.
25 Educ. Code § 56320(a). Based on the assessment and by drawing upon information from a
26 variety of sources, the District must determine the student’s eligibility for special education
27 services. Cal. Educ. Code § 56330.

1 46. In Pittsburg Unified, staff systematically refer Black and English learner students
2 for disability assessments based on behavior or academic performances that do not indicate a
3 disability. For example, special education assessments of English learners are sometimes
4 conducted in English rather than the student’s native language, thus confounding the results,
5 which measure the student’s language confusion rather than a disability. District staff who
6 conduct special education assessments have been pressured to conduct inappropriate assessments
7 of Black students and to diagnose Black and English learner students with more severe
8 disabilities than the assessments indicated. School staff have witnessed Black students who were
9 removed from the general education classroom and “informally” placed in restrictive special
10 education classrooms based on school administrators’ and other staffers’ inaccurate perceptions
11 that those students’ behavior was related to a disability rather than developmentally appropriate
12 mild misbehavior. Staff have also witnessed a District administrator state that a Latine English
13 learner student was “automatically qualified” for special education services even when the
14 assessments did not indicate special education services were needed.

15 47. Data from the District and State show how the District’s discriminatory practices
16 result in overidentification of Black and English learner students:

17 48. **Black Students:**

- 18 • In the 2017-18 school year, Black students had the highest rate of being identified
19 as having disabilities, at a rate of 14 students identified as disabled per 100 Black
20 students.¹⁷ Black students comprised 16.4% of students enrolled but were 23.8%
21 of students with disabilities enrolled.¹⁸
- 22 • In the 2018-19 school year, Black students were significantly overrepresented
23 among students with disabilities compared to statewide averages.¹⁹

24 ¹⁷ CRDC Students with Disabilities Report, *supra* n.4.

25 ¹⁸ *Id.*

26 ¹⁹ Compare Data Quest, *2018-19 Enrollment by Ethnicity and Grade – Pittsburg Unified Report*,
27 CAL. DEP’T OF EDUC. (2019), available at:
[https://data1.cde.ca.gov/dataquest/dqcensus/EnrEthLevels.aspx?cds=0761788&aggllevel=district](https://data1.cde.ca.gov/dataquest/dqcensus/EnrEthLevels.aspx?cds=0761788&aggllevel=district&year=2018-19)
28 *&year=2018-19 with Special Education Enrollment by Ethnicity and Disability, Pittsburg*

- For three school years in a row from 2017-2020, Black students were disproportionately identified with emotional disturbance disorder and Other Health Impairment.²⁰

49. **English Learner Students:**

- In the 2017-18 school year, English learner students were 2.5 times more likely to be categorized as having disabilities than non-English learners.²¹
- In the 2018-19 school year, English learner students were significantly overrepresented in the districtwide population of students identified as having disabilities. Data also showed that the overrepresentation of English learners identified as having disabilities grew from the previous two years.²²

B. The District Disproportionately Segregates Disabled Students, Especially Black and English Learner Students, in Inferior Separate Classrooms and Fails to Provide Legally Required Supports and Services.

50. Section 56000 imposes on the State and District a clear, present, ministerial, and non-discretionary duty to educate disabled students in the Least Restrictive Environment. Cal. Educ. Code § 56040.1. Decades of research affirms the importance of this mandate—inclusion of disabled students in the general education classroom has essential positive short- and long-term effects for all students. Disabled students in these classes are absent less often, develop stronger skills in reading and math, and are more likely to have jobs and pursue education after high

Unified, *supra* n.6; *Compare Data Quest, Enrollment Multi-Year Summary by Ethnicity – State Report*, CAL. DEP’T OF EDUC., available at: <https://data1.cde.ca.gov/dataquest/dqcensus/EnrEthYears.aspx?cds=00&agglevel=state&year=2018-19> (last accessed Sept. 7, 2021) with U.S. DEP’T OF EDUC., *2018-19 Child Count and Educational Environments*, available at: <https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bcc> (last accessed Sept. 7, 2021).

²⁰ Her Ha, *supra* n.7.

²¹ CRDC Students with Disabilities Report, *supra* n.4.

²² *Compare Pittsburg Unified District Language Group Data – Districtwide for 2018-19*, *supra* n.5 with *2018-19 Enrollment by English Language Acquisition Status (ELAS) and Grade, Pittsburg Unified District Report*, *supra* n.5 (toggle settings “Students With Disabilities: Yes” and “Students With Disabilities: No”).

1 school.²³ Non-disabled peers benefit too, through better academic and social-emotional
2 development.²⁴

3 51. The State and District must educate disabled students to the maximum extent
4 possible with non-disabled students, and can only remove disabled students from the general
5 education classroom if their education cannot be achieved satisfactorily with the use of
6 supplementary aids and services. To prevent unnecessary removal of disabled students from the
7 general education classroom, the District must assess students in all areas related to their
8 suspected disability—including social and emotional status, academic performance, and
9 communicative status—and identify necessary supplementary aids and services. Cal. Educ. Code
10 §§ 56320(f), 56031. Districts may place students in segregated classes only when the nature or
11 severity of the disability is such that the disabled student’s education in the regular classes with
12 the use of supplementary aids and services, including curriculum modification and behavioral
13 support, cannot be achieved satisfactorily. Cal. Educ. Code §§ 56364.2(a), 56040.1(b);
14 *Sacramento City Unified Sch. Dist., Bd. of Educ. v. Rachel H. By & Through Holland*, 14 F.3d
15 1398, 1403 (9th Cir. 1994). These requirements also apply to separate schools, or when disabled
16 students are removed from the general education environment in other ways. Cal. Educ. Code §
17 56364.2(a).

18 52. Moreover, a disabled student need not be able to keep academic pace with their
19 non-disabled peers to access the general education classroom. The “attainment of passing grades
20 and regular advancement from grade to grade are generally accepted indicators of satisfactory
21 progress.” *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998). For
22 example, a disabled student may have an Individualized Education Plan (“IEP”) to help her
23 address a deficit in writing. If the rest of the class is keeping a daily journal as part of their
24 learning activities, a disabled child should participate in this activity by having a teacher or
25 instructional aide dot words for the child to trace over.

26
27 _____
28 ²³ Hehir, *supra* n.10 12-19.

²⁴ *Id.* 7-9.

1 53. California Government Code Section 11135 expressly incorporates the
2 protections and prohibitions set forth in federal law, Section 504 of the Rehabilitation Act and
3 Title II of the Americans with Disabilities Act, and implementing regulations. *See* Cal. Gov’t
4 Code § 11135(b); *Bassilios v. City of Torrance*, 166 F.Supp.3d 1061, 1084 (C.D. Cal. 2015)
5 (“[I]f a public entity that receives state funding has violated the [Rehabilitation Act] or [Title II],
6 then it has also violated § 11135”). Section 11135 therefore prohibits the State and District from
7 discriminating against disabled students (including through unnecessary segregation) when
8 providing educational services, programs, and activities, and requires public entities to
9 administer their services, programs, and activities in the most integrated setting appropriate to
10 the needs of qualified students with disabilities.²⁵

11 54. The State’s own data reveals how the District’s deficient policies and practices
12 negatively impact disabled students. For example, the State releases data about the educational
13 environment placements of school-age students with disabilities in California, broken down into
14 three categories: 1) percentage of students who spends 80% or more of their school time in a
15 general education setting; 2) percentage of students who spends 40% or less of their school time
16 in a general education setting; and 3) percentage of students in separate schools. ***This data***
17 ***reveals that the District was among the most segregated school districts in the state for***
18 ***students with disabilities.*** In the 2017-18 school year:

- 19 • 74% of districts statewide had a better rate than Pittsburg Unified of “in regular
20 [general education] class less than 40%” of the time,
- 21 • 82% of districts statewide had a better rate than Pittsburg Unified of “in regular
22 class more than 80%” of the time, and
- 23 • 93% of districts statewide have a lower (better) rate than Pittsburg Unified of
24 placing students in separate schools.

25
26
27 ²⁵ Plaintiffs have amended the Petition to remove the cause of action alleging discrimination
28 under Government Code § 11135 following the Court's Order on State Defendants’ first
demurrer, but seek to preserve the issue for a potential appeal.

1 55. In 2018-19, the District placed 46.52% of disabled students in the general
2 education classroom for less than 80% of the time—seven percentage points higher than the state
3 average—and placed a significantly greater number of students in separate schools than the
4 statewide average. When it comes to segregation, Pittsburg Unified is bringing down the State’s
5 numbers, which are already abysmal compared to the segregation rates in other states.

6 56. Ms. Redfoot and other staff have witnessed the District place Black and English
7 learner students with disabilities in segregated placements without first considering or providing
8 services and supports to enable them to remain in or access the general education classroom.
9 Although the State collects this disaggregated data, it has refused to publicly disclose that data.
10 This effectively prevents public understanding of the scope of the problem, and creates barriers
11 to advocacy by parents, students, and concerned community members to hold school districts
12 accountable to disabled students, especially disabled students of color.

13 57. In 2015, the District voluntarily retained an outside consultant, Stetson &
14 Associates, to evaluate its services to students with disabilities. The report highlights many of
15 deficiencies in the District’s special education program.²⁶ Specifically, the report found that the
16 District does not provide students with disabilities adequate support when placed in the general
17 education classroom, and fails to prioritize students’ needs in creating a tailored approach to their
18 special education needs. Indeed, the report found that “in-class support, referred to as ‘Push-In’
19 services in [the District], is virtually non-existent and is typically provided by aides, when
20 provided at all.”²⁷

21 58. The State and District have been on notice about the deficiencies in the District’s
22 special education program through the State’s own evaluation processes, the District’s data
23 collection, and the District’s reports to the State on educational outcomes for students with
24

25 ²⁶ STETSON & ASSOCS., INC., *Evaluation of Services Provided to Students with Disabilities:*
26 *Pittsburg Unified School District, January 2016* (Jan. 2016),
27 <https://www.pittsburg.k12.ca.us/cms/lib/CA01902661/Centricity/Domain/91/Program%20Evaluation%202015%20-%20Stetson%20Review.pdf> (hereinafter “Stetson Report”).

28 ²⁷ *Id.* 15.

1 disabilities. Yet, they have failed to ameliorate the issues that harm students with disabilities,
2 including those issues identified in the Stetson Report over the last five years.

3 59. As such, the District has engaged in decision-making and retained unlawful
4 policies that unnecessarily segregate disabled students, including Black and English learner
5 students. During IEP meetings for Mark S. and Rosa T., the District special education director,
6 Angelica Thomas, stated that the District has a policy that disabled students cannot be placed in
7 the general education classroom unless they are on the same curriculum as, and can keep
8 academic pace with, their non-disabled peers. This policy conflicts with California law requiring
9 disabled students to be integrated into general education classrooms to the “maximum extent
10 possible.” On information and belief, this policy is also reflected and formalized in written
11 policies, procedures, internal memoranda, or communications to District staff.

12 60. The District also has made system-wide decisions that fail to provide the
13 following widely-recognized evidence-based services and supports for disabled students in the
14 general education classroom:

15 a) **Positive Behavioral Interventions and Supports:** California law requires
16 districts consider the use of Positive Behavioral Interventions and Supports and other
17 strategies to address disability-related behaviors for students whose behavior impedes
18 their learning or that of others. Cal. Educ. Code §§ 56521.2(b), 56341.1(b)(1). On
19 information and belief, the District fails to provide sufficient training to its staff in how to
20 consider and provide these behavioral interventions and supports. Ms. Redfoot, a long-
21 time special education teacher in the District, has not received sufficient supports and
22 services to be able to implement Positive Behavioral Interventions and Supports. Ms.
23 Redfoot has also not been trained on writing or completing Functional Behavioral
24 Assessments and writing Behavior Intervention Plans (“Behavior Plans”) to effectively
25 implement Positive Behavioral Interventions and Supports for more severely-impacted
26 students.

1 b) **Behavior Intervention Plans:** California law requires school districts to
2 provide a student with an adequate Behavior Plan in appropriate cases where a child's
3 behavior impedes the child's learning or that of others. Cal. Educ. Code § 56521.2(b).
4 But the District has decided and retained an unlawful policy or practice of requiring
5 teachers to first write and amend IEP behavior goals before ever writing a Behavior Plan,
6 even where a child's behavior impedes the child's learning or that of others and a
7 Behavior Plan is necessary to provide a child with a FAPE. Michell Redfoot has received
8 emails and verbal communication from District leadership, including multiple former
9 special education directors, confirming this District policy. On information and belief,
10 this policy and decision is also reflected and formalized in written policies, procedures,
11 internal memoranda, or communications to District staff. As a result, the District
12 frequently fails to write Behavior Plans when required and writes inadequate Behavior
13 Plans that fail to reduce students' behaviors. The District also neglects to provide
14 sufficient training in how to write strong Behavior Plans. Ms. Redfoot has routinely
15 witnessed these flaws and has not received sufficient training in how to write a strong
16 Behavior Plan.

17 c) **Functional Behavioral Assessments:** A functional behavioral assessment
18 is a process in which a student's behavior is monitored to determine the purpose of
19 particular behaviors and create a strong Behavior Plan. Assessments may be required
20 when a disabled student's IEP has proven inadequate to prevent disability-related
21 behaviors. Ms. Redfoot and other District staff have routinely witnessed the District fail
22 to conduct these required behavioral assessments, even when a student's IEP and
23 Behavior Plan have proven ineffective. The District has a policy and has decided that
24 functional behavioral assessments should not be conducted even when Behavior Plans
25 have been proven ineffective multiple times and additional expertise and data is needed.
26 On information and belief, this policy and decision is also reflected and formalized in
27 written policies, procedures, internal memoranda, or communications to District staff.

1 d) **Educationally Related Mental Health Services:** When students display
2 mental health-related disabilities that interfere with their education, school districts must
3 provide assessments for Educationally Related Mental Health Services (“Mental Health
4 Services”). Cal Educ. Code § 56320(f). Students who qualify for Mental Health Services
5 receive counseling on campus administered by the county’s mental health department.
6 The District routinely fails to assess disabled students for Mental Health Services even
7 when their symptoms clearly indicate a mental illness that interferes with their education.
8 The District also fails to sufficiently train staff in how to identify students with suspected
9 mental illnesses and how to consider and offer assessments for Mental Health Services.
10 For example, Plaintiff Rosa T. has experienced symptoms of severe anxiety and
11 depression that worsened over the last two years and caused her to miss 47 days of school
12 one year, but the District failed to provide Mental Health Services and supports. The
13 District’s failures further lead to undiagnosed and unaddressed trauma. For example, L.G.
14 experienced severe trauma as a result of years of bullying and harassment from her peers,
15 but the District never identified that trauma or provided her trauma-sensitive services and
16 supports.

17 e) **Paraprofessional Support:** California law requires districts provide
18 paraprofessional support to students who need additional individualized or small-group
19 attention to benefit from their education, including situations where the student needs an
20 aide to participate in the general education classroom. Cal. Educ. Code § 56033.5. Aides
21 may also implement a student’s Behavior Plan and provide positive behavioral supports
22 and services, among other tasks. The District has an unlawful policy and enacted
23 decisions that providing one-to-one paraprofessional support to disabled students is more
24 restrictive than segregating that student into a special education classroom and refusing to
25 provide one-to-one paraprofessional support for disabled students. District leadership,
26 including special education director Angelica Thomas, have confirmed this District
27 policy in IEP meetings for Mark S. Michell Redfoot has also heard District leadership
28

1 express this District policy or decision in multiple IEP meetings. On information and
2 belief, the District has documented this policy or decision in formal, written policies,
3 procedures, internal memoranda, or communications. The District also fails and refuses
4 to provide a sufficient number of classroom and individual aides to help students
5 transition to and succeed in the general education classroom. The District also fails to
6 provide sufficient training to aides in implementing and supporting evidence-based
7 curriculum. Ms. Redfoot and other District staff have routinely witnessed the District's
8 refusal and failure to provide classroom and individual aides, lack of a sufficient number
9 of classroom aides to aide in transitions, and poorly trained aides unable to provide
10 sufficient supports.

11 f) **Push-in Services:** To maximize disabled students' time in the Least
12 Restrictive Environment, general education teachers, special education teachers, and
13 other service providers must work closely with students to provide instructional support,
14 differentiated instruction, and related services in the general education classrooms. The
15 District lacks policies and practices for providing push-in services. Ms. Redfoot has
16 routinely witnessed her students being pushed out of the general education classroom
17 because they did not receive sufficient push-in services.

18 g) **Continuum of Placements:** The Stetson Report recommended the District
19 create a continuum of placements that provides more disabled students with more
20 opportunities to transition to the general education classroom. But the District has failed
21 to create special day classes specifically for students with mild and moderate disabilities
22 to enable them to receive tailored instruction, and has failed to take any related steps,
23 causing disabled students districtwide to receive inadequate instruction by overwhelmed
24 and unsupported special education teachers.

25 h) **Training:** The District does not sufficiently train its staff to consider
26 special education-related aids and services to disabled students before placing those
27 students in a segregated setting. Ms. Redfoot and other District staff have not received
28

1 adequate professional development on how to prevent unnecessary segregation of
2 disabled students.

3 i) **Failure to Offer Appropriate Services and Supports:** On information
4 and belief, when making offers of Free Appropriate Public Education in IEP meetings,
5 the District intentionally offers inadequate services and supports to pressure parents to
6 agree to meet with the District outside of IEP meetings, where the District conditions
7 adequate services on waivers of students' legal claims, in violation of its mandatory
8 duties. Cal. Educ. Code §§ 56001(a), 56040(a).

9 61. These violations stem from decisions made at the District level that limit the
10 training provided to District staff regarding Positive Behavioral Interventions and Supports,
11 Behavior Plans, Functional Behavioral Assessments, Educationally Related Mental Health
12 assessments and services, and push-in services. On information and belief, these training
13 decisions are reflected in formal, written policies, procedures, internal memoranda, or
14 communications to District staff regarding teacher trainings, including the expenditure of District
15 resources in trainings. These documents limit the content of and time for trainings and therefore
16 prevent District staff from providing effective services and supports to disabled students.

17 62. The District's failure to resolve these systemic deficiencies have caused the
18 unlawful segregation of disabled students. For example, the District continually used Mark S.'s
19 struggles with occupational skills, speech and language, and ability to self-regulate to justify
20 segregation, but failed to consider and provide one-to-one paraprofessional support, a functional
21 behavioral assessment, or an adequate Behavior Plan. The District continually increased Mark
22 S.'s segregation despite recommendations from a special education teacher that he should have
23 been fully included in the general education classroom. Mark S. now needs individualized
24 remediation services to catch up to his peers, but because the District lacks an infrastructure for
25 providing push-in services, he must be pulled out of the general education classroom to receive
26 those services.

1 63. When she was an elementary and middle-school student, L.G. and her mother,
2 Plaintiff Jessica Black, consistently complained to school and District staff about other students
3 calling L.G. hateful slurs like “Afro-Circus,” “fat,” and “stink.” Students also regularly
4 physically harassed L.G. at school, including kicking her possessions when they fell on the floor,
5 pushing and elbowing her, and threatening to beat her up. These incidents continued throughout
6 her time at Pittsburg Unified schools. L.G. and her mother also reported to school staff on at least
7 two occasions that L.G. was being sexually harassed by staff and students. As a result of these
8 incidents, L.G.’s disability-related behaviors and need for behavioral support increased. The
9 District failed to attribute L.G.’s behavior to her disability and failed to provide appropriate
10 behavioral supports and services, such as a strong Behavior Plan or Mental Health Services.
11 Instead, the District assumed her behavior stemmed from her being naturally aggressive, a
12 racially-biased assumption. When L.G.’s disability and fear for her safety caused her to bring a
13 stun gun to school, the District expelled her, failing to consider that her behavior stemmed from
14 her struggles with executive functioning and impulse control. The District then segregated L.G.
15 into a non-public school, and then into an independent study program, for three school years
16 during a crucial phase of her social-emotional development. The District refused to provide the
17 necessary services for L.G. to transition back to school, including an adequate Behavior Plan, a
18 social-emotional curriculum, or in-person support from a trained behaviorist who could help
19 L.G. learn self-regulation skills.

20 **C. The District Has Failed to Provide Evidence-Based Instruction Tied to**
21 **California’s Academic Content Standards, as a Matter of District Policy, to**
22 **Disabled Students in Special and General Education Classrooms.**

23 64. Section 56000 incorporates and supplements the federal Individuals with
24 Disabilities Education Act²⁸ and guarantees qualified disabled students the right to a Free
25 Appropriate Public Education. Cal. Educ. Code § 56000(a). Section 56000 requires the State and

26 _____
27 ²⁸ *Kent v. Dir., California Off. of Admin. Hearings*, No. SACV1501926SJOJCGX, 2016 WL
28 356021 at *1 (C.D. Cal. Jan. 29, 2016) (noting that “California adopted legislation to participate
in IDEA, codified in California Education Code sections 56000 *et seq.*”).

1 local educational agencies “do [nothing] more than the Constitution already required of them,”
2 *Hayes v. Commission on State Mandates*, 11 Cal.App.4th 1564, 1592 (1992), by providing a
3 “free, appropriate public education and special educational instruction and services for these
4 persons.” Cal. Educ. Code § 56000(a). Through Section 56000, the State acknowledged disabled
5 students’ fundamental right to a basic education and established the prevailing constitutional
6 statewide standard for these students. A Free Appropriate Public Education provides disabled
7 students with access to learning, without which they would be effectively excluded from public
8 schools. *Timothy O.*, 822 F.3d at 1109.

9 65. To carry out its clear, present, ministerial, and non-discretionary duty under
10 Section 56000, the District must ensure that all children who need special education and related
11 aids and services are evaluated. Cal. Educ. Code § 56337; 5 C.C.R. § 3030(b)(10)(A)-(C). After
12 determining eligibility, the District must offer, develop, and implement an IEP with effective
13 special education and related aids and services, including appropriately intensive research-based
14 instruction and services, and provide special education services to conform with the IEP. Cal.
15 Educ. Code §§ 56345, 56001(a), 56040(a). The IEP must contain “a statement of measurable
16 annual goals,” including academic and functional goals, designed to “enable the pupil to be
17 involved in and make progress in the general education curriculum.” Cal. Educ. Code §
18 56345(a)(2). These goals must be “reasonably calculated to enable a child to make progress
19 appropriate in light of the child’s circumstances,” “‘specially designed’ to meet a child’s ‘unique
20 needs,’ and ‘appropriately ambitious,’ to enable the child to meet ‘challenging objectives.’”
21 *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999-1000 (2017). These goals are
22 expressly linked to states’ “challenging academic content standards” for all students, including
23 those with disabilities, to ensure they “are held to high academic achievement standards.” 20
24 U.S.C. § 6311(b)(1)(A)-(D), (b)(2), (C)(4)(A). Disabled students therefore have a right to receive
25 individually tailored services and supports to enable them to meet state academic content
26 standards, including California’s Content Standards.²⁹ Thus, “for most children, a [Free

27 ²⁹ See California 1997 Content Standards, *supra* n.15 iv (describing the “content students need to
28

1 Appropriate Public Education] will involve . . . individualized special education calculated to
2 achieve advancement from grade to grade.” *Andrew F.*, 137 S. Ct. 1000.

3 66. Section 11135 prohibits discrimination on the basis of disability, including in the
4 State’s and District’s obligation to provide a Free Appropriate Public Education. It expressly
5 incorporates the protections and prohibitions set forth in federal law, Section 504 of the
6 Rehabilitation Act and Title II of the Americans with Disabilities Act, and implementing
7 regulations. *See* Cal. Gov’t Code § 11135(b); *Bassilios v. City of Torrance*, 166 F.Supp.3d 1061,
8 1084 (C.D. Cal. 2015) (“[I]f a public entity that receives state funding has violated the
9 [Rehabilitation Act] or [Title II], then it has also violated § 11135”).

10 67. The 2015 Stetson Report found that there was a universal perception at the
11 District that the statewide academic content standards are not a framework for disabled
12 students.³⁰ The report further found a lack of curriculum alignment with general education
13 standards for students with moderate to severe disabilities. After observing special education
14 classrooms, the auditors noted:

15 the frequent absence of learner objectives linked to the curriculum,
16 little evidence of planning between special education teachers and
17 the enrolled grade level teachers, and alignment with the activities
18 or standards being addressed in the general education settings.
19 Across the board, respondents indicated that the general
20 curriculum was not referenced to student IEPs—an instructional
21 and policy compliance concern.³¹

22 In general education classrooms, the auditors observed that “instructional aides are typically the
23 only in-class support offered and instructional accommodations were infrequently observed,
24 leaving struggling students on their own to learn the content efficiently.”³²

25 68. To address these concerns, the Stetson Report made several recommendations to
26 the District to: 1) better ensure access and progress in the general education framework for

27 _____
28 master by the end of each grade level[.]”); California Common Core Standards, *supra* n.2
(same).

³⁰ Stetson Report, *supra* n.24 25.

³¹ *Id.* 27.

³² *Id.* 25.

1 students with disabilities; 2) provide training and other resources for special education staff to
2 gain knowledge and use the general education curriculum; and 3) provide training and other
3 resources for instructional aides in academic content, using effective differentiated strategies
4 with students, and effectively planning for instruction with their supervising teachers.³³

5 69. Despite these findings and recommendations, the District has retained at least two
6 sets of unlawful policies and systemic practices and systemic decisions: 1) refusing as a policy to
7 maintain and provide instructional services and curriculum based on peer-reviewed research to
8 disabled students and instead maintaining and incorporating services and curriculum that are
9 ineffective and unproven; and 2) prohibiting as a policy disabled students from accessing
10 instruction and interventions tied to the statewide academic content standards in special and
11 general education classrooms.

12 70. First, the law requires the District to provide disabled students with instructional
13 services and interventions that are based on peer-reviewed research.³⁴ Nevertheless, the District
14 has a policy and engages in decision-making that refuses to provide and omits this type of
15 required instruction and intervention and instead requires teachers to use methods that are proven
16 ineffective, outdated, and lacking any basis in peer-reviewed research. Michell Redfoot has
17 received emails and verbal communication from District leadership, including the current and
18 former special education directors and program specialists, stating that District policy precludes
19 her from providing instructional services and intervention based on peer-reviewed research and
20 instead requires staff to create instructional content and curricula by themselves. On information
21 and belief, the District has documented this policy in other formal, written policies, procedures,
22 internal memoranda, or communications that remove teachers' ability to provide instruction and
23 intervention based on peer-reviewed research and endorse alternate, ineffective methods. On

24 ³³ *Id.* 31-33.

25 ³⁴ Cal. Educ. Code § 56345(a)(4) (declaring that the IEP shall comprise a statement of the special
26 education and related services and supplementary aids and services “based on peer-reviewed
27 research to the extent practicable” to be provided to the student). The United States Court of
28 Appeals for the Third Circuit has held that failure to implement a program based on peer-
reviewed research “weigh[s] heavily against a finding that the school provided [the student] a
FAPE.” *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 279 (3d Cir. 2012).

1 information and belief, this policy is also reflected in formal, written policies, procedures,
2 internal memoranda, or communications to District staff regarding teacher trainings, including
3 the expenditure of District resources in trainings. Districtwide policy limits trainings to
4 ineffective and outdated methods and remove the ability of teachers to provide instruction and
5 intervention based on peer-review research.

6 71. Second, the law requires the District to provide instruction tied to the state
7 academic content standards to disabled students capable of mastering those standards. But the
8 District has a policy of refusing to allow any disabled students access to this type of instruction.
9 On information and belief, the District has documented this policy or decision in formal, written
10 policies, procedures, internal memoranda, or communications that forbid teachers from
11 providing this type of instruction. The District has taught its special education teachers that the
12 law does not require—and, in fact, forbids—that disabled students in segregated settings be
13 provided instruction tied to the statewide academic content standards, even if those students are
14 capable of mastering those standards and have a related area of deficit. The District has
15 accordingly has decided to forbid special education teachers in special education classrooms
16 throughout the District from providing instruction tied to the statewide academic content
17 standards. For example, in a 2019 email to Ms. Redfoot, the District documented this policy:

18 ***The law does not require that special education students achieve***
19 ***general education standards [statewide academic content***
20 ***standards]...you are hereby directed to discontinue the***
21 ***coordination of your special education program with the Common***
22 ***Core Standards pacing guide and provide instruction based on the***
23 ***Individual Education Plan of the children enrolled in your***
24 ***classroom. For those children who have goals written that are***
based on the Common Core Standards for their grade level,
please replace those goals with ones that are directly related to
the student's areas of need at the appropriate instructional level
indicated.

25 (emphasis added). Ms. Redfoot continues to receive verbal and written communication from
26 District leadership prohibiting her as a matter of District policy from providing instruction tied to
27 the state academic content standards to disabled students capable of mastering those standards.
28

1 72. As a result of these policies and decisions, the District fails to adequately train
2 special education teachers on how to implement evidence-based instruction tied to the statewide
3 academic content standards.³⁵ The District’s failure and refusal to provide training to special
4 education teachers on how to implement evidence-based special education practices or provide
5 related supportive material resources means many disabled students in special education
6 classrooms do not have access to the statewide curriculum. Nor does the District provide
7 sufficient training to instructional aides on content overviews of academic areas or differentiated
8 instructional strategies. In over eleven years of working at the District as a special education
9 teacher, Ms. Redfoot has repeatedly witnessed the District fail and refuse to train special
10 education teachers to use evidence-based instruction in their classrooms.

11 73. As a result, special education teachers in special education classrooms throughout
12 the District fail to provide instruction based on peer-reviewed research tied to the statewide
13 academic content standards. Instead, they spend most classroom time focusing on non-academic
14 activities, thereby preventing disabled students from accessing or making any progress in the
15 statewide academic curriculum. Even when some teachers contravene District policy and attempt
16 to provide evidence-based instruction, they implement only small pieces of programs meant to be
17 implemented fully and with fidelity, thus preventing students from benefiting from the program
18 and mastering the statewide academic content standards. Staff have witnessed untrained special
19 education teachers disregard or inadequately implement evidence-based instructional strategies
20 and cause their students to regress academically. As a result, disabled students like Mark S. and
21 Rosa T., who are placed in segregated classrooms throughout Pittsburg Unified, are deprived of
22 access to the statewide academic curriculum and the opportunity to meet challenging objectives
23 and achieve advancement from grade to grade.

26 ³⁵ Evidence-based instructional practices are “instructional techniques with meaningful research
27 supporting their effectiveness that represent critical tools in bridging the research-to-practice gap
28 and improving student outcomes.” Bryan G. Cook & Sara Cothren Cook, *Unraveling Evidence-
Based Practices in Special Education*, 1 J. SPECIAL EDUC. (2011) 1.

1 74. For example, during most school days while he was in second grade (a key
2 developmental age for learning to read), Mark S.’s teachers provided little to no evidence-based
3 instruction on standard academic content standards and goals. Rather, they spent most of the
4 classroom time showing non-instructional videos and movies, having students work on arts and
5 crafts, or teaching functional skills. As a result, Mark S. entered the third grade with reading and
6 writing skills at a pre-Kindergarten to beginning first grade level. An independent evaluation by
7 a well-known neuropsychologist concluded that Mark S.’s regression was the result of “District
8 programming [that] has not provided [Mark S.] with the kinds of instruction or tools he has
9 needed to in order to make meaningful educational progress in several core academic skill
10 areas.”

11 75. The District’s policies and decisions also fail to provide disabled students with
12 evidence-based instruction tied to the statewide academic content standards in the *general*
13 *education classrooms*. The District fails to adequately train general education teachers in how to
14 implement evidence-based instruction for disabled students in their classrooms, guaranteeing that
15 disabled students in these classrooms will not have access to the curriculum. Nor does the
16 District provide sufficient training to general education classroom teachers or instructional aides
17 that include differentiated instructional strategies. Many general education teachers do not
18 provide differentiated, small-group, or one-to-one special education instruction to their disabled
19 students. Instead, they provide the same grade-level instruction to all students despite knowing
20 that disabled students will not be able to access the curriculum because of their disabilities and
21 lack of necessary supports. Thus, disabled students in general education classrooms throughout
22 Pittsburg Unified are deprived of access to the statewide academic content standards, such as the
23 Common Core curriculum, and the opportunity to meet challenging objectives and achieve
24 advancement from grade to grade.

25 76. For example, most school days during the 2019-20 and 2020-21 academic years,
26 Rosa T.’s general education and special education teachers provided little to no evidence-based
27 instruction designed to help disabled students progress in the statewide academic content
28

1 standards. As a result of these deficient instructional practices, in the middle of her twelfth-grade
2 year, Rosa T. was reading at a seventh-grade level and had remained at that level for at least a
3 year. Rosa T. is now unable to meet proficiency in English Language Arts or Mathematics on the
4 California Assessment of Student Performance and Progress (“California Assessment Exam”).

5 77. The California Assessment Exam measures proficiency in the statewide academic
6 content standards. Disabled students’ performance districtwide on this measure confirms that the
7 District’s practices prevent them from meeting these standards. In the 2018-19 school year, the
8 last time the California Assessment Exam was administered, 95.1% of disabled students in the
9 District did not meet proficiency in English Language Arts and 96.27% did not meet proficiency
10 in Mathematics, compared to 83.64% and 87.38%, respectively, for disabled students across the
11 state.³⁶ The District’s failure and refusal to provide evidence-based instruction tied to the
12 statewide academic content standards to disabled students places the District into the lowest rung
13 of districts across California.

14 **D. The District Disproportionately Disciplines and Excludes Black, Native**
15 **American, Multiracial, and Disabled Students.**

16 78. A violation of students’ constitutional right to equal educational opportunity
17 occurs when a policy or practice has a “substantial disparate impact on the minority children of
18 its schools, causing de facto segregation of the schools and an appreciable impact to a district’s
19 educational quality, and no action is taken to correct that policy when its impacts are identified.”
20 *Collins*, 41 Cal.App.5th at 896. Evidence of intentional discrimination is not required to state a
21 cognizable claim. *Id.*; *Butt*, 4 Cal.4th at 681.

22 79. Section 11135 also provides an explicit private right of action to challenge
23 disparate-impact discrimination on the basis of race, ethnicity, national origin, and disability
24 status, among other protected categories, by the State and District when providing educational
25 services, programs, and activities to students. Cal. Gov’t. Code § 11135(a); Cal. Code Regs. Tit.
26 2 § 11154(i)(1). Accordingly, Defendants have a clear, present, ministerial, and non-

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28 ³⁶ See CAL. ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS, *supra* n.11.

1 discretionary duty to ensure that students in protected categories do not suffer disproportionately
2 from school-based discipline.

3 80. The District subjects Black, Native American, multiracial, and disabled students
4 to discriminatory discipline practices which flow directly from the State’s failure to provide
5 meaningful oversight.³⁷ The District’s student discipline system provides staff with unfettered
6 discretion to choose among several different disciplinary options, including suspension and
7 expulsion for certain first-time and/or minor offenses, without justification or meaningful
8 oversight. This system is documented as a formal policy in the District’s discipline matrix.³⁸ For
9 example, District policy states that students alleged to have engaged in a physical altercation, a
10 common schoolyard behavior for most young children and youth, may be given wide-ranging
11 consequences for the **first offense**, including holding a conference with the student’s parent,
12 conflict resolution, suspension out of school for 3-5 days, or even expulsion.³⁹ The District has
13 further documented this policy or decision in other formal, written policies, procedures, internal
14 memoranda, or communications. This system allows racial and ableist biases and stereotypes to
15 guide disciplinary decision-making, including views among District staff that the behavior of
16 students of color and disabled students—and students at the intersections of these identities—is
17 inherently defiant, problematic, and deserving of extra-punitive punishment. As a result, District
18 staff regularly target and harass Black, Native American, and other students of color through
19 harsher discipline, including suspension, expulsion, and involuntary transfer to alternative
20 programs, for the same or similar behaviors as their peers, causing these students to lose equal
21 access to the classroom. Black and Native American students in the District are disciplined at the
22 highest rates for “disruption/defiance,” which is one of the most subjective disciplinary offense

23 ³⁷ PITTSBURG UNIFIED SCH. DIST., *The Student Rights and Responsibilities Handbook (2021-*
24 *2022)* (2021) 76-77,
25 [https://www.pittsburg.k12.ca.us/cms/lib/CA01902661/Centricity/Domain/58/Student%20Handb](https://www.pittsburg.k12.ca.us/cms/lib/CA01902661/Centricity/Domain/58/Student%20Handbook%202021-22%20ENGLISH-%20V.5.pdf)
26 [ook%202021-22%20ENGLISH-%20V.5.pdf](https://www.pittsburg.k12.ca.us/cms/lib/CA01902661/Centricity/Domain/58/Student%20Handbook%202021-22%20ENGLISH-%20V.5.pdf) (“Student Misbehavior and Progressive Disciplinary
27 Action Chart” describing multiple disciplinary options to address various categories of student
28 misbehavior).

³⁸ *Id.*

³⁹ *Id.* at 76.

1 and most likely to be infected by racial bias. For the four school years encompassing 2016-2020,
2 the District suspended Black students for defiance-only at the highest or second-highest rates as
3 compared to other racial/ethnic groups.⁴⁰ During the 2017-18 and 2018-19 school years, the
4 District suspended Native American students for defiance-only suspension at over twice the rate
5 for white, Asian, and Latine students.⁴¹ Despite having actual knowledge of these practices, the
6 District has acted with deliberate indifference by failing to intervene and provide sufficient
7 training to its staff in how to make antiracist and anti-ableist disciplinary decisions.

8 81. As described above, when she was an elementary and middle-school student, L.G.
9 and her mother, Plaintiff Jessica Black, consistently complained to school and District staff that
10 other students were verbally and physically harassing L.G. at school. Because of this harassment,
11 L.G.'s disability-related behaviors and need for behavioral support increased. Instead of
12 addressing the underlying racism and harassment, school and District staff routinely used their
13 discretion to harshly discipline L.G. for minor behaviors such as leaving her jacket in the office,
14 calling a staff member a "rugrat," and alleged uniform violations. Staff attempted to rationalize
15 these practices using racially-coded and stereotypical language, claiming that L.G. was "giving
16 people dirty looks," "intimidating" students," "mean mugging," "com[ing] in with hoods on,"
17 and "intimidat[ing students] with her facial expressions." Other students were not disciplined for
18 similar or identical behaviors. This pattern reveals the implicit racial bias infused in the District's
19 disciplinary system.

20 82. When J.T., another Black student, was thirteen years old, he was given lunch
21 detention for allegedly touching another student in class. The District failed to properly
22 communicate with J.T.'s mother, Plaintiff Dr. Royston, who worked for the District at the time
23 as a school psychologist, about the incident and the resulting discipline. Over the next few
24 weeks, Dr. Royston and school staff had a disagreement about whether J.T. should be disciplined

26 ⁴⁰ EDUC. DATA P'SHIP, *Pittsburg Unified: Students Suspended for Defiance Only by*
27 *Race/Ethnicity*, available at: <https://www.ed-data.org/district/Contra-Costa/Pittsburg-Unified>
(last accessed June 9, 2021).

28 ⁴¹ *Id.*

1 with lunch detention for the incident. Shortly thereafter, in apparent retaliation for Dr. Royston
2 challenging the unfair discipline of her child, the District unilaterally transferred J.T. into an
3 academically-inferior alternative school in the District as purported discipline for the classroom
4 incident. The school administrator told Dr. Royston to sign a form “consenting” to the transfer,
5 though the school administrator informed Dr. Royston that J.T. would be transferred to the
6 alternative program whether or not Dr. Royston signed the form. This encapsulates the District’s
7 systemic decision-making and attitude that it is acceptable to use extra-punitive discipline on
8 Black students, irreparably damaging those students’ academic careers simply because it has the
9 power to do so.

10 83. The misperception by District staff that Black students are more disruptive or
11 have “problem behaviors” extends to even the youngest Black students. When he was in second
12 grade, M.G., a Black student, was excelling academically in a dual English-Spanish immersion
13 program in a District school. One day, the teacher told M.G.’s mother that she planned to have
14 M.G. involuntarily transferred out of the dual-immersion program. M.G.’s mother, Dr. Royston,
15 was shocked that M.G.’s second grade teacher would make that decision without even consulting
16 her and cavalierly disregard M.G.’s well-being as a student by permanently excluding him from
17 her classroom. After Dr. Royston successfully advocated to keep her son in the dual-immersion
18 program, the teacher poured a bottle of water on M.G.—a seven-year-old child—in front of the
19 entire classroom because M.G. happened to fall asleep one afternoon at his desk. When Dr.
20 Royston complained to District staff, they refused to allow her to transfer M.G. to a different
21 dual-immersion classroom.

22 84. The District claims to have adopted a so-called “restorative justice” program. But
23 this program, as implemented by the District, actually perpetuates the District’s racially biased
24 and ableist disciplinary system. The District fails to provide sufficient training to its staff and
25 create a system for implementing restorative justice practices with fidelity. The program focuses
26 only on superficial implementation for the sake of declaring “the District uses restorative
27 justice,” at the expense of authentically preventing future incidents through strengthening
28

1 relationships between staff and students, increasing capacity to address interpersonal conflict, or
2 reducing punitive staff reactions to behaviors. Staff are not held accountable for addressing harm
3 they inflict on students through restorative justice; instead, Black students are not respected
4 because of implicit racial bias, and they have no outlet to remedy or even challenge unjust
5 treatment by staff. The District’s “restorative justice program,” in practice, is little more than a
6 standard disciplinary meeting where school staff require students to simply sit and apologize to
7 each other (regardless of circumstance) and is used by staff as a last resort only after punitive and
8 exclusionary discipline have been exhausted.

9 85. The District also disproportionately disciplines and excludes disabled students
10 compared to their nondisabled peers. These disparities are primarily driven by the District’s
11 failure to write adequate Behavior Plans, conduct Functional Behavioral Assessments, use
12 Positive Behavioral Interventions and Supports, and provide Mental Health Services, which
13 causes disabled students to be disciplined for disability-related behaviors. The District then uses
14 these behaviors and disciplinary incidents to further justify segregating disabled students.

15 86. Data from the District, State, and the federal government shows how the District’s
16 discriminatory practices disparately impact Black, Native American, multiracial, disabled
17 students, and students at the intersection of those identities:

- 18 • From the 2016-17 through 2018-19 school years, the District disciplinarily
19 excluded Black students at ever-increasing rates. In the 2017-18 school year,
20 Black students were suspended or expelled from District schools at more than
21 twice their rate of enrollment.⁴² In the 2018-19 school year, according to data
22 received pursuant to the Public Records Act, the District disciplinarily excluded
23 Black students at the highest rate (15 students per 100) compared to every other
24 student racial/ethnic group, with multiracial students a close second (14 students
25 per 100) and Native American students at the third-highest rate (10 students per
26 100).

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28 ⁴² C.R. Data Collection, *supra* n.12.

- 1 • In the 2017-18 school year, according to data received pursuant to the Public
2 Records Act, students with disabilities were three times more likely than students
3 without disabilities to be suspended.
- 4 • At the intersection of race and disability, in the 2017-18 school year, Black and
5 multiracial students with disabilities were disciplinarily excluded from school at
6 twice the rates of white and Latine students with disabilities.⁴³
- 7 • In the 2017-18 school year, data received through the Public Records Act reveals
8 that fully *one-third of Black students with disabilities were disciplinarily*
9 *excluded from District schools or classrooms*, and nearly 8% of disabled Black
10 students were suspended multiple times.

11 **III. COVID-19 Related School Closures Have Raised the Stakes for Defendants’** 12 **Failures to Remedy These Systemic Deficiencies.**

13 87. The Defendants’ systemic deficiencies compound the unmet needs disabled
14 students face in the aftermath of California’s shelter-in-place order enacted to stem the spread of
15 the coronavirus. COVID-19-related school closures did not relieve Defendants of their obligation
16 to provide students with an equal educational opportunity and a Free Appropriate Public
17 Education in the Least Restrictive Environment. For eighteen months, these students experienced
18 elevated anxiety, stress, trauma, social isolation, and learning loss. To successfully transition
19 back to in-person instruction, they need well-tailored instruction, a nurturing school
20 environment, and adequate assessments, services, and supports. Instead, these students are
21 returning to a school district that isolates them and exacerbates their mental health needs through
22 segregation and discriminatory discipline, while providing inadequate instruction that will cause
23 them to fall further behind. It is especially urgent, in this moment of heightened student need,
24 that Defendants uphold their constitutional and statutory duties to remedy the systemic
25 deficiencies at the District.

26 **IV. The Experiences of Individual Plaintiffs**

27
28 ⁴³ *Id.*

1 **A. Mark S.**

2 88. Mark S., a ten-year-old Latino English learner student who qualifies for special
3 education services because he has autism. Mark S. has experienced years of deprivation of his
4 fundamental right to education, including a Free Appropriate Public Education in the Least
5 Restrictive Environment.

6 **1. Unlawful Segregation**

7 89. From Mark S.'s preschool year in 2016-17 through most of his second grade year
8 in 2020-21, the District placed Mark S. in a special education classroom for at least 70% of the
9 school day. The District continually used Mark S.'s struggles with occupational skills, speech,
10 language, and self-regulation to justify segregating him in a special education classroom. Yet, the
11 District failed to consider and provide behavior-related services and supports that could have
12 enabled Mark S. to participate in or transition into the general education classroom, such as a
13 one-to-one paraprofessional, Functional Behavioral Assessment, or an adequate Behavior Plan.
14 On at least three occasions, when his mother Anna S. visited Mark S. during recess one day, she
15 saw him segregated in response to his disability-related behaviors, playing by himself on the
16 kindergarten playground, under the supervision of a behavioral aide who was on her phone.

17 90. On multiple occasions, the District increased Mark S.'s time outside of the
18 general education classroom despite recommendations from Ms. Redfoot and the school
19 psychologist that Mark S. was ready for more time in the general education classroom and had
20 made improvements to his motor and functional skills, behaviors, and response to the general
21 education classroom. For example, by the end of his first-grade year in May 2020, Ms. Redfoot
22 reported to the District that Mark S. no longer needed a special education classroom and
23 recommended his attendance in the general education class for 80% of the time with one-to-one
24 paraprofessional support. The District refused to follow these recommendations and kept Mark
25 S. outside of the general education classroom for 70% of the time. District staff stated that
26 providing Mark S. a full-time one-to-one paraprofessional in the general education classroom
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1 would be more restrictive than placement in a segregated setting, which is a legally inaccurate
2 statement that flies in the face of the intent and purpose of state protections for disabled students.

3 91. Because of the District's failure to follow Ms. Redfoot's recommendations, Mark
4 S. matriculated out of Ms. Redfoot's class into another special education classroom where he did
5 not receive evidence-based instruction, or proper behavioral services and supports, causing him
6 to regress academically. Mark S. now needs individualized remediation services, but because the
7 District lacks an infrastructure for providing push-in services, he must be pulled out of the
8 general education classroom to receive remediation.

9 **2. Inadequate Instruction**

10 92. Mark S. has strong academic skills. During Mark S.'s kindergarten and first-grade
11 years, Ms. Redfoot provided him evidence-based instruction tied to the statewide academic
12 content standards despite the District's contrary policy and practice, and Mark S. achieved
13 mastery of those standards. But when Ms. Redfoot's was forced to take a temporary disability
14 leave for health reasons at the beginning of Mark S.'s first grade year, Mark S.'s teachers wrote
15 his new IEP goals and failed to align those goals to the statewide academic standards. The
16 teachers also failed to provide any evidence-based instruction designed to help Mark S. meet
17 goals aligned to the standards, focused on functional skills, and prioritized behavioral regulation
18 and compliance over all else.

19 93. When Mark S. matriculated into another special education class in fall 2020, the
20 District once again refused and failed to provide him with evidence-based instruction tied to the
21 statewide academic content standards, reflecting District policy and practice. During most school
22 days in the 2020-2021 year, Mark S.'s teachers provided little to no evidence-based instruction
23 on standard academic goals for their students to progress from grade to grade. Mark S.'s teachers
24 did not follow any evidence-based programs or implemented only small, dispersed segments of
25 those programs (not as the programs were intended to be used). They spent most of the
26 classroom time showing non-instructional videos and movies, having students work on arts and
27 crafts, or teaching functional skills. In May 2021, at the end of Mark S.'s second grade year, an
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1 independent psychoeducational evaluation revealed that Mark S.’s reading and writing skills
2 have fallen to a pre-Kindergarten to beginning first grade level despite having mastered first
3 grade statewide academic content standards at the end of the previous academic year, 2019-20.
4 Specifically, Mark S.’s verbal knowledge was in the first percentile for his age, his English oral
5 language skills were “exceptionally low” for his age, his skills on language-based learning tasks
6 are exceptionally low to well below average for his age and grade, and his reading and written
7 expression skills were estimated to fall at a pre-kinder to early first grade instructional level.

8 94. In her May 2021 report, the assessor wrote that Mark S.’s regression was the
9 result of “District programming [that] has not provided [Mark S.] with the kinds of instruction or
10 tools he has needed to in order to make meaningful educational progress in several core
11 academic skill areas.” The assessor emphasized that Mark S. “deserves to have appropriately
12 ambitious goals that draw upon his unique strengths and that allow him to make meaningful
13 educational progress, while continuing to access the core/general curriculum and being held to
14 state standards.” Mark S. will need numerous hours of individualized instruction over the next
15 two years to fully catch up to his peers. Anna S. is urgently concerned that the District lacks the
16 infrastructure necessary to provide evidence-based instruction to help her son catch up, and that
17 Mark S. will be trapped in a segregated classroom where he will fall further behind his grade-
18 level peers if these violations are not addressed.

19 **B. Rosa T.**

20 95. Rosa T. is an eighteen-year-old Latina English learner student who qualifies for
21 special education services because she has a Specific Learning Disability. Her cognitive abilities
22 are in the average range. Rosa T. also has Anxiety Disorder, Mood Disorder, and Insomnia
23 Disorder. Rosa T. entered her second year of twelfth grade at Pittsburg Unified because she has
24 not earned enough credits to graduate.

25 **1. Inadequate Instruction**

26 96. Rosa T. has been deprived of evidence-based instruction tied to the statewide
27 academic content standards in both her general education and segregated settings. During most
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1 school days during the 2019-2020 and 2020-2021 academic years, Rosa T.'s general education
2 and special education teachers provided little to no evidence-based instruction designed to help
3 disabled students to progress in the standards. Instead, Rosa T.'s general education teachers spent
4 most of the classroom time providing the same instruction to all students despite knowing that
5 Rosa T. was far behind her peers' grade levels. The teachers did not provide any differentiated,
6 small-group, or one-to-one evidence-based instruction to help Rosa T. master grade-level
7 standards in light of her disability. In Rosa T.'s segregated classroom, the special education
8 teachers hardly provided *any* explicit instruction, let alone evidence-based instruction. Instead,
9 they required Rosa T. and her disabled classmates to work on their homework from other classes
10 and ask for help if needed. As a result of these deficient instructional practices, in the middle of
11 the twelfth grade during the 2020-2021 school year, Rosa T.'s reading comprehension skills
12 were several levels below her grade-level, even as low as third-grade on certain assessments. She
13 also scored below grade level standards in English Language Arts and Mathematics on the
14 California Assessment Exam in the eleventh grade. Rosa T. has made little academic progress
15 since the 2019-2020 school year and still struggles significantly with reading, spelling, and
16 writing.

17 2. **Unlawful Segregation**

18 97. The District continues to use Rosa T.'s academic struggles to justify segregating
19 her from her general education peers. Rosa T. currently spends 37% of her time outside of the
20 general education classroom in support classes for students with disabilities. But the District fails
21 to provide push-in services to help Rosa T. remain in the general education classroom, such as
22 providing differentiated, small-group, or one-to-one instruction. Because Rosa T. is so far behind
23 and the District lacks an infrastructure for providing push-in services, Rosa T. will need to be
24 pulled out of the general education classroom and into a segregated setting to receive
25 remediation.

1 **3. Denial of Mental Health Services**

2 98. Rosa T. has experienced symptoms of severe anxiety and depression that have
3 significantly interfered with her education since at least her sophomore year of high school in the
4 2018-2019 academic year. Yet, the District has deprived Rosa T. of Mental Health Services.
5 Rosa T.'s psychiatrist has diagnosed Rosa T. with Anxiety Disorder, Mood Disorder, and
6 Insomnia Disorder. In her junior year of high school, Rosa T. missed 47 days of school after
7 missing 90 days the year before. Rosa T.'s mother explained to the District in IEP meetings,
8 home visits, and on phone calls that Rosa T.'s absences were due to her anxiety, depression, and
9 insomnia, and that the family needed more support. A 2019 psychoeducational evaluation
10 identified Rosa T.'s mental illnesses and their effect on her attendance, and recommended the
11 District consider offering her on-site counseling. As Rosa T.'s mental health deteriorated over
12 the next two years and Sofia L. requested additional support at school, the District failed to
13 provide Mental Health Services and supports. Instead, the District continually recommended
14 pushing her into a fully segregated placement at a separate school and also referred Rosa T. and
15 her mother to truancy court multiple times. In their last appearance at truancy court, the judge
16 asked why Rosa T. kept getting sent to the court and ordered counseling through the county.

17 99. The District's failure to properly support Rosa T. has exacerbated her mental
18 health issues to the point that she cannot attend school in person. These failures by the District
19 have caused Rosa T. to require full segregation from her peers.

20 **V. The State Has an Obligation to Deliver Equal Educational Opportunity and Is**
21 **Responsible for Monitoring School Districts to Ensure Compliance with the**
22 **Constitution and Section 56000.**

23 100. The State has failed to comply with its obligation to ensure that, through oversight
24 and intervention, Pittsburg Unified and other districts are complying with state constitutional,
25 statutory, and regulatory mandates regarding the education of students of color and disabled
26 students.

1 101. The State retains ultimate, plenary power over public education in the State of
2 California. Notwithstanding any purported delegation of authority to local school districts, the
3 State bears responsibility to ensure that all children in California’s public school receive equal
4 educational opportunity. The primary responsibility for carrying out the State’s duties and
5 functions with respect to its educational mandate resides with the State Superintendent of Public
6 Instruction and with the State Board of Education. The California Department of Education is
7 ultimately responsible for administering and enforcing laws related to education and has a
8 responsibility under law to monitor school districts to ensure students with disabilities are
9 receiving an appropriate education as required by Section 56000. Cal. Educ. Code §§ 33308,
10 33300-16; 5 C.C.R. § 3201(c)(3). None of these offices have effectively supervised the statewide
11 system of public education to ensure that students in Pittsburg Unified, and in all California,
12 receive equal educational opportunity. Instead, the State has abdicated its legal responsibilities to
13 Mark S. and Rosa T. (collectively “Student Plaintiffs”) and their disabled peers and other
14 students of color to provide equal educational opportunities.

15 102. The State has long known that Pittsburg Unified has engaged in the unlawful
16 policies and practices outlined in this Writ and Complaint, because they collect and analyze the
17 data that illustrate the allegations outlined in this Writ and Complaint.⁴⁴ The State has also

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19 ⁴⁴ See, e.g., CAL. DEP’T OF EDUC., *Annual Performance Report Measures* (Sept. 2, 2020),
20 available at: <https://www.cde.ca.gov/sp/se/ds/leadatarpts.asp> (showing that, in the 2017-18
21 school year: 74% of school districts statewide had a better rate than Pittsburg Unified of “in
22 regular [general education] class less than 40%” of the time, 82% of districts statewide had a
23 better rate than the District of “in regular class more than 80%” of the time, and 93% of districts
24 statewide had a better rate than the District of placing students in separate schools); EDUC. DATA
25 P’SHP, *Pittsburg Unified: Students Suspended for Defiance Only by Race/Ethnicity*, available at:
26 <https://www.ed-data.org/district/Contra-Costa/Pittsburg-Unified> (last accessed Sept. 7, 2021)
27 (showing for the four school years encompassing 2016-2020, the District suspended Black
28 students for defiance-only at the highest or second-highest rates as compared to other
racial/ethnic groups; and during 2017-18 and 2018-19, the District suspended Native American
students for defiance-only suspension at over twice the rate for white, Asian, and Latine
students.); See CAL. ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS, *supra* n.11
(showing in 2018-19, the last time the California Assessment Exam was administered, 95.1% of
disabled students in the District did not meet proficiency in English Language Arts and 96.27%
did not meet proficiency in Mathematics, compared to 83.64% and 87.38%, respectively, for
disabled students across the state.).

1 received multiple written complaints from special education staff and students with similar
2 factual allegations of systemic violations. Although the State should have flagged Pittsburg
3 Unified’s special education and disciplinary programs as extreme outliers, it failed to proactively
4 or adequately monitor, review, inspect, and remedy the District’s unlawful policies and practices.
5 Although the State has flagged the District as needing intensive monitoring and intervention for
6 multiple years, it has only flagged the District on a small subset of the issues described in this
7 Writ and Complaint. Moreover, the District remains flagged by the State as needing intensive
8 monitoring but has made little to no progress on the systemic flaws outlined in this Writ and
9 Complaint. The State’s superficial “monitoring” of Pittsburg Unified’s special education
10 program has been totally ineffective in bringing about better outcomes for Pittsburg Unified’s
11 disabled students and is representative of the State’s broader failure to monitor and intervene
12 when school districts fail to provide equal educational opportunity to disabled students and
13 students of color, especially Black students. These failures by the State have inevitably led to a
14 deficient educational system in the District that steers disabled students, and disabled students of
15 color and disabled English learners in particular, into separate and inferior classrooms where
16 they are barred from accessing meaningful academic opportunities and their right to a basic
17 education.

18 103. The State’s monitoring and intervention system also more generally fails to
19 capture low-performing school districts like Pittsburg Unified and effectively remedy their
20 systemic deficiencies. To adequately monitor school districts’ compliance with the law, the State
21 must incorporate a qualitative monitoring and intervention approach—including classroom
22 observations, investigation of inputs, and provision of high quality professional development—to
23 ensure that school districts implement policies, procedures, and practices to ensure that students
24 are referred for assessments, and assessed, based on criteria free from racial and language-biases;
25 disabled students are provided quality services and supports to prevent placement into special
26 education classrooms; teachers and aides provide evidence-based instructional strategies tied to
27 statewide academic content standards; and school discipline systems utilize anti-racist and
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1 authentic restorative strategies to prevent disproportionate discipline of disabled students of
2 color. The State must also incorporate this qualitative monitoring approach to its complaint
3 investigation procedures, whose paper-compliance mindset overly focuses on quantitative
4 measures that fail to capture violations alleged in administrative complaints. By failing to
5 investigate the adequacy of the inputs, the State improperly assumes that the *outputs*—students’
6 performances—reflect legally compliant educational policies and practices.

7 104. The State must also adjust its quantitative monitoring approach. For example, the
8 State claims to incorporate district-level data disaggregated by race and placement but has never
9 disclosed that data to prove it is conducting the analysis and enable the public to put pressure on
10 failing districts to comply with State and federal constitutional and statutory laws.

11 **VI. Plaintiffs Have Exhausted Administrative Remedies and Have No Plain, Speedy,
12 and Adequate Remedy at Law Other than the Instant Writ and Complaint.**

13 105. On February 25, 2021, Anna S. filed a complaint on behalf of her son, Mark S.,
14 and all other similarly situated students at Pittsburg Unified with the California Department of
15 Education’s Complaint Resolution Unit against the Department and the District, pursuant to 5
16 C.C.R. Section 3200 *et seq.*, challenging all of the systemic violations of law outlined in this
17 Writ and Complaint except for discriminatory discipline practices. On May 5, 2021, and May 21,
18 2021, the California Department of Education responded to the administrative complaint denying
19 all of the systemic claims.

20 106. On July 7, 2021, Jessica Black filed a complaint on behalf of her daughter, L.G.,
21 and all other similarly situated students at Pittsburg Unified with the California Department of
22 Education’s Complaint Resolution Unit against the Department and the District, pursuant to 5
23 C.C.R. Section 3200 *et seq.*, challenging the same systemic violations of law outlined in Anna
24 S.’s complaint and adding allegations about the District’s discriminatory discipline practices.
25 During a phone call with counsel for Plaintiffs and by letter on July 20, 2021, the California
26 Department of Education stated that it would not investigate systemic violations that had been
27 made in previous administrative complaints. On September 10, 2021, the California Department

1 of Education issued an investigation report that failed to address or acknowledge any of the
2 systemic claims.

3 107. On August 2, 2021, Sofia L. filed a complaint on behalf of her daughter, Rosa T.,
4 and all other similarly situated students at Pittsburg Unified with the California Department of
5 Education's Complaint Resolution Unit against the Department and the District pursuant to 5
6 C.C.R. Section 3200 *et seq.* challenging the same systemic violations of law outlined in Anna
7 S.'s complaint and adding allegations about the District's failure to provide Mental Health
8 Services. On October 7, 2021, the California Department of Education responded to the
9 administrative complaint but, consistent with its position that it would not investigate allegations
10 of systemic violations that had been made in previous administrative complaints, failed to
11 address or acknowledge any of the systemic claims. On November 3, 2021, Sofia L. on behalf of
12 her daughter, Rosa T., submitted a request for reconsideration of the California Department of
13 Education's Investigation Report dated October 7, 2021. On February 7, 2022, the California
14 Department of Education responded to the administrative complaint once again failing to address
15 any of the systemic claims.

16 108. On June 17, 2022, Sofia L. filed a complaint on behalf of her other daughter and
17 all other similarly situated students at Pittsburg Unified with the California Department of
18 Education's Complaint Resolution Unit against the Department and the District pursuant to 5
19 C.C.R. Section 3200 *et seq.* challenging the same systemic violations of law outlined in her
20 previous complaint on behalf of Rosa T.'s and adding allegations about the District's policy
21 requiring disabled students to keep academic pace with their non-disabled peers. On September
22 15, 2022, the California Department of Education responded to the administrative complaint but,
23 consistent with its position that it would not investigate allegations of systemic violations that
24 had been made in previous administrative complaints, failed to address, or acknowledge any of
25 the systemic claims. On October 11, 2022, Sofia L. submitted a request for reconsideration of the
26 California Department of Education's Investigation Report dated September 15, 2022. On
27 December 2, 2022, the California Department of Education denied this request. Plaintiffs have
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1 accordingly exhausted their administrative remedies. Moreover, because the California
2 Department of Education stated that it would not investigate systemic violations that had been
3 made in previous administrative complaints, it is accordingly futile for other taxpayer and
4 student plaintiffs to pursue administrative remedies.

5 109. On June 1, 2021, Michell Redfoot, Dr. Nefertari Royston, and Jessica Black
6 (collectively “Taxpayer Plaintiffs”) filed a Uniform Complaint Procedure (“UCP”) Complaint
7 with the District, pursuant to 5 C.C.R. Section 4620, challenging all of the systemic violations of
8 law outlined in this Writ and Complaint. On July 30, 2021, the District issued an Investigative
9 Report finding that “the Complaint lacks merit.” On August 4, 2021, the Taxpayer Plaintiffs
10 appealed this decision to the California Department of Education. On August 24, 2021, the
11 District responded again to the UCP Complaint, purporting separate Investigative Reports to Dr.
12 Royston and Jessica Black that were substantially identical to its July 30 response, again finding
13 that “the Complaint lacks merit.” On August 24, 2021, erring on the side of caution to close off
14 any arguments that her UCP Complaint had not been administratively exhausted, Plaintiff Dr.
15 Royston appealed the District’s Investigative Report to the California Department of Education.
16 On August 30, also erring on the side of caution to close off any arguments that her UCP
17 Complaint had not been administratively exhausted, Taxpayer Plaintiff Jessica Black appealed
18 the District’s Investigative Report to the California Department of Education (“Department”). On
19 October 1, 2021, the Department sent a letter to Taxpayer Plaintiff Michell Redfoot granting
20 itself an indefinite extension to review her appeal. On October 3, 2021, sixty days after Taxpayer
21 Plaintiffs filed their appeal with the Department on August 4, 2021; or, in the alternative, on
22 October 29, 2021, sixty days after all three Taxpayer Plaintiffs filed their appeals with the
23 Department, the appeal process was fully exhausted. *See* Cal. Educ. Code § 262.3(d) (stating that
24 individuals seeking relief who allege they are a victim of discrimination “may not seek civil
25 remedies pursuant to this section until at least 60 days have elapsed from the filing of an appeal
26 to the State Department of Education”); *Collins*, 41 Cal. App. 5th at 912 (observing that “CDE . .
27 . must . . . complete its review in 60 days.”).

1 110. On October 22, 2021, the Department sent a letter to Taxpayer Plaintiff Dr.
2 Royston granting itself an indefinite extension to review her appeal. On October 29, 2021, the
3 Department sent a letter to Taxpayer Plaintiff Jessica Black granting itself an indefinite extension
4 to review her appeal. On November 4, 2021, the Department issued a determination on Taxpayer
5 Plaintiffs' appeals that directed Pittsburg Unified to issue an "amended investigation report" on
6 significantly narrower grounds and only encompassing events within the six months prior to the
7 date the UCP Complaint was filed. On November 24, Pittsburg Unified issued "amended
8 investigation reports" to Taxpayer Plaintiffs Redfoot, Royston, and Black finding in each that
9 "[t]he supplemental findings of fact show that the allegations in the Decision's conclusion lack
10 merit." Again, erring on the side of caution to close off any arguments that their UCP Complaints
11 had not been administratively exhausted, on November 24, 2021, Taxpayer Plaintiffs Dr.
12 Royston and Ms. Black filed further appeals with the Department; and Taxpayer Plaintiff
13 Redfoot filed a further appeal with the Department on November 29, 2021. The Department sent
14 written notices to Taxpayer Plaintiffs Redfoot, Royston, and Black dated December 2, 2021,
15 stating "this appeal is now closed."

16 111. On January 21, 2022, the Department sent written notices to Taxpayer Plaintiffs
17 Royston and Black that "the appeal is denied." That same day, the Department issued a
18 determination on Taxpayer Plaintiff Redfoot's appeal that directed Pittsburg Unified to issue an
19 "amended investigation report" within 20 days. On January 28, 2022, the Department sent
20 another letter to Taxpayer Plaintiff Michell Redfoot granting itself yet another indefinite
21 extension to review her appeal. On February 10, 2022, the District sent a second amended
22 Investigation Report to Plaintiff Redfoot concluding that "[t]he supplemental findings of fact
23 show that the allegations in the Remand's conclusion lack merit." On March 11, 2022, once
24 again erring on the side of caution to close off any arguments that her UCP Complaint had not
25 been administratively exhausted, Taxpayer Plaintiff Redfoot filed a third appeal with the
26 Department. On June 10, 2022, the Department sent a letter to Taxpayer Plaintiff Redfoot stating
27 "the appeal is denied."

1 112. By filing the multiple appeals, in August 2021, in November 2021, and in March
2 2022, by receipt of written notice from the Department dated December 2, 2021 closing their
3 appeals, and because sixty days has elapsed after all of their appeals to the Department, the
4 Taxpayer Plaintiffs have fully exhausted their administrative remedies through the UCP process
5 or, in the alternative, are excused from any exhaustion requirements due to futility and the
6 Department's repeated attempts to obstruct administrative exhaustion by granting itself repeated
7 indefinite extensions of time to make a determination on the appeals. Accordingly, Taxpayer
8 Plaintiffs have no plain, speedy and adequate remedy at law other than that sought herein.

9 113. Student and Taxpayer Plaintiffs have thus fully exhausted their administrative
10 remedies or, in the alternative, are excused from any exhaustion requirements. Accordingly,
11 Student and Taxpayer Plaintiffs have no plain, speedy, and adequate remedy at law other than
12 that sought herein.

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION – VIOLATION OF STATE CONSTITUTIONAL RIGHT**
15 **TO EQUAL PROTECTION**

16 **By All Plaintiffs Against All Defendants for Violation of the Equal Protection Clauses of**
17 **the California Constitution, Article I, Section 7(a) & Article IV, Section 16(a) (Inadequate**
18 **Instruction) (Unlawful Segregation) (Racial Discrimination)**

19 114. Student Plaintiffs Mark S., by and through his guardian ad litem Anna S., and
20 Rosa T., by and through her guardian ad litem Sofia L., and Taxpayer Plaintiffs Jessica Black,
21 Michell Redfoot, and Dr. Nefertari Royston (collectively "Plaintiffs") incorporate the preceding
22 paragraphs of this Writ and Complaint as if set forth in full herein and incorporate by reference
23 paragraphs numbers 133 through 146 of this Writ and Complaint as if set forth in full herein.

24 115. Defendants have a clear and present State-mandated duty under Article I, Section
25 7(a) and Article IV, Section 16(a) of the California Constitution to ensure that students,
26 regardless of race, national origin, and disability in Pittsburg Unified are given basic educational
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1 opportunities equal to those of other students elsewhere in the State, including a Free
2 Appropriate Public Education tied to California’s academic content standards.

3 116. Defendants have knowingly violated and continue to violate the rights of
4 Plaintiffs to receive equal protection of the laws, as guaranteed by Article I, Section 7(a) and
5 Article IV, Section 16(a) of the California Constitution.

6 117. Defendant District has violated the rights of Plaintiffs by maintaining policies and
7 making decisions that overidentify Black and English learner students as having disabilities or
8 more severe disabilities; fail to provide evidence-based instruction based on California’s
9 statewide academic content standards to disabled students in general and special education
10 classrooms; disproportionately exclude Black, Native American, and multiracial students with
11 and without disabilities through disciplinary exclusion from the classroom and involuntary
12 transfer to schools with inferior academic instruction; and harass, target, and discriminatorily
13 discipline Black, Native American, multiracial, and disabled students, and students at the
14 intersection of those identities.

15 118. The District’s application of policies in its administration of educational services
16 within District schools has had and continues to have the effect of denying Plaintiffs full and
17 equal access to the benefits of the programs or activities administered by the District, or of
18 subjecting Plaintiffs to discrimination under such programs or activities, on the basis of their
19 race, national origin, or disability. The following policies are illustrative of the disproportionate
20 impact of the application of these policies on Black, Native American, multiracial, English
21 learner and disabled students within the District: failing to provide assessments to students in
22 their native language; failing to provide sufficient training to District staff in the consideration
23 and implementation of special education services and supports to include disabled students in the
24 Least Restrictive Environment; refusing to provide instruction tied to the statewide academic
25 content standards to disabled students in segregated classrooms; failing to provide teachers with
26 sufficient training in the use of evidence-based instruction for disabled students; and use of a
27 highly discretionary discipline system, including suspension, expulsion and involuntary policies,
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1 that perpetuates racial and ableist biases and disparately negatively impact the rights of Black,
2 Native American, multiracial, English learner, and disabled students to attend school in a general
3 education setting.

4 119. State Defendants have also violated the rights of Plaintiffs by failing to respond to
5 reports that disabled students do not receive basic educational opportunities equal to those that
6 other students in California receive and failing to exercise meaningful oversight over school
7 districts, including Pittsburg Unified, where disabled, Black, Native American, multiracial, and
8 English learner students are de facto segregated from school and/or provided inferior academic
9 instruction; and where Black, Native American, multiracial, and disabled students, and students
10 at the intersection of those identities, are targeted for harassment and discriminatory discipline.

11 120. The State Defendants' defective system for monitoring school districts and
12 selecting them for intensive review and intervention has had and continues to have the effect of
13 denying Plaintiffs and other students full and equal access to the benefits of the programs or
14 activities administered by the District, and subjecting Plaintiffs and other students to
15 discrimination under such programs or activities, on the basis of their race, national origin, or
16 disability. The State Defendants systematically fail to identify the scope of systemic issues at
17 school districts, like Pittsburg Unified, that disproportionately segregate disabled students of
18 color into classrooms that provide an inferior education or disproportionately discipline students
19 of color, with and without disabilities, that robs them of valuable instructional time.

20 121. Plaintiffs seek injunctive relief enjoining all Defendants from permitting
21 operation of a special education program that overidentifies Black and English learner students
22 as having disabilities or more severe disabilities; fails to provide evidence-based instruction
23 based on California's statewide academic content standards, as a matter of District policy, to
24 disabled students in general and special education classrooms; from permitting operation of a
25 student discipline program that discriminates on the basis of race, ethnicity, national origin, or
26 disability and disproportionately excludes Black and multiracial students with and without
27 disabilities through disciplinary exclusion from the classroom and involuntarily transfer to
28

1 schools with inferior academic instruction; and harasses, targets, discriminatorily disciplines
2 Black, Native America, multiracial, and disabled students, and students at the intersection of
3 those identities. Plaintiffs also seek injunctive relief ordering all Defendants to promulgate
4 policies and/or practices to restore students' fundamental right to equal educational opportunity
5 and provide associated relief. Unless enjoined, Defendants will continue to violate the right to
6 receive equal protection of the laws under the California Constitution, and Plaintiffs and the
7 general public will suffer irreparable harm.

8 122. Taxpayer Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and Jessica Black
9 bring this action through California Code of Civil Procedure section 526a as taxpayer plaintiffs.
10 As alleged more fully below in paragraph 134, Taxpayer Plaintiffs have each been assessed for
11 or paid taxes. As alleged more fully below in paragraph 135, State Defendants and Defendant
12 District each receive public funds. Taxpayer Plaintiffs contend that Defendants' actions and
13 inactions as described in this Petition and Complaint violate Article I, Section 7(a) and Article
14 IV, Section 16(a) of the California Constitution; constitute an illegal expenditure, or waste, of
15 taxpayer funds; and constitute an abuse of discretion. Taxpayer Plaintiffs seek a judicial
16 declaration of the rights and duties of the respective parties with respect to the instant matter.

17 **SECOND CAUSE OF ACTION – VIOLATION OF CALIFORNIA EDUCATION CODE**

18 **SECTION 56000**

19 **By All Plaintiffs Against Defendant District for Violation of the California Education Code**
20 **(Overidentification; Violation of Right to Free Appropriate Public Education in the Least**
21 **Restrictive Environment)**

22 123. Plaintiffs incorporate the preceding paragraphs of this Writ and Complaint as if
23 set forth in full herein and incorporate by reference paragraphs numbers 133 through 146 of this
24 Writ and Complaint as if set forth in full herein.

25 124. Pittsburg Unified has clear and present duty under California Education Code
26 Section 56000 *et seq.* to ensure that students receive a Free Appropriate Public Education in the
27 Least Restrictive Environment. The District has failed to abide by its duties, including but not
28

1 limited to those under California Education Code Sections 56320(a), (b)(1), and (f), 56330, and
2 56337, and the California Code of Regulation Title 5 Sections 3030(b)(10)(A)-(C), 3023(a), by
3 maintaining policies and making systemic decisions that unnecessarily refer and assess Black
4 and English learner students for disabilities, including more severe disabilities, use racially and
5 culturally discriminatory assessment procedures, assess English learner students in a language
6 other than their native language, and unnecessarily identify these students with disabilities,
7 including more severe disabilities, causing them to receive improper instructional services and to
8 be unnecessarily placed in segregated settings.

9 125. Pittsburg Unified has violated and continues to violate the rights of Student
10 Plaintiffs and those similarly situated to receive a Free Appropriate Public Education in the Least
11 Restrictive Environment as guaranteed by California Education Code Section 56000 *et seq.*,
12 including but not limited to Sections 56000(a), 56001(a), 56031, 56033.5, 56040(a), 56040.1,
13 56320(f), 56337, 56341.1(b)(1), 56345, 56364.2(a), 56521.1(b), and 56521.2(b), and the
14 California Code of Regulation Title 5 Section 3030(b)(10)(A)-(C), by having policies that fail to
15 provide special education services and supports to enable disabled students, including Black,
16 Latine, multiracial, and English learner students with disabilities, access to the general education
17 classroom; and fail to provide evidence-based instruction tied to California’s academic content
18 standards to enable disabled students in special education and general education classrooms to
19 meet “challenging objectives” that are “appropriately ambitious” and “achieve advancement
20 from grade to grade.” *Andrew F.*, 137 S. Ct. 1000.

21 126. Plaintiffs seek injunctive relief enjoining Defendants from failing to provide
22 disabled students, including Black, multiracial, and English learner students with disabilities,
23 with a Free Appropriate Public Education in the Least Restrictive Environment, as well as the
24 use of discriminatory practices, and ordering the Defendants to promulgate policies and/or
25 practices to assure compliance with state law and provide associated relief.

1 127. Unless enjoined, Defendants will continue to violate the right of Plaintiffs and
2 disabled students to a Free Appropriate Public Education in the Least Restrictive Environment,
3 and Plaintiffs will suffer irreparable harm.

4 128. Taxpayer Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and Jessica Black
5 bring this action through California Code of Civil Procedure section 526a as taxpayer plaintiffs.
6 As alleged more fully below in paragraph 134, Taxpayer Plaintiffs have each been assessed for
7 or paid taxes. As alleged more fully below in paragraph 135, Defendant District receives public
8 funds. Taxpayer Plaintiffs contend that Defendant District's actions and inactions as described
9 in this Petition and Complaint violate Article I, Section 7(a) and Article IV, Section 16(a) of the
10 California Constitution and California Education Code Section 56000 et seq.; constitute an
11 illegal expenditure, or waste, of taxpayer funds; and constitute an abuse of discretion. Taxpayer
12 Plaintiffs seek a judicial declaration of the rights and duties of the respective parties with respect
13 to the instant matter.

14 **THIRD CAUSE OF ACTION – DECLARATORY RELIEF**

15 **By All Plaintiffs Against All Defendants for Declaratory Relief**

16 129. Plaintiffs incorporate the preceding paragraphs of this Writ and Complaint as if
17 set forth in full herein and incorporate by reference paragraphs numbers 133 through 146 of this
18 Writ and Complaint as if set forth in full herein.

19 130. An actual and existing controversy exists between Plaintiffs and Defendants
20 because Plaintiffs contend, and Defendants will dispute, that Defendants' actions and inactions
21 as described above have violated Article I, Section 7(a) and Article IV, Section 16(a) of the
22 California Constitution and California Education Code Section 56000 *et seq.*

23 131. Plaintiffs seek a judicial declaration that the Defendants have violated these
24 constitutional and statutory provisions.

25 132. Taxpayer Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and Jessica Black
26 bring this action through California Code of Civil Procedure section 526a as taxpayer plaintiffs.
27 As alleged more fully below in paragraph 134, Taxpayer Plaintiffs have each been assessed for
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1 or paid taxes. As alleged more fully below in paragraph 135, State Defendants and Defendant
2 District each receive public funds. Taxpayer Plaintiffs contend that Defendants' actions and
3 inactions as described in this Petition and Complaint violate Article I, Section 7(a) and Article
4 IV, Section 16(a) of the California Constitution and California Education Code Section 56000 et
5 seq.; constitute an illegal expenditure, or waste, of taxpayer funds; and constitute an abuse of
6 discretion. Taxpayer Plaintiffs seek a judicial declaration of the rights and duties of the
7 respective parties with respect to the instant matter, including declaratory relief.

8 **FOURTH CAUSE OF ACTION – TAXPAYER CLAIM**

9 **By Taxpayer Plaintiffs Jessica Black, Michell Redfoot, and Dr. Nefertari Royston Against**
10 **All Defendants for Violation of California Code of Civil Procedure Section 526a (Illegal**
11 **Expenditure of Taxpayer Funds)**

12 133. Plaintiffs incorporate the preceding paragraphs of this Writ and Complaint as if
13 set forth in full herein.

14 134. Taxpayer Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and Jessica Black
15 have, within the last year, each been assessed for, and are liable to pay, taxes on their property,
16 income, or other taxes in the City of Pittsburg and in the county in which they reside, and pay
17 taxes to the State of California and the United States of America.

18 135. Defendants received State and federal funds which have been appropriated and
19 allocated to the Defendants for the purpose of administering educational programming where
20 students are guaranteed educational equity regardless of race, national origin, or disability.

21 136. Defendants' expenditure of federal, state, county, and/or municipal funds to
22 administer and implement a system of public education that engages in unconstitutional
23 discrimination in violation of California civil rights and statutory law, as challenged herein, is
24 unlawful. Defendants, through the actions of their agents, have expended tax monies and threaten
25 to continue and will continue to expend tax monies in an illegal manner in violation of State law
26 as alleged in this Writ and Complaint.

1 137. Pittsburg Unified receives public funds from various sources, both state and
2 federal, that are collected by or granted to the State of California and appropriated and allocated
3 by the State of California to local education agencies, including Pittsburg Unified, for the
4 purposes of providing education services to students enrolled in California schools. The sources
5 of those funds include but are not limited to the state lottery money, and general funds allocated
6 pursuant to the State Local Control Funding Formula. Funds are provided to Pittsburg Unified to
7 fulfill its obligations, as a local education agency, to provide free public education to all students
8 and to provide it in a manner that provides equal access to educational services to all children.
9 Additionally, certain funds are appropriated and allocated to provide supplemental services
10 designed to increase educational opportunity for socially and economically disadvantaged
11 children and English Learners, and to support students designated as eligible for special
12 education services.

13 138. State Defendants receive public funds from various sources, both state and
14 federal, that are collected by or granted to the State of California and appropriated and allocated
15 by the State of California to pay for various personnel and services provided by the State
16 Defendants. The sources of those funds include but are not limited to the state lottery money and
17 general funds allocated pursuant to the Local Control Funding Formula. Funds are provided to
18 the State Defendants to fulfill their obligations to provide a free public education to all students
19 and to provide it in a manner that provides equal access to educational services to all children.
20 Additionally, certain funds are appropriated and allocated to provide supplemental services
21 designed to increase educational opportunity for socially and economically disadvantaged
22 children, English Learners, and to support students designated as eligible for special education
23 services. Included in those allocations are funds to be used by the State to pay for the personnel
24 and services necessary to monitor and oversee the performance of local school districts with
25 respect to their obligations under the state constitution and statutes to provide equal educational
26 opportunity, in an educationally-sound system, free of discrimination. *See, e.g.,* 5 C.C.R. § 4900
27 (“All educational programs and activities **under the jurisdiction of the State Board of**
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1 **Education** receiving or benefiting from state or federal financial assistance shall be available to
2 all qualified persons without regard to sex, sexual orientation, gender, ethnic group
3 identification, race, ancestry, national origin, religion, color, or mental or physical disability.”)
4 (emphasis added). By failing to prevent and remedy unlawful discrimination in special education
5 programs and disciplinary policies and practices, and otherwise failing to take steps to ensure
6 equal educational access for Black, Native American, multiracial, English learner, and disabled
7 students, as alleged herein, Defendants have unlawfully diverted money intended to provide
8 equal educational opportunity and access, in an educationally-sound system, free of
9 discrimination, to other uses in violation of state law.

10 139. Pittsburg Unified, as alleged herein, has expended those public funds to develop,
11 maintain, and enforce policies, practices, and customs that violate constitutional and statutory
12 provisions as alleged in this Writ and Complaint. For example, the District’s publicly-funded
13 education program violates the law by forbidding special education teachers in special education
14 classrooms from providing instruction tied to the statewide academic content standards, as
15 discussed further in paragraph 69, *supra*.

16 140. State laws specifically charge State Defendants with the obligations to monitor,
17 review, and ensure funds are expended for lawful purposes, including to ensure equal
18 educational opportunity. For example, California Education Code section 56836.04 requires the
19 State Superintendent of Public Instruction to continuously “monitor and review all special
20 education programs approved” under the State’s special education programs “to ensure that all
21 funds appropriated to special education local plan areas . . . are expended for the purposes
22 intended,” including “to assist local educational agencies to provide special education and related
23 services to individuals with exceptional needs.” Also, California Education Code section
24 56836.02 requires the State Superintendent of Public Instruction to apportion state funding to
25 districts and other local education agencies for special education programming. Further,
26 California Education Code section 33127 requires the State Superintendent of Public Instruction,
27 the State Controller, and the State Director of Finance to develop “standards and criteria to be
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1 reviewed and adopted by the state board, and to be used by local educational agencies in the
2 development of annual budgets and the management of subsequent expenditure from that
3 budget.”

4 141. State Defendants continue to permit or authorize the allocation or reimbursement
5 of public funds to Pittsburg Unified despite knowing that the funds are being illegally used.
6 Because State Defendants have permitted the use of these funds or authorized these funds
7 without fulfilling their statutory and constitutional obligation to ensure these funds are not used
8 to deprive students of equal educational access in a discrimination-free environment, they have
9 also committed waste.

10 142. Taxpayer Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and Jessica Black
11 have an interest in enjoining the unlawful expenditure of tax funds. Pursuant to Cal. Civ. Proc.
12 Code § 526a and this court’s equitable power, Taxpayer Plaintiffs Michell Redfoot, Dr. Nefertari
13 Royston, and Jessica Black seek declaratory and injunctive relief to prevent continued harm and
14 to protect Taxpayer Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and Jessica Black and the
15 public from Defendants’ unlawful policies, practices, and deliberate indifference, as alleged
16 herein. There is an actual controversy between Taxpayer Plaintiffs Michell Redfoot, Dr.
17 Nefertari Royston, and Jessica Black and Defendants concerning their respective rights and
18 duties. Taxpayer Plaintiffs Michell Redfoot, Dr. Nefertari Royston, and Jessica Black contend
19 that the Defendants have unlawfully administered educational programming in the Pittsburg
20 Unified School District and have failed to satisfy their duties to act to correct deficiencies, as
21 alleged herein, whereas Defendants contend in all respect to the contrary. Taxpayer Plaintiffs
22 Michell Redfoot, Dr. Nefertari Royston, and Jessica Black seek a judicial declaration of the
23 rights and duties of the respective parties with respect to the instant matter.

24 143. Taxpayer Plaintiffs have suffered and continue to suffer irreparable injury and are
25 without a plain, speedy, and adequate remedy in the ordinary course of the law to compel
26 Defendants to enforce and comply with the legal requirements outlined herein, thereby rendering
27 a Writ of Mandate appropriate. There is no provision in law for a taxpayer to receive money
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1 damages for unlawful governmental conduct; money damages would be difficult to ascertain;
2 and money damages would not adequately compensate taxpayers for unlawful governmental
3 activity.

4 144. Taxpayer Plaintiffs' success in this action will result in the enforcement of
5 important rights affecting the public interest by conferring significant benefits on a large class of
6 persons. Taxpayer Plaintiffs seek enforcement of rights not only for themselves, but for
7 taxpayers and students enrolled in California public schools that seek access to or benefit from
8 the programs and services provided through California's public school system.

9 145. Private enforcement of these rights is necessary, as no other agency has pursued
10 these rights.

11 146. Taxpayer Plaintiffs contend that Defendants' actions and inactions as described
12 above violate Article I, Section 7(a) and Article IV, Section 16(a) of the California Constitution;
13 California Education Code Section 56000 *et seq.*; constitute an abuse of discretion; and
14 constitute an illegal expenditure of taxpayer funds.

15 **FIFTH CAUSE OF ACTION – WRIT OF MANDATE**

16 **By All Plaintiffs Against Defendant District for a Writ of Mandate Under California Code**
17 **of Civil Procedure Section 1085**

18 147. Plaintiffs incorporate the preceding paragraphs of this Writ and Complaint as if
19 set forth in full herein.

20 148. Defendant District has a clear and present ministerial duty to ensure equal
21 educational opportunity to any person and a Free Appropriate Public Education in the Least
22 Restrictive Environment for all disabled children enrolled in the school districts they administer
23 and/or oversee; to take appropriate action to identify and eliminate policies that interfere with the
24 equal participation by their students in their instructional programs; and to monitor and ensure
25 that the schools and/or school districts are in compliance with state statutory and regulatory
26 requirements and the underlying purposes and specific provisions of the California Constitution
27 and state laws applicable to the provision of equal education to students of color with and
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1 without disabilities. Defendant District, as alleged herein, has failed and is failing to comply with
2 those duties and obligations.

3 149. Defendant District has a clear and present duty under California Education Code
4 Section 56000 *et seq.* to develop and implement policies, procedures, and programs to ensure
5 that all disabled students receive a Free Appropriate Public Education in the Least Restrictive
6 Environment. Defendant District has failed to develop and implement policies, procedures, and
7 programs consistent with their statutory duties under California Education Code Section 56000 *et*
8 *seq.* Respondents' failure has resulted in the disproportionate segregation of disabled students of
9 color into inferior segregated settings where they are denied access to a Free Appropriate Public
10 Education. Defendant District, as alleged herein, have failed and are failing to comply with those
11 duties and obligations and their actions, or inactions, constitute an abuse of discretion.

12 150. Defendant District has a clear and present ministerial duty to provide for equal
13 access to educational opportunity for all children enrolled in its schools; to take appropriate
14 action to identify and eliminate policies that interfere with the equal participation by their
15 students in their instructional programs; and to monitor and ensure that its schools are in
16 compliance with state and federal statutory and regulatory requirements and the underlying
17 purposes and specific provisions of the California Constitution and state laws applicable to the
18 provision of equal education to students of color and disabled students of color. As a result of the
19 Defendant District's failure to comply with its constitutional, statutory and regulatory duties,
20 students of color, English learners, and disabled students in Pittsburg Unified have been denied
21 equal educational opportunity and continue to suffer educational deficits as a result of the lack of
22 an effective educational program designed to provide equal educational opportunity to students
23 regardless of their race, ethnicity, national origin, or disability.

24 151. Plaintiffs have suffered and continue to suffer irreparable injury and are without a
25 plain, speedy, and adequate remedy in the ordinary course of the law to compel Defendant
26 District to comply with the legal obligations alleged in this Complaint.

1 156. Compensatory education to Student Plaintiffs, whom the District has deprived of
2 their right to equal educational opportunity;

3 157. An award of costs, disbursements and reasonable attorneys' fees and expenses;
4 and

5 158. For such other and further relief as the Court may deem just and proper.

6 Date: January 27, 2023

Respectfully by,

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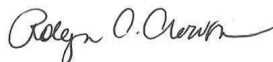
8 Malhar Shah
9 Claudia Center
10 DISABILITY RIGHTS EDUCATION AND
DEFENSE FUND

11 

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

16 

17 Ana G. Najera Mendoza
18 Victor Leung
19 AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN
20 CALIFORNIA

21 

22 Robyn Crowther
23 Amanda C. Schwartz
24 STEPTOE & JOHNSON LLP

Attorneys for Petitioners-Plaintiffs

VERIFICATION

I, Anna S., hereby declare:

1. I, Anna S., am the Guardian ad Litem of Plaintiff Mark S. I have read the foregoing Third Amended Petition for Writ of Mandate (CCP §1085) and Complaint for Declaratory and Injunctive Relief (CCP § 526(a)). I am informed, and do believe, that the matters herein are true. On that ground, I allege that the matters stated herein are true. In addition, the facts within paragraphs 6-7, 22, 24, 59, 60(e), 62, 73-74, 88-94, and 105 are within my own personal knowledge and I know them to be true.

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

Dated: January 27, 2023



Anna S.

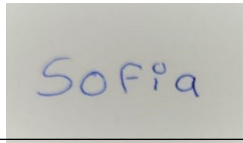
1 **VERIFICATION**

2 I, Sofia L., hereby declare:

3 1. I, Sofia L., am the Guardian ad Litem of Plaintiff Rosa T. I have read the
4 foregoing Third Amended Petition for Writ of Mandate (CCP §1085) and Complaint for
5 Declaratory and Injunctive Relief (CCP § 526(a)). I am informed, and do believe, that the
6 matters herein are true. On that ground, I allege that the matters stated herein are true. In
7 addition, some or all of the facts within paragraphs 6-7, 23, 25, 59, 60(d), 76, 95-99, 107, and
8 108 are within my own personal knowledge and I know them to be true.

9 2. I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11
12 Dated: January 27, 2023



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14 Sofia L.
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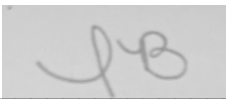
VERIFICATION

I, Jessica Black, hereby declare:

1. I, Jessica Black, am a Petitioner/Plaintiff in the above-entitled action. I have read the foregoing Third Amended Petition for Writ of Mandate (CCP §1085) and Complaint for Declaratory and Injunctive Relief (CCP § 526(a)). I am informed, and do believe, that the matters herein are true. On that ground, I allege that the matters stated herein are true. In addition, some or all of the facts within paragraphs 16, 28, 29, 60(d), 63, 81, 106, 109, and 110 are within my own personal knowledge and I know them to be true.

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

Dated: January 27, 2023



Jessica Black

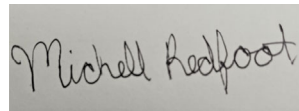
1 **VERIFICATION**

2 I, Michell Redfoot, hereby declare:

3 1. I, Michell Redfoot, am a Petitioner/Plaintiff in the above-entitled action. I have
4 read the foregoing Third Amended Petition for Writ of Mandate (CCP §1085) and Complaint for
5 Declaratory and Injunctive Relief (CCP § 526(a)). I am informed, and do believe, that the
6 matters herein are true. On that ground, I allege that the matters stated herein are true. In
7 addition, some or all of the facts within paragraphs 13, 26, 29, 46, 56, 60(a)-(c), 60(e)-(f), 60(h),
8 69-73, 90-92, and 109-11 are within my own personal knowledge and I know them to be true.

9 2. I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11
12 Dated: January 27, 2023



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Michell Redfoot

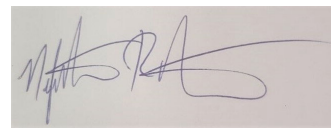
1 **VERIFICATION**

2 I, Nefertari Royston, hereby declare:

3 1. I, Nefertari Royston, am a Petitioner/Plaintiff in the above-entitled action. I have
4 read the foregoing Third Amended Petition for Writ of Mandate (CCP §1085) and Complaint for
5 Declaratory and Injunctive Relief (CCP § 526(a)). I am informed, and do believe, that the
6 matters herein are true. On that ground, I allege that the matters stated herein are true. In
7 addition, some or all of the facts within paragraphs 13, 17, 27, 29, 46, 56, 60(c), 60(e), 82, 83,
8 and 109-11 are within my own personal knowledge and I know them to be true.

9 2. I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

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12 Dated: January 27, 2023



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14 Dr. Nefertari Royston
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1 PROOF OF SERVICE

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

5 On **January 27, 2023**, I served the following listed document(s): **THIRD AMENDED**
6 **VERIFIED PETITION FOR WRIT OF MANDATE (CCP § 1085) AND COMPLAINT**
7 **FOR DECLARATORY AND INJUNCTIVE RELIEF (CCP § 526(A))** by the method
8 indicated below, on the parties in this action:

<p>9 State of California 10 Deputy Attorney General 11 California Department of Justice 12 455 Golden Gate Avenue # 11000 13 San Francisco, CA 94102</p>	<p>Jennifer.Bunshoft@doj.ca.gov</p>
<p>14 Tony Thurmond, in his official capacity as State 15 Superintendent of Public School Instruction 16 1430 N Street, Suite 5111 17 Sacramento, CA 95814</p> <p>18 State Board of Education 19 1430 N Street, Suite 5111 20 Sacramento, CA 95814</p> <p>21 California Department of Education 22 1430 N Street, Suite 5111 23 Sacramento, CA 95814</p>	<p>VCale@cde.ca.gov LGarfinkel@cde.ca.gov</p>
<p>24 Pittsburg Unified School District 25 c/o Katherine Alberts 26 1390 Willow Pass Rd #700, 27 Concord, CA 94520</p>	<p>kalberts@leonealberts.com jjohnson@leonealberts.com service@leonealberts.com</p>

28 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the document(s) to be
29 sent by email to the persons at the e-mail addresses listed in the Service List. I did not
30 receive, within a reasonable time after the transmission, any electronic message or other
31 indication that the transmission was unsuccessful.

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

34 Executed on January 27, 2023, at Los Angeles, California.

35 /s/ Inez Brown

36 INEZ BROWN