

1 RACHEL STEINBACK (SBN 310700)
Rachelsteinback@nlsla.org
2 CHELSEA HELENA (SBN 328623)
Chelseahelena@nlsla.org
3 MELISA FUMBARG (SBN 328417)
Melisafumbarg@nlsla.org
4 DAVID PALLACK (SBN 90083)
Dpallack@nlsla.org
5 NEIGHBORHOOD LEGAL SERVICES
OF LOS ANGELES COUNTY
6 13327 Van Nuys Blvd.
Pacoima, CA 91331-3006
7 Telephone: (818) 291-1786
Fascimile: (833) 537-5529
8

9 *Attorneys for Plaintiffs R.W., J.L.,
G.V., F.V., and Black Parallel School Board*

10 *[Additional counsel listed on the following page]*

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF LOS ANGELES

13 R.W.,
14 Student J.L., Minor by and through their
15 guardian *ad litem* R.W.,
16 G.V.,
17 Student F.V., Minor by and through their
18 guardian *ad litem* G.V., and

19 BLACK PARALLEL SCHOOL BOARD,
20 PLAINTIFFS,

21 v.

22 TONY THURMOND, in his official
23 capacity as STATE SUPERINTENDENT
24 OF PUBLIC INSTRUCTION, and the
CALIFORNIA DEPARTMENT OF
25 EDUCATION,

26 DEFENDANTS.

Case No. 21STCP03325

VERIFIED FIRST AMENDED
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE

1 MONA TAWATAO (SBN 128779)
mtawatao@equaljusticesociety.org
2 ALEXANDRA SANTA ANA (SBN 317852)
Asantaana@equaljusticesociety.org
3 CHRISTINA ALVERNAZ (SBN 329768)
calvernaz@equaljusticesociety.org
4 EQUAL JUSTICE SOCIETY
1939 Harrison Street, Suite 818
5 Oakland, CA 94612
Telephone: (415) 288-8703
6 Facsimile: (415) 484-1530

7 JASON D. LINDER (SBN 212665)
jlinder@mayerbrown.com
8 DOUGLAS A. SMITH (SBN 290598)
dougsmith@mayerbrown.com
9 JOSEPH J. VEŠCERA (SBN 328386)
jvescera@mayerbrown.com
10 CARTER M. JANSEN (SBN 347116)
cjansen@mayerbrown.com
11 MAYER BROWN LLP
333 South Grand Avenue, 47th Floor
12 Los Angeles, California 90071-1503
Telephone: (213) 229-9500
13 Facsimile: (213) 625-0248

14 CYNTHIA L. RICE (SBN 87630)
crice@crla.org
15 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
1430 FRANKLIN STREET, SUITE 103
16 Oakland, CA 94612
Telephone: (510) 267-0762
17 Facsimile: (510) 267-0763

18 *Attorneys for Plaintiffs R.W., J.L.,*
19 *G.V., F.V., and Black Parallel School Board*

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1 **PRELIMINARY STATEMENT**

2 1. This case seeks to require the California Department of Education (“CDE”) and its
3 Superintendent of Public Instruction (“STATE SUPERINTENDENT”) (collectively,
4 “DEFENDANTS”) to monitor all California public school districts for racially
5 discriminatory discipline policies and practices and to redress those practices when they are
6 found.

7 2. Black and Latinx students have been denied equal educational opportunities in
8 California for generations. Through years of racialized disinvestment, systematic
9 criminalization, and school pushout through the school-to-prison pipeline, public education
10 in California has failed to equitably serve Black and Latinx students. State-level data has
11 long shown that Black and Latinx students in districts across California are disciplined more
12 frequently and harshly than their white counterparts. Policies and practices in several
13 California districts undermine students’ fundamental right to education under the California
14 Constitution, violate express requirements of state and federal law, and have resulted in
15 alarming disparities in disciplinary measures.

16 3. The California Constitution requires the State to ensure that all students—regardless
17 of race or ethnicity—have equal access to its public education system. Cal. Const., art. IX,
18 § 5, *Butt v. California* (1992) 4 Cal. 4th 668, 680. School districts must offer all students an
19 education program providing the opportunity for them to stay in school and succeed,
20 irrespective of their race or ethnicity.

21 4. Access to education is vital to ensuring that students of any background enter colleges
22 or careers with the skills and tools necessary to be self-sufficient, productive, and
23 contributing members of society. When students are removed from or otherwise prevented
24 from engaging with their learning environments due to exclusionary discipline practices or a
25 lack of investment in restorative programs (*i.e.*, programs that emphasize building
26 relationships with and between students to foster a culture of respect, personal responsibility,
27 and holistic conflict resolution), their access to basic educational services and opportunities is

1 severely compromised.¹ Highly punitive forms of discipline—like suspensions, expulsions,
2 and involuntary transfers—create the additional consequences of traumatizing students,
3 jeopardizing their mental and social-emotional health, and subjecting them to needless and
4 life-altering contact with the criminal legal system.²

5 5. The State of California, acting through its STATE SUPERINTENDENT, and CDE
6 have the ultimate responsibility for ensuring that students of all backgrounds receive equal
7 access to educational services in compliance with state and federal law. As a part of this duty,
8 DEFENDANTS must monitor and enforce the express and mandatory limitations and
9 obligations imposed on educational agencies who discipline, transfer, assign, or expel
10 students. DEFENDANTS, while on notice of disparities based on race and ethnicity, have
11 refused to monitor and redress the disparate impact of school discipline, transfer, and
12 assignment policies and practices on Black and Latinx students. DEFENDANTS have
13 thereby failed to fulfill their obligation to ensure that school districts statewide do not
14 discriminate against Black and Latinx students through the application of discipline and
15 school transfer policies and practices that have a disparate racial impact.

16 6. Moreover, school districts regularly disguise their disparate treatment of Black and
17 Latinx students by classifying expulsions as voluntary or involuntary transfers to other
18 schools to evade their responsibility to accurately report their expulsions.

19 7. School districts are obligated to report their suspensions and expulsions each year to
20 CDE and, in turn, CDE makes that data publicly available through its website, DataQuest.³
21 Media and advocacy groups frequently access this data to compile reports on school districts
22 with the worst rates of discipline in terms of disproportionately disciplining Black and Latinx
23 students. To reduce their publicly reported suspension and expulsion numbers, school
24 districts have increasingly relied on “voluntary transfers” and “involuntary transfers” as a

25
26 ¹ Elizabeth Pufall Jones, Max Margolius, Miriam Rollock, Catalina Tang Yan, Marissa L. Cole & Jonathan F.
27 Zaff, *Disciplined and Disconnected: How Students Experience Exclusionary Discipline in Minnesota and the*
28 *Promise of Non-Exclusionary Alternatives* (2018) p. 3.

² Mara Eyllon, Carmel Salhi, John L. Griffith & Alisa K. Lincoln, *Exclusionary School Discipline Policies and*
Mental Health in a National Sample of Adolescents without Histories of Suspension or Expulsion (2020).

1 means of forcing or coercing students to move from their comprehensive school campuses to
2 alternative school placements, such as continuation schools. Cal. Educ. Code §§ 48432.3
3 [voluntary transfers], 48432.5 [involuntary transfers], 48662 [involuntary transfers].
4 Involuntary transfers in particular are expulsions by another name. These transfers are
5 subject to administrative hearing requirements similar to those required in expulsion
6 hearings. Cal. Educ. Code § 48432.5.

7 8. School districts throughout California are using transfers to manage student behavior
8 in a way that disadvantages vulnerable student groups, including students of color. This
9 practice is able to continue without public knowledge or meaningful accountability because
10 although districts are required to submit data on voluntary and involuntary transfers to the
11 State, that data is not disclosed to or available for review by the public. Cal. Educ. Code
12 §§ 60900-01.

13 9. The California Education Code gives school districts the power to establish their own
14 policies and practices governing the criteria for compulsory and voluntary interdistrict
15 transfers, which are often published in districts' administrative regulations. School districts
16 are therefore given the power to create their own criteria for school discipline through the
17 transfer process.

18 10. School districts often pressure parents into signing "waivers" of their child's right to
19 an expulsion hearing. This results in the direct transfer of a student to an alternative school
20 without a hearing. When a parent agrees to a waiver, school districts label the student's
21 change in placement as a "voluntary transfer." But in reality, the transfer is not voluntary.
22 Although these "voluntary transfers" often arise out of disciplinary incidents, CDE does not
23 monitor voluntary transfers or hearing waivers. On information and belief, many parents,
24 including limited English-proficient parents, are coerced by school districts to sign waivers
25 without understanding the rights they are relinquishing. Despite being on notice of these
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28 ³ Cal. Dep't of Educ., DataQuest, <https://data1.cde.ca.gov/dataquest/>.

1 practices, CDE has failed to exercise any meaningful oversight of waivers and has failed to
2 create reporting requirements for voluntary transfers or waivers.

3 11. After these placements, students typically end up in the same restrictive, inadequate
4 placements as they would after an expulsion, including but not limited to, a county
5 community school, a continuation school, or independent study. School districts thus
6 circumvent public reporting of school discipline by creating what amounts to their own
7 school removal process. Despite being on notice of school districts using transfers to
8 effectuate expulsions and conceal true rates of disciplinary measures imposed against Black
9 and Latinx students, CDE has failed to exercise oversight of transfers and has not required
10 school districts to report transfer data.

11 12. Plaintiffs are Black and Latinx students, parents of students, and a community
12 organization. Plaintiffs have been, or support those who have been, subjected to
13 disproportionate discipline in California public school districts. They seek judicial
14 intervention to ensure that DEFENDANTS meet their duties to monitor and enforce the
15 express and compulsory limitations and obligations imposed on educational agencies who
16 discipline, transfer, assign, expel or transfer students to ensure that those practices do not
17 unlawfully discriminate against students based on race or ethnicity.

18 **PARTIES**

19 **PLAINTIFFS**

20 13. Plaintiff J.L. is a fifth-grade student attending Mojave Unified School District and is a
21 resident of California. J.L. is Black and has been diagnosed with autism spectrum disorder
22 and ADHD. He has an Individualized Educational Plan (“IEP”), which is a plan developed to
23 ensure that a child who has a disability identified under the law receives specialized
24 instruction and related services so that he may participate in and benefit from public
25 education programs and activities. J.L. has experienced repeated off-the-books suspensions
26 and classroom exclusions as a student in Mojave Unified School District and has not been
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1 given equal access to educational instruction and school programs or afforded the protections
2 of due process.

3 14. Plaintiff R.W. is a taxpayer in Kern County and the State of California. She is the
4 parent of J.L. In addition to the racial discrimination against her son J.L., Plaintiff R.W. has
5 witnessed the mistreatment of other Black and Latinx students in Mojave Unified School
6 District.

7 15. Plaintiff F.V. is a sixth-grade student currently attending Wilsona School District. He
8 previously attended Eastside Union School District. F.V. is Latinx and receives special
9 education services through an IEP. While attending school in Eastside Union School District,
10 F.V. received both formal and informal off-the-books suspensions for behavior that was a
11 manifestation of his disabilities, causing him to lose several days of instructional time. He
12 was also subjected to frequent law enforcement contact from a Los Angeles County Sheriff's
13 Deputy stationed at his school, causing him to receive a criminal citation at 8-years-old.

14 16. Plaintiff G.V. is a taxpayer in Los Angeles County and the State of California. She is
15 the parent of F.V. In addition to the racial discrimination against her son F.V., G.V. has
16 witnessed the mistreatment of other Black and Latinx students in Antelope Valley schools.

17 17. Plaintiff BLACK PARALLEL SCHOOL BOARD is a nonprofit community
18 organization developed to work in parallel to the Sacramento City Unified School District's
19 Board of Education. Black Parallel School Board's mission is to support the educational
20 achievement and opportunities of Black students by monitoring all educational activities and
21 programs of the school district to ensure that they serve the needs of Black students. Black
22 Parallel School Board also provides support services to parents regarding the education of
23 their children and leads statewide efforts to reform school discipline for Black students.

24 **DEFENDANTS**

25 18. Defendant CDE is a department of the State of California statutorily charged with
26 administering and enforcing laws pertaining to education, including those laws that guarantee
27 common schools and equal access to public education under the California Constitution. Cal.

1 Const., art. I, § 7; art. IV, § 16; art. IX, § 1; Cal. Educ. Code § 33308. Within those
2 responsibilities, CDE must comply with the Equal Educational Opportunities Act (20 U.S.C.
3 § 1703 et seq), the Every Student Succeeds Act (20 U.S.C. § 6301 et seq.), and Title VI of
4 the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and its regulations and ensure that
5 local education agencies (“LEAs”) funded by the State are also in compliance with those
6 statutes and regulations.

7 19. California, and in turn CDE, receives federal funds from the United States
8 Department of Education under the Every Student Succeeds Act and other federal grant
9 programs, including Title I and Title III of the Elementary and Secondary Education Act, as
10 reauthorized by the Every Student Succeeds Act. These funds are granted so that CDE may
11 provide funding to support educational services to California children and youth consistent
12 with the provisions of federal law and the express conditions of grant agreements. CDE is
13 charged with cooperating with federal and state agencies in prescribing rules, regulations,
14 and instructions required by those agencies and with monitoring and ensuring legal
15 compliance by school districts. Cal. Educ. Code § 33316(b). CDE is also charged with
16 monitoring school district compliance with data reporting, including reporting of suspensions
17 and expulsions. Cal. Educ. Code § 33126.1.

18 20. Defendant TONY THURMOND is the STATE SUPERINTENDENT and is a
19 constitutional officer of the state charged with the supervision of all California schools and
20 school districts. The STATE SUPERINTENDENT, as the executive officer of CDE, is
21 obligated to take all necessary steps to ensure that school districts comply with state and
22 federal requirements concerning educational programs and services. Cal. Educ. Code
23 §§ 33111, 33301-33033. He is charged with reviewing empirical research data concerning
24 barriers to equal opportunities for all California students and with ensuring that school
25 districts comply with data reporting requirements. Cal. Educ. Code §§ 33126.1(l),
26 33126.2(b). He is also required to assist school districts and county offices of education to
27 recognize and eliminate unlawful discrimination that may exist within their programs or
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1 activities and to meet state anti-discrimination mandates. Cal. Code Regs., tit. 5, §§ 4900-
2 4901. Plaintiffs bring this action against STATE SUPERINTENDENT Thurmond in his
3 official capacity.

4 21. DEFENDANTS receive financial assistance from or are responsible for programs that
5 receive financial assistance from the United States Department of Education and must ensure
6 that no person, including Plaintiffs and other Black and Latinx students in California
7 districts, is subjected to discrimination under any program or activity receiving such
8 assistance, and for otherwise complying with the provisions of 42 U.S.C. § 2000d and 34
9 C.F.R. § 100.1 *et seq.*

10 22. Section 33304 of the California Education Code expressly incorporates Section 11180
11 of the California Government Code, giving DEFENDANTS the power to “prosecute actions
12 concerning . . . subjects under the jurisdiction of the department,” including “[v]iolations of
13 any law or rule or order of the department.” Cal. Gov. Code § 11180. DEFENDANTS know,
14 or should know, that school districts across the state have engaged in policies or practices
15 leading to discriminatory discipline of Black and Latinx students. Each has failed to comply
16 with their various statutory and constitutional obligations by establishing and/or condoning
17 and funding a system, pattern, or practice of exclusionary discipline that discriminates
18 against Student Plaintiffs and other Black and Latinx students and directly results in the
19 denial of equal access to educational services. DEFENDANTS, acting under the color of
20 state law, performed, participated in, and aided or abetted the acts and omissions averred
21 herein, proximately causing the harm to Plaintiffs set forth below. They are thereby liable to
22 Plaintiffs for the relief sought herein.

23 **VENUE**

24 23. Venue in this Court is appropriate under Code Civil Procedure § 393, as funds
25 distributed by the State of California, the California Department of Education, and the State
26 Superintendent of Public Instruction were expended by districts within the regional
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1 boundaries of Los Angeles County, and facts giving rise to the causes of action arose in Los
2 Angeles County.

3 **FACTUAL ALLEGATIONS**

4 24. Black and Latinx students in California schools are not afforded the same
5 opportunities or treated the same way as their white peers. While Black students accounted
6 for only 5.4% of the state’s public-school enrollment in 2018-2019, they represented 16.3%
7 of students suspended in the State and 12.9% of those expelled. In 2018-2019, Black students
8 accounted for 59,493 of California’s suspensions and 673 of the state’s expulsions. Assuming
9 a 180-day school year, 331 suspensions and four expulsions of Black students were therefore
10 occurring each day. Black students are significantly overrepresented in suspension and
11 expulsion numbers reported to CDE each year and to a degree not experienced by any other
12 student group.

13 25. The consequences of harsher punishments for Black and Latinx students are far-
14 reaching. For years, comprehensive research and studies have shown that students who lose
15 instructional time due to exclusionary discipline have a greater risk of dropping out, falling
16 behind in schoolwork, feeling disconnected from school, and feeling targeted, singled out, or
17 unsupported by teachers and administrators.⁴ Students affected by exclusionary discipline
18 practices are less likely to attend college and consequently more likely to experience
19 economic instability and be relegated to low-wage jobs as adults.⁵ Moreover, due to the
20 pervasive presence of law enforcement in public schools throughout the State, suspensions
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22 ⁴ See Advancement Project & The Civil Rights Project, *Opportunities Suspended: The Devastating*
23 *Consequences of Zero tolerance and School Discipline Policies* (2000)
24 [https://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-](https://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and-school-discipline-policies/crp-opportunities-suspended-zero-tolerance-2000.pdf)
25 [devastating-consequences-of-zero-tolerance-and-school-discipline-policies/crp-opportunities-suspended-zero-](https://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and-school-discipline-policies/crp-opportunities-suspended-zero-tolerance-2000.pdf)
26 [tolerance-2000.pdf](https://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and-school-discipline-policies/crp-opportunities-suspended-zero-tolerance-2000.pdf) (as of Sept. 2, 2021); C.A. Christle, K. Jolivet & C.M. Nelson, *Breaking the School to*
27 *Prison Pipeline: Identifying School Risk and Protective Factors for Youth Delinquency* (2005)
28 https://doi.org/10.1207/s15327035ex1302_2 (as of Sept. 2, 2021); Sheryl Hemphill, John Toumbourou, Todd
Herrenkohl, Barbara McMorris & Richard Catalano, *The Effect of School Suspensions and Arrests on*
Subsequent Adolescent Antisocial Behavior in Australia and the United States (2006) 39 J. Adolescent Health 5,
736-44 (2006).

⁵ Andrew Bacher-Hicks, Stephen B. Billings & David Deming, *The School to Prison Pipeline: Long Run*
Impacts of School Suspension on Adult Crime, National Bureau of Economic Research (2019)
https://www.nber.org/system/files/working_papers/w26257/w26257.pdf.

1 and expulsions have been found to forge a direct pathway from school to the criminal legal
2 system, a phenomenon referred to as the “school-to-prison pipeline.”⁶

3 26. As part of their responsibilities as LEAs, California school districts are required to
4 provide student data to DEFENDANTS through the California Longitudinal Pupil
5 Achievement Data System (“CALPADS”). Reported and required indicators include
6 enrollment and demographic data, special education data, performance data, and discipline
7 data on suspensions, expulsions, and transfers. This annual data is available to
8 DEFENDANTS, who use it to generate summary reports available to the public on its online
9 platforms, DataQuest, and the California School Dashboard, found at
10 <https://www.caschooldashboard.org/>.

11 27. During the past decade, numerous districts statewide have reported discipline data to
12 CDE showing racial disparities. On information and belief, CDE has failed to meaningfully
13 and affirmatively hold any district to account for discipline discrimination or provide redress
14 to affected students. Sacramento City Unified School District gave Black students 41.5% of
15 suspensions in 2018-2019, despite Black students comprising only 15.5% of the student
16 population. That same year, Latinx students in Stanislaus Union School District received
17 69% of suspensions despite accounting for only 53.4% of the student population. In 2018-
18 2019, West Contra Costa Unified gave 41.5% of suspensions to Black students, who
19 represent only 15% of the student population. Black students in Hesperia Unified School
20 District received 17% of suspensions and 22% of expulsions, at just 7% of the student
21 population, in 2018-2019. That same year in San Bernardino Unified School District, Black
22 students received 27.3% of suspensions despite making up just 11.5% of the population.

23 28. In 2018-2019, Latinx students in Riverside Unified School District received 71% of
24 expulsions, while making up only 63% of the population. In Conejo Valley Unified School
25 District, Latinx students received 45% of suspensions, but made up only 27% of the

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27 ⁶ ACLU, *No Police in Schools: A Vision for Safe and Supportive Schools in CA* (2021)
28 https://www.aclusocal.org/sites/default/files/field_documents/no_police_in_schools_-_report_-_aclu_-_082421.pdf.

1 population. Conversely, their white counterparts made up 54% of the population, but
2 received 41% of the suspensions. Similarly, in San Dieguito Union High School District,
3 Latinx students made up only 14.5% of the population, but received 27% of the suspensions.

4 29. The Antelope Valley Union High School District provides a graphic example of how
5 DEFENDANTS' failure to hold school districts accountable for their exclusionary discipline
6 practices has dramatically impacted Black and Latinx children.

7 30. The Antelope Valley Union High School District is in Lancaster and Palmdale,
8 California, a region of north Los Angeles County known as the Antelope Valley. In 2018-
9 2019, it served 22,476 students in grades 9 through 12. The district's student population is
10 racially and ethnically diverse: 63.3% are Latinx; 16.7% are Black; 12.3% are white; 2.8%
11 are Asian-Pacific Islander; and 0.3% are American Indian or Alaska Native. According to
12 data collected by the State, 70% of the Antelope Valley Union High School District students
13 are from low-income families, which makes public education critical to breaking the cycle of
14 poverty for these students.

15 31. Black and Latinx students in the Antelope Valley Union High School District have
16 for years been subject to discipline and school assignment policies and practices that
17 suspend, expel, or assign them to alternative schools at highly disproportionate rates. In the
18 2018-2019 school year, the Antelope Valley Union High School District reported 2,972
19 suspensions. This is 600 more suspensions than were reported for the same year by the Los
20 Angeles Unified School District, a district with more than 21 times the enrollment of
21 Antelope Valley Union, and the largest district in California.

22 32. At 8.3%, the Antelope Valley Union High School District's suspension rate in 2018-
23 2019 was more than 20 times the rate of the Los Angeles Unified School District (0.4%),
24 nearly four times the rate of the rest of Los Angeles County (2.1%) and nearly 2.5 times the
25 rate of the state (3.6%). And while overall suspensions in the Antelope Valley Union High
26 School District are higher than the rest of the county and the state as a whole, suspensions of
27 Black and Latinx students are even higher. In the 2018-2019 school year, despite their
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1 relatively small share of the Antelope Valley Union High School District student population
2 (16.7%), Black students comprised nearly half of suspended and expelled students, at 43.7%
3 and 42.6% respectively. In contrast, although white students were 12.3% of the student
4 population, they comprised only 6.3% of suspended students in 2018-2019, and not a single
5 student expelled from the Antelope Valley Union High School District was white.

6 33. Despite this reported data showing patently unlawful racial disproportionalities in
7 discipline meted out to California students, CDE has done nothing in response, leaving these
8 districts, and others around the State, to continue their practices unchecked, harming
9 thousands of Black and Latinx students each year.

10 34. Although statewide suspension and expulsion rates have decreased during the last
11 decade, significant disproportionalities remain for Black students in virtually all school
12 districts, and Latinx students in several school districts around the state. Several school
13 districts, including those mentioned in this complaint, have not reported any significant
14 decrease in suspensions and expulsions, and continue to discipline Black and Latinx students
15 at momentously disproportionate rates. This is in violation of the laws that DEFENDANTS
16 are bound to uphold and enforce.

17 35. Moreover, the statewide decrease, on information and belief, masks a pervasive and
18 pernicious statewide practice of districts using informal suspensions and transfers as
19 functional school exclusions that avoid reporting requirements. DEFENDANTS are aware
20 that this statewide decrease is due to school districts reclassifying suspensions and expulsions
21 as informal suspensions and transfers but have ignored the practice, abdicating their
22 responsibilities to the students who continue to suffer.

23 36. Informal, or off-the-books, suspensions are illegal in that they temporarily exclude
24 students from school without the Education Code's due process protections, denying them
25 written notice and an opportunity for a parent conference. Cal. Educ. Code §§ 48910, 48911.
26 Often, no documentation exists proving that these de facto suspensions took place, so parents
27 are at a significant disadvantage when they attempt to contest or resist these exclusions.

1 These suspensions are also not reported to the Department of Education, meaning that they
2 will not be publicly disclosed or held to meaningful account. *See* Cal. Educ. Code § 48900.8.

3 37. Further, many districts hide their true numbers of expulsions by relying on
4 involuntary transfers. Students who are initially referred for expulsion are instead
5 involuntarily transferred out of a general education setting and into an alternative setting. In
6 so doing, districts avoid issuing reportable formal expulsions. Because the State gives
7 districts the freedom to establish their own policies, procedures, or criterion for such transfers
8 (Cal. Educ. Code §§ 48432.3 & 48432.5), districts have been allowed to abuse that power in
9 shuffling students via transfer to alternative schools as a means of punishment for disrupting
10 the learning environment, as an alternative to expulsion, or as a way to handle student
11 truancy.

12 38. Relatedly, districts around the state, on information and belief, have implemented a
13 “waiver” system, wherein parents and students are convinced through coercion, intimidation,
14 or misrepresentation into waiving the due process protections that accompany expulsion
15 hearings and involuntary transfers and accepting an immediate “voluntary” transfer to an
16 alternative school. Parents and students are led to believe that they are avoiding expulsions
17 by consenting to these waivers; however, these transfers operate as an expulsion in removing
18 the student from the general education setting and placing them in an often less supportive,
19 more poorly resourced, and less academically rigorous alternative setting.

20 39. Transfer practices in the Antelope Valley Union High School District reflect this
21 statewide trend of masking true expulsion numbers. As with their suspension rates,
22 expulsions in the Antelope Valley Union High School District are well above those of the
23 Los Angeles Unified School District as well as county and statewide averages. In 2018-2019,
24 the Antelope Valley Union High School District’s average expulsion rate was 3.0 per 1,000
25 students, whereas the expulsion rates of Los Angeles Unified School District and the State
26 were 0.0 and 1.0 per 1,000 students, respectively. And as with suspensions, Black students
27 fare far worse when it comes to expulsions. The average expulsion rate for Black students in
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1 the Antelope Valley Union High School District for this same year was 6.6 per 1,000
2 students, 253% higher than the district's overall average. Comparatively, the Antelope Valley
3 Union High School District did not expel any white students during the 2018-2019 school
4 year.

5 40. Through an extensive public records request, Plaintiffs' counsel was able to obtain
6 non-publicly reported transfer data for the Antelope Valley Union High School District. In
7 2018-2019, the Antelope Valley Union High School District effectuated 573 transfers to
8 alternative schools. Over the previous three years (from 2016 through 2019), it averaged 623
9 such transfers. The district reported 61 expulsions for that same year and averaged 83
10 expulsions in the previous three years. Reported expulsions in the Antelope Valley Union
11 High School District have decreased in the last decade, from 161 expulsions in 2012 to 61 in
12 2019, while the data made available on district transfers shows that these numbers in the last
13 five years have remained very high. On information and belief, Antelope Valley Union High
14 School District, like other California school districts, is relying on this hidden and unreported
15 disciplinary tactic to reduce its reported number of student suspensions and expulsions.

16 41. Transfers in the Antelope Valley Union High School District follow a similar pattern
17 to suspensions and expulsions in terms of the impact on vulnerable students. Of the 29
18 voluntary transfers given in the 2018-2019 school year, Black and Latinx students received
19 27 of them, or 93%. Black students received 59% of voluntary transfers, more than all other
20 racial groups combined.

21 42. The example of the Antelope Valley Union High School District is merely a snapshot
22 of a statewide problem—Black and Latinx students in districts throughout California
23 experience the adverse and far-reaching effects of discipline discrimination.

24 43. DEFENDANTS are on notice of these racially discriminatory disciplinary practices
25 because every school district in California submits its data on voluntary and involuntary
26 transfers to CDE. On information and belief, DEFENDANTS do not review or analyze this
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1 data to determine whether districts are complying with the law or should be subjected to
2 increased monitoring.

3 44. These practices persist statewide without public knowledge or meaningful
4 accountability because DEFENDANTS do not make this data available to the public.

5 45. The manner in which many districts throughout the state use transfers to manage
6 student behavior is, on information and belief, further disadvantaging vulnerable student
7 groups, particularly and disproportionately students of color and students of color with
8 disabilities. Plaintiffs are informed and believe that data reported to DEFENDANTS shows
9 that discipline-related transfers result in disproportionate exclusions of students of color and
10 students of color with disabilities from comprehensive school campuses. Federal government
11 studies have confirmed such findings.⁷

12 46. Transferring students, particularly vulnerable students, to alternative school campuses
13 all but ensures that those students will not be provided with the full educational opportunities
14 and experiences offered in the general education setting. Alternative and community day
15 schools were designed to be a temporary placement for students needing to address urgent,
16 short-term behavioral problems, credit deficiencies, or attendance issues—they were not
17 intended to provide comprehensive education programs. These schools are not equipped or
18 structured to support students with special education needs, students experiencing the effects
19 of trauma, students with acute academic deficits, or students ready for academic
20 advancement.⁸ They often do not offer honors or advanced placement courses, or even all of
21 the courses necessary to enroll in many colleges and universities. Many students must remain
22 enrolled an additional semester or year to even meet the requirements to graduate high
23 school. Often, students are given one-size-fits-all online or independent study curriculums in
24 which they receive limited academic support or opportunities for collaboration that are

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27 ⁷ U.S. Gov't Accountability Off., GAO-19-373, *K-12 Education: Certain Groups of Students Attend Alternative*
28 *Schools in Greater Proportions Than They Do Other Schools* (2019), <https://www.gao.gov/products/gao-19-373>.

1 critical to college and career readiness. These curriculums often do not offer a selection of
2 elective courses or have any athletics or extracurricular activities. Students forced into these
3 placements spend full semesters and sometimes even multiple years in these unsatisfactory
4 settings, meaning that most cannot and do not earn the credits or gain the experience needed
5 to graduate or succeed post-graduation.⁹ Moreover, after years of placement in alternative
6 schools, students' academic deficits can become insurmountable, leading to higher drop-out
7 rates.¹⁰

8 47. The United States Department of Education requires state departments of education to
9 develop a plan under the Every Student Succeeds Act ("ESSA") for how it intends to use
10 federal funds. This plan, known as the ESSA State Plan, among other things requires states to
11 specify how they will support school districts in reducing the overuse of exclusionary and
12 discriminatory discipline practices. 20 U.S.C. § 6312(b)(11).

13 48. California's ESSA State Plan lists the ways that it claims to support districts in
14 reducing the overuse of exclusionary discipline and focuses on using California's Local
15 Control and Accountability Plan system to meet this goal. It explains that the state will
16 require districts to describe in their Local Control and Accountability Plans how they will
17 reduce exclusionary discipline. These plans also include a state monitoring section, referring
18 to on-site reviews and "data reviews" of districts; however, on information and belief, this
19 monitoring does not include a review of discipline data reported in CALPADS.

20 49. DEFENDANTS have been on notice of the stark racial disparities in discipline
21 statewide at districts like the Antelope Valley Union High School District due to the state
22 data reporting responsibilities required of all California districts. Plaintiffs are informed and
23 believe that DEFENDANTS have not increased monitoring of discipline data, escalated
24 reporting requirements, or taken action to require districts that have reported racial disparities
25 in discipline data to explain or address the disproportionality.

27 ⁸ U.S. Gov't Accountability Off., GAO-20-310, K-12 Education: Information on How States Assess Alternative
28 School Performance (2020), <https://www.gao.gov/assets/710/705567.pdf>.

⁹ *Id.* at 11-12, 16-17.

1 50. Further, DEFENDANTS have not and did not at any time undertake an investigation
2 in school districts where disproportionate and racialized discipline is present. They have not
3 subjected such school districts to additional monitoring and have not required the submission
4 of any additional information regarding suspension, expulsion, and transfer policies and
5 statistics.

6 51. On information and belief, DEFENDANTS continue to fully fund school districts
7 around the State with high rates of suspension, expulsion, and transfers of Black and Latinx
8 students without imposing funding or other conditions.

9 **DEFENDANTS’ FAILURES CAUSE CONCRETE, SERIOUS, AND LONG-**
10 **LASTING HARMS**

11 **J.L. and R.W.**

12 52. J.L. is a ten (10)-year-old student who attends Hacienda Elementary School in
13 Mojave Unified School District. J.L. is Black.

14 53. J.L. has autism spectrum disorder. One of the accommodations to which J.L. is
15 entitled under his IEP is the ability to take breaks. This accommodation allows J.L. to leave
16 class and go to a designated safe space when he is feeling overwhelmed.

17 54. In October 2019, when J.L. was six years old and a second-grade student at Mojave
18 Elementary School in the Mojave Unified School District, he was excluded from his class for
19 two days, allegedly for not listening to his teacher and for “destroying school property” by
20 rubbing his pencil eraser on the back of a classroom chair. He was effectively suspended
21 from his regular class and placed in a segregated classroom for students with behavioral
22 issues. This was an “informal suspension” as he was excluded from his regular classrooms as
23 a disciplinary measure, without following the due process requirements in Education Code
24 Sections 48910, 48911, or 48911.1. Plaintiffs are informed and believe that Mojave Unified
25 School District and other districts around the state regularly engage in these workarounds, off-
26 the-books suspensions, which are not reported to the California Department of Education,

27 ¹⁰ *Id.*

1 meaning that they will not be publicly disclosed or reflected in reported suspension rates. *See*
2 Cal. Educ. Code § 48900.8.

3 55. Plaintiff R.W., J.L.’s mother, asked to meet with the principal to discuss J.L.’s
4 suspension, but the principal was unavailable according to the Mojave Unified School
5 District.

6 56. Mojave Unified School District permitted R.W. to observe the “behavioral
7 intervention” class during J.L.’s suspension, and she observed that students watched movies
8 all day and did not receive any meaningful educational instruction or support.

9 57. In November 2019 after having lunch with his mother, J.L. went to line up with his
10 teacher and the rest of his class. However, his teacher told him to get out of line. When R.W.
11 inquired as to the reason for this treatment, the teacher yelled in front of J.L.’s classmates and
12 his other teachers, “He’s not welcome in my class!” J.L. and R.W. were publicly
13 embarrassed.

14 58. Thereafter, the teacher refused to allow J.L. into class. He was moved to another
15 class. The instruction at this class was at a lower academic level than his previous class and
16 gave less challenging classwork and assignments to students.

17 59. J.L. was understandably very upset about his experience with that particular teacher.
18 Whenever he saw or had to interact with her, he felt physically ill with headaches, stomach
19 aches, and other physio-emotional responses to trauma. His grades suffered as a result.

20 60. J.L. was subject to additional informal suspensions, but Mojave Unified School
21 District did not inform R.W. of all these informal suspensions, nor did she receive any notice
22 of them. She only later learned of them from J.L.’s teacher.

23 61. During the 2020-2021 school year, when instruction occurred through distance
24 learning because of the COVID-19 pandemic, J.L. was excluded from his online classroom
25 on multiple occasions, causing him to lose vital instructional time. J.L.’s teacher blocked him
26 from class for playing online games during instructional time, despite the fact that those
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1 games that were part of the class curriculum. J.L. was excluded from online class on at least
2 three occasions, at times losing half a day of instructional time.

3 62. Plaintiff R.W., J.L.'s mother, also works with other Black and Latinx students in
4 Mojave Unified School District who are experiencing or have experienced discrimination,
5 disparate discipline, and mistreatment at school. R.W. often acts as an advocate and
6 community resource for these parents. She puts together advocacy letters that can be used as
7 templates for other parents to use when advocating for their students. She attends monthly
8 seminars on how to navigate school boards that train her, in part, on how to successfully
9 advocate for students and against discrimination at the school board level. She does
10 significant outreach to Black and Latinx parents in her community and provides training to
11 them on their rights at school. Plaintiff R.W. has also filed district-level complaints
12 challenging misuse of school funds intended for vulnerable student groups.

13 63. Plaintiff R.W. is connected with several advocacy and parent groups statewide,
14 including Plaintiff Black Parallel School Board. Plaintiff R.W. consults with these groups to
15 receive training and understand how she can become a more effective advocate for her
16 community.

17 64. Plaintiff R.W. has accompanied other parents in proceedings at the school district
18 regarding bullying of their children. She has raised issues relating to harassment and
19 discrimination against Black and Latinx students at the district and school levels.

20 65. Plaintiff R.W. engages in all of these activities because she would like to see her
21 children and children around the state receive a robust, equitable education free from
22 discrimination and harassment.

23 **F.V. and G.V.**

24 66. F.V. is an eleven-year-old sixth grade student who attends Challenger Middle School
25 in Lancaster, California. Challenger Middle School is part of the Wilsona School District.
26 F.V. is hard of hearing. He previously attended Eastside Elementary School in Eastside
27 Union School District in Lancaster for his third-grade year. Both Wilsona School District and
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1 Eastside Union School District feed into the Antelope Valley Union High School District.
2 F.V. is Latinx.

3 67. F.V. has an IEP. F.V. receives services under the primary eligibility of Hard of
4 Hearing and the secondary eligibility Speech or Language Impairment. He also has been
5 diagnosed with autism spectrum disorder and attention deficit hyperactivity disorder
6 (“ADHD”).

7 68. For kindergarten and first and second grades, F.V. did not have any behavioral or
8 discipline issues at school. However, in third grade, other students started bullying F.V. for
9 his disabilities—he has to wear both glasses and hearing aids. F.V. did his best to cope with
10 being newly bullied; however, because the school did not adequately address the bullying
11 despite multiple attempts by his mother, G.V., to inform them of it, F.V. began manifesting
12 new behaviors as a response to emotional stress.

13 69. During the 2019-2020 school year, F.V. went from having no behavioral or
14 disciplinary issues to being frequently formally and informally suspended from classes and
15 school. His first suspension occurred in October 2019. Eight-year-old F.V. was suspended for
16 one day after a staff member on lunch duty reported seeing F.V. name calling, pushing, and
17 jumping on other students. F.V. told G.V. that this behavior was a response to a group of
18 students bullying him by hitting him and calling him names.

19 70. In February of 2020, F.V. was given a one-day suspension for tripping another
20 student and grabbing the hood of the student’s jacket. A sheriff’s deputy serving as a school
21 resource officer questioned eight-year-old F.V. and gave him a law enforcement citation for
22 battery. The sheriff’s deputy did this in plain violation of the law. Children under the age of
23 twelve cannot be prosecuted in the state of California for anything other than the most
24 serious of crimes – murder and forcible sex offenses. Further, in recognition of the
25 vulnerability of children, and “[i]n order to ensure the safety and well-being” of these youth,
26 the law explicitly states that law enforcement intervention for children under twelve is to be
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1 “avoid[ed] ... whenever possible.” Welf. & Inst. Code §§ 602(b), 602.1. Appropriately, no
2 case was filed. To this day, F.V. still experiences fear and anxiety around school police.

3 71. F.V.’s school was not giving him additional supports and made no effort to address
4 the causes for his behavior. In February 2020, F.V. was suspended for three days for
5 allegedly fighting with other students in the cafeteria. The other students had previously
6 called F.V. names and bullied him for his hearing aids. F.V. reacted by calling them names
7 and attempting to push and scratch them.

8 72. For all of F.V.’s suspensions, G.V. was not initially given written notice or an
9 opportunity for conferences, as required by Education Code § 49811. She had to request
10 these due process protections herself by going to the school and asking for written
11 explanations and meetings with school staff.

12 73. According to counseling notes from October 2019 to March 2020, F.V. was referred
13 for discipline several times by his teacher for exhibiting similar behavior. No additional
14 supports were added to his education program to address F.V.’s sudden change of behavior
15 and temperament. During this period, school administrators routinely called G.V. in the
16 middle of the school day to take F.V. home from school on account of the aforementioned
17 behaviors. G.V. was not given formal notices of the suspensions. She was also not given an
18 opportunity to have a conference with the school regarding the suspensions, as required by
19 Education Code § 48911. She was not given any paperwork to document these multiple
20 informal suspensions.

21 74. F.V. continues to experience anxiety and signs of depression as he struggles to cope
22 with the exclusionary and discriminatory discipline and law enforcement contacts he
23 experienced as a third grader.

24 **Black Parallel School Board**

25 75. Black Parallel School Board is a non-profit community organization supporting the
26 educational opportunities and advancement of Black students. It was developed to work
27 parallel to the Sacramento City Unified School District Board of Education by monitoring all
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1 educational activities and programs of the school district and ensuring the school district
2 addresses and meets the needs of Black students. Black Parallel School Board further
3 provides support services to parents regarding the education of their children. Black Parallel
4 School Board and its members are concerned about, and work to advocate against,
5 disproportionate rates of discipline for Black students across the state of California.

6 76. Black Parallel School Board also works with networks of parent groups, community-
7 based organizations, and grassroots groups to capacity-build and provide trainings on issues
8 relating to school discipline, and specifically, exclusionary discipline of Black students.
9 Black Parallel School Board works with policy advocates to provide parent and student
10 stories and on-the-ground information about the workings of targeted school districts. Such
11 information helps policy advocates inform their legislative advocacy and strategy. Black
12 Parallel School Board also works with other community organizations to develop and
13 disseminate handbooks and know-your-rights materials relating to school discipline.

14 77. Its members include concerned community members and parents of students in
15 Sacramento City Unified School District who have been or may be subjected to expulsion
16 and other forms of harsh and exclusionary disciplinary action.

17 78. Black Parallel School Board is concerned about the high rates of suspensions and
18 expulsions for Black students in Sacramento City Unified and the state of California. One of
19 its organizational focuses is addressing the disproportionate occurrences of exclusionary
20 discipline on Black students and fostering equitable access to education by reforming
21 discipline practices that lead to loss of instruction and educational opportunities for Black
22 youth.

23 79. Indeed, when Black Parallel School Board was formed almost a decade ago, its
24 members were focused on increasing graduation rates and closing the academic achievement
25 gap for Black students in Sacramento Unified School District. However, as time went on, the
26 group soon learned of grossly disproportionate rates of discipline for Black students in the
27 Sacramento Unified School District. The group and its members began to divert their
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1 resources to address exclusionary discipline of Black students. In the last several years,
2 parents around the state have reached out to the group for training, advice, technical
3 assistance, and close support to address exclusionary discipline in their own home districts.
4 As a result of CDE’s failure to monitor and redress the exclusionary discipline of Black
5 students, Black Parallel School Board has had to divert further resources away from Black
6 student academic achievement in Sacramento towards exclusionary discipline of Black
7 students at school districts statewide.

8 80. Black Parallel School Board has expended both funds and resources in furtherance of
9 its mission of attaining Black student equity in Sacramento and statewide. The organization
10 is a leader in statewide efforts to reform school discipline for Black students.

11 **FIRST CAUSE OF ACTION**

12 **VIOLATION OF THE EQUAL PROTECTION CLAUSES OF THE CALIFORNIA**
13 **CONSTITUTION, ARTICLE I, SECTION 7(A) & ARTICLE IV, SECTION 16(A)**

14 **(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

15 81. Plaintiffs incorporate by reference paragraphs 1-80 as though fully set forth here.

16 82. The California Constitution guarantees all students in California basic educational
17 equality. A constitutional violation of basic educational equality occurs where a public
18 educational program “falls fundamentally below prevailing statewide standards” that effects
19 disparate treatment upon a group of students. *Butt v. California* (1992) 4 Cal.4th 668, 687.
20 This right is fundamental, such that any action that has a real and appreciable impact upon
21 such right is subject to strict scrutiny.

22 83. The State bears the nondelegable responsibility and the ultimate authority to ensure
23 that public schools are providing basic educational equality to all students, as guaranteed by
24 the Constitution. Cal. Const., art. IX, § 5; art. I, § 7. Public education is an obligation, which
25 the state assumed by the adoption of the Constitution and by operation of statute delegated to
26 the CDE and STATE SUPERINTENDENT and to local education agencies. The

1 Constitution prohibits the state from maintaining, operating, or financing the common public
2 school system in a way that denies educational equality absent a compelling reason.

3 84. Although DEFENDANTS are on notice of the racial disparities in discipline
4 administered in school districts around the State, they have not, on information and belief,
5 taken action or directed any school district to determine the cause of the disparities or rectify
6 them accordingly. DEFENDANTS additionally continue to provide funding to school
7 districts, without condition, even when these districts show statistically significant disparities
8 in discipline and transfer rates for Black and Latinx students.

9 85. DEFENDANTS have violated the rights of Plaintiffs and other Black and Latinx
10 students to receive equal protection under the law, pursuant to Article I, § 7(a) and Article
11 IV, § 16(a) of the California Constitution, by failing to monitor and take other steps to ensure
12 that school districts are providing basic educational opportunities equal to those of white
13 students. Further, DEFENDANTS have failed to ensure that school district policies or
14 practices are applied in a manner that do not disparately impact Black and Latinx students by
15 disproportionately subjecting them to discipline, suspension, expulsion, involuntary transfers,
16 assignment to independent study programs, contact with school-based law enforcement and
17 security personnel, or limits or denials of their access to the general education setting.
18 Student Plaintiffs and members of Plaintiff Black Parallel School Board who were, are, or
19 will be enrolled in school districts around the state have a personal interest in their
20 educational rights and the obligation under State law to ensure their equal protection and
21 access to education. Student Plaintiffs and student members of, or students served by,
22 Plaintiff Black Parallel School Board are hampered in their ability to access education
23 equally to white students on account of discriminatory policies and practices.

24 86. Unless enjoined, DEFENDANTS will continue to violate the rights of Student
25 Plaintiffs, BLACK PARALLEL SCHOOL BOARD, and other Black and Latinx students
26 enrolled in California public schools to receive equal protection under the law as guaranteed
27 by the California Constitution. Student Plaintiffs and other Black and Latinx students will

1 continue to suffer irreparable harm including, but not limited to, continued exclusion and
2 removal from school, poor academic outcomes, lost instructional time, social isolation, poor
3 mental health outcomes, and higher risk of drop-out and incarceration.

4 87. Plaintiffs seek a judicial determination of their rights and a preliminary and/or
5 permanent injunction enjoining DEFENDANTS from failing to comply with their legal
6 duties.

7 88. Plaintiffs bring this action in furtherance of public policy and to enforce important
8 rights affecting the public interest as established by the California Constitution and
9 applicable federal and state laws. Therefore, Plaintiffs seek attorneys’ fees pursuant to Code
10 Civ. Proc. § 1021.5 and as otherwise allowed by law.

11 **SECOND CAUSE OF ACTION**

12 **WRIT OF MANDATE (CODE CIV. PROC. § 1085)**

13 **(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

14 89. Plaintiffs incorporate by reference paragraphs 1-88 as though fully set forth here.

15 90. Plaintiffs seek a writ of mandate pursuant to Section 1085 of the California Code of
16 Civil Procedure to enforce and compel DEFENDANTS to exercise their duties to monitor
17 and intervene when racial disparities are present in disciplinary policies and practices so that
18 PLAINTIFFS may not be deprived of their right to equal access to education.

19 91. The California Constitution guarantees that all students—regardless of race or
20 ethnicity—have equal access to its public education system. Cal. Const., art. IX, §§ 1, 5. The
21 California Constitution also mandates that “[a] person may not be . . . denied equal protection
22 of the laws.” Cal. Const., Art. I, § 7(a). And pursuant to the Common School Clause of the
23 California Constitution, the State is also required to “provide for a system of common
24 schools by which a free school shall be kept up and supported in each district.” Cal. Const.,
25 art. IX, § 5.

26 92. Individually and collectively, these Constitutional provisions impose a general duty
27 on DEFENDANTS to (1) monitor the operations of public schools for unlawful
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1 discrimination in their policies and practices, including those relating to discipline, and (2)
2 take action to prevent and redress discrimination if on notice, actual or otherwise, that such
3 discrimination exists. The duties to monitor and to take action to prevent and redress
4 discrimination are ministerial, even if the specific action taken to fulfill these duties remains
5 within DEFENDANTS' discretion.

6 93. These constitutionally based duties require DEFENDANTS to ensure that local
7 educational agencies do not violate California's education-related statutory provisions and
8 the individual rights granted thereunder. Among those provisions are the following, which
9 make express the individual rights that DEFENDANTS must guarantee or proscribe the
10 specific action that DEFENDANTS must take to fulfill their constitutional obligations.¹¹

- 11 • **Cal. Education Code § 220:** "No person shall be subjected to discrimination on the
12 basis of . . . race or ethnicity . . . in any program or activity conducted by an
13 educational institution that receives, or benefits from, state financial assistance."
- 14 • **Cal. Government Code § 11135:** "No person in the State of California shall, on the
15 basis of . . . race, color, [or] ethnic group identification . . . be unlawfully denied full
16 and equal access to the benefits of, or be unlawfully subjected to discrimination
17 under, any program or activity that is conducted, operated, or administered by the
18 state or by any state agency, is funded directly by the state, or receives any financial
19 assistance from the state."
- 20 • **Cal. Government Code § 11136:** "Whenever a state agency that administers a
21 program or activity that is funded directly by the state or receives any financial
22 assistance from the state has reasonable cause to believe that a . . . local agency has
23 violated the provisions of Section 11135, . . . the head of the state agency . . . shall
24 notify the . . . local agency of such violation and shall submit a complaint detailing
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26 ¹¹ The California Education Code and corresponding regulations also impose ministerial and discretionary
27 duties on the STATE SUPERINTENDENT, which extend to CDE. These Education Code provisions and
28 regulations ensure that students have the benefit of leadership and intervention by the STATE
SUPERINTENDENT and CDE in implementing and upholding the state's nondiscrimination laws.

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the alleged violations to the Department of Fair Employment and Housing for investigation and determination.”

- **Cal. Government Code § 11137:** “If it is determined that a . . . local agency has violated the provisions of this article, pursuant to the process described in Section 11136, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such . . . local agency.”¹²
- **Cal. Education Code § 48432.3:** The “governing board of a school district” must “strive to ensure that no specific group of pupils, including a group based on race [or] ethnicity . . . is disproportionately enrolled in continuation schools within the school district.”
- **Cal. Education Code § 234.1:** The CDE must “monitor adherence” of LEAs to antidiscrimination laws and “assess whether local education agencies have . . . [a]dopted a policy that prohibits discrimination” or “[a]dopted a process for receiving and investigating complaints of discrimination.”
- **Cal. Code of Regulations, Title 5 § 4902:** “[T]he Superintendent of Public Instruction is responsible for providing leadership to local agencies to ensure that the requirements” of “nondiscrimination laws,” including Government Code §§ 11135-11137, 42 U.S.C. §§ 2000a et seq, 20 U.S.C. §§ 1701 et seq, and “[a]ny and all other federal and state laws and regulations involving assurances that local agencies will not discriminate on the basis of . . . ethnic group identification, race, [or] color,” are “met in educational programs that receive or benefit from state or federal financial assistance and are under the jurisdiction of the State Board of Education.”
- **Cal. Education Code §§ 52072, 52072.5:** “The Superintendent may, with the approval of the state board, identify [school districts or county offices] in need of intervention.” In implementing such intervention, the SI may “[m]ake changes” to the

¹² See also Gov. Code § 11139 (“This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief.”).

1 school district or county office’s “local control and accountability plan,” “[d]evelop
2 and impose a budget revision,” or “[a]ppoint an academic trustee.”

3 94. DEFENDANTS have the duty to “administer and enforce all laws” (Cal. Educ. Code
4 § 33308) and the duties, powers, and responsibilities to “make investigations and prosecute
5 actions” (Cal. Gov. Code § 11180) against school districts if they violate state and federal
6 laws, including those pertaining to guaranteeing equal education and prohibiting
7 discrimination, and this duty is non-delegable. *See also* Cal. Educ. Code §§ 33301-04,
8 33316(b); Cal. Gov. Code §§ 11135 et seq.; Cal Code Regs. tit 5 § 4900. DEFENDANTS
9 receive state and federal funds to monitor and ensure all school districts fulfill their
10 obligations under federal and state law to provide equal educational opportunity and an
11 educationally sound system.

12 95. DEFENDANTS have failed—and continue to fail—to meet their ministerial duties
13 derived from the California Constitution and the aforementioned statutes. DEFENDANTS
14 have also failed to meet their discretionary duties under those provisions, which either (i)
15 require DEFENDANTS to take some sort of action but afford DEFENDANTS discretion in
16 doing so, or (ii) give DEFENDANTS discretion in deciding whether to act at all. Despite
17 being on notice, actual or otherwise, of the disproportionate impact the school districts’
18 discriminatory disciplinary policies and practices have on Black and Latinx students,
19 DEFENDANTS have done nothing to respond to the school districts’ discriminatory
20 disciplinary policies and practices. And even in instances when the duty to take action in
21 response to discrimination is at the option of DEFENDANTS (*i.e.*, DEFENDANTS have
22 discretion in determining whether to act in the first place), DEFENDANTS have abused that
23 discretion by knowingly refusing to take any action at all in the face of obvious
24 discrimination.

25 96. DEFENDANTS have not fulfilled their ministerial duty to monitor educational
26 institutions to ensure they do not discriminate, let alone their ministerial duty to take some
27 sort of action, in their discretion, to address discrimination when it exists or is suspected of
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1 existing (*e.g.*, curtail state funding of those institutions; notify the discriminating LEA and
2 submit a complaint to the Department of Fair Employment and Housing (“DFEH”). The
3 monitoring systems currently in place do not consider information on coercive voluntary
4 transfers or expulsion hearing waivers, despite DEFENDANTS’ knowledge of these
5 widespread practices and their negative impact on Black and Latinx students. Moreover,
6 under the current system, DEFENDANTS do not investigate districts where racial
7 discrimination is occurring, nor do they subject such districts to additional monitoring.
8 DEFENDANTS’ total failure to act in some areas, and reliance on objectively incomplete
9 and ineffective monitoring systems in others, constitutes an abuse of discretion.

10 97. As the statistics cited herein on disciplinary practices within California’s public
11 schools establish, DEFENDANTS have failed—and continue to fail—to fulfill the
12 ministerial duty to “provide leadership” to ensure that the requirements of nondiscrimination
13 laws are met. *See* Cal. Code of Regulations, Title 5 § 4902. Further, the statistics establish
14 that DEFENDANTS’ attempts, if any, at “providing leadership”—including purported
15 monitoring for compliance with nondiscrimination laws—constitute an abuse of discretion.
16 And by not identifying LEAs or school districts in need of intervention and then
17 implementing that intervention, STATE SUPERINTENDENT and, by extension, CDE, also
18 abused the discretion afforded them by Education Code §§ 52072 and 52072.5 through their
19 deliberate inaction in response to the discrimination outlined herein. For example,
20 DEFENDANTS have not undertaken any of the statutory interventions that they may invoke
21 at their discretion, such as “[m]ak[ing] changes” to the school district or county office’s
22 “local control and accountability plan,” “[d]evelop[ing] and impos[ing] a budget revision,” or
23 “[a]ppoint[ing] an academic trustee.” Cal. Educ. Code §§ 52072, 52072.5.

24 98. The federal government guarantees that no person shall be “excluded from
25 participation in, be denied the benefits of, or be subjected to discrimination under any
26 program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000(d). More
27 specifically, it guarantees that “[n]o person in the United States shall, on the ground of race,
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1 color, or national origin be excluded from participation in, be denied the benefits of, or be
2 otherwise subjected to discrimination under any program [receiving federal financial
3 assistance].” 34 C.F.R. § 100.3. Further, such programs may not “[s]ubject an individual to
4 segregation or separate treatment in any matter related to his receipt of any. . . benefit under
5 the program.” *Id.*

6 99. Several other federal statutes also seek to ensure an educational system free of racial
7 discrimination, including:

- 8 • **20 U.S.C. § 6303:** The State must reserve a certain amount of federal funds to
9 be used for, inter alia, the State education agency’s “monitoring and
10 evaluating the use of funds by local educational agencies.”
- 11 • **34 C.F.R. § 100.3(b)(6):** “In administering a program regarding which the
12 recipient has previously discriminated against persons on the ground of race,
13 color, or national origin, the recipient must take affirmative action to
14 overcome the effects of prior discrimination . . . Even in the absence of such
15 prior discrimination, a recipient in administering a program may take
16 affirmative action to overcome the effects of conditions which resulted in
17 limiting participation by persons of a particular race, color, or national origin.”
- 18 • **20 U.S.C. § 7114:** Certain funds provided to states for educational purposes
19 may be used to “support [] local education agencies in providing programs
20 and activities that. . . foster safe, healthy, supportive, and drug-free
21 environments that support student academic achievement . . . which may
22 include . . . coordinating with any local educational agencies . . . to reduce
23 exclusionary discipline.”
- 24 • **20 U.S.C. § 1703:** “No State shall deny equal educational opportunity to an
25 individual on account of his or her race, color, sex, or national origin, by . . .
26 (c) the assignment by an educational agency of a student to a school, other
27 than the one closest to his or her place of residence within the school district

1 in which he or she resides, if the assignment results in a greater degree of
2 segregation of students on the basis of race, color, sex, or national origin
3 among the schools of such agency than would result if such student were
4 assigned to the school closest to his or her place of residence within the school
5 district . . . or (e) the transfer by an educational agency, whether voluntary or
6 otherwise, of a student from one school to another if the purpose and effect of
7 such transfer is to increase segregation of students on the basis of race, color,
8 or national origin among the schools of such agency.”

9 100. Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, and its implementing
10 regulations provide that prohibited discrimination extends to the use of practices that have
11 the effect of discriminating against individuals based on race or ethnicity and that recipients
12 of federal funds have the affirmative obligation to ensure that funds are not used in that
13 manner by sub-recipients. 34 C.F.R. § 100.3 states:

14 A recipient . . . may not, directly or through contractual or other arrangements,
15 utilize criteria or methods of administration which have the effect of
16 subjecting individuals to discrimination because of their race, color, or
17 national origin, or have the effect of defeating or substantially impairing
18 accomplishment of the objectives of the program as respect individuals of a
19 particular race, color, or national origin.

20 34 C.F.R. 100.7(e) forbids intentional discrimination, as well as practices that have a
21 disparate impact, but are not intentionally discriminatory.

22 101. The United States Department of Education also requires all states to develop
23 a plan for uses of federal funding, known as the ESSA State Plan. One such requirement is
24 that the state demonstrate:

25 [H]ow the State educational agency will support local educational agencies
26 receiving assistance under this part [20 U.S.C. § 6311 et seq.] to improve
27 school conditions for student learning, including through reducing—

- 1 (i) incidences of bullying and harassment;
- 2 (ii) the overuse of discipline practices that remove students from the
- 3 classroom; and
- 4 (iii) the use of aversive behavioral interventions that compromise student
- 5 health and safety[.]

6 20 U.S.C. § 6311(g)(1)(C). Plans must address how the state “will support efforts to reduce
7 the overuse of discipline practices that remove students from the classroom, which may
8 include identifying and supporting schools with high rates of discipline.” 20 U.S.C.
9 § 6312(b)(11). ESSA requires assurances that state programs are administered in accordance
10 with all applicable statutes and regulations, meaning that states are required to ensure
11 education programs under ESSA are not administered in a racially discriminatory way. 20
12 U.S.C. § 7844(1). States must also ensure that they will “adopt and use proper methods of
13 administering each such program” including enforcing obligations imposed on districts by
14 law and correcting deficiencies “identified through audits, monitoring, or evaluation.” 20
15 U.S.C. § 7844(3)(a-b). Once a state identifies in its ESSA State Plan steps it will take to
16 combat the effects of exclusionary discipline—such as data collection, reporting on
17 CALPADS, data analysis, and development of improvement plans—these steps become
18 ministerial duties that must be performed. Individually and collectively, these provisions
19 require that educational institutions, including CDE, not discriminate if they receive federal
20 funding. This imposes a ministerial duty on CDE and the STATE SUPERINTENDENT to
21 (1) monitor educational institutions receiving federal funds to ensure they do not
22 discriminate, and (2) take action to prevent and redress discrimination in local education
23 agencies.

24 102. DEFENDANTS have failed to fulfill their duties derived from these statutes
25 and regulations. They have not implemented an adequate or complete monitoring system,
26 despite federal funds being designated for such use. *See* 20 U.S.C. § 6303. They have also
27 failed to take affirmative action to overcome the effects of the discrimination found in the
28

1 LEAs’ disciplinary policies or practices, as mandated by 34 C.F.R. § 100.2(b)(6), or to
2 otherwise address the disciplinary policies or practices’ negative impact on the participation
3 of Black and Latinx students in educational programs. 20 U.S.C. § 7114 states that federal
4 funds may be used to “reduce exclusionary discipline,” yet DEFENDANTS have not done
5 so. Through deliberate inaction, DEFENDANTS have failed to properly monitor and redress
6 discrimination in disciplinary policies and practices of LEAs, and this inaction has allowed
7 for the continued denial of “equal educational opportunity” in the form of, among other
8 things, discriminatory school assignments, suspensions, expulsions, and transfers, in
9 violation of 20 U.S.C. § 1703.

10 103. DEFENDANTS are and have been on notice that school districts, including
11 those attended by Student Plaintiffs, have engaged in these discriminatory disciplinary
12 policies, and have violated their duties by failing to implement a monitoring and oversight
13 system, take any action, or provide leadership to ensure that Black and Latinx students,
14 including Plaintiffs J.L. and F.V. and the children of the members of Plaintiff BLACK
15 PARALLEL SCHOOL BOARD, are afforded equal access to educational opportunities and
16 all the nondiscrimination protections of state and federal law.

17 104. As a result of the DEFENDANTS’ failure to fulfill their ministerial and
18 discretionary duties, Black and Latinx students enrolled in school districts throughout the
19 state have been denied equal educational opportunity and continue to suffer academic
20 deficits.

21 105. Plaintiffs have no clear and present alternative remedy available to them with
22 respect to DEFENDANTS’ failure to comply with their duties.

23 106. Plaintiffs seek a judicial determination of their rights as well as a writ of
24 mandate pursuant to Code of Civil Procedure § 1085 directing DEFENDANTS to comply
25 with their legal duties and obligations, including but not limited to: developing a monitoring
26 system for regularly reviewing discipline data for accuracy and for racial disproportionality;
27 identifying school districts that disproportionately discipline Black and Latinx students

1 through discipline related classroom assignment, formal or informal suspension, expulsion,
2 or voluntary or involuntary discipline related transfers for increased monitoring and
3 intervention; taking all necessary steps to ensure that state laws governing discipline of
4 students are not carried out in a discriminatory manner; and ensuring that school districts
5 comply with their obligations under state and federal law to provide equal educational
6 opportunities to all students.

7 107. Plaintiffs bring this action in furtherance of public policy and to enforce
8 important rights affecting the public interest as established by the California Constitution and
9 the federal and state laws alleged in this complaint. Therefore, Plaintiffs seek attorneys' fees
10 pursuant to Code Civil Procedure § 1021.5 and as otherwise allowed by law.

11 **THIRD CAUSE OF ACTION**

12 **ILLEGAL EXPENDITURE OF TAXPAYER FUNDS (CODE CIV. PROC. § 526a)**

13 **(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

14 108. Plaintiffs incorporate by reference paragraphs 1-107 as though fully set forth
15 here.

16 109. Plaintiffs G.V. and R.W. are residents and taxpayers of Los Angeles County,
17 California. Within the last year, Plaintiffs G.V. and R.W. have been assessed for and are
18 liable to pay taxes in the county in which they reside and are liable to pay income taxes to the
19 state of California and the United States of America. Within a year before the
20 commencement of this action Plaintiffs G.V. and R.W. were assessed, and paid taxes in the
21 county in which they reside and to the state of California and the United States.

22 110. DEFENDANTS, individually and through the actions of their agents, have
23 expended tax money and will continue to expend tax money in an illegal manner in violation
24 of state law, as alleged in this complaint.

25 111. DEFENDANTS received state and federal funds which have been
26 appropriated and allocated to the DEFENDANTS, CDE, and the state of California through
27 its Board of Education for the purpose of complying with state and federal mandates

1 regarding specialized education programs for students. By failing to exercise its statutorily
2 required responsibility to properly oversee these programs and otherwise failing to take steps
3 to ensure equal educational access for Black and Latinx students herein, DEFENDANTS
4 have unlawfully diverted money intended for monitoring and oversight of programming
5 designed to expressly benefit such students to other uses in violation of state and federal law.
6 There is no adequate administrative remedy to challenge the State's unlawful failure to
7 exercise its oversight responsibilities and resulting illegal diversion of money.

8 112. Plaintiffs G.V. and R.W. and other taxpayers have suffered and continue to
9 suffer irreparable injury. Money damages would not adequately compensate taxpayers for
10 unlawful governmental activity.

11 113. The acts and omissions outlined in this Complaint were committed by
12 DEFENDANTS, either in their official capacities or through the actions of their agents,
13 acting pursuant to policies set by DEFENDANTS. Plaintiffs G.V. and R.W. bring this action
14 on behalf of themselves to enjoin the wasteful expenditure of taxpayers' dollars by
15 DEFENDANTS.

16 114. Plaintiffs bring this action in furtherance of public policy and to enforce
17 important rights affecting the public interest as established by the California Constitution and
18 the federal and state laws alleged in this complaint. Therefore, Plaintiffs seek attorneys' fees
19 pursuant to Code Civil Procedure § 1021.5 and as otherwise allowed by law.

20 **FOURTH CAUSE OF ACTION**

21 **DECLARATORY RELIEF**

22 **(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

23 115. Plaintiffs incorporate by reference paragraphs 1-114 as though fully set forth
24 here.

25 116. Plaintiffs assert that DEFENDANTS are obligated pursuant to Cal. Const., art.
26 I, § 7, Cal. Code of Regs., tit. 5, § 4902, 42 U.S.C. § 2000d, 34 C.F.R. § 100.1 *et seq.*, and 20
27 U.S.C. § 1703, to ensure that all policies and practices of school districts are applied in a

1 manner that does not disparately harm Black and Latinx students by disproportionately
2 subjecting them to discipline, suspension, expulsion, involuntary transfers, assignment to
3 independent study programs, school police or criminal legal system contact, or limits or
4 denials of their access to the general education setting. DEFENDANTS failed to meet that
5 obligation when they took no action to intervene when data showed that districts were
6 actively applying disciplinary practices in a manner that negatively and disparately impacted
7 Black and Latinx students and denied them access to the full range of educational services.

8 117. Plaintiffs assert that DEFENDANTS are obligated pursuant to Cal. Const. Art.
9 I, § 7, Cal. Code of Regs., tit. 5 § 4902, 42 U.S.C. § 2000d, 34 C.F.R. § 100.1 *et seq.*, and 20
10 U.S.C. § 1703, to monitor school districts for compliance with anti-discrimination policies
11 but failed to implement a monitoring system that provided notice of non-compliance and
12 timely intervention and correction. DEFENDANTS have, in various manners asserted that
13 they have no such obligations.

14 118. Plaintiffs desire a judicial determination of their rights as well as a declaration
15 as to legal duties and obligations of DEFENDANTS. A judicial declaration is necessary and
16 appropriate at this time under the circumstances in order that Plaintiffs may ascertain their
17 rights and the duties and obligations of DEFENDANTS.

18 119. Plaintiffs bring this action in furtherance of public policy and to enforce
19 important rights affecting the public interest as established by the California Constitution and
20 the federal and state laws alleged in this complaint. Therefore, Plaintiffs seek attorneys' fees
21 pursuant to Code Civil Procedure § 1021.5 or as otherwise allowed by law.

22 **REQUEST FOR RELIEF**

23 **WHEREFORE**, Plaintiffs request judgment against DEFENDANTS as follows:

- 24 1. A preliminary and/or permanent injunction prohibiting DEFENDANTS from violating
25 the equal protection clause of the California Constitution and directing DEFENDANTS
26 to develop an adequate discipline practices monitoring and intervention system for
27 regularly reviewing CALPADS discipline data to ensure that Districts are reporting data

1 accurately, to identify school districts that disproportionately discipline or transfer
2 Black or Latinx students, and to take such intervention measures as are necessary to
3 ensure that Black, Latinx, and other students are not denied equal access to educational
4 opportunities based on their race or ethnicity as a result of a district's discipline or
5 transfer policies;

- 6 2. An order that DEFENDANTS take all necessary steps to ensure that state laws
7 regulating the discipline and involuntary transfer of students are not racially or
8 ethnically discriminatory and ensure that school districts comply with their obligations
9 under state and federal law to provide equal educational opportunities to all students;
- 10 3. A writ of mandate under Code of Civil Procedure § 1085 ordering DEFENDANTS to
11 comply with their constitutional and statutory duties, including but not limited to:
12 developing a monitoring and intervention system for regularly reviewing discipline data
13 for accuracy and for racial disproportionality; identifying school districts that
14 disproportionately discipline Black and Latinx students for increased monitoring and
15 intervention; taking all necessary steps to ensure that state laws governing discipline of
16 students are not carried out in a discriminatory manner; and ensuring that school
17 districts comply with their obligations under state and federal law to provide equal
18 educational opportunities to all students;
- 19 4. Declaratory relief resolving the issues in dispute between the parties;
- 20 5. An order awarding Plaintiffs reasonable costs and attorneys' fees to the extent permitted
21 by law; and
- 22 6. Such other relief as the Court deems just and proper.

23
24 Dated: January 6, 2023

NEIGHBORHOOD LEGAL
SERVICES OF LOS ANGELES

25
26 By: /s/ Rachel Steinback
Rachel Steinback
Chelsea Helena
Melisa Fumbarg

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David Pallack
NEIGHBORHOOD LEGAL
SERVICES OF LOS ANGELES
COUNTY
13327 Van Nuys Blvd.
Pacoima, CA 91331-3006
Telephone: (818) 291-1786
Fascimile: (833) 537-5529
Rachelsteinback@nsls.org
Chelseahelena@nsls.org
Melisafumbarg@nsls.org
Dpallack@nsls.org

By: /s/ Mona Tawatao
Mona Tawatao
Alexandra Santa Ana
Christina Alvernaz
EQUAL JUSTICE SOCIETY
1939 Harrison Street, Suite 818
Oakland, CA 94612
Telephone: (415) 288-8703
Facsimile: (415) 484-1530
mtawatao@equaljusticesociety.org
asantaana@equaljusticesociety.org
calvernaz@equaljusticesociety.org

By: /s/ Douglas A. Smith
Douglas A. Smith
Jason D. Linder
Joseph J. Vescera
Carter M. Jansen
MAYER BROWN LLP
333 South Grand Ave., 47th Floor
Los Angeles, California 90071-1503
Telephone: (213) 229-9500
Facsimile: (213) 625-0248
dougsmith@mayerbrown.com
jlinder@mayerbrown.com
jvescera@mayerbrown.com
cjansen@mayerbrown.com

By: /s/ Cynthia L. Rice
Cynthia Rice
CALIFORNIA RURAL LEGAL
ASSISTANCE, INC.
1430 Franklin Street, Suite 103

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Oakland, CA 94612
Telephone: (510) 267-0762
Facsimile: (510) 267-0763
crice@crla.org

*Attorneys for Plaintiffs R. W., J.L.,
G.V., F.V., and Black Parallel School
Board*

VERIFICATION

I am a petitioner and plaintiff in this action and have read the First Amended Complaint and Petition for Writ of Mandate in this matter. The factual allegations stated therein in support of the Petition for Writ of Mandate are true of my own knowledge, except as to those matters stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed in the City of Sacramento, California on
01/05/2023

_____.

Carl Pinkston

CARL PINKSTON
BLACK PARALLEL SCHOOL BOARD

VERIFICATION

I am a petitioner and plaintiff in this action and have read the First Amended Complaint and Petition for Writ of Mandate in this matter. The factual allegations stated therein in support of the Petition for Writ of Mandate are true of my own knowledge, except as to those matters stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed in the City of California City, California on 01/05/2023

_____.

R.W

R.W.

VERIFICATION

I am a petitioner and plaintiff in this action and have read the First Amended Complaint and Petition for Writ of Mandate in this matter. The factual allegations stated therein in support of the Petition for Writ of Mandate are true of my own knowledge, except as to those matters stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed in the City of California City, California on
01/05/2023

_____.

R.W

J.L.

VERIFICATION

I am a petitioner and plaintiff in this action and have read the First Amended Complaint and Petition for Writ of Mandate in this matter. The factual allegations stated therein in support of the Petition for Writ of Mandate are true of my own knowledge, except as to those matters stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed in the City of Palmdale, California on 01/06/2023.

G.V.

G.V.

VERIFICATION

I am a petitioner and plaintiff in this action and have read the First Amended Complaint and Petition for Writ of Mandate in this matter. The factual allegations stated therein in support of the Petition for Writ of Mandate are true of my own knowledge, except as to those matters stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed in the City of Palmdale, California on 01/06/2023.

G.V.

F.V.

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PROOF OF SERVICE

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 333 South Grand Avenue, 47th Floor, Los Angeles, California 90071.

On January 6, 2023, I served the foregoing document described as: **VERIFIED FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE** on all parties as follows:

BENJAMIN GARY DIEHL
CRISTINA MATSUSHIMA
MICHAEL BYERTS
CALIFORNIA DEPARTMENT OF JUSTICE,
300 S SPRING ST, STE 1702,
LOS ANGELES, CA 90013-1256
Cristina.matsushima@doj.ca.gov
michael.byerts@doj.ca.gov
benjamin.diehl@doj.ca.gov

*Attorneys for Defendants California Department of Education and
Tony Thurmond, in his capacity as Superintendent of Public Instruction*

BY E-MAIL TRANSMISSION I caused such document to be electronically transmitted to the offices of the addressee(s) listed below, using the above e-mail address, on the date specified above.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6, 2023 at Los Angeles, California.

/s/ Joseph J. Vescera
Joseph J. Vescera