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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

15 BLACK PARALLEL SCHOOL BOARD;
16 STEPHEN DOE, by and through his Next
17 Friend, A.A.; KURTIS DOE, by and through
18 his Next Friend, J.E.; KONRAD DOE, by and
19 through his General Guardian, S.S.; on behalf
20 of themselves and all others similarly situated,

Plaintiffs,

v.

21 SACRAMENTO CITY UNIFIED SCHOOL
22 DISTRICT; JORGE A. AGUILAR,
23 Superintendent for Sacramento City Unified
24 School District; CHRISTINE A. BAETA,
25 Chief Academic Officer for the Sacramento
26 City Unified School District; JESSIE RYAN,
27 DARREL WOO, MICHAEL MINNICK,
28 LISA MURAWSKI, LETICIA GARCIA,
CHRISTINA PRITCHETT, and MAI VANG,
members of the Sacramento City Unified
School District Board of Education; THE
BOARD OF EDUCATION OF
SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT,

Defendants.

DEMAND FOR JURY TRIAL

Case No.

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

DISABILITY RIGHTS CALIFORNIA
1831 K STREET
SACRAMENTO, CALIFORNIA 95811
(916) 504-5800

INTRODUCTION

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2 1. Sacramento City Unified School District (“SCUSD” or “the District”) has created
3 and perpetuates an unlawful school system that results in modern-day segregation and
4 mistreatment of students with disabilities, particularly Black students with disabilities. Despite
5 being on notice of its discriminatory conduct for years, the District has not taken steps to
6 effectively eradicate the problems described herein. As a result, discrimination persists and
7 students languish in a hostile, stigmatizing, and demoralizing school environment. This lawsuit
8 is brought to end these practices.

9 2. As the United States Supreme Court observed more than sixty-five years ago,
10 “education is perhaps the most important function of the state and local governments. ... It is
11 required in the performance of our most basic public responsibilities. ... It is the very foundation
12 of good citizenship. Today it is a principal instrument in awakening the child to cultural values,
13 in preparing him for later professional training, and in helping him to adjust normally to his
14 environment. In these days, it is doubtful that any child may reasonably be expected to succeed
15 in life if he is denied the opportunity of an education. Such an opportunity, where the state has
16 undertaken to provide it, is a right which must be made available to all on equal terms.” *Brown,*
17 *et al., v. Bd. of Educ. of Topeka, et al.*, 347 U.S. 686, 691 (1954).

18 3. The Court’s landmark decision in *Brown v. Board of Education* began the long
19 road to the racial integration of American public schools and made absolutely clear that “in the
20 field of public education the doctrine of ‘separate but equal’ has no place. Separate educational
21 facilities are inherently unequal.” 347 U.S. at 692. Such segregation of children in public
22 schools “generates a feeling of inferiority as to their status in the community that may affect their
23 hearts and minds in a way unlikely ever to be undone.” *Id.* at 691.

24 4. In 1973, Congress echoed these values when passing the Rehabilitation Act of
25 1973. As Senator Hubert Humphrey then said, “The time has come to firmly establish the right
26 of [Americans with disabilities] to dignity and self-respect as equal and contributing members of
27 society, and to end the virtual isolation of millions of children and adults from society.” 118
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1 Cong. Rec. 32310 (1972). In 1990, Congress once again affirmed these values by passing the
2 Americans with Disabilities Act to serve as a remedy for “discrimination against individuals with
3 disabilities [which] persists in such critical areas as . . . education.” 42 U.S.C. § 12101(a)(3).
4 Congress specifically found that “segregat[ion]” is a “form[] of discrimination against
5 individuals with disabilities.” *Id.* § 12101(a)(2). Accordingly, students with disabilities have the
6 right to be educated side-by-side with their peers without disabilities to the “maximum extent”
7 appropriate. 34 C.F.R. § 104.34.

8 5. Despite these long-standing laws and precedents, segregation of students with
9 disabilities, and particularly Black students with disabilities, remains rampant in public schools
10 within the District. Modern-day segregation is subtler than it was in 1954 or 1973, but it is still
11 just as harmful and insidious. Segregation, as used herein, not only refers to the District’s
12 practice of placing students with disabilities in rooms or schools separated from their peers
13 without disabilities, but also encompasses all of the other exclusionary practices used by the
14 District to separate students with disabilities, and Black students with disabilities in particular,
15 from their peers. Those practices include imposing excessive and exclusionary discipline on
16 students with disabilities for behavior caused by their disabilities, and failing to provide the
17 services, accommodations, and modifications required by law that would allow these students the
18 opportunity to thrive in the general education setting.

19 6. Superficially, the District’s schools may appear equal and integrated. However,
20 the District has organized its programs and resources in a way that segregates and systematically
21 denies its students with disabilities, particularly Black students with disabilities, a meaningful
22 opportunity to be educated side-by-side with their peers in an inclusive, general education
23 environment.

24 7. The District effectively segregates almost half of its students with disabilities by
25 relegating them to separate classrooms on otherwise integrated campuses for a majority of the
26 school day or removing them to entirely segregated campuses. As alleged herein, these
27 segregated students receive disparate and sub-par academic instruction and opportunities, and are
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1 less likely to graduate from high school, less likely be ready for college or a career, and less
2 likely to meet the grade-level education standards established by the State. Upon information
3 and belief, this disparate education is even greater for Black students with disabilities.

4 8. The District's inappropriate segregation of students with disabilities is well-
5 documented. In 2017, an independent audit of the District's services to students with disabilities
6 noted that the District placed students with disabilities in separate classes and schools at a rate
7 that significantly surpassed both state and nationwide averages.¹ In particular, the District
8 segregated students with mental health conditions, Autism Spectrum Disorder, and intellectual
9 disabilities at grossly disproportionate rates, with Black students with disabilities experiencing
10 the highest rates of segregated placements. Upon information and belief, rather than taking steps
11 to remedy its ways, the District has actually increased its use of segregated classrooms and
12 schools for students with disabilities since 2017.

13 9. This modern-day return to a separate and inherently unequal school system
14 perpetuates stigma, misunderstanding, and fear about students with disabilities. It reinforces the
15 unwarranted feelings of shame and humiliation these children experience as a result of being
16 deemed unfit to learn alongside their peers. Children who are placed in these restrictive and
17 isolating environments receive a clear and discriminatory message: by virtue of their disabilities,
18 they are unwelcome in and unsupported by their schools. As a result, these students are at high
19 risk of extreme and ongoing frustration, greater anxiety, humiliation, lowered self-esteem, and
20 depression, which further interfere with their ability to access education.

21 10. To make matters worse, students with disabilities, particularly Black students with
22 disabilities, are disparately subjected to exclusionary school discipline and other tactics that
23 remove them from school and exacerbate this stigma. In 2017, the independent auditors noted
24 that students with disabilities in the District were 2.5 times more likely to be suspended than
25

26 _____
27 ¹ Council of the Great City Schools, *Improving Special Education Services in the Sacramento*
28 *City Unified School District* at 49-50 (Spring 2017),
<https://www.cgcs.org/cms/lib/DC00001581/Centricity/Domain/4/SacramentoSpecialEducation.pdf>.

1 those without disabilities. And, Black students with disabilities were 2.8 times more likely to be
2 suspended than all other students with disabilities. Similarly, a 2018 report by researchers with
3 the California Community College Equity Assessment Lab called the District “the most
4 egregious suspension district for Black males in the State of California.”²

5 11. The District’s mistreatment of Black students with disabilities flows from and
6 perpetuates implicit biases and stereotypes that portray Black youth as violent and aggressive,
7 which can lead to unjustified restraint and exclusion. The District’s practices not only
8 communicate these implicit biases and stereotypes, but also risk these students internalizing the
9 underlying message that they do not belong in a hostile educational environment in which their
10 physical and emotional safety are constantly at risk. The District’s actions and failures create
11 real and lasting harms, including emotional trauma and feelings of stigmatization and isolation.
12 Indeed, a hostile educational environment harms not only the students who are dehumanized and
13 discriminated against, but all who witness and are implicitly taught to normalize such
14 discriminatory treatment.

15 12. The vast majority of children with disabilities can learn in general education
16 classrooms if given the appropriate and legally required services, accommodations, and
17 modifications. The District must restructure its programs and resources to ensure that all
18 students – including students with disabilities of all races – are afforded a meaningful
19 opportunity to be educated side-by-side with their peers in an inclusive, general education
20 environment and are free from the daily fear of excessive and disparate exclusionary discipline.
21 Only then will students with disabilities receive a truly equal education.

22 **JURISDICTION**

23 13. This action for declaratory and injunctive relief arises under Title II of the
24

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26 ² J. Luke Wood, *et al.*, *The Capitol of Suspensions: Examining the Racial Exclusion of Black*
27 *Males in Sacramento County* at 12 (2018) (available at [https://cceal.org/wp-](https://cceal.org/wp-content/uploads/2018/06/sacramento.pdf)
28 [content/uploads/2018/06/sacramento.pdf](https://cceal.org/wp-content/uploads/2018/06/sacramento.pdf)); see also J. Luke Wood, *et al.*, *Get Out! Black Male*
Suspensions in California Public Schools (2018) (available at [http://blackmaleinstitute.org/wp-](http://blackmaleinstitute.org/wp-content/uploads/2018/02/GET-OUT-Black-Male-Suspensions-in-California-Public-Schools_lo.pdf)
[content/uploads/2018/02/GET-OUT-Black-Male-Suspensions-in-California-Public-](http://blackmaleinstitute.org/wp-content/uploads/2018/02/GET-OUT-Black-Male-Suspensions-in-California-Public-Schools_lo.pdf)
[Schools_lo.pdf](http://blackmaleinstitute.org/wp-content/uploads/2018/02/GET-OUT-Black-Male-Suspensions-in-California-Public-Schools_lo.pdf)).

1 Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.*, Section 504 of the
2 Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794, 42 U.S.C. § 1983, the Fourteenth
3 Amendment to the United States Constitution (“Equal Protection Clause”), Title VI of the Civil
4 Rights Act of 1964 (“Title VI”), 42 U.S.C. § 2000d *et seq.*, and California Government Code
5 section 11135 *et seq.*

6 14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343,
7 and 1367, because the matters in controversy arise under the Constitution and laws of the United
8 States. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights
9 of the parties and to grant all further relief deemed necessary and proper. The Court’s exercise
10 of supplemental jurisdiction over Plaintiffs’ claims under state law is proper, as the state law
11 claims “are so related to [Plaintiffs’ claims] that they form part of the same case or
12 controversy[.]” 28 U.S.C. § 1367(a).

13 **VENUE**

14 15. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. §
15 1391(b)(1) and (2).

16 16. Defendants reside or are organized in the Eastern District of California and a
17 substantial part of the events or omissions giving rise to this action arose in Sacramento County,
18 which is located within the Eastern District of California.

19 17. Members of the Class reside in the Eastern District of California. The Plaintiffs
20 reside or are organized in the Eastern District of California.

21 **PARTIES**

22 ***Plaintiffs***

23 18. Plaintiff Black Parallel School Board (“BPSB”) is a community-based
24 membership organization developed to serve Black children, primarily those attending SCUSD.
25 BPSB members include parents of Black students with disabilities who reside within the District,
26 attend a wide array of schools, and are not receiving adequate, necessary, and appropriately
27 individualized services, accommodations, and modifications. Instead, children of BPSB’s
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1 members experience high rates of exclusionary discipline, segregated placements,
2 discrimination, and harmful and hostile school conditions. BPSB has diverted its resources from
3 its primary activities and mission to address the District’s unlawful policies and practices.

4 19. Plaintiff Stephen Doe is a fifth-grade student who attends a K-8 school in
5 SCUSD. Stephen is Black and has been diagnosed with Autism Spectrum Disorder (“Autism”)
6 and Anxiety Disorder. Stephen is one of only a few Black students remaining at his school and,
7 upon information and belief, is the only Black student with Autism at his school. Although he is
8 capable of learning grade-level curriculum along-side his peers without disabilities, Stephen has
9 never had a properly credentialed teacher to support his inclusion in his public school, has
10 experienced repeated exclusionary discipline and school removals for disability-based behaviors,
11 and has fallen behind his peers without disabilities. Stephen has also experienced a hostile
12 school environment including staff and peer harassment and bullying based on his race and
13 disabilities. For at least the last year, SCUSD has attempted to push Stephen out of his public
14 school by proposing that he instead be placed in a segregated class or school for students with
15 disabilities. Because of SCUSD’s policies, Stephen and his family face a daily choice between
16 two discriminatory options: continue to endure the general education environment where he is
17 not receiving legally mandated and necessary services, or give in to the additional harm of
18 segregation. Stephen brings this suit through his guardian, A.A..

19 20. Plaintiff Kurtis Doe is an eleventh-grade Black student with mental health
20 conditions and a likely history of trauma who resides within SCUSD. Unfortunately, Kurtis has
21 never received a proper, comprehensive assessment and his disabilities and needs remain unclear
22 to the District. Instead, Kurtis has been pushed out of his neighborhood school and enrolled in a
23 nonpublic school exclusively for students with disabilities. His nonpublic school serves fewer
24 than 100 students spanning kindergarten through twelfth grade. Kurtis does not have access to
25 his peers without disabilities, or typical high school experiences and coursework. Instead, he is
26 subjected to restraints and stigma, and feels daily frustration that he is not learning. Kurtis wants
27 to return to a public school, but cannot do so until SCUSD removes the systemic, structural
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1 barriers that prevent his meaningful inclusion and access to his education. The last time that
2 Kurtis tried to return to public school in the ninth grade, he experienced repeated exclusionary
3 discipline. In fact, before the end of the school year, he was unlawfully removed from school
4 entirely and forced to languish at home without any instruction or school placement. Because of
5 SCUSD's policies, Kurtis also faces a choice between two discriminatory options: remain in his
6 segregated setting where he is isolated and not learning, or return to a District school that is not
7 equipped to educate him and meet his disability-related needs. Kurtis brings this suit through his
8 guardian, J.E..

9 21. Plaintiff Konrad Doe is a fourth-grade SCUSD student who attends a public
10 elementary school. Konrad is Black and has been diagnosed with Autism Spectrum Disorder,
11 Dyslexia, a specific learning disorder with impairment in written expression, and Attention-
12 Deficit / Hyperactivity Disorder ("ADHD"). Konrad has languished for years while the District
13 ignored his needs and conditions and delayed his identification as a student with disabilities,
14 instead subjecting him to ineffective and unlawful "Student Study Teams." Konrad has
15 experienced repeated and excessive disciplinary exclusions, shortened school days, and countless
16 hours of missed instruction. Due to SCUSD's policies, Konrad is facing another daunting school
17 year without appropriate supports and services, or even a proper written plan to address his
18 known disabilities. Like the other Plaintiffs, though Konrad is capable of accessing grade-level
19 curriculum, he has fallen behind his peers. Konrad brings this suit through his guardian, S.S..

20 22. Plaintiffs Stephen, Kurtis, and Konrad are referred to herein as "Student
21 Plaintiffs." The Student Plaintiffs will file a motion with the Court to proceed under fictitious
22 names.

23 ***Defendants***

24 23. Defendant Sacramento City Unified School District is a government agency
25 responsible for providing the children who reside within its boundaries with full and equal access
26 to the public education programs and activities it offers in compliance with the requirements of
27 federal and state laws and regulations. SCUSD is chartered and incorporated under California
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1 law and is a recipient of federal and state financial assistance. SCUSD’s responsibilities include
2 adopting policies and practices, and making and implementing administrative decisions for the
3 schools and students within its jurisdiction.

4 24. Defendant Jorge A. Aguilar (“Defendant Aguilar”) is the Superintendent of
5 SCUSD. Defendant Aguilar is appointed by the SCUSD Board of Education to implement
6 policies created by the Board of Education and/or mandated by federal and state laws and
7 regulations. Defendant Aguilar is responsible for ensuring that children in SCUSD are provided
8 equal access to public education programs and activities offered in SCUSD. Defendant Aguilar
9 is also responsible for ensuring that all eligible children with disabilities are provided access to
10 education in integrated settings, including services, accommodations, and modifications, in
11 compliance with federal and state laws and regulations. Defendant Aguilar is sued in his official
12 and individual capacity.

13 25. Defendant Christine A. Baeta (“Defendant Baeta”) is the Chief Academic Officer
14 of SCUSD. Defendant Baeta leads the SCUSD Academic Office, which guides the development
15 and implementation of academic services in the district, including curriculum, instruction,
16 assessment, and school improvement. Additionally, Defendant Baeta is responsible for the
17 professional development of administrative and teaching staff, and supervises the operational and
18 academic management of SCUSD schools. Defendant Baeta is sued in her official and
19 individual capacity.

20 26. Defendant Board of Education of the SCUSD (“Board of Education”) is elected
21 by the community to provide leadership and oversight of the District. Among its many
22 responsibilities, the Board of Education establishes a long-term vision for the District and
23 establishes District policies, administrative regulations, and goals. In addition, the Board of
24 Education bears a fiduciary responsibility for the management and expenditure of public funds in
25 a manner consistent with state and federal law that ensures all students, including students with
26 disabilities and Black students with disabilities, have equal access to public education programs
27 and services. The Board of Education selects, appoints, and oversees the work of the District’s
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1 Superintendent, Defendant Aguilar. The Board of Education works with the District's
2 Superintendent to fulfill its major responsibilities.

3 27. Defendants Jessie Ryan, Darrell Woo, Michael Minnick, Lisa Murawski, Leticia
4 Garcia, Christina Pritchett, and Mai Vang are the currently elected Members of the Board of
5 Education (collectively, "Board Member Defendants"). In their official capacities, they
6 individually and collectively bear the duties and responsibilities of the Board of Education as
7 described above. They are sued in their official and individual capacities.

8 28. Unless otherwise noted, Defendants Aguilar, Baeta, the Board of Education, the
9 Board Member Defendants, and SCUSD are collectively and interchangeably referred to as
10 "SCUSD," the "District," or "Defendants."

11 **LEGAL FRAMEWORK**

12 29. As discussed above, since the landmark decision in *Brown v. Board of Education*
13 and the Congressional acts that followed, it has been plain that public education programs,
14 services, and facilities must be operated in a manner that ensures equal access for and inclusion
15 of all students, regardless of race or disability.

16 30. Several federal and state laws work in concert to ensure that school districts fulfill
17 this promise of equality in California. Section 504 and the ADA protect students with
18 disabilities from discrimination, exclusion, unequal treatment, and unequal access to education in
19 public schools. Similarly, the Equal Protection Clause and Title VI protect students from
20 discrimination on the basis of race. California Government Code section 11135 prohibits
21 agencies such as school districts from discriminating against persons on the basis of disability,
22 race, and other protected statuses.

23 ***Section 504 and Title II of the ADA***

24 31. Congress enacted Section 504 and the ADA to directly address the discrimination
25 that people with disabilities face when they are unnecessarily excluded from public life, such as
26 the public school system, due to their disabilities. See *Olmstead v. L.C.*, 527 U.S. 581, 599–601
27 (1999).

1 32. Taken together, Section 504 and the ADA create a system of legal responsibilities
2 that are designed to ensure that students with disabilities are free from discrimination and have
3 equal access to a public education alongside their peers without disabilities. To achieve these
4 mandates, school districts are required to: (1) identify, locate and comprehensively evaluate
5 every child living in the district who is suspected of having a disability; (2) for qualifying
6 students, offer special education, related aids and services, accommodations, and modifications
7 that “are designed to meet individual educational needs of [students with disabilities] as
8 adequately as the needs of [students without disabilities] are met;” (3) to the greatest extent
9 appropriate, educate students with disabilities in inclusive settings; (4) provide appropriate
10 services so that students with disabilities are not disciplined for disability-related behavior; (5)
11 provide appropriate services so that students with disabilities are not excluded from the regular
12 education environment through harassment or bullying; and (6) provide access to education free
13 from discrimination. 34 C.F.R. § 104.33; *see also* 29 U.S.C. § 794; 42 U.S.C. § 12101 *et seq.*;
14 34 C.F.R. Pt. 104; 28 C.F.R. Pt. 35.

Section 504

15
16 33. Section 504 is a federal law that protects individuals with disabilities in programs
17 and activities that receive federal financial assistance. 29 U.S.C. § 794; 34 C.F.R. §§ 104.1,
18 104.4. Section 504 states that “[n]o otherwise qualified individual with a disability in the United
19 States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be
20 denied the benefits of, or be subjected to discrimination under any program or activity receiving
21 Federal financial assistance . . .” 29 U.S.C. § 794(a). Section 504 requires entities that receive
22 federal financial assistance to provide aids, benefits, and services to individuals with disabilities
23 in the most integrated setting appropriate to the individual’s needs. 34 C.F.R. § 104.4(b)(2).
24 Section 504 prohibits these entities from using “criteria or methods of administration . . . that have
25 the effect of subjecting qualified [people with disabilities] to discrimination” on the basis of
26 disability. *Id.* § 104.4(b)(4).

27 34. Section 504 applies to all school districts that receive federal financial assistance.
28

1 29 U.S.C. § 794(b)(2); 34 C.F.R. § 104.31. Section 504 requires that these school districts
2 provide students with disabilities with special education and related aids and services designed to
3 meet the needs of students with disabilities as adequately as the school districts meet the needs of
4 students without disabilities. *See* 34 C.F.R. § 104.33(a), (b)(1). Qualified students with
5 disabilities must be given “equal opportunity to obtain the same result, to gain the same benefit,
6 or to reach the same level of achievement, in the most integrated setting appropriate to the
7 [student’s] needs.” *Id.* § 104.4(b)(2).

8 35. Under Section 504, school districts are required to provide qualified students with
9 a “free appropriate public education.” 34 C.F.R. §§ 104.33(a), .34(a). Before determining any
10 educational placement, school districts must provide the student with a validated evaluation,
11 administered by trained personnel. *Id.* § 104.35. Regardless of the nature or severity of the
12 student’s disability, school districts must ensure that the student is educated with peers without
13 disabilities to the “maximum extent appropriate . . . unless . . . the education of the person in the
14 regular environment with the use of supplementary aids and services cannot be achieved
15 satisfactorily.” *Id.* § 104.34(a).

16 Title II of the ADA

17 36. Title II of the ADA mandates that “no qualified individual with a disability shall,
18 by reason of such disability, be excluded from participation in or be denied the benefits of the
19 services, programs, or activities of a public entity, or be subjected to discrimination by any such
20 entity.” 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130(a). Further, “[a] public entity shall
21 administer services, programs, and activities in the most integrated setting appropriate to the
22 needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). This means “a setting
23 that enables individuals with disabilities to interact with [persons without disabilities] to the
24 fullest extent possible.” 28 C.F.R. pt. 35, App. B. Additionally, a public entity may not use
25 “criteria or methods of administration . . . [t]hat have the effect of subjecting qualified
26 individuals with disabilities to discrimination on the basis of disability.” 28 C.F.R. §
27 35.130(b)(3)(i).
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1 37. Congress enacted the ADA to provide a remedy for “discrimination against
2 individuals with disabilities [which] persists in such critical areas as . . . education.” 42 U.S.C. §
3 12101(a)(3), (b). Congress specifically found that “segregat[ion]” is a “form[] of discrimination
4 against individuals with disabilities.” *Id.* § 12101(a)(2). Consequently, Title II of the ADA
5 outlaws segregation of individuals with disabilities and other forms of discrimination against
6 individuals with disabilities in public services such as education. *Id.* § 12132; 28 C.F.R. §
7 35.130. Title II of the ADA requires public entities to administer their services, programs, and
8 activities in the most integrated setting appropriate to the needs of qualified individuals with
9 disabilities. *See Olmstead*, 527 U.S. 581 (1999) (interpreting Title II of the ADA); *see also* 28
10 C.F.R. § 35.130(d).

11 38. Title II of the ADA further requires that public schools provide children with
12 disabilities an equal educational opportunity. *See* 28 C.F.R. § 35.130(b)(1)(ii). Title II of the
13 ADA applies to all of the activities of school districts that provide public education. School
14 districts are required to “make reasonable modifications” to their programs and services “when
15 the modifications are necessary to avoid discrimination.” 28 C.F.R. § 35.130(b)(7)(i).
16 Therefore, a public school district violates the ADA by segregating students because of their
17 disabilities instead of making reasonable modifications that would enable such students to learn
18 in an integrated, general education environment. *See* U.S. Dep’t of Justice, Civ. Rights Div.,
19 *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of*
20 *the Americans with Disabilities Act and Olmstead v. L.C.* at 2 (June 22, 2011) (explaining that
21 the ADA’s “integration mandate” requires public entities to “reasonably modify their policies,
22 procedures or practices when necessary to avoid discrimination”).

Equal Protection Clause

24 39. The Fourteenth Amendment to the U.S. Constitution provides that “No State shall
25 . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const.
26 amend. XIV. The Equal Protection Clause was created to prevent “official conduct
27 discriminating on the basis of race.” *Washington v. Davis*, 426 U.S. 229, 239 (1976).

1 40. “[T]he opportunity of an education . . . where the state has undertaken to provide
2 it, is a right which must be made available to all on equal terms.” *Brown v. Board of Educ.*, 347
3 U.S. 483, 493 (1954). When a school district deprives a child of an equal education to those of
4 her peers, “[t]he inestimable toll of that deprivation on the social economic, intellectual, and
5 psychological well-being of the individual . . . make it most difficult to reconcile the cost or the
6 principle of a status-based denial of basic education with the framework of equality embodied in
7 the Equal Protection Clause.” *Plyler v. Doe*, 457 U.S. 202, 222 (1982).

8 41. The Equal Protection Clause’s prohibition on segregation in public education
9 must be considered “in the light of its full development and its present place in American life
10 throughout the Nation.” *Brown v. Board of Educ.*, 347 U.S. 483, 492-493.

11 ***Title VI***

12 42. Title VI of the Civil Rights Act of 1964 provides that recipients of federal
13 financial assistance may not discriminate on the basis of race, color, or national origin. 42
14 U.S.C. § 2000d. The statutory text of Title VI bars intentional discrimination on the basis
15 of race, color, or national origin. *See Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582,
16 607–08 (1983); *Alexander v. Choate*, 469 U.S. 287, 292–93 (1985). This prohibition extends to
17 recipients of federal financial assistance through the U.S. Department of Education, such as
18 public school districts. 34 C.F.R. §§ 100.1, 100.3.

19 43. Title VI ensures that students should not experience a “racially hostile
20 environment,” one in which racial harassment is “severe, pervasive or persistent so as to interfere
21 with or limit the ability of an individual to participate in or benefit from the services, activities or
22 privileges provided by the recipient.” *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022,
23 1033 (9th Cir. 1998); *see also Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 650 (1999).

24 44. In passing Title VI, Congress specifically sought to end federal financial
25 assistance to segregated institutions, including segregated schools. Representative Emanuel
26 Celler, Chairman of the House Judiciary Committee at the time of the passage of Title VI, stated,
27 “The enactment of [T]itle VI will serve to override specific provisions of law which contemplate
28

1 Federal assistance to racially segregated institutions.” 110 Cong. Rec. 2467 (1964) (quoted in
2 *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 330-31 (1978) (opinion of Marshall, J.).
3 Congress viewed Title VI as a way to implement *Brown v. Board of Education*’s prohibition on
4 segregation: Senator Hubert Humphrey, a leading sponsor of the Civil Rights Act of 1964,
5 identified ending federal grants to racially segregated institutions to conform with *Brown* as a
6 primary purpose of Title VI. 110 Cong. Rec. 6544 (1964).

7 ***California Government Code Section 11135***

8 45. California Government Code section 11135 prohibits discrimination against
9 persons on the basis of race, sex or disability and other protected statuses in state-run or state-
10 funded programs and activities.

11 46. Regulations promulgated pursuant to California Government Code section 11135
12 provide, in relevant part, that “[i]t is a discriminatory practice for a recipient... (i) to utilize
13 criteria or methods of administration that . . . (1) have the purpose or effect of subjecting a
14 person to discrimination on the basis of ethnic group identification, religion, age, sex, color, or a
15 physical or mental disability[.]” Cal. Code Regs. tit. 2, § 11154.

16 47. SCUSD’s operation of schools within the District and its administration of
17 educational services within those schools are subject to California Government Code section
18 11135(a) because they constitute a program or activity which is funded directly by the State of
19 California or receive financial assistance from the State.

20 48. California Government Code section 11139 provides that the anti-discrimination
21 provisions of California Government Code section 11135 *et seq.*, and the regulations adopted
22 pursuant thereto, “may be enforced by a civil action for equitable relief, which shall be
23 independent of any other rights and remedies.” Plaintiffs therefore have the right to bring a civil
24 action for injunctive relief to enforce the rights guaranteed to them under California Government
25 Code section 11135 and the regulations promulgated thereunder.

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FACTUAL ALLEGATIONS

Defendants’ Unlawful Policies and Practices

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2
3 49. On information and belief, Defendants fail to implement legally compliant
4 policies, procedures, and programs with respect to students with disabilities who require
5 services, accommodations, and modifications to access education in the general education
6 curriculum. SCUSD’s failure to implement legally-compliant policies, procedures, and
7 programs results in SCUSD discriminatorily segregating students with disabilities, particularly
8 Black students with disabilities, at rates significantly higher than both statewide and national
9 averages.

10 50. Upon information and belief, SCUSD places nearly half of its students with
11 disabilities in segregated placements. These segregated placements include nonpublic schools,
12 which are segregated schools only attended by students with disabilities, and special day classes,
13 which are segregated classrooms that only serve students with disabilities. The District operates
14 special day classes on both general education campuses that otherwise appear superficially
15 integrated and at least one fully segregated public campus that enrolls only students with
16 disabilities.

17 51. In addition, according to the National Center for Education Statistics, only 2.9
18 percent of students with disabilities nationwide are educated in separate schools for students with
19 disabilities. SCUSD, in contrast, regularly places approximately five percent of its students with
20 disabilities in nonpublic schools and another one percent of its students with disabilities on its
21 standalone, fully segregated public campus called the John Morse Therapeutic Center (“John
22 Morse”). Taken together, SCUSD places approximately six percent of its students with
23 disabilities in separate schools each year – a rate that is more than twice the national average.

24 52. Similarly, in SCUSD, students with Autism are more than three times as likely as
25 students with Autism nationwide to be educated in segregated schools. And, students who have
26 an Intellectual Disability are twelve times as likely to be educated in segregated schools as
27 similarly situated students nationwide. Furthermore, upon information and belief, students who
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1 have emotional and mental health disabilities are segregated at staggering rates, with SCUSD
2 educating almost none of these students in the regular education environment for at least eighty
3 percent of the school day.

4 53. These failures are exacerbated for Black students with disabilities. The District
5 disproportionately labels Black students with disabilities as having emotional and mental health
6 disabilities, and Black students are even more likely than other students with disabilities to
7 experience segregation. For example, during the 2017-18 school year, almost thirty-eight
8 percent of the students at John Morse and thirty-one percent of the students placed at nonpublic
9 schools were Black, even though Black students were less than sixteen percent of the District's
10 student population and less than twenty percent of all students with disabilities. Overall, Black
11 students with disabilities are 1.9 times more likely than other students with disabilities in
12 SCUSD to be placed in segregated settings.

13 54. Despite the concerns expressed by the 2017 independent audit regarding the
14 District's overuse and ineffective use of segregated placements, upon information and belief,
15 SCUSD has not reformed its practice related to the use of these segregated placements. In fact,
16 upon information and belief, SCUSD has increased its use of segregated placements, with the
17 number of special day classes increasing by over ten percent since 2017. Further, SCUSD has
18 failed to leverage the funds it expends on segregated schools and placements to, instead, provide
19 students with non-discriminatory access to education in the general education environment.

20 55. SCUSD's segregation of students with disabilities, particularly Black students
21 with disabilities, causes these students ongoing harm. Because Defendants fail to provide
22 students with disabilities, particularly Black students with disabilities, access to the same
23 educational opportunities as their peers, these students fall further and further behind. For
24 example, upon information and belief, only six percent of students at John Morse met or
25 exceeded the standards of the California Assessment of Student Performance and Progress for
26 the 2017-18 academic year.

27 56. Compounding this harm is the District's refusal to provide students with
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1 disabilities in segregated settings access to the full range of academic services, supports and
2 course offerings provided to other students in SCUSD. For example, the students at John Morse
3 are not instructed in music, art, sports, health, and foreign languages. Unlike other elementary
4 and middle-school students in general education programs in SCUSD, the District does not
5 provide students at John Morse students with tutoring, college readiness and preparation
6 programs like Advancement Via Individual Determination (AVID) and Math, Engineering,
7 Science Achievement (MESA) programs, enrichment programs, or the services of academic
8 counselors, library media teachers, social/behavior or career development counselors, or staff
9 speech and language specialists. The District's discriminatory denial of access to these
10 curricular offerings to students with disabilities at John Morse exacerbates their segregation.

11 57. Additionally, the District contracts with segregated nonpublic schools that also do
12 not provide students with disabilities with access to the range of curricular offerings that their
13 peers without disabilities receive. Upon information and belief, high school students in SCUSD
14 who are placed in segregated schools do not receive access to a college-preparatory curriculum.
15 Nor do these students have access to the full range of course offerings, such as foreign language
16 courses, that their non-disabled peers can access in the general education environment. Upon
17 information and belief, these students also do not have equal access to career and technical
18 education curriculum as their peers without disabilities.

19 58. SCUSD Students placed in nonpublic schools, particularly Black students, are
20 more likely to dropout. For example, in 2016-17, the dropout rate for District students placed in
21 nonpublic schools was eight percent which far exceeded the District, County, and State dropout
22 rates of two percent, three percent and two percent, respectively. Worse, Black students in
23 nonpublic schools had a nine percent dropout rate. Additionally, few of the students in
24 nonpublic schools who make it to the twelfth grade graduate. In 2016-17, twelfth grade students
25 who attended District school sites enjoyed a graduation rate of almost eighty-three percent;
26 students placed in nonpublic schools had an 8.2 percent graduation rate. Only seven SCUSD
27 students graduated from a nonpublic school in 2016-17, and none of the students graduated
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1 having completed the required coursework for UC/CSU admission. In fact, between the 2007-08
2 and 2016-17 school years, only *one* SCUSD student with a disability has graduated from a
3 nonpublic school having completed UC/CSU required coursework.

4 59. As alleged *infra*, the District’s placement of students with disabilities in
5 segregated placements also subjects them to unnecessary and traumatic restraint and seclusion.
6 Neither restraints nor seclusion have been shown to have any educational benefit, and, instead,
7 have been shown to cause both physical and psychological harm to students.

8 60. Even the students with disabilities who are not placed in segregated settings
9 experience the harms of segregation through the District’s policies that lead to excessive use of
10 exclusionary discipline. This is especially true for Black students with disabilities. Students
11 who experience exclusionary discipline lose instructional opportunities, are more likely to have
12 decreased school connectedness and have reduced opportunities for pro-social development.
13 Over time, the cumulative effect of exclusionary discipline can disengage students from their
14 education, risking further negative outcomes for these students.

15 **District Policies that Deny Timely Identification and Evaluation**

16 61. Defendants have failed to put into effect policies, procedures, and programs that
17 ensure that all students with disabilities who require services, accommodations, and
18 modifications to remain in the general education environment are timely identified, located, and
19 evaluated. Instead, Defendants have created policies and practices that result in illegal delay of
20 evaluations, despite parental requests.

21 62. The District has created a number of gate-keeping mechanisms, both for general
22 evaluation as well as for specialized assessments. Upon information and belief, these gate-
23 keeping teams serve to illegally restrict the number of students who receive assessment and to
24 illegally delay those assessments for students who do receive them, particularly for Black
25 students with disabilities.

26 63. These gate-keeping mechanisms include the District-created “Student Study
27 Team.” Upon information and belief, in response to parental requests for evaluations,
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1 Defendants require students and parents to participate in the District-created Student Study Team
2 process. The Student Study Team process is an unnecessary extra series of meetings that, at its
3 best, delays what should be a timely assessment and, at its worst, completely denies appropriate
4 assessment. Upon information and belief, Student Study Teams have access to no specialized
5 services that could legally be provided in lieu of an assessment for a student with a disability.
6 Upon information and belief, Student Study Teams do not provide parents and students with any
7 description of assessment processes or of their procedural rights to assessment.

8 64. These gate-keeping mechanisms also include specialized assessment teams such
9 as the educationally-related mental health services team and the Autism team. Upon information
10 and belief, these structures, created by Defendants, delay and restrict the number of students who
11 receive these evaluations.

12 65. Upon information and belief, the District has not staffed these specialized
13 assessment teams in a way that could possibly meet the need for assessment within the District.
14 A referral to one of these assessment teams functions as a referral to wait for available staff. For
15 example, Defendants require an assessment by a school social worker as part of the
16 educationally-related mental health services team assessment. However, upon information and
17 belief, during the 2018-19 school year, Defendants only employed eight social workers for the
18 entire school district, which serves more than 45,000 students across seventy schools. Upon
19 information and belief, Defendants do not have a sufficient number of trained and/or qualified
20 staff to conduct these evaluations, which results in many of these evaluations being illegally
21 delayed.

22 66. Long delays in merely getting evaluated deny children who need services,
23 accommodations, and modifications access to education in the general education environment.
24 They also place these children at increased risk of placement in a segregated setting due to lack
25 of timely and appropriate interventions.

26 67. The District has a policy of not providing parents and students with accurate
27 information regarding their rights to assessment, despite the District's knowledge that its own
28

1 staff both act upon misinformation and convey that misinformation to families. The District has
2 a policy of not providing parents and students with information regarding assessments even after
3 the District learns that a student has a disability. Upon information and belief, the District does
4 not have any process to review school-site parent/student handbooks in the District to ensure that
5 parents and students receive information about seeking assessments, nor does the District have
6 any other systemic way to ensure that parents and students are provided accurate information
7 about assessments. On the contrary, misinformation about assessment is rampant through the
8 District. For example, the 2017 independent audit revealed that some District staff believed that
9 they had to suspend students before students could receive assessment, which, on information
10 and belief, disproportionately harms Black students with disabilities. Yet the District has failed
11 to take the most basic steps to ensure that parents and students understand their right to request
12 assessments.

13 **District Policies that Deny Students Necessary Services, Accommodations, and**
14 **Modifications in the General Education Environment**

15 68. Districtwide, Defendants have failed to create a sufficient number of appropriate
16 inclusive placements for students with disabilities. Defendants have failed to structure the
17 SCUSD programs and its resources so that services, accommodations, and modifications are
18 available to students with disabilities in integrated placements. Consequently, SCUSD
19 segregates students with disabilities who could be appropriately educated in the general
20 education environment.

21 69. Upon information and belief, Defendants have maintained woefully inadequate
22 staffing levels and systematically fail to provide staff with training and oversight to ensure that
23 students with disabilities receive sufficient individualized services, accommodations, and
24 modifications to support their inclusion in the general education environment. For example,
25 during the 2018-19 school year, SCUSD had only one staff member who was qualified to serve
26 as an inclusion specialist, eight social workers, and seven behavior intervention specialists for
27 the entire District. As a consequence, students are not offered and do not receive appropriately
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1 intensive services, accommodations, and modifications to allow students to access education in
2 the general education environment.

3 70. For example, Defendants fail to provide students with social, emotional,
4 behavioral, and/or mental health needs access to appropriately intensive services,
5 accommodations, and modifications such as educationally-related mental health services, direct
6 behavior support, functional behavioral assessments, behavior intervention plans, individual
7 counseling, social skills services, social work services, and psychological services. Defendants'
8 failure to provide these services in the general education environment significantly contributes to
9 the segregation of students with disabilities, especially Black students with disabilities.

10 71. The District has maintained its policy of inadequate staffing despite knowledge
11 that general education teachers reported that they could not adequately serve students with
12 disabilities. Upon information and belief, in 2019, the Sacramento City Teachers Association
13 negotiated with the District to apply cost savings from cuts to teachers' healthcare toward
14 increased supports for students with disabilities, including hiring more psychologists and
15 behavior intervention specialists. However, also upon information and belief, the District
16 reneged on this agreement and never hired additional staff to support students with disabilities.

17 72. Defendants additionally fail to provide students with disabilities with sufficient
18 access to specialized related services such as augmentative and alternative communication or
19 assisted technology. Upon information and belief, the District does not make these services
20 available to students in the general education environment. Instead, the District instructs parents
21 to seek these services through their medical provider.

22 73. Despite knowledge of effective services and supports to provide students with
23 disabilities non-discriminatory access to education in the general education environment,
24 Defendants have failed to adopt these measures. Defendants ignored recommendations from the
25 2017 independent audit to develop an "Inclusive Education Vision," and failed to implement the
26 audit's recommendations for inclusive education practices, such as the Multi-Tiered Systems of
27 Support framework. The audit further found that SCUSD had not created sufficient tools for
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1 inclusive practice in the general education environment. Upon information and belief, despite
2 the audit's concerns and recommendations directed at the District, Defendants have failed to
3 implement inclusive education throughout SCUSD, nor provide staff meaningful or effective
4 training or levels of resources on inclusive education.

5 74. Upon information and belief, despite knowledge that lack of staff training has led
6 to discrimination for Black students with disabilities, Defendants systematically fail to provide
7 staff with sufficient training and support on cultural and linguistic responsiveness, or other
8 approaches to working with students that validate and affirm their home culture and language to
9 promote their social, emotional, and academic success. When incorporated in the classroom,
10 culturally and linguistic responsiveness enables school staff, including teachers, social workers
11 and school psychologists, to better understand the motivations and behavior of students so that
12 they can rely less on exclusionary discipline and more on, where needed, appropriate services.
13 SCUSD's failure to employ culturally relevant teaching, or similarly effective approaches,
14 significantly contributes to SCUSD's wholly inadequate provision of services to students with
15 disabilities, particularly Black students with disabilities, leading to further isolation and
16 segregation.

17 75. Due to SCUSD's failure to provide appropriate services in the general education
18 environment, many students with disabilities, particularly Black students with disabilities are
19 discriminatorily excluded from educational opportunities and instructional time. Ultimately, due
20 to SCUSD's failure to provide appropriate services in the general education environment, many
21 students with disabilities, particularly Black students with disabilities, are segregated from their
22 peers.

23 **District Policies that Result in Discriminatory Discipline**

24 76. Defendants further segregate students with disabilities through inappropriate
25 exclusionary discipline. Because SCUSD fails to provide these students with appropriate
26 services, accommodations, and modifications, students continue to struggle with their disability-
27 related behaviors. In response, SCUSD punishes its students with disabilities and overly relies
28

1 on time outside of the classroom, suspensions, and expulsions, which denies students with
2 disabilities, particularly Black students with disabilities, access to educational opportunities.

3 77. The District's written student discipline board policy and administrative
4 regulation, adopted in June 2014 in collaboration with the Black Parallel School Board, purport
5 to "avoid disparate application and treatment." However, the District, despite being aware of the
6 discrimination rampant in its schools, has engaged in a widespread policy of non-enforcement of
7 its own written policy. Consequently, discrimination remains entrenched in the District's
8 disciplinary practices.

9 78. The District's Board Policy 5144 requires the Superintendent to "collaboratively
10 develop a Discipline Matrix with stakeholders that shall be used to guide the actions of all school
11 site leaders with regards to when out-of-school suspension or an expulsion referral can be
12 utilized for certain offenses." The Board Policy directly ties this discipline matrix to the goal of
13 "minimizing the excessive use of willful defiance as a reason to impose in-school and off-
14 campus removals that often lead to poor educational outcomes...." However, upon information
15 and belief, the District has not adopted a discipline matrix to meet this goal.

16 79. The District's Board Policy 5144 further requires that the Superintendent present
17 to the Board an annual plan that will ensure mandatory professional development for "all district
18 employees" in areas including restorative practices, social and emotional learning, implicit bias,
19 and cultural proficiency. Upon information and belief, the Superintendent has not created such a
20 plan, and has not mandated such training for all District employees, despite knowledge that such
21 training was necessary to address race- and disability-based discrimination in the District's
22 schools.

23 80. On paper, the District's administrative regulations mandate that each school
24 create an "Annual Site Action Plan," based on a framework that the District would provide to
25 schools, for reducing "suspensions/disproportionality" and improving "school climate through
26 the use of restorative practices." However, upon information and belief, subsequent to the
27 adoption of this administrative regulation, the District entered into a memorandum of
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1 understanding with its teachers' union which prohibits the implementation of these plans. Upon
2 information and belief, the District has not provided schools with the framework for the Annual
3 Site Action Plans, nor has any school in the District created an Annual Site Action Plan on its
4 own.

5 81. The District's administrative regulations also mandate that the District provide the
6 school sites with disaggregated data to inform necessary reforms. Administrative Regulation
7 5144 states:

8 The District's administrative regulations also mandate that the District provide the
9 school sites with disaggregated data to inform necessary reforms. Administrative
10 Regulation 5144 states: The District office will provide all school sites with data
11 concerning suspensions and expulsions at the site on a monthly basis. This data
12 shall include statistics concerning: race, ethnicity, gender, SES, EL/LEP, students
13 with disabilities, location, time, grade, type of infraction, duration of suspension,
14 and may also include other relevant data. The data shall be analyzed by the site
15 team on a monthly basis by utilizing the District provided Data Discussion Guide.
16 The Data Discussion Guide is a resource for assisting with the analysis of
17 discipline trends and creating the Monthly Action Plans (MAPs). The school
18 site's data analysis and MAPs shall be evaluated by the District twice annually;
19 on or before December 1 and May 1, of each school year.

20 82.
21 Upon information and belief, the District has not provided school sites with this data, nor has it
22 evaluated any Monthly Action Plans created by school sites.

23 83. Upon information and belief, the District has a policy of not tracking and
24 recording all disciplinary exclusions. Students with disabilities receive a variety of informal
25 disciplinary removals that are not tracked as suspensions by the District. These informal
26 removals include parents being called to pick up their students from school, students being sent
27 to sit in an office without access to educational instruction, and students being sent to sit in the
28 hallway without access to educational instruction. The District's policy is to not track these
informal removals as discipline. As a consequence, the District does not provide students with
disabilities who experience informal removals with evaluations before disciplinary changes in
placement.

84. Moreover, upon information and belief, the District has a policy of not providing
students with disabilities who experience formal disciplinary removals with evaluations before

1 disciplinary changes in placement in a lawful and timely manner. As a result of this policy,
2 students with disabilities have been placed in segregated school settings without regard to the
3 relationship between the behavior subject to the disciplinary action and their disability.

4 85. Upon information and belief, the District has a policy of suspending students
5 enrolled in kindergarten through third grade for willful defiance and/or creating an intimidating
6 or hostile environment, in violation of state law prohibiting such suspensions for students in
7 kindergarten through third grade. During the 2017-18 school year, students with disabilities in
8 kindergarten through the third grade were suspended on the basis of willful defiance at twice the
9 rate of all District students, while Black students with disabilities were suspended on the same
10 ground at five times the rate of all District students. In that same year, upon information and
11 belief, students with disabilities in kindergarten through third grade were suspended on the basis
12 of creating an intimidating or hostile environment at twice the rate of all District students, while
13 Black students with disabilities were suspended at eight times the rate of all District students. As
14 a result of this policy, students with disabilities, particularly Black students with disabilities, are
15 unable to access critical support services, academic instruction and social integration with their
16 peers at a young age when such services and experiences are particularly critical to students'
17 social-emotional development and access to education.

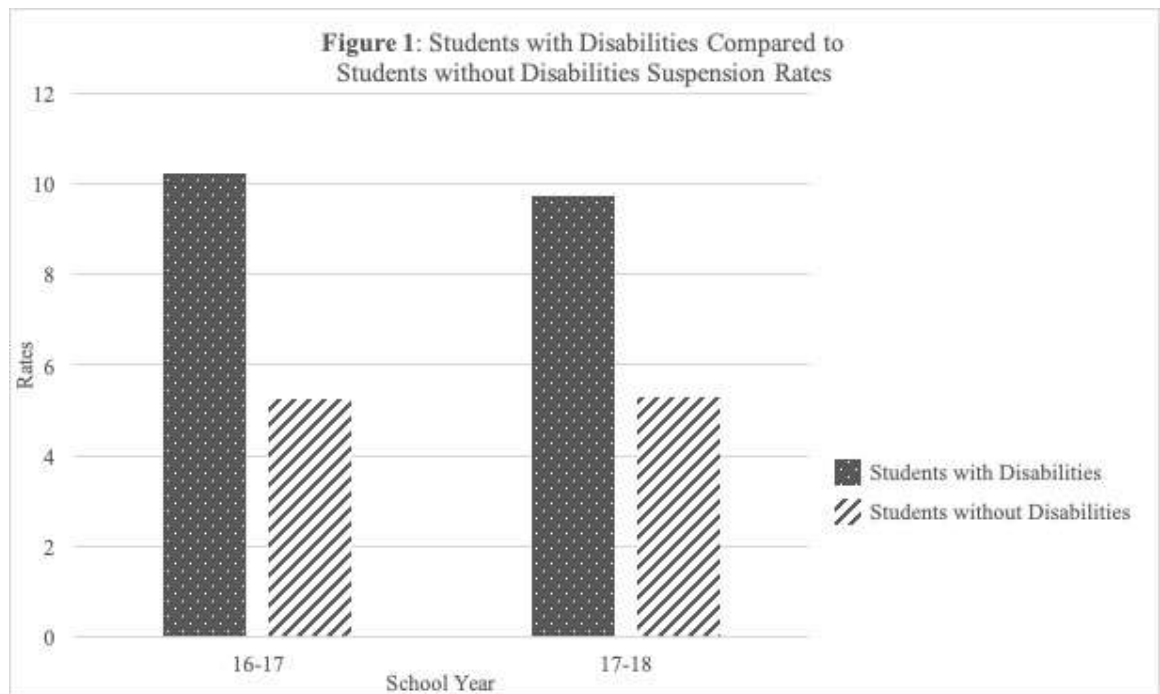
18 86. Upon information and belief, the District has a policy of not providing students
19 with disabilities access to education during periods of disciplinary exclusion. Due to the lack of
20 access to education, students with disabilities fall further behind their classmates during
21 disciplinary exclusions. Black students with disabilities suffer the greatest lack of access to
22 education since, as described below, they bear the brunt of the District's discriminatory overuse
23 of exclusionary discipline.

24 87. These failures result in the inappropriate use of exclusion from school in response
25 to student behaviors, disproportionately impacting students with disabilities, particularly Black
26 students with disabilities.

27 88. Upon information and belief, during the 2018-19 school year, students with
28

1 disabilities were significantly more likely to receive an out-of-school suspension than their peers
2 without disabilities.

3 89. Figure 1 shows the contrast between the rate of suspensions for students with
4 disabilities and their peers without disabilities, as reported to the California Department of
5 Education for school years 2016-17 and 2017-18. During both school years, the rate of
6 suspension for students with disabilities was approximately twice as high as for students without
7 disabilities.

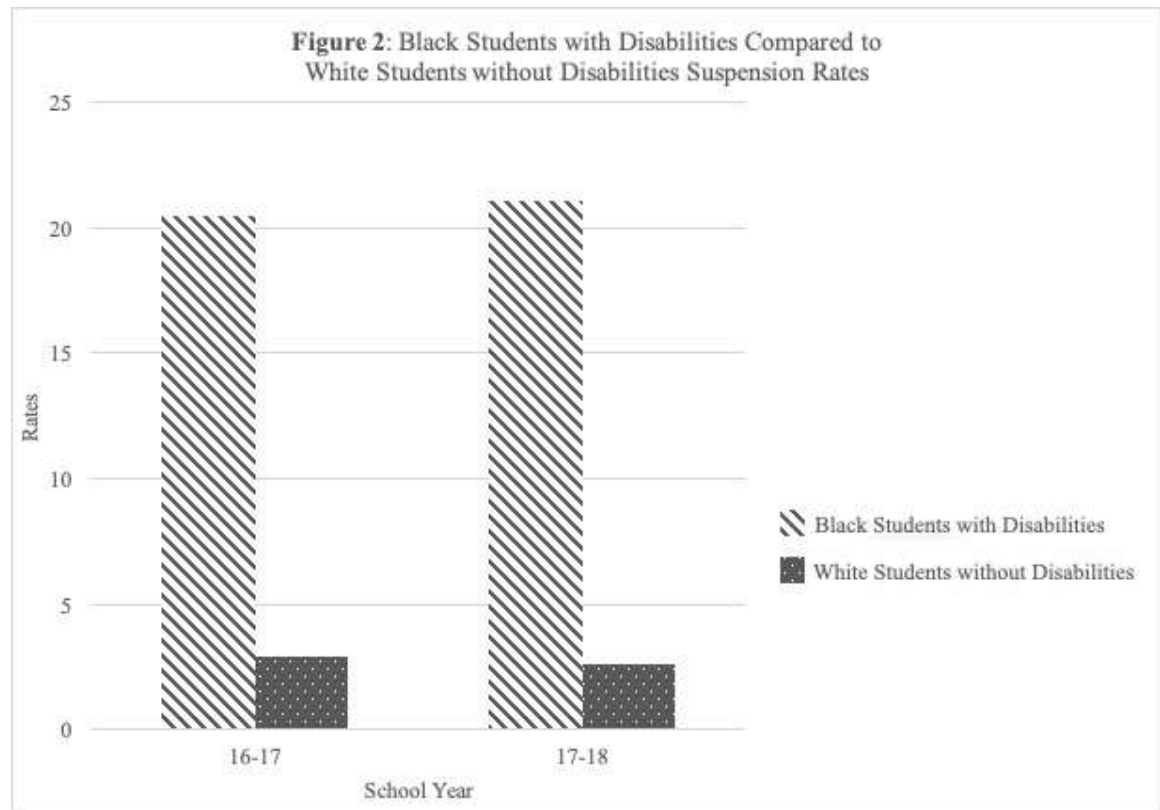


20 90. The inappropriate use of removals is worse for Black students with disabilities.
21 Upon information and belief, during the 2018-19 school year, Black students received at least
22 forty percent of total suspensions within SCUSD, although they comprised only fourteen percent
23 of the student population.³ That year, upon information and belief, Black students with
24 disabilities were more than ten times more likely than other students with disabilities to be
25 suspended. Similarly, upon information and belief, they were almost ten times more likely than
26 their non-Black peers without disabilities to be suspended. Moreover, upon information and

27 _____
28 ³ All suspension data for the 2018-19 school year included herein is based on total numbers of
suspension rather than unduplicated counts and is upon information and belief.

1 belief, Black students with disabilities were more than fifteen times more likely than their White
 2 peers without disabilities to receive an out-of-school suspension.

3 91. Figure 2 displays the significant divergence between the suspension rates of Black
 4 students with disabilities and their White peers without disabilities for school years 2016-17 and
 5 2017-18 as reported by the California Department of Education. In both school years the
 6 suspension rate for Black students with disabilities was approximately ten times as high as the
 7 rate for their White peers without disabilities.

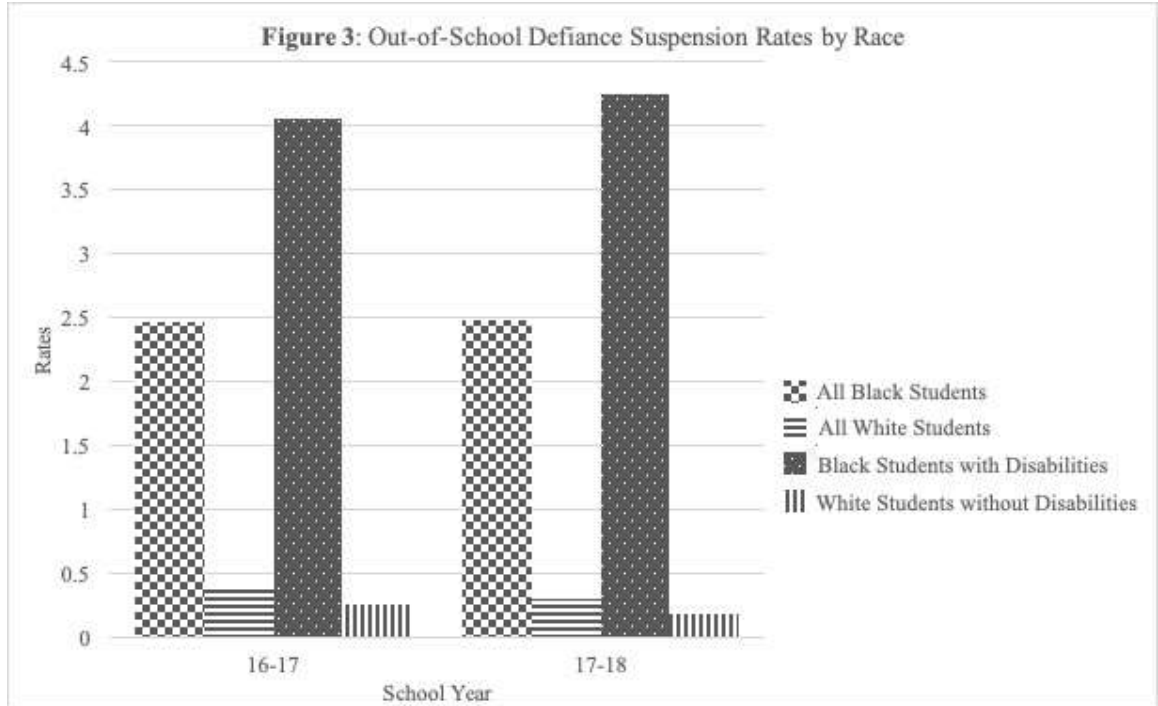


21 92. Black students with disabilities face an even greater risk of suspension under
 22 highly subjective and discretionary categories like “willful defiance” and “created intimidating
 23 or hostile environment.” Such offense categories are susceptible to implicit and explicit biases;
 24 educators are more likely to view ambiguous behavior as more hostile when performed by Black
 25 rather than White actors.⁴ Thus, highly discretionary and subjective offenses can be expected to
 26

27 ⁴ See Kurt Hugenberg & Galen V. Bodenhausen, *Facing Prejudice: Implicit Prejudice and the*
 28 *Perception of Racial Threat*, 14 *Psychol. Science* 640, 643 (Nov. 2003), available at
<https://www.frontiersin.org/articles/10.3389/fpsyg.2017.00519/full>; Anthony Page, *Batson’s*
Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge, 85 *B.U. L. Rev.* 155, 222-

1 result in disparate outcomes for Black students when districts fail to mitigate this risk.

2 93. As a result of these failures, during the 2018-19 school year, upon information
 3 and belief, Black students were at least five times more likely than their peers to receive an out-
 4 of-school suspension for willful defiance. Upon information and belief, Black students with
 5 disabilities faced an even greater risk of suspension and were approximately three times more
 6 likely than other students with disabilities and approximately fifty times more likely than their
 7 White peers without disabilities to receive an out-of-school suspension for willful defiance.
 8 Upon information and belief, Black students were approximately six times more likely than their
 9 White peers to receive an out-of-school suspension for behavior categorized as “created an
 10 intimidating or hostile environment.” Upon and information and belief, Black students with
 11 disabilities were approximately two times more likely than other students with disabilities
 12 and approximately twenty times more likely than their White peers without disabilities to receive
 13 an out-of-school suspension for “created an intimidating or hostile environment.”



28 24 & n.337 (2005) (collecting studies showing that “that people will assign different significance to identical actions depending on the actors’ race”).

1 94. Figure 3 compares four student groups: all Black students, all White students,
2 Black students with disabilities, and White students without disabilities for school years 2016-17
3 and 2017-18. As reported by the California Department of Education, during both school years,
4 the rate of suspension for all Black students was significantly higher than the rate for all White
5 students – about eight times higher. Black students with disabilities were suspended at a rate
6 approximately fifteen times higher than their White peers without disabilities in 2016-17 and
7 approximately twenty-three times higher in 2017-18.

8 **District Policies that Deny Students a Safe Learning Environment**

9 95. Defendants have failed to provide a safe and non-discriminatory learning
10 environment for students with disabilities, particularly Black students with disabilities.

11 96. The District, despite being aware of the bullying and harassment in its schools,
12 has engaged in a widespread policy of non-enforcement of its own written Board policy around
13 school-site safety planning. Taken together, Board Policy 0450 and Administrative Regulation
14 5145.5 require that each SCUSD school site create a “Comprehensive Safety Plan” with an
15 attached “bullying prevention plan” and update those plans on an annual basis. The Board is
16 required to review and approve each school’s Comprehensive Safety Plan. Upon information
17 and belief, the Board has not reviewed and approved any SCUSD school site’s Comprehensive
18 Safety Plan that includes the required bullying prevention plan.

19 97. Defendants have failed to hire sufficient trained staff to effectively remedy
20 disability-based harassment of students with disabilities and race-based harassment of Black
21 students with disabilities within District schools. For example, during the 2018-19 school year,
22 the District only employed one anti-bullying specialist for the entire District. Upon information
23 and belief, the District has offered no effective training to address bullying and harassment based
24 on race or disability. Consequently, even when SCUSD school staff respond to reports of
25 harassment, they routinely suggest strategies for addressing it that are not culturally responsive,
26 are counter-productive, or put a large burden on the students who have been harassed. Further,
27 SCUSD staff fail to create, maintain, monitor, update, and/or follow safety plans for students
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1 who have been bullied or harassed on the basis of disability or race.

2 98. Defendants have also failed to ensure that parents and students have sufficient
3 information about reporting complaints of disability- or race-based harassment. The District
4 points to its “Title IX officer” as the proper official to investigate such complaints. Title IX of
5 the Education Amendments of 1972, 20 U.S.C. §§ 1681-88, is a federal law designed to end sex-
6 based discrimination in federally funded programs. The District’s own website states that the
7 Title IX “District compliance officer will investigate any complaints of harassment or
8 discrimination based on gender equity issues for student to student.” Upon information and
9 belief, there is no information on the District’s website that would suggest that a family should
10 make a complaint of disability- and/or race-based harassment to the District’s Title IX officer.
11 The District has consequently failed to structure its reporting mechanism for disability- and race-
12 based harassment in a way that would allow parents and students to access it.

13 99. Defendants have failed to monitor and provide oversight to ensure that students
14 who have experienced disability-based or race-based bullying and harassment are not forced to
15 transfer schools. Upon information and belief, Defendants do not track transfers of students
16 within the District that resulted after the student or parent requested intervention with bullying or
17 harassment. Due to the lack of training on effective strategies to address bullying and the lack of
18 oversight, SCUSD school staff have pressured the families of these students to agree that the
19 student should transfer schools. Consequently, for at least some students with disabilities, they
20 transfer schools multiple times before they even reach middle school. As a result, the disruption
21 in education further denies these students access to education.

22 100. After SCUSD places students in segregated settings, these students experience
23 additional harm from the unnecessary use of traumatic interventions such as restraints and
24 seclusion of students rather than positive behavioral interventions, services and supports. Upon
25 information and belief, Black students with disabilities experience this harm at significantly
26 greater rates than other students.

27 101. Upon information and belief, the District continues to contract with segregated
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1 placements that unnecessarily rely upon traumatic restraints and seclusion of students rather than
2 positive behavioral interventions, services and supports. Upon information and belief, students
3 who are placed by SCUSD in segregated placements are more likely to experience seclusion and
4 restraint than students in the general education environment. Upon information and belief, for
5 similar behaviors, Black students are more likely to experience seclusion and restraint than
6 White students. Upon information and belief, in recent school years, Black students in
7 segregated settings were significantly more likely than White students to be restrained and
8 secluded for “out of seat/ disruptive behavior.” Black students were also significantly more
9 likely than White students to be restrained and secluded for behavior described as “student
10 frustrated or agitated.” Upon information and belief, Black students who were placed in
11 segregated settings by SCUSD were significantly more likely to experience physical restraints
12 than other students. Upon information and belief, when White students were restrained, they
13 were significantly more likely than Black students to receive an escort restraint, a less traumatic
14 form of restraint than a physical restraint.

15 102. The District’s policy of contracting with segregated placements that unnecessarily
16 rely upon restraints and seclusion, denies students with disabilities, particularly Black students
17 with disabilities, access to a safe learning environment and consequently denies access to
18 education. The trauma caused by these interventions, upon information and belief, compounds
19 the harm of segregation for these students.

20 *Plaintiff Facts*

21 **Black Parallel School Board**

22 103. Plaintiff Black Parallel School Board is a community-based membership
23 organization developed to serve Black children, primarily those attending SCUSD. It is an
24 unincorporated association located in Sacramento, California and is governed by a member-
25 elected and member-run Executive Council.

26 104. The BPSB’s primary responsibility is to support the educational growth and
27 achievement of Black students by monitoring all educational activities and programs of SCUSD
28

1 to ensure that they are compatible with the needs of Black students in the district. BPSB
2 primarily focuses on promoting and advocating for Black student achievement and educational
3 quality and attainment, and classroom and District practices that are supportive and culturally
4 relevant as opposed to those that punish and exclude Black children.

5 105. One of BPSB's primary activities is to monitor school sites and the district as a
6 whole, and to publish their findings in an annual report that informs BPSB advocacy efforts.
7 BPSB's other primary activities are to advocate and help parents and children in the District
8 advocate for themselves before the School Board and in other school forums, provide trainings
9 for parents and educators, and to coordinate with and support other Black-student focused
10 advocacy groups throughout the Sacramento region and Central Valley of California. BPSB also
11 regularly provides and connects SCUSD students to education scholarships and provides support
12 services to parents regarding school discipline and academic performance.

13 106. BPSB has approximately 150 members including parents of Black students with
14 disabilities who reside within the District, attend a wide array of schools, and are not receiving
15 adequate, necessary, and appropriately individualized services, accommodations, and
16 modifications. Instead, children of BPSB's members experience high rates of exclusionary
17 discipline, segregated and restrictive placements, discrimination, and harmful and hostile school
18 environments.

19 107. BPSB has diverted resources away from their primary activities in order to
20 mitigate the District's unlawful policies and practices. Executive Council members have
21 attended meetings as advocates on behalf of their members, conducted classroom observations to
22 investigate members' complaints regarding the education of students with disabilities, and
23 identified referrals for members requiring legal assistance. For example, since January 2017,
24 BPSB has attended nearly twenty meetings on behalf of members after members complained that
25 their children were not receiving the services, accommodations, and modifications they needed.
26 The BPSB was not formed to provide these types of supportive services and does not receive
27 funding to provide these services.
28

Individual Plaintiffs

108. Student Plaintiffs Stephen, Kurtis, and Konrad are all school-aged children who reside within the boundaries of SCUSD. No two Student Plaintiffs currently attend or have attended the same schools within the District.

109. Each Student Plaintiff has known disabilities that impair one or more of his or her major life activities under Section 504 and the ADA, including, but not limited to, the activity of learning.

110. All of the Student Plaintiffs are either Black or mixed-race Black. As discussed below, each of the Student Plaintiffs have experienced discrimination, segregation (including exclusionary discipline), and unequal educational opportunities that are illustrative and symptomatic of the District’s unlawful and discriminatory policies, as outlined above.

111. Unless and until the Defendants’ address the problems outlined herein, the Student Plaintiffs will be unable to be free from discrimination and receive the equal access to their public education in the integrated and inclusive school setting to which they are entitled.

Stephen Doe

112. Stephen Doe is a ten-year-old student who attends a K-8 school operated by SCUSD. Stephen is a fifth-grade student.

113. Stephen enjoys playing basketball, watching his favorite athletes, and sketching. Stephen lives with his mother and siblings within the boundaries of the District.

114. Stephen has been diagnosed with Autism Spectrum Disorder and Anxiety Disorder. Stephen is a qualified individual with a disability under Section 504 and the ADA.

115. Stephen is one of fewer than two dozen Black students remaining at his public school. Although Black and White students each make up approximately fifteen to seventeen percent of the District’s overall enrollment each year, Black enrollment at Stephen’s school has dropped below five percent whereas White student enrollment now accounts for nearly two-thirds of the school’s student body. Upon information and belief, all academic staff at Stephen’s school are also White.

1 116. The District has failed to provide Stephen with appropriate mental health,
2 behavioral, or social evaluations, nor has the District provided him the services,
3 accommodations, and modifications that would allow him to be successful in the general
4 education environment. In addition, upon information and belief, none of the teachers at
5 Stephen's school is credentialed to be a primary instructor for students with Autism Spectrum
6 Disorder.

7 117. Stephen is not provided with equal access to the instruction, programs, and
8 services available to other students at his school. For example, Stephen is frequently removed
9 from his class during core parts of the curriculum.

10 118. To date, Stephen has not received culturally relevant and responsive education,
11 programs, and services while attending a District school.

12 119. Instead of providing these services, supports, and equal access at Stephen's
13 neighborhood school, the District has recommended that Stephen be removed to a more
14 segregated placement and has repeatedly excluded Stephen from his classroom.

15 120. Upon information and belief, Stephen has been removed from class without
16 documentation on more than eighty occasions since he started first grade at his K-8 school.

17 121. During the 2018-19 school year, Stephen was excluded from his class on at least
18 23 school days – the equivalent of more than four weeks of school. Stephen was formally
19 suspended from school for seven of those days. In addition, Stephen's classroom teacher sent
20 Stephen home or to another room on at least sixteen other occasions.

21 122. Upon information and belief, the District did not document or track Stephen's
22 sixteen additional removals from school during the 2018-19 school year. These additional
23 removals typically occurred at the beginning of the school day and lasted for the remainder of the
24 day. He was typically sent out without any school work and deprived of any school instruction.
25 The District did not document or track removals not resulting in formal suspension, and thus
26 failed to recognize that Stephen had been removed for more than ten days of school during the
27 2018-19 school year. Upon information and belief, Stephen did not receive any instruction or
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1 access to education on his eleventh day of removal and beyond during the 2018-19 school year.

2 123. Upon information and belief, all of these suspensions and informal removals
3 during the 2018-19 school year resulted from disability-related behavior or behavior related to
4 his response to experiencing identity-based bullying and harassment. Nevertheless, the District
5 did not conduct a manifestation determination review or a Functional Behavior Assessment for
6 Stephen.

7 124. Upon information and belief, Stephen – the only known Black student with
8 Autism Spectrum Disorder at his school – was suspended and removed more than any other
9 student in the school during the 2018-19 school year.

10 125. These excessive removals result in lost instructional time, hindering Stephen’s
11 academic progress. On a school campus that lacks diversity in race and ability, such targeted and
12 persistent exclusion also stigmatizes Stephen and students like him, fostering an environment
13 that is unwelcoming and unaccommodating.

14 126. Stephen is at constant risk of being removed from his public K-8 school and
15 placed in a segregated setting where he also will not have equal access to his public education
16 and where he is likely to be subjected to additional harms, such as a heightened risk of restraint
17 and seclusion.

18 127. Stephen has been the repeated target of disability- and race-based biases and
19 stereotypes. Despite his medical diagnosis of Autism Spectrum Disorder, school staff continue
20 to openly treat him as if he is a dangerous child to be feared. For example, Stephen’s teacher
21 locked the classroom door and refused to let Stephen enter, telling the other students that they
22 were on “lock down” – a term that connotes fear and threats of violence in today’s culture – and
23 that they were not to let Stephen inside the classroom.

24 128. Stephen has endured severe and pervasive identity-based bullying and harassment
25 at school from both staff and students. This has included, for example, other students calling
26 Stephen names like “stupid Black boy” and physically attacking Stephen. Despite notice,
27 Defendants failed to intervene in a timely or effective manner to ensure that Stephen has access
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1 to a safe educational environment. Defendants' actions and failures effectively endorse fear-
2 based racial and disability biases and discrimination. These actions and failures have caused
3 Stephen to feel afraid at school and isolated from his peers, creating a hostile learning
4 environment for Stephen and other students and limiting Stephen's access to benefits provided
5 by the school.

6 129. Upon information and belief, Stephen's experiences are illustrative of and result
7 from the District's unlawful policies as outlined above.

8 *Kurtis Doe*

9 130. Kurtis Doe is a sixteen-year-old student who has been placed by SCUSD in a
10 nonpublic school that exclusively serves students with disabilities. Kurtis is an eleventh-grade
11 student.

12 131. Kurtis enjoys cooking and reading science-fiction novels. He is interested in
13 learning about culinary arts and wishes he could participate in a Regional Occupational Program
14 or "ROP" at school. Kurtis wants to graduate with a regular high school diploma and would like
15 to be ready to attend college after graduation.

16 132. Kurtis has a history of trauma and has been diagnosed with various mental health
17 conditions. Kurtis is a qualified individual with a disability under Section 504 and the ADA.

18 133. Kurtis is Black. He lives with his siblings and guardian, J.E., within the
19 boundaries of the District.

20 134. During the 2017-18 school year, Kurtis attended the ninth grade at a public
21 SCUSD high school. Although he was on a public campus, he was placed in a separate class for
22 students with disabilities for a majority of his school day. The District failed to provide Kurtis
23 with appropriate mental health, behavioral, or social evaluations, supports, or services that would
24 help him to be successful in the general education environment. In addition, upon information
25 and belief, Kurtis was not provided with equal access to the instruction and courses that were
26 available to other students without disabilities at his school.

27 135. Additionally, Kurtis did not receive culturally relevant and responsive education,
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1 programs, and services while attending a District school that year. Kurtis also did not receive
2 trauma-informed services or instruction.

3 136. Also during the 2017-18 school year, Kurtis endured severe and pervasive
4 identity-based bullying and harassment at school from both staff and students. Kurtis was the
5 target of peers' homophobic, race-based, and disability-based slurs. Kurtis sought help from
6 staff and was directed to fill out the bullying and harassment form. Kurtis estimates that he
7 submitted at least two dozen forms that year but received no responses to those complaints. The
8 discrimination, bullying, and harassment persisted, causing Kurtis to feel unsafe, unprotected,
9 and unsupported in his school. In addition, Kurtis's teacher placed a sign outside the classroom
10 door that informed all passing students and staff that the class was for "Emotionally Disturbed"
11 students. This sign remained in place throughout the school year and was not removed by the
12 District, despite its violation of students' privacy and its further perpetuating biases and
13 stereotypes about these students.

14 137. During the 2017-18 school year, Kurtis was excluded from school on at least
15 twenty-two school days – the equivalent of more than four weeks of school. Kurtis was formally
16 suspended from school for eleven of those days. In addition, Kurtis was sent home or excluded
17 from school on at least eleven other occasions. Upon information and belief, the District did not
18 document or track Kurtis's eleven additional removals from school during the 2017-18 school
19 year. While removed from school, Kurtis was deprived of any school instruction or school work.
20 Upon information and belief, Kurtis did not receive any instruction or access to education on his
21 eleventh day of removal and beyond during the 2017-18 school year.

22 138. Upon information and belief, all of these suspensions and informal removals
23 during the 2017-18 school year resulted from disability-related behavior or behavior related to
24 his response to experiencing identity-based bullying and harassment. Nevertheless, the District
25 did not intervene appropriately or conduct a Functional Behavior Assessment. Although the
26 District conducted one manifestation determination review in May 2018, it failed to return Kurtis
27 to his school after determining that his alleged behavior was a manifestation of his disabilities.
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1 139. Instead of providing Kurtis with services, accommodations, modifications, and
2 equal access at his neighborhood school, the District unilaterally removed Kurtis from his public
3 high school in May 2018. The District failed to provide him with any instruction or school
4 placement between May 2018 and September 2018, causing Kurtis to miss the last eleven days
5 of his ninth grade year and approximately the first seven days of his tenth grade year.

6 140. In September 2018, the District placed Kurtis in a segregated nonpublic school
7 that exclusively serves students with disabilities. Kurtis remained in this segregated setting for
8 the duration of the 2018-19 school year. He is still placed there for the 2019-20 school year.

9 141. While segregated in a nonpublic school, Kurtis does not receive equal access to
10 California's comprehensive and rigorous high school curriculum, including access to the full A-
11 G coursework required for University of California and California State University admission or
12 the opportunity to enroll in Advanced Placement courses. Kurtis does not get to experience or
13 participate in typical high school social experiences and rites of passage that are afforded to other
14 SCUSD students, such as football games and dances.

15 142. While segregated in a nonpublic school, Kurtis experiences stigma and additional
16 harms, such as multiple physical restraints. By removing him from his community and typically
17 developing peers, SCUSD has effectively denied Kurtis meaningful access and participation in
18 an integrated educational opportunity.

19 143. Upon information and belief, Kurtis's experiences are illustrative of and result
20 from the District's unlawful policies as outlined above.

21 *Konrad Doe*

22 144. Konrad Doe is a nine-year-old student who attends a public elementary school
23 operated by SCUSD. Konrad is a fourth-grade student.

24 145. Konrad enjoys playing basketball, and participates in multiple recreational
25 leagues outside of school. Konrad lives with his grandparents, who are his legal guardians,
26 within the boundaries of the District.

27 146. Konrad has been diagnosed with Autism Spectrum Disorder, Dyslexia, a specific
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1 learning disability in the area of written expression, and Attention-Deficit/Hyperactivity
2 Disorder. Konrad is a qualified individual with a disability under Section 504 and the ADA.

3 147. From the 2015-16 school year to the 2018-19 school year, Konrad attended his
4 neighborhood elementary school in SCUSD for kindergarten through third grade. Konrad was
5 one of fewer than three dozen Black students at his neighborhood school, which was located in
6 one of the wealthiest areas of Sacramento. Although Black and White students each make up
7 approximately fifteen to seventeen percent of the District's enrollment in any given school year,
8 Black students made up only 5.2 percent of the students at Konrad's school between 2015 and
9 2019 whereas about half of all enrolled students are White. Upon information and belief, all or
10 nearly all of the academic staff at Konrad's school were also White during this time period.

11 148. After experiencing discrimination and harassment at his neighborhood school,
12 Konrad has transferred to a different public elementary school that is farther from his home for
13 the start of the 2019-20 school year.

14 149. To date, the District has failed to provide Konrad with appropriate mental health,
15 behavioral, or social evaluations, supports, or services that would help him to be successful in the
16 general education environment. In addition, upon information and belief, none of the teachers at
17 either of Konrad's elementary schools is credentialed to be a primary instructor for students with
18 Autism Spectrum Disorder.

19 150. To date, Konrad has not been provided with equal access to the instruction,
20 programs, and services available to other students at his school. Instead, Konrad has been
21 frequently removed from his class during core parts of the curriculum. He has been repeatedly
22 excluded from the District's extracurricular and afterschool activities and has been singled out
23 and subjected to shortened school days for prolonged periods of time.

24 151. Konrad has never received culturally relevant and responsive education,
25 programs, and services while attending a District school.

26 152. Konrad has also been subject to excessive and repeated exclusionary discipline.
27 During the 2018-19 school year, for example, nine-year-old Konrad was formally suspended
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1 from his class on for seventeen school days – the equivalent of more than three weeks of school.

2 153. In addition, Konrad was sent home or kept in the office for most of the school
3 day, and accordingly deprived of academic instruction, on many other occasions. Upon
4 information and belief, the District did not document, track, or report Konrad’s additional
5 removals from school during the 2018-19 school year.

6 154. The District failed to recognize in a timely manner that he had been removed for
7 more than ten days of school or respond in a lawful manner. Upon information and belief,
8 Konrad did not receive any instruction or access to education on his eleventh day of removal and
9 beyond during the 2018-19 school year.

10 155. Upon information and belief, all of these suspensions and informal removals
11 during the 2018-19 school year resulted from disability-related behavior or behavior related to
12 his response to experiencing identity-based bullying and harassment. Nevertheless, the District
13 did not conduct a manifestation determination review until after Konrad’s seventeenth day of
14 formal suspension. Although the District determined that his conduct was a manifestation of his
15 disabilities, the District failed to document the meeting or offer and conduct a functional
16 behavior assessment.

17 156. Upon information and belief, Konrad has been removed from class or had his
18 school day administratively shortened without documentation on dozens of occasions since he
19 started kindergarten in the District.

20 157. Upon information and belief, on one or more occasions, Konrad was suspended
21 for “willful defiance” while he was in kindergarten through third grade in violation of state law.

22 158. These removals constitute excessive and unlawful exclusionary discipline. They
23 result in lost instructional time, hindering Konrad’s academic progress. On a school campus that
24 lacks diversity in race and ability, such targeted and persistent exclusion also stigmatizes Konrad
25 and students like him, fostering an environment that is unwelcoming and unaccommodating.

26 159. Konrad has been the repeated target of disability and race-based biases and
27 stereotypes. For example, rather than appropriately responding to and addressing his disability-
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1 based needs, school staff have repeatedly characterized Konrad as an aggressor or bully. Upon
2 information and belief, Konrad – the only Black student with Autism Spectrum Disorder at his
3 school – was suspended and removed more than any other student in his school during the 2018-
4 19 school year.

5 160. Over the past few years, Konrad has become keenly aware that he is different
6 from other students. He has started referring to himself as “bad” and struggling with suicidal
7 thoughts and actions. As recently as spring 2019, he tried to run out into traffic to get hit by a
8 car during the middle of the school day. When his grandparents and doctor requested an
9 accommodation in the form of temporary home instruction, District staff suggested in writing
10 that he instead dis-enroll from the District.

11 161. In February 2019, Konrad filed for due process alleging that the District had
12 failed to provide him with a free appropriate public education as guaranteed by the Individuals
13 with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*, as well as violations under
14 Section 504, the ADA, Title VI, and California Government Code section 11135. In March
15 2019, the Office of Administrative Hearings dismissed all non-IDEA claims for lack of
16 jurisdiction.

17 162. Because of the District’s policies that deny students with disabilities access to the
18 general education environment, Konrad is at constant risk of being removed from his elementary
19 school and placed in a segregated setting where he also will not have equal access to his public
20 education and where he is likely to be subjected to additional harms, such as a heightened risk of
21 restraint and seclusion. He remains at constant risk of experiencing exclusionary discipline.

22 163. Upon information and belief, Konrad’s experiences are illustrative of and result
23 from the District’s unlawful policies as outlined above.

24 **CLASS ALLEGATIONS**

25 164. Pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure,
26 Plaintiffs bring this action for injunctive and declaratory relief on their own behalf and on behalf
27 of all similarly situated students. The Plaintiffs seek to represent the following Classes in this
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1 matter, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), as follows:

2 **CLASS 1:** All students who currently or will in the future reside within the boundaries of
3 SCUSD, who have known or suspected disabilities, who require or may require services,
4 accommodations, and/or modifications to access and benefit from their public education
5 in the general education environment, and who have been or will be deprived of those
6 services, accommodations, and/or modifications due to the policies alleged herein.

7
8 **SUBCLASS to CLASS 1:** All Black students who currently or will in the future reside
9 within the boundaries of SCUSD, who have known or suspected disabilities, who require
10 or may require services, accommodations, and/or modifications to access and benefit
11 from their public education in the general education environment, and who have been or
12 will be deprived of those services, accommodations, and/or modifications due to the
13 policies alleged herein.

14 165. This action is an appropriate class action under Rule 23(b)(2), as SCUSD has
15 acted or refused to act on grounds that apply generally to each Class, so that final injunctive
16 relief or corresponding declaratory relief is appropriate respecting each Class as a whole.

17 166. **Numerosity.** The persons in these Classes are so numerous that joinder of all such
18 persons is impracticable. Upon information and belief, there are currently approximately 6,000
19 SCUSD students with identified disabilities, including approximately 1,200 Black students with
20 identified disabilities. Upon information and belief, almost half of these students are currently in
21 segregated settings. Additionally, more than ten percent of SCUSD students with disabilities
22 receive recorded suspensions each year. Accordingly, Defendants' deficient policies and
23 practices impact many hundreds of current and future students.

24 167. **Commonality.** There are questions of law and fact common to each Class
25 identified above, namely:

26 Whether SCUSD's policies, procedures and practices related to segregating students with
27 disabilities, including through lack of timely identification and evaluation; denial of
28

1 services, accommodations, and modifications; discriminatory exclusionary discipline;
2 and failure to provide a safe learning environment violate Section 504, and the ADA; and
3 Whether SCUSD's policies, procedures and practices related to segregating students with
4 disabilities, including through lack of timely identification and evaluation; denial of
5 services, accommodations, and modifications; discriminatory exclusionary discipline;
6 and failure to provide a safe learning environment violate Title VI, the Equal Protection
7 Clause, and state law.

8 168. **Typicality.** The claims of the Student Plaintiffs are typical of the claims of the
9 Classes, identified above, in that each of the Student Plaintiffs is a student with a disability that
10 qualifies him or her as eligible for services, accommodations, and modifications under Section
11 504 and/or the ADA, but Student Plaintiffs: (1) have not received a timely and appropriate
12 evaluation; (2) have not received timely and appropriate provision of services, accommodations,
13 and modifications; and (3) have been excluded from the general education environment in the
14 absence of those necessary services, accommodations, and modifications.

15 169. **Adequate Representation.** The Student Plaintiffs will fairly and adequately
16 protect the interests of the Class and Subclass. Student Plaintiffs do not have any interests
17 antagonistic to the members of any Class. The relief sought by Student Plaintiffs will inure
18 benefit to the members of each Class. Additionally, Student Plaintiffs are represented by counsel
19 who are experienced, skilled, and knowledgeable about civil rights litigation, disability rights,
20 and class action litigation.

21 **LEGAL CLAIMS**

22 **FIRST CLAIM FOR RELIEF**

23 **Violations of Section 504**
24 **29 U.S.C. § 794, 34 C.F.R. Pt. 104**
25 **(On Behalf of All Plaintiffs and Class Members**
Against Defendants District and Board of Education)

26 170. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in
27 full herein.
28

1 171. All Plaintiffs are, and Class Members are, or are suspected of being, qualified
2 individuals with disabilities within the meaning of Section 504 and are or may be otherwise
3 qualified to participate in or receive benefits from Defendants' programs or activities. 29 U.S.C.
4 § 794(a).

5 172. Defendants SCUSD and Board of Education have been and are a recipient of
6 federal financial assistance sufficient to invoke the coverage of Section 504. *Id.* § 794(b)(3).

7 173. As set forth above, Defendants' policies and practices violate the Section 504 and
8 unnecessarily segregate students with disabilities into highly restrictive placements and
9 discriminate against all Plaintiffs and Class Members by reason of their disability. The
10 Defendants' policies and practices regarding identification and evaluation; provision of services,
11 accommodations, and modifications; student discipline; and addressing bullying and harassment
12 constitute a persistent and systemic failure to meet the requirements of Section 504.

13 174. Thus, Defendants have deprived each Plaintiff and have or may deprive Class
14 Members of participation in and the benefits of general education.

15 175. Defendants have further used methods of administration that have subjected
16 students with disabilities to discrimination on the basis of their disabilities.

17 176. As a result of Defendants' violations, Plaintiffs have suffered, and Class Members
18 suffer or may suffer, irreparable harm, including substantial losses of educational opportunities.

19 177. Due to Defendants' ongoing violations of Section 504 and implementing
20 regulations, injunctive and declaratory relief are appropriate remedies.

21 **SECOND CLAIM FOR RELIEF**

22 **Violations of Title II of the ADA**
23 **42 U.S.C. §§ 12131 *et seq.*, 28 C.F.R. § 35.130**
24 **(On Behalf of All Plaintiffs and Class Members Against All Defendants)**

25 178. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in
26 full herein.

27 179. Each Defendant is either a public entity subject to Title II of the ADA or an
28 official responsible for supervising the operations of a public entity subject to Title II of the

1 ADA. 42 U.S.C. § 12131(1).

2 180. All Plaintiffs and Class Members are, or are suspected of being, qualified
3 individuals with disabilities within the meaning of Title II of the ADA and meet the essential
4 eligibility requirements for the receipt of services, programs, or activities of Defendants. *Id.* §
5 12131(2).

6 181. As set forth above, Defendants' policies and practices constitute a persistent and
7 systemic failure to meet the requirements of Title II of the ADA and discriminate against all
8 Plaintiffs and Class Members, by reason of their disability, by denying all Plaintiffs and Class
9 Members an equal and equally effective educational opportunity in the most integrated setting
10 appropriate, and instead providing all Plaintiffs and Class Members with a separate, different,
11 and inferior educational experience.

12 182. Thus, Defendants have deprived each Plaintiff and have or may deprive Class
13 Members of from participation in or the benefits of services, programs, or activities of a public
14 entity.

15 183. Defendants have further used methods of administration that have subjected
16 students with disabilities to discrimination on the basis of their disabilities.

17 184. As a result of Defendants' violations, Plaintiffs have suffered, and Class Members
18 suffer or may suffer, irreparable harm, including substantial losses of educational opportunities.

19 185. Due to Defendants' ongoing violations of Title II of the ADA and implementing
20 regulations, injunctive and declaratory relief are appropriate remedies.

21 **THIRD CLAIM FOR RELIEF**

22 **Violation of the Equal Protection Clause of the Fourteenth Amendment**
23 **to the U.S. Constitution and 42 U.S.C. § 1983**
24 **(On Behalf of All Plaintiffs and Subclass Members**
25 **Against Defendants Aguilar, Baeta, Ryan, Woo, Minnick,**
26 **Murawski, Garcia, Pritchett, and Vang in Their Individual Capacities)**

27 186. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in
28 full herein.

187. Defendants Aguilar, Baeta, Ryan, Woo, Minnick, Murawski, Garcia, Pritchett,

1 and Vang have, on the basis of race, intentionally discriminated against Plaintiffs and the
2 Subclass Members by excluding and segregating Black students with disabilities from an equal
3 education. These Defendants have excluded and segregated Black students with disabilities by
4 disciplining or allowing the discipline of Black students with disabilities and denying Black
5 students with disabilities the services, accommodations, and modifications to which they are
6 entitled.

7 188. These Defendants have demonstrated a widespread pattern of discrimination by
8 selectively enforcing facially neutral disciplinary policies, which has resulted in Black students
9 with disabilities being denied access to education, and for which there is no nondiscriminatory
10 justification.

11 189. In addition, these Defendants have been deliberately indifferent to the hostile
12 educational environment that exists for Black students with disabilities in SCUSD, despite their
13 actual knowledge of this hostile educational environment. In addition and in the alternative,
14 these Defendants' implicit and unconscious biases and stereotypes against Black students with
15 disabilities have been a significant factor in causing, allowing the continued existence of, and the
16 District's deliberate indifference to the gross race-based disparities in the discipline, exclusion,
17 segregation, and deprivation of services and supports for Black students.

18 190. In addition, the Defendants' policies have had a disproportionate negative impact
19 on Black students with disabilities with regard to exclusion, segregation, discipline, harassment,
20 and deprivation of services and supports to which those students are entitled.

21 191. The acts and omissions complained of were committed by the Defendants who
22 were at all times acting under color of state law to deprive the Plaintiffs and Subclass Members
23 of their federal right to equal protection within the meaning of 42 U.S.C. § 1983.

24 192. As a result of Defendants' violations, Plaintiffs have suffered, and Subclass
25 Members suffer or may suffer, irreparable harm, including substantial losses of educational
26 opportunities.

27 193. Due to Defendants' ongoing violations of the Equal Protection Clause, injunctive
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1 and declaratory relief are appropriate remedies.

2 **Fourth Claim for Relief**

3 **Violations of Title VI and 42 U.S.C. § 1983**
4 **(On Behalf of All Plaintiffs and Subclass Members**
5 **Against Defendants District and Board of Education)**

6 194. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in
7 full herein.

8 195. Upon information and belief, Defendants SCUSD and Board of Education are
9 recipients of federal funding sufficient to invoke the coverage of Title VI. 42 U.S.C. § 2000d *et*
10 *seq.* Defendants have, on the basis of race, intentionally discriminated against Plaintiffs and the
11 Subclass Members by excluding and segregating Black students with disabilities from an equal
12 education. These Defendants have intentionally denied Black students with disabilities the
13 services and supports to which they are entitled.

14 196. These Defendants have demonstrated a widespread pattern of intentional
15 discrimination by selectively enforcing facially neutral disciplinary policies, in violation of Title
16 VI of the Civil Rights Act. This selective enforcement has resulted in Black students with
17 disabilities being denied access to education, and for which there is no nondiscriminatory
18 justification.

19 197. In addition, these Defendants have engaged in intentional discrimination by
20 denying Black students with disabilities access to education by being deliberately indifferent to
21 the hostile educational environment that exists for Black students with disabilities in SCUSD,
22 despite their actual knowledge of this hostile educational environment.

23 198. The acts and omissions complained of were committed by these Defendants who
24 were at all times acting under color of state law to deprive the Plaintiffs and Subclass Members
25 of their federal right to nondiscrimination within the meaning of 42 U.S.C. § 1983.

26 199. As a result of Defendants' violations, Plaintiffs have suffered, and Subclass
27 Members suffer or may suffer, irreparable harm, including substantial losses of educational
28 opportunities.

1 200. Due to Defendants' ongoing violations of the Title VI, injunctive and declaratory
2 relief are appropriate remedies.

3 **Fifth Claim for Relief**

4 **Violations of California Government Code § 11135**
5 **and Cal. Code Regs. tit. 2, § 11154**
6 **(On Behalf of All Plaintiffs and Subclass Members**
7 **Against Defendants District and Board of Education)**

8 201. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in
9 full herein.

10 202. California Government Code section 11135 prohibits discrimination against
11 persons on the basis of race and other protected statuses in state-run or state-funded programs
12 and activities.

13 203. Upon information and belief, Defendants SCUSD and Board of Education are
14 recipients of state funding.

15 204. The District's application of policies in their administration of educational
16 services within District schools has had and continues to have the effect of denying Plaintiffs and
17 Subclass Members full and equal access to the benefits of the programs or activities administered
18 by the District, or of subjecting Plaintiffs and Subclass Members to discrimination under such
19 programs or activities, on the basis of their race.

20 205. As a result of the manner in which the District has administered the policies
21 described above, Plaintiffs and Subclass Members have been denied full and equal access to the
22 benefits of educational opportunities within District schools, or have been subjected to
23 discrimination under such programs or activities, on the basis of race, in violation of California
24 Government Code section 11135(a) and Title 2 of the California Code of Regulation, section
25 11154.

26 206. The District has therefore violated and continues to violate California
27 Government Code section 11135.

28 207. Plaintiffs and Subclass Members are entitled to injunctive relief to enjoin the

1 District's violation of California Government Code section 11135.

2 **REQUEST FOR RELIEF**

3 WHEREFORE, Plaintiffs respectfully request that the Court:

- 4 1. Certify this case as a class action under Federal Rules of Civil Procedure 23(a) and
5 23(b)(2).
- 6 2. Appoint Plaintiffs as Class Representatives of the Classes and their attorneys as Counsel
7 for all Classes.
- 8 3. Declare that Defendants' policies, practices and procedures regarding segregation and
9 discipline of students with disabilities and regarding students with disabilities who
10 require access to services, accommodations, and modifications to access education in the
11 general education environment violate the rights of all Plaintiffs and Class Members
12 under Section 504, the ADA, and state law.
- 13 4. Declare that Defendants' policies, practices and procedures regarding segregation and
14 discipline of Black students with disabilities, and peer-on-peer and staff-on-student racial
15 harassment violate the rights of all Plaintiffs and Subclass Members under the Equal
16 Protection Clause, Title VI, and state law.
- 17 5. Issue permanent injunctions pursuant to Section 504, the ADA, the Equal Protection
18 Clause, Title VI, and state law that enjoin Defendants, their successors in office, agents,
19 employees and assigns, and all persons acting in concert from violating Section 504, the
20 ADA, the Equal Protection Clause, Title VI, and state law and require Defendants to
21 promulgate compliant policies, procedures, and practices.

22 And order Defendants to:

- 23 6. Immediately discontinue all policies, procedures and practices that do not comply with
24 the laws cited in this complaint;
- 25 7. Create and broadly disseminate to teachers and other District staff, parents, and students a
26 new Board of Education-approved written policy statement, which must include the
27 following, acknowledging the rights of students with disabilities and Black students with
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1 disabilities as set forth in this complaint, and reasserting Defendants' commitment to
2 honor those rights, including:

- 3 a. The right of access to the same educational opportunities as their peers regardless
4 of disability or race;
- 5 b. The right to services, accommodations, and modifications necessary to remain in
6 the general education environment; and
- 7 c. The right to an educational environment free of discriminatory discipline and
8 harassment and bullying;

9 8. Take immediate action to reform policies, procedures and practices to fully comply with
10 Section 504, ADA the Equal Protection Clause, Title VI, and state law; such action must
11 include securing a team of third-party experts to assist the District to:

- 12 a. Develop and implement a clear and defined plan to achieve inclusivity for all
13 students throughout the District, including students with disabilities and Black
14 students with disabilities, that enables these students to receive access to equal
15 education side-by-side with their peers without disabilities in a safe and
16 welcoming educational environment;
- 17 b. Implement a districtwide Multi-Tiered System of Supports to identify the needs of
18 and improve educational outcomes for all students using multiple data measures,
19 and to provide strategic, targeted, appropriate, and culturally relevant
20 interventions for all students that are available regardless of a student's disability,
21 status or race;
- 22 c. Establish appropriate programs, that are based on peer-reviewed research or other
23 evidence-based programs to provide services, accommodations, and modifications
24 to students with disabilities in the general education environment;
- 25 d. Provide for immediate and continuing education for all District staff and
26 evaluation of progress toward compliance with Section 504, ADA the Equal
27 Protection Clause, Title VI, and state law by qualified third-party experts; such
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1 education or training must include:

- 2 i. identification of students with disabilities,
- 3 ii. provision of appropriate and culturally relevant instruction, services,
- 4 accommodations, and modifications in the least restrictive environment,
- 5 iii. stopping and preventing harassment and bullying based on disability or
- 6 race,
- 7 iv. eliminating or significantly reducing reliance on exclusionary discipline,
- 8 v. implicit bias, and
- 9 vi. administration of discipline without racial discrimination;
- 10 e. Develop and implement a system to identify staff who are not complying with any
- 11 of the laws cited in this Complaint, retrain and provide appropriate supports to
- 12 any such staff to enable them to come into compliance, and take appropriate
- 13 disciplinary action regarding any staff who fail to come into compliance after
- 14 such retraining or provision of supports;
- 15 f. Analyze the current racial make-up of the District's teachers, social workers and
- 16 psychologists, respectively, relative to the current racial make-up of the District's
- 17 student body; create and implement separate plans that include clear goals to
- 18 increase the diversity of the teachers, social workers, and psychologists,
- 19 respectively, based on the foregoing analysis; and achieve substantial compliance
- 20 with those plans and goals within three years and total compliance within seven
- 21 years;
- 22 g. Analyze all aspects of education for students with disabilities in the District for
- 23 implicit racial bias and structural discriminatory racialization; develop a
- 24 comprehensive plan to eliminate or mitigate such bias and discrimination; and
- 25 achieve substantial compliance with such plan within three years and total
- 26 compliance within seven years;
- 27 h. Review and analyze the credentials and qualifications of all District
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1 administrators and staff; identify gaps in credentials or qualifications to
2 administer or instruct students with disabilities; develop a detailed plan to
3 eliminate such gaps; and achieve substantial compliance with such plan within
4 three years and total compliance within seven years; and

5 i. Determine appropriate District staffing levels, staff qualifications, methods of
6 data collection and analysis, and effective measures to prevent and protect all
7 students, including students with disabilities and Black students with disabilities,
8 against bullying; develop a detailed plan based on such determination; and
9 achieve substantial compliance with such plan within three years and total
10 compliance within seven years.

11 9. Enjoin all disciplinary action, including any pending action, against any Black student
12 with disabilities unless a manifestation determination has been completed, and maintain
13 such injunction until a districtwide Multi-tiered System of Services and Supports has
14 been implemented and determined effective by a qualified third-party expert or experts;

15 10. Enjoin the use of so-called District Student Study Teams until a districtwide Multi-Tiered
16 System of Supports is in place and a qualified third-party expert or experts have
17 determined whether the District should continue use of such teams;

18 11. Offer assessments or reassessments to all students enrolled in the District who requested
19 assessment for disability or who were referred to a Student Study Team within the last
20 two years;

21 12. Offer all Black students currently enrolled in the District who have been classified as
22 having Emotional Disturbance the option of having an independent educational
23 evaluation at the District's expense, and provide such assessments for all students who
24 accept the offer;

25 13. Identify, offer, and provide services, accommodations, and modifications to all students
26 found eligible for the same in accordance with Section 504 and the ADA; and

27 14. Provide the Court and the public with an annual report on the District's compliance with
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1 the Court's orders for four consecutive years.

2 Plaintiffs further respectfully request that the Court:

3 15. Retain jurisdiction of this case until Defendants have fully complied with the orders of
4 this Court, and there is reasonable assurance that Defendants will continue to comply in
5 the future absent continuing jurisdiction;

6 16. Award Plaintiffs reasonable attorneys' fees, costs, and disbursements as authorized by
7 law; and

8 17. Grant further relief as the Court may deem just and proper.

9
10 DATED: September 5, 2019

Respectfully submitted,

11 MONA TAWATAO
12 EVA PATERSON

13 **EQUAL JUSTICE SOCIETY**

14 /s/ Mona Tawatao (as authorized on 9/5/2019)

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21 /s/ Carly J. Munson

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27 /s/ Michael Harris (as authorized on 9/5/2019)

28 _____
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