

FILED

2012 JUL -2 P 2:36

RECEIVED  
CLERK OF COURT  
JUL 2 2012

PER LOCAL RULE 5 THIS  
CASE IS ASSIGNED TO  
DEPT 9

SUMMONS ISSUED

DIANE L. WEBB (State Bar No. 197851)  
ANDREW M. PURDY (State Bar No. 261921)  
S. JESSICA OURK (State Bar No. 275658)  
MORGAN, LEWIS & BOCKIUS LLP  
One Market, Spear Street Tower  
San Francisco, California 94105-1596  
Telephone: (415) 442-1000  
Facsimile: (415) 442-1001  
Email: dwebb@morganlewis.com  
apurdy@morganlewis.com  
jourk@morganlewis.com

JORY STEELE (State Bar No. 206944)  
American Civil Liberties Union Foundation of  
Northern California, Inc.  
39 Drumm Street  
San Francisco, California 94111  
Telephone: (415) 621-2493  
Facsimile: (415) 255-1478  
Email: jsteele@aclunc.org

OREN M. SELLSTROM (State Bar No. 161074)  
CECILIA CHEN (State Bar No. 269122)  
Lawyers' Committee For Civil Rights of the  
San Francisco Bay Area  
131 Steuart Street, Suite 400  
San Francisco, CA 94105  
Telephone: (415) 543-9444  
Facsimile: (415) 543-0296  
Email: osellstrom@lccr.com  
cchen@lccr.com

Attorneys for Plaintiffs Molly Palmer and  
Christina Pollack

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF CONTRA COSTA

N1-2-1013 BY FAX

Caption Continued On Next Page

1 MOLLY PALMER and CHRISTINA POLLACK,

2 Petitioners and Plaintiffs,

3 v.

4 WEST CONTRA COSTA UNIFIED SCHOOL  
5 DISTRICT; Superintendent BRUCE HARTER, in his  
6 official capacity; Associate Superintendent WENDELL  
7 GREER, in his official capacity; Board of Education  
8 President CHARLES T. RAMSEY, in his official  
9 capacity; Board of Education Clerk ANTONIO  
10 MEDRANO, in his official capacity; Board of  
11 Education Member MADELINE KRONENBERG, in  
12 her official capacity; Board of Education Member  
13 ELAINE R. MERRIWEATHER, in her official  
14 capacity; Board of Education Member TONY  
15 THURMOND, in his official capacity; and DOES 1-  
16 100,

17 Respondents and Defendants.

Case No. \_\_\_\_\_

**VERIFIED PETITION FOR WRIT  
OF MANDATE AND COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

1. By and through this petition and complaint, petitioners/plaintiffs seek to rectify the inexcusable, ongoing failure of the West Contra Costa Unified School District (“WCCUSD” or the “District”) to provide educational instruction, facilities, funding and materials, as well as other support services, to its most marginalized and high-risk students, namely, those students assigned to attend the District’s Community Day School Program (“CDSP”).

2. Community day schools such as CDSP are a statutorily designed educational resource for students with disciplinary, attendance, or probation backgrounds, or those whose continued education is impeded by other high-risk factors. These schools are intended to provide an educational setting better matched to these students’ academic, social, and emotional development needs than a traditional school environment. At a community day school, at-risk students are supposed to be provided with a stable, more resource-intensive educational environment and the support services necessary to allow them to complete their education successfully.

3. In practice, and as more specifically alleged on information and belief below, WCCUSD and its officials have so woefully provided for CDSP’s operations that they have

1 virtually ensured that these students, among the most vulnerable in the District, are denied their  
2 fundamental right to an education. WCCUSD provides CDSP few, if any, resources for its  
3 students. What little is actually provided CDSP in terms of facilities and materials is among the  
4 worst – if not the worst – available in the District. For example, the classrooms – really two  
5 dilapidated trailers sitting on a forgotten corner of a contaminated construction site – have been  
6 both an internal and external safety hazard to students; educational materials and supplies are  
7 practically non-existent and teachers regularly have to either improvise or scrounge for materials  
8 for CDSP students. The school is continually understaffed and lacks any counseling and  
9 guidance resources for the students.

10 4. The situation at CDSP is fundamentally at odds with the California Supreme  
11 Court’s repeated emphasis that, in California, “education [is] a fundamental interest ‘which [lies]  
12 at the core of our free and representative form of government.’” *Butt v. State of California*, 4  
13 Cal.4th 668, 683 (1992) (quoting *Serrano v. Priest*, 18 Cal.3d 728, 767-68 (1976) (“*Serrano II*”)  
14 (second alteration in original)). The fundamental nature of the right to education arises from “the  
15 distinctive and priceless function of education in our society.” *Serrano v. Priest*, 5 Cal.3d 584,  
16 608-09 (1971) (“*Serrano I*”).

17 5. Despite the fundamental nature of these constitutional principles, the needs of  
18 CDSP students are almost completely ignored by the District. Indeed, WCCUSD’s own website  
19 fails to identify CDSP as one of its schools. Instead, District data combines CDSP with the  
20 nearby Samuel L. Gompers Continuation High School (“Gompers”). California Education Code  
21 section 48661, however, requires community day schools be located separately from, and not on,  
22 any other high school campus.

23 6. Moreover, the District is entitled to receive significant additional funding on a per-  
24 CDSP-student basis from the California Board of Education. These funds, which are directly tied  
25 to CDSP’s enrollment, are intended to support the specialized educational environment to which  
26 CDSP students are entitled. Yet, Plaintiffs are informed and believe that despite these additional  
27 state funds, let alone any other taxpayer funds, the District has provided virtually no monies for  
28 materials or services to CDSP during at least the last four school years, if not longer.

7. California courts have repeatedly recognized that the California Constitution requires that all California students have “equal access to a public education system that will teach them the skills they need to succeed as productive members of modern society.” *Hartzell v. Connell*, 35 Cal. 3d 899, 906-09 (1984). Numerous statutory provisions impose specific duties on school districts and officials to effectuate this guarantee. The District, however, has denied and continues to deny students assigned to CDSP these essential educational opportunities. Absent the relief sought by Plaintiffs herein, the District will continue to do so, thereby denying the school’s vulnerable students the resources needed for them to even begin to be able to achieve their fullest educational potential.

8. Plaintiffs therefore seek injunctive, declaratory and writ relief to stop WCCUSD and its leadership from depriving CDSP students of the educational programs, resources, opportunities and funding to which they are entitled under Articles I and IX of the California Constitution, as well as certain California Education Code provisions (including sections 48660, *et seq.*, without limitation), which provide for the maintenance, operation and funding of community day schools such as CDSP.

9. Additionally, Plaintiffs, on behalf of other similarly situated Contra Costa County taxpayers, seek recovery from WCCUSD of any and all funds that should have been allocated to CDSP in the District budget since the school was established, but were not.

10. WCCUSD’s website proclaims that its mission is to “provide the highest quality education to enable all students to make positive life choices, strengthen our community, and successfully participate in a diverse and global society” by “provid[ing] excellent learning and teaching experiences; safe, student-centered learning environments; and support for all students and employees.” The District, however, falls far short of its stated mission with respect to the educational resources it provides CDSP students.

## VENUE AND JURISDICTION

11. This Court has general jurisdiction to declare the rights of parties and to grant all relief deemed necessary and proper pursuant to Article VI, Section 10, of the California Constitution and California Code of Civil Procedure section 410.10.

12. Venue is proper in this Court pursuant to Code of Civil Procedure section 395 because plaintiffs, CDSP, defendants WCCUSD, Harter, Greer, and the Board Members (identified below) are located in Contra Costa County, California, each conduct their official duties on behalf of WCCUSD in Contra Costa County, and all of the conduct alleged herein occurred in Contra Costa County.

### **PARTIES**

13. Petitioner and plaintiff Molly Palmer (“Palmer”) is a citizen resident of Contra Costa County, California. She owns certain real property within the District’s boundaries and, for at least one year before commencement of this action, has been assessed, and has paid, a tax for that property.

14. Petitioner and plaintiff Christina Pollack (“Pollack”) is a citizen resident of Contra Costa County, California. She owns certain real property within the District’s boundaries and, for at least one year before commencement of this action, has been assessed, and has paid, a tax for that property.

15. Palmer and Pollack, hereinafter together referred to as “Plaintiffs,” maintain this action as taxpayer citizens as permitted under Code of Civil Procedure section 526a to enjoin all actions and inactions by Respondents and Defendants (as defined below) that violate California’s constitutional and statutory provisions that provide for access to educational opportunities for all students in the District, as enumerated below. Additionally, Plaintiffs seek to prevent any further illegal expenditure of, waste of or injury to the funds and/or property of Contra Costa County and the District, as well as to recover any prior waste or illegal expenditure of such funds.

16. Plaintiffs additionally maintain this action under the common law of this state in their representative capacity as concerned citizens seeking to enforce Respondents and Defendants’ (as defined below) obligation to perform their non-delegable, non-discretionary duties to ensure educational opportunities for all District students.

17. Respondent and defendant WCCUSD is an agency of the state of California tasked with the local operation and oversight of schools within the District. WCCUSD’s primary offices are located at 1108 Bissell Avenue in Richmond, California. CDSP is a school located within the

1 District and is administered by the District leadership and personnel.

2 18. Respondent and defendant Bruce Harter (“Harter”) is WCCUSD’s Superintendent  
3 and has served in that position since July 2006. Plaintiffs sue Harter in his official capacity as  
4 Superintendent. Superintendent Harter is the chief executive officer of the governing board of the  
5 District and is obligated to take all necessary steps to ensure that the District complies with the  
6 California Constitution and all applicable California laws and regulations. Pursuant to Education  
7 Code sections 35035(b), (c), and (e), the Superintendent’s duties include, among other things,  
8 producing the budget of the District for each ensuing school year, assigning employees to  
9 appropriate positions, and determining that each employee has a valid certification.

10 19. Respondent and defendant Wendell Greer (“Greer”), currently serves as  
11 WCCUSD’s Associate Superintendent for K-Adult Schools. Plaintiffs are informed and believe  
12 that Greer was and has been delegated certain responsibilities by the District to address certain  
13 concerns raised regarding the facilities, conditions, resources and other services allocated to  
14 CDSP by WCCUSD. Plaintiffs sue Greer in his official capacity as Associate Superintendent.

15 20. The District is governed by the Board of West Contra Costa Unified School  
16 District (the “Board”), which has legal responsibility for setting District policy as well as  
17 establishing general policies governing the operation of the schools in the District. The Board is  
18 also vested with the power to establish a community day school within the district, which it did  
19 by establishing CDSP.

20 21. Respondent and defendant Charles T. Ramsey (“Ramsey”) is the President of  
21 WCCUSD’s Board of Education, and has served on the Board since November 1993. Plaintiffs  
22 sue Ramsey in his official capacity as a WCCUSD Board member.

23 22. Respondent and defendant Antonio Medrano (“Medrano”) is the Clerk of  
24 WCCUSD’s Board of Education, and has served on the Board since November 2008. Plaintiffs  
25 sue Medrano in his official capacity as a WCCUSD Board member.

26 23. Respondent and defendant Madeline Kronenberg (“Kronenberg”) has served on  
27 WCCUSD’s Board of Education since November 2006. Kronenberg in her official capacity as a  
28 WCCUSD Board member.



1 (1971). As the Court has noted, education plays an indispensable role in our society in two ways:  
2 First, education serves as a major determinant of an individual's chances for economic and social  
3 success. *Id.* at 605. Second, education asserts a unique influence on an individual's development  
4 as a citizen and participant in political and community life. *Id.* Thus, "education is the lifeline of  
5 both the individual and society." *Id.* It is for these reasons that all children in the state's public  
6 schools have the right to learn in a "system of common schools" that are "kept up and supported"  
7 in a manner that provides a meaningful opportunity for children to learn in schools maintained  
8 with equal rights and privileges as far as possible. *See* Cal. Const. Art. IX, § 5; Educ. Code §  
9 35293.

10 29. Consistent with the California Constitution's recognition of education as a  
11 fundamental interest and the equal protection guarantees found in the California Constitution, a  
12 student may not be provided with a program of education that "falls fundamentally below  
13 prevailing statewide standards." *Butt*, 4 Cal.4th at 685, 686-87.

14 30. At the district level, these principles are codified in the Education Code provision  
15 requiring all high schools to have "equal rights and privileges" to the extent possible. Educ. Code  
16 § 35293. This is true as well for students in community day schools, whose "academic programs  
17 shall be comparable to those available to pupils of a similar age in the school district." Educ.  
18 Code § 48663(e). The state's policy of equal educational opportunity is furthered by ensuring  
19 that certain essential standards are met in every school and that the day-to-day operations of  
20 public schools do not create any unnecessary obstacles to the students' learning.

21 31. These constitutional and statutory provisions impose on Defendants, and each of  
22 them in their official capacity, the non-delegable and non-discretionary duty to provide all  
23 WCCUSD students – including CDSP students – the opportunity to obtain an equal education in  
24 all the District's schools. *See Serrano*, 5 Cal. 3d at 612-614; *Butt*, 4 Cal. 4th at 681. Because  
25 local school districts execute the educational guarantees provided for in the state constitution,  
26 these local agencies are likewise subject to the guarantees of equal protection and due process.  
27 *Jackson v. Pasadena City Sch. Dist.*, 59 Cal. 2d 876, 879 (1963).



**Community Day Schools**

32. Community day schools are considered schools of last resort for students at risk for leaving the public school system. Pursuant to Education Code section 48662(b), students can only be sent to a community day school such as CDSP in very limited circumstances: (1) following expulsion from another school; (2) under terms of probation as a ward of the court due to child abuse and neglect; (3) as a juvenile criminal probationer; or (4) through a district-level process such as an attendance review board.

33. Because of the circumstances under which students are assigned to a community day school, Education Code section 48660.1 provides that, to the extent possible, a community day school's program should incorporate, among other things, a low pupil-teacher ratio; individualized instruction and assessment of students; and maximum collaboration with school district support service resources, including, but not limited to, school counselors and psychologists, academic counselors, and pupil discipline personnel.

34. In line with the desire for community day schools to be placement options for expelled students or those who have been removed from other school settings, including the need to provide safe school facilities for these students, the Education Code requires that community day schools be located on sites separate from other schools, and not merely be a separate program within another school.

35. Given community day schools' specialized mission, they are entitled to supplemental funding from the California Department of Education. Pursuant to Education Code sections 48664(a),(c), and 48660.1, in addition to any funds from any other sources, each school district that operates a community day school receives an additional \$4,000 per year (adjusted annually for inflation) for each unit of average daily attendance annually reported. These extra funds are intended to facilitate the extra services (e.g., counseling and psychological services, academic counselors, and individualized instruction) needed by community day school students.

36. Community day school students are entitled to the same educational opportunities as their fellow students schooled elsewhere in the District. Education Code section 48663(e) requires that "a community day school's academic programs shall be comparable to those

1 available to pupils of a similar age in the school district.” Accordingly, WCCUSD must provide  
2 CDSP students with the same level of educational services and privileges enjoyed by every other  
3 high school student in its District.

4 **FACTUAL ALLEGATIONS**

5 37. Plaintiffs are informed and believe that CDSP not only fails to serve the  
6 specialized educational needs of the students assigned to it, but it has created an environment that  
7 is so inhospitable that it denies its students their fundamental right to an education. Should  
8 Defendants be allowed to continue to ignore the glaring and persistent problems with CDSP – of  
9 which they have had more than adequate notice – CDSP will continue to under-serve its students  
10 and deny them equal educational opportunities.

11 38. WCCUSD’s failure to provide for CDSP is evinced, in large part, by the school’s  
12 physical location and condition. Simply put, CDSP’s campus is unsafe, inadequate, and  
13 intolerable to its students and teachers. In particular, Plaintiffs are informed and believe that, for  
14 at least the two school years preceding the filing of this action, CDSP’s campus has consisted of  
15 two dilapidated trailers.” These two trailers sit adjacent to a contaminated construction site,  
16 separated from it by only a chain-link fence, the heart of Richmond’s “Iron Triangle.” According  
17 to Richmond Police Department public records, a multitude of crimes have occurred during the  
18 last several years within a 500-foot radius of CDSP, including homicides, kidnapping, strong-arm  
19 robbery, drug sales, shootings at inhabited dwellings, residential burglary, lewd and lascivious  
20 public acts, carrying loaded firearms, public intoxication, prostitution, drunkenness in public, hit-  
21 and-run felony and reckless driving, among others. Plaintiffs are informed and believe that  
22 within the last two school years, several CDSP students have been victims of violence on the  
23 school’s “campus” during school hours.

24 39. In addition to the problems related to the CDSP “campus’ location,” the school’s  
25 conditions fail to provide an environment conducive to the education to which CDSP students are  
26 entitled. Plaintiffs are informed and believe each of the following:

- 27 a) The trailer “classrooms” sit immediately adjacent to a construction site for  
28 the new Gompers – a site found last year to be toxically contaminated and

- 1 that has been subject to environmental remediation;
- 2 b) Mesh-like metal bars cover the trailers' windows and block out natural
- 3 light;
- 4 c) Classroom furniture is not sufficiently maintained;
- 5 d) The trailer doors – as well as the prefabricated walls – are flimsy and
- 6 provide limited security from either the elements or after-hours trespassers;
- 7 e) Past roof leaks have rotted the floors, subfloors and walls of the
- 8 classrooms, thereby causing significant warping of the trailers' respective
- 9 superstructures that has not been remedied;
- 10 f) Faulty electrical wiring and blown fuses have, from time to time, cut-off
- 11 necessary climate control and, on an ongoing basis, have frustrated the
- 12 teachers' ability to use electronic devices to convey their lessons;
- 13 g) Rotted floors have caused the closure of CDSP's only restrooms, and they
- 14 have not been reopened in the last two years;
- 15 h) The trailers' deteriorated conditions have, within the last two school years,
- 16 allowed pests such as rats and feral cats to enter and live in the trailers, as
- 17 evinced by the animal feces found on the classroom floors;
- 18 i) During last two school years, mushrooms have noticeably grown inside
- 19 classroom wall and floor crevices; and
- 20 j) The campus has at times been a dump site for dangerous and discarded
- 21 District materials and equipment. For example, a large, broken refrigerator
- 22 filled with rotten food was recently found outside near the trailers.
- 23 Additionally, a trash heap consisting of old books and other instructional
- 24 materials, as well as broken science equipment and furniture was located
- 25 alongside the chain link fence that partially runs between the CDSP
- 26 campus and Gompers.

27 40. Plaintiffs are informed and believe that, while CDSP's severely deficient physical

28 problems have varied from time to time, and while vermin incursion, fungus infestations and

1 internal exposure to the external elements declined within the past school year, as of the date of  
2 this complaint, multiple physical problems persist and remain unaddressed by Defendants. For  
3 example, Plaintiffs are informed and believe that:

- 4 a) The trailer ceilings remain saggy and the floors remain warped;
- 5 b) The classroom trailers continue to have climate control problems, and  
6 teachers have resorted to space heaters to keep the students warm during  
7 the cooler months;
- 8 c) Because there have been no working bathrooms in the classroom trailers  
9 since the 2010-2011 school year, CDSP students must travel next door to  
10 the Gompers High School campus to access bathrooms, also in direct  
11 violation of the statutory requirement that community day school facilities  
12 and their students be located separately from other schools for safety and  
13 educational reasons;
- 14 d) The students have virtually no options for recreation on the CDSP campus  
15 – students and teachers fashioned a basketball hoop out of a plastic milk  
16 crate tied to a trailer window; and
- 17 e) Very recently, the active construction on the adjacent Gompers campus has  
18 been so loud that instruction has at times been halted because students  
19 cannot hear their teachers.

20 The District's failure to address such obvious and grave ongoing problems violates the letter and  
21 the spirit of California's constitutional and statutory mandates that equal educational opportunity  
22 is a fundamental right for all students.

23 41. As noted above, CDSP's physical location directly violates the Education Code,  
24 which requires that community day schools be separated from regular continuation schools unless  
25 certain exemptions apply – none of which are applicable here. CDSP's trailers are located on the  
26 same grounds as Gompers, with no meaningful separation between the two campuses. Plaintiffs  
27 are informed and believe that the proximity of the two schools has, in several past instances,  
28 endangered CDSP students' safety and security when CDSP students who were believed to be

1 gang members by Gompers students were violently assaulted. Given the pervasive gang presence  
2 in and around the schools – and as demonstrated by gang graffiti and “tags” found on the CDSP  
3 campus – future violence is inevitable.

4 42. Plaintiffs are informed and believe that the District intends what little resources  
5 and administrative oversight it does provide for CDSP to come from Gompers, as the District  
6 effectively makes no distinction between the two schools. For example, Plaintiffs are informed  
7 and believe that:

- 8 a) CDSP students routinely use Gompers’ restrooms, as they have no working  
9 restrooms on their own campus;
- 10 b) Because CDSP has historically been allocated little to no budget for  
11 educational supplies, CDSP’s teachers have scavenged or borrowed  
12 furniture, books, instructional materials, and other school supplies, as well  
13 as audio-visual or computer technology, from Gompers or other schools;  
14 and
- 15 c) Opportunities to receive counseling, guidance and vocational services for  
16 CDSP students are practically non-existent, and CDSP teachers have  
17 repeatedly been told that no such services have been budgeted for their  
18 school. Indeed, a recent (February 2012) independent evaluation of CDSP  
19 by the Wright Institute – a Berkeley-based professional school of  
20 psychology currently advising WCCUSD on how to foster the system’s  
21 students’ personal and social development – noted that “[CDSP] students  
22 have a high level of need for services to address their non-academic  
23 barriers to learning, [but] there are currently no such support services on  
24 campus.” Accordingly, CDSP’s teachers have tried to draw upon such  
25 resources provided at Gompers, albeit with no success.

26 43. In addition to the persistent problems with the physical facilities at and location of  
27 CDSP, Plaintiffs are informed and believe that the school has lacked consistent instruction by a  
28 full staff of certified educators. For example, Plaintiffs are informed and believe that CDSP has

been unable to maintain a permanent teacher fully credentialed to administer the math and science curricula to the students. Instead, upon information and belief, CDSP students were taught these subjects by either by a rotating number of non-credentialed substitute teachers or other CDSP teachers who, despite some of the teachers not having the requisite credentials, recognized the curricular deficiencies and, knowing that the District's track record of doing nothing about this problem, sought to fill the gap. Upon information and belief, the conditions at CDSP have historically caused the school to suffer significant teacher turnover. These staffing shortcomings essentially scuttle any hopes for the CDSP students' success due to the consistent, individualized instruction they require.

44. Plaintiffs are informed and believe that CDSP's teachers are regularly left to their own devices to find and maintain even the most basic instructional supplies necessary for instruction at CDSP. Upon information and belief, the District has repeatedly told CDSP teachers –as recently as the 2011-2012 school year – that there is little or no budget for the operations of CDSP at all. As the table below demonstrates, data provided by the District shows that this issue has persisted since at least the 2007-2008 school year:

School Year	Amount Budgeted for CDSP Materials and Supplies	Actual CDSP Expenditures
2007-2008	Not specified	\$257* *Unclear whether this also includes elementary day school program
2008-2009	Not specified	\$557* *Unclear whether this also includes elementary day school program
2009-2010	\$47	\$0
2010-2011	\$152	\$186
2011-2012	\$48	\$0* *As of January 31, 2012

Accordingly, upon information and belief, CDSP teachers have resorted to trying to obtain books and supplies by way of other WCCUSD schools' cast-offs (e.g., scrounging for useable books in

1 the on-campus trash heap described in paragraph 39 above) or purchase them with their own  
2 money. CDSP students often cannot provide their own school supplies – nor should they be so  
3 required. As a result, they often go without school supplies, to the detriment of their education.  
4 What precious few supplies the teachers have marshaled, however, do not last long. Plaintiffs are  
5 informed and believe that at least several times over the last two school years, supplies have been  
6 destroyed as a result of mildew and pests in the trailers or stolen or vandalized due to the lack of  
7 security. These deprivations stand in stark contrast to the fact that other District schools –  
8 including Gompers – have, upon information and belief, received significant computer and  
9 technological upgrades during the past two school years.

10 45. Simply put, with an inadequately staffed, funded and supplied school, the deck is  
11 further stacked against CDSP students, and the District is falling far short of implementing and  
12 fulfilling its duty to meet its constitutional obligation to provide educational opportunity to CDSP  
13 students.

14 46. Not surprisingly, student attendance at CDSP is low. Student data hosted by the  
15 California Department of Education affiliate “Ed-Data” shows that 29 students were enrolled at  
16 CDSP during the 2010-2011 school year. Plaintiffs, however, are informed and believe that, on  
17 average, actual daily attendance at CDSP rarely surpasses 8 or 10 students. The enrollment  
18 number is itself problematic because on a District-wide basis, significantly more students are  
19 annually expelled from District schools, and therefore should be enrolled at CDSP. Plaintiffs are  
20 informed and believe that through administrative negligence and failure to create a sufficient  
21 educational environment, the bulk of the District’s students who should be enrolled at and  
22 attending CDSP are not.

23 47. Plaintiffs are informed and believe that for those students who do try to attend  
24 school at CDSP, teachers often have little to no guidance on how or why students were enrolled  
25 in CDSP or how long the student will remain, much less information concerning students’  
26 academic and psychosocial needs. Indeed, Plaintiffs are informed and believe that students are  
27 enrolled at CDSP without having met the statutorily defined criteria for assignment to community  
28 day schools. These administrative failures are, as Plaintiffs are informed and believe, the result of

1 CDSP having absolutely no effective on-campus administrative oversight in place.

2 48. While the District has deprived CDSP students of the resources and educational  
3 opportunities to which they are entitled, the state is required by Education Code sections 48664(a)  
4 and 48664(c), to pay the District (on top of other statutory funding provisions) an additional  
5 annual per-ADA (“Average Daily Attendance”) unit fee of \$4,000 (adjusted for inflation) for a  
6 CDSP education that, upon information and belief, the District largely fails to provide. Further,  
7 Plaintiffs are informed and believe that since at least 2007, the District has failed to budget any  
8 meaningful amount of money for materials and supplies at CDSP. The District’s constitutional  
9 deprivations and statutory violations are plain, but are made all the more egregious because CDSP  
10 is specifically established pursuant to statute to serve only the most vulnerable, disenfranchised  
11 students.

12 49. CDSP’s conditions and operational deficiencies should come as no surprise to the  
13 District because, upon information and belief, they have persisted – obvious to anyone who visits  
14 the CDSP campus – for several years now. Formal complaints have also been registered with the  
15 District. For example, in June or July 2011, Harter and the Board Defendants, as well as the  
16 Principal of Gompers, received an anonymous complaint under the administrative complaint  
17 procedures set forth in Education Code section 35186 (also known as “*Williams* complaints”) that  
18 identified many of the problems with CDSP’s facilities, resources and instructional programs  
19 alleged herein. In response to the anonymous *Williams* complaint, WCCUSD sent a letter to the  
20 Contra Costa County Superintendent of Education outlining how the District intended to respond  
21 to the issues outlined in the anonymous complaint. Plaintiffs are informed and believe that rather  
22 than addressing the systemic administrative, instructional and resource-oriented problems  
23 identified in the *Williams* complaint, the District instead only made a half-hearted attempt to fix a  
24 few basic facilities-oriented problems. Indeed, the bulk of WCCUSD’s response highlighted how  
25 the District requires CDSP teachers and students to rely on Gompers to operate. WCCUSD did  
26 not affirmatively state that it would take action to remedy these very real and severe deficiencies.

27 50. Plaintiffs are informed and believe that, in or about November 2011, Greer was  
28 tasked by the District and Harter with addressing the concerns stated in the anonymous *Williams*



1 complaint. In the course of doing so, Greer, speaking for the District, stated WCCUSD's intent in  
2 January 2012 to relocate CDSP to its Alvarado Adult School campus as early as May 1, 2012.  
3 Plaintiffs are informed and believe that Greer was authorized to speak for the District. By  
4 moving the CDSP campus, the District would not only be in compliance with the Education  
5 Code's requirement that community day schools be located on sites separate from other k-12  
6 school sites, but it also would be taking a big step toward ensuring the safety and well-being of  
7 CDSP's students. May 1st came and went and the District took no action. Plaintiffs are informed  
8 and believe that, subsequent to May 1, Greer and the District never provided an explanation why  
9 they did not move CDSP.

10 51. As of the filing of this complaint, CDSP continues to be located in the two  
11 dilapidated trailers on the Gompers campus. Plaintiffs are informed and believe that at no time  
12 before the end of the 2011-2012 school year or since, did the staff of CDSP receive any indication  
13 that the District had taken any affirmative action to cure its obvious operational deficiencies (e.g.,  
14 purchasing additional educational materials or employing permanent, certified teachers). Further,  
15 Plaintiffs are informed and believe that at no time prior to the end of the 2011-2012 school year  
16 were CDSP students' safety concerns addressed by the District. The next school year starts in  
17 mere months, and Plaintiffs are informed and believe that the District and its leadership have still  
18 failed to address many of the school's core physical plant and resource-centered problems.

19 52. Plaintiffs are informed and believe that Defendants, and each of them in their  
20 respective official capacities, at all times herein mentioned, have been able to perform their  
21 respective official duties, as set forth in paragraphs 17 through 51 above. Notwithstanding their  
22 clear abilities to perform their statutorily defined duties, Plaintiffs are informed and believe that  
23 Defendants have each failed and continue to fail to uphold these duties by providing CDSP  
24 students an access to the educational opportunities they are entitled to under law.

25 53. Plaintiffs file suit for injunctive and other relief, as well as file this petition for a  
26 writ of mandate to enforce of an important right affecting the public interest, *i.e.*, to ensure the  
27 educational opportunities provided at CDSP on a going-forward basis. Aside from this petition  
28 and complaint, there exists other no plain, speedy, and adequate remedy in the ordinary course of

1 law to cure this problem. Simply put, Defendants must be compelled to perform their non-  
2 delegable, non-discretionary duties owed to all District students, but which, upon information and  
3 belief, they have not directed toward CDSP and its students since the school's establishment.

4 **FIRST CAUSE OF ACTION**  
5 **(Violation of Article IX, Sections 1 and 5 of the California Constitution)**  
6 **(All Plaintiffs Against All Defendants)**

7 54. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through  
8 53 above, as if fully set forth herein.

9 55. Defendants have failed and continue to fail to fulfill their respective non-  
10 delegable, non-discretionary public duties to ensure CDSP students are afforded their respective  
11 rights under Article IX, Sections 1 and 5 of the California Constitution, to learn in a "system of  
12 common schools" that are "kept up and supported" such that youth may learn and receive the  
13 "diffusion of knowledge and intelligence essential to the preservation of the[ir] rights and  
14 liberties." These constitutional provisions impose on the Defendants, and each of them, the  
15 nondelegable duty to provide to CDSP students their fundamental right to equal educational  
16 opportunity. Defendants have denied and continue to deny CDSP students this opportunity in the  
17 school to which they are assigned in that CDSP lacks even the barest essentials of an education,  
18 as alleged in paragraphs 1 to 53 above.

19 **SECOND CAUSE OF ACTION**  
20 **(Violation of the Equal Protection Clauses of the California Constitution,**  
21 **Article I, Section 7(a) and Article IV, Section 16(a))**  
22 **(All Plaintiffs Against All Defendants)**

23 56. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through  
24 55 above, as if fully set forth herein.

25 57. Defendants have failed and continue to fail to fulfill their respective non-  
26 delegable, non-discretionary public duties to ensure CDSP students receive equal protection  
27 under the laws, pursuant to Article I, Section 7(a) and Article IV, Section 16(a) of the California  
28 Constitution, by providing CDSP students' educational opportunities that fall far below the  
prevailing state standards.

**THIRD CAUSE OF ACTION**  
**(Violation of the Due Process Clauses of the California Constitution,**  
**Article I, Sections 7(a) and 15)**  
**(All Plaintiffs Against All Defendants)**

58. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 57 above, as if fully set forth herein.

59. The state's compulsory education laws as implemented and enforced by the District, require CDSP students to attend school full-time between the ages of six and eighteen years of age and have, thereby, imposed restraints on the liberty of CDSP students.

60. Defendants have failed and continue to fail to fulfill their respective non-delegable, non-discretionary public duties to ensure CDSP students are afforded their respective rights to due process, pursuant to Article I, Sections 7(a) and 15 of the California Constitution, by requiring them to attend a public school that is dangerous to their health and safety and that impedes their basic educational success.

61. Additionally, CDSP students have a protected property interest in obtaining a public education and in graduating from high school and receiving a California high school diploma. Fulfillment of the property interest in obtaining a California high school diploma is now conditioned on CDSP students passing the California High School Exit Examination ("CAHSEE").

62. Defendants, by having failed and by continuing to fail to fulfill their respective non-delegable, non-discretionary public duties, have subjected and continue to subject CDSP students to a substandard public school experience that will ill-prepare them to: (1) continue study by properly integrating back into high school after their time at CDSP; (2) prepare for and pass CAHSEE; and (3) graduate from high school and receive a California public school diploma.

63. Defendants have failed and continue to fail to fulfill their respective non-delegable, non-discretionary public duties by failing to ensure CDSP students their respective rights to due process through depriving them of basic educational opportunities sufficient to enable them to learn, to achieve to state standards, and to complete all requirements for graduation, diploma conferral, and the ability to pursue a common occupation and by arbitrarily

denying CDSP students an equal opportunity to receive an education.

**FOURTH CAUSE OF ACTION**  
**(Violation of Education Code § 48661)**  
**(All Plaintiffs Against All Defendants)**

64. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 63 above, as if fully set forth herein.

65. Education Code section 48661 provides that a “community day school shall not be situated on the same site as . . . [a] continuation school” unless one of the enumerated exceptions, all of which are inapplicable here, is satisfied.

66. CDSP is located on the campus of Gompers, a continuation school in the District.

67. Plaintiffs are informed and believe that during the spring of 2012, Greer, speaking on behalf of the District, represented that CDSP would be moved from its current location on the Gompers campus to a location on the Alvarado campus by May 1, 2012.

68. Plaintiffs are further informed and believe that the CDSP campus was not moved by the District as of May 1, 2012, nor has it been as of the date of this complaint.

69. Defendants have failed and continue to fail to fulfill their respective non-delegable, non-discretionary public duties to ensure CDSP students’ respective rights to attend a community day school that is not situated on the same site as a continuation school.

**FIFTH CAUSE OF ACTION**  
**(Violations of Education Code § 35035)**  
**(All Plaintiffs Against Defendants District, Harter, and Board Defendants)**

70. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 69 above, as if fully set forth herein.

71. Education Code sections 35035(c) and (e) provide each district superintendent shall “[s]ubject to the approval of the governing board, assign all employees of the district employed in positions requiring certification qualifications” and shall “[d]etermine that each employee of the district in a position requiring certification qualifications has a valid certificated document . . . authorizing him or her to serve in the position to which she is assigned.”

72. Defendants have failed and continue to fail to fulfill their respective non-delegable, non-discretionary public duties to ensure CDSP students’ respective rights by

1 depriving them of an adequate number of certified teachers at CDSP, and in failing to provide  
2 them sufficient instruction in the core subjects of mathematics and science.

3 **SIXTH CAUSE OF ACTION**  
4 **(Education Code § 17565)**  
5 **(All Plaintiffs Against All Defendants)**

6 73. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through  
7 72 above, as if fully set forth herein.

8 74. Education Code section 17565 requires “[t]he governing board of any school  
9 district [to] furnish [and] repair...the school property of its districts.”

10 75. Defendants have failed and continue to fail to fulfill their respective non-  
11 delegable, non-discretionary public duties by failing to properly furnish CDSP’s facilities and for  
12 allowing the school to fall into grave disrepair.

13 **SEVENTH CAUSE OF ACTION**  
14 **(Education Code § 35292.5)**  
15 **(All Plaintiffs Against All Defendants)**

16 76. Plaintiffs incorporate herein by reference all the allegations of paragraphs 1  
17 through 75 above, as if fully set forth herein.

18 77. Education Code section 35292.5(a)(1) requires every school to maintain and clean  
19 every restroom regularly, and to keep all restrooms “fully operational and stocked at all times  
20 with toilet paper, soap, and paper towels or functional hand dryers.” Moreover, every “school  
21 shall keep all restrooms open during school hours when pupils are not in classes, and shall keep a  
22 sufficient number of restrooms open during school hours when pupils are in classes.” Educ. Code  
23 § 35292.5(a)(2).

24 78. Defendants have failed and continue to fail to fulfill their respective non-  
25 delegable, non-discretionary public duties by allowing CDSP’s restrooms to fall into disrepair,  
26 thereby rendering them unusable, and also by keeping them locked at all times.

27 **EIGHTH CAUSE OF ACTION**  
28 **(Violations of California Code of Education §§ 35290, 35292, 35293, 48663(e))**  
29 **(All Plaintiffs Against All Defendants)**

30 79. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through  
31 78 above, as if fully set forth herein.





1 life.

2 93. By failing to operate, administer, and maintain CDSP in accordance with the  
3 constitutional and statutory mandates and guidance set forth for the operation of community day  
4 schools and as alleged in this petition and complaint, Defendants, and each of them in their  
5 respective official capacities in the District's leadership, failed, and continue to fail to fulfill their  
6 non-delegable and non-discretionary public duties to provide CDSP students with the educational  
7 opportunities constitutionally and statutorily afforded them.

8 94. Defendants, and each of them in their respective official capacities, should  
9 therefore be compelled to perform their duties sufficiently to ensure CDSP students are provided  
10 all opportunities and resources due them as students in California public schools.

11 **TWELFTH CAUSE OF ACTION**  
12 **(Declaratory Relief)**  
**(All Plaintiffs Against All Defendants)**

13 95. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through  
14 94 above, as if fully set forth herein.

15 96. An actual controversy exists between the parties in that Plaintiffs contend that  
16 Defendants have failed and continue to fail to fulfill their respective non-delegable, non-  
17 discretionary public duties to ensure CDSP students' rights to obtain a basic education, as  
18 alleged in this petition and complaint. Plaintiffs are informed and believe and, on that basis  
19 allege, that Defendants dispute these contentions.

20 97. A judicial resolution of this controversy is therefore necessary and appropriate.

21 **THIRTEENTH CAUSE OF ACTION**  
22 **(Injunctive Relief)**  
**(All Plaintiffs Against All Defendants)**

23 98. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through  
24 97 above, as if fully set forth herein.

25 99. Plaintiffs have no plain, speedy or adequate remedy at law. Unless enjoined,  
26 Defendants will continue to neglect their non-delegable and non-discretionary public duties to  
27 ensure CDSP students' rights to obtain a basic education. Defendants' actions will result in  
28 irreparable harm to Plaintiffs, who bring suit as concerned taxpayers living within the District,



1 because the actions of Defendants, and each of them in their respective official capacities, have  
2 been wasting and continue to waste public funds through the continued maintenance and  
3 operation of CDSP in a deficient manner that wholly fails to provide the school's students the  
4 educational opportunities afforded them under the California Constitution and the state's  
5 Education Code, as well as the specialized guidance and individualized instruction that  
6 community day schools are intended to provide.

7 100. Injunctive relief is appropriate under Code of Civil Procedure to prevent  
8 Defendants, and each of them in their respective official capacities, from further perpetuating  
9 their wasteful operation of CDSP in the coming 2012-2013 school year and beyond. Without  
10 such relief, CDSP students will remain saddled with a decrepit and dangerous physical plant, and  
11 that suffers from the lack of sufficient administration, instruction and resources set forth above.

12 **PRAYER FOR RELIEF**

13 Plaintiffs respectfully request the following relief:

14 1. The issuance of a preemptory writ of mandate from this Court directing  
15 Defendants, and each of them in their respective official capacities as the District's leadership, to  
16 perform their non-delegable, non-discretionary official duties and refrain from doing the  
17 following:

- 18 a) failing to provide CDSP students the opportunity to learn in a "system of  
19 common schools" that are "kept up and supported" such that they may  
20 receive their fundamental right to equal educational opportunity as  
21 provided by Article IX, Section 1 and 5 of the California Constitution;  
22 b) failing to provide CDSP students the opportunity to obtain a free education  
23 with opportunities equal to those had by other students as set forth in  
24 Article I, Section 7(a) and Article IV, Section 16(a) of the California  
25 Constitution;  
26 c) failing to provide CDSP students their rights to due process by requiring  
27 them to attend a public school that is dangerous to their health and safety  
28 and that impedes their right to equal educational opportunity as required by

Article I, Sections 7(a) and 15 of the California Constitution;

- d) failing to provide CDSP students the right to attend a community day school that is not situated on the same sight as a continuation school as set forth in Education Code section 48661;
- e) failing to provide CDSP students an adequate number of certified teachers as set forth in Education Code section 35035;
- f) failing to furnish and repair CDSP as required by Education Code section 17565;
- g) failing to provide CDSP students access to clean and well-maintained restrooms at CDSP as required by Education Code section 35292.5;
- h) failing to provide CDSP student the opportunity to have educational opportunities comparable to that of students of similar age in the district as set forth in Education Code sections 35290, 35292, 35293, and 48663(e); and
- i) failing to ensure that students transferred to CDSP are transferred pursuant to the eligibility criteria as set forth in Education Code section 48662.

2. A declaratory judgment from the Court finding that Defendants have failed to fulfill their non-delegable and non-discretionary public duties to provide CDSP students with their fundamental right to educational opportunities afforded to all public school students under the California Constitution and statutory provisions.

3. The issuance of a preliminary and permanent injunction by the Court directing Defendants to refrain from taking any action to deny CDSP students:

- a) the opportunity to learn in a “system of common schools” that are “kept up and supported” such that they may receive their fundamental right to equal educational opportunity as provided by Article IX, Section 1 and 5 of the California Constitution;
- b) the opportunity to obtain a free education with opportunities equal to those had by other public school students as set forth in Article I, Section 7(a)

1 and Article IV, Section 16(a) of the California Constitution;

- 2 c) their rights to due process by requiring them to attend a public school that  
3 is dangerous to their health and safety and that impedes their right to equal  
4 educational opportunity as required by Article I, Sections 7(a) and 15 of the  
5 California Constitution;
- 6 d) the right to attend a community day school that is not situated on the same  
7 sight as a continuation school as set forth in Education Code section 48661;
- 8 e) an adequate number of certified teachers as set forth in Education Code  
9 section 35035;
- 10 f) an adequately furnished and repaired school as required by Education Code  
11 section 17565;
- 12 g) access to clean and well-maintained restrooms at CDSP as required by  
13 Education Code section 35292.5;
- 14 h) the opportunity to have educational opportunities comparable to that of  
15 students of similar age in the district as set forth in Education Code  
16 sections 35290, 35292, 35293, and 48663(e); and
- 17 i) proper assignment to CDSP pursuant to the eligibility criteria as set forth in  
18 Education Code section 48662.

19 4. An Order of the Court directing Defendants to repay, for the continued support and  
20 funding of CDSP programs, all public funds from CDSP's opening date to present that were  
21 intended through either District or California Department of Education budgetary allotments or  
22 any other statutory entitlements to be allocated for support and continued funding of CDSP, but  
23 were never made available to CDSP administrators, instructors or other personnel due to  
24 Defendants' wasteful actions;

25 5. An award of attorneys' fees under Code of Civil Procedure Section 1021.5;

26 6. The costs of suit herein; and

27 7. Any other and further relief as the Court deems just and proper.

1 Dated: July 2, 2012

MORGAN, LEWIS & BOCKIUS LLP

2  
3 By

  
Diane L. Webb

4  
5 Dated: July \_\_, 2012

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN  
CALIFORNIA, INC.

6  
7 By

8 Jory C. Steele

9 Dated: July \_\_, 2012

LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF  
THE SAN FRANCISCO BAY AREA

10  
11 By

12 Oren Sellstrom

13 Attorneys for Plaintiffs Molly Palmer and  
14 Christina Pollack

1 Dated: July \_\_, 2012

MORGAN, LEWIS & BOCKIUS LLP

3 By

Diane L. Webb

5 Dated: July 2 2012

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN  
CALIFORNIA, INC.

7 By

Jory C. Steele

9 Dated: July 2 2012

LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF  
THE SAN FRANCISCO BAY AREA

11 By

Oren Sellstrom

Attorneys for Plaintiffs Molly Palmer and  
Christina Pollack

**VERIFICATION**

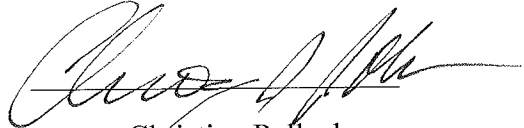
I, Molly Palmer, declare as follows:

1. I am one of the Petitioners and Plaintiffs in this case.

2. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know the contents thereof.

3. The facts stated therein are true as of my personal knowledge, except as to those facts alleged on information and belief, and with respect to such facts, I believe them to be true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 30 day of <sup>June</sup>~~July~~, 2012 in Richmond, California.

  
Christina Pollack

**VERIFICATION**

I, Molly Palmer, declare as follows:

1. I am one of the Petitioners and Plaintiffs in this case.

2. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know the contents thereof.

3. The facts stated therein are true as of my personal knowledge, except as to those facts alleged on information and belief, and with respect to such facts, I believe them to be true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 30<sup>th</sup> day of <sup>June</sup>~~July~~, 2012 in Richmond, California.



Molly Palmer