JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

(1) BLACK PARALLEL SCHOOL BOARD; (2) A., S., through his guardian A., AMY; (3) E., K., through his guardian E., JENNIFER; (4) S., C., through his guardian S., SAMUEL

(b) County of Residence of First Listed Plaintiff Sacramento
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Please see attachment.

DEFENDANTS

(1) SACRAMENTO CITY UNIF. SCH. DIST.; (2) Sacramento City Unif. Sch. Dist., AGUILAR, JORGE A., Superintendent; please see attachment for additional Defendants.

County of Residence of First Listed Defendant Sacramento
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☒ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

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- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
29 U.S.C. 794; 42 U.S.C. 12131 et seq.; 42 U.S.C. 1983; 42 U.S.C. 2000d et seq.

Brief description of cause:
Civil rights violations by public school district of children with disabilities and Black children with disabilities

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
09/05/2019

SIGNATURE OF ATTORNEY OF RECORD
/s/ Carly J. Munson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Civil Cover Sheet- Attachment

Supplement to I. (a) – Defendants

(3) Sacramento City Unif. Sch. Dist., BAETA, CHRISTINE A., Chief Academic Officer

(4) Sacramento City Unif. Sch. Dist. Bd. of Educ., RYAN, JESSIE, Member

(5) Sacramento City Unif. Sch. Dist. Bd. of Educ., WOO, DARREL, Member

(6) Sacramento City Unif. Sch. Dist. Bd. of Educ., MINNICK, MICHAEL, Member

(7) Sacramento City Unif. Sch. Dist. Bd. of Educ., MURAWSKI, LISA, Member

(8) Sacramento City Unif. Sch. Dist. Bd. of Educ., GARCIA, LETICIA, Member

(9) Sacramento City Unif. Sch. Dist. Bd. of Educ., PRITCHETT, CHRISTINA, Member

(10) Sacramento City Unif. Sch. Dist. Bd. of Educ., VANG, MAI, Member

(11) SACRAMENTO CITY UNIF. SCH. DIST. BD. OF EDUC.

Supplement to I. (c) – Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BLACK PARALLEL SCHOOL BOARD; S.A., by and through his Next Friend, AMY A.; K.E., by and through his Next Friend, JENNIFER E.; C.S., by and through his General Guardian, SAMUEL S.; on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT; JORGE A. AGUILAR, Superintendent for Sacramento City Unified School District; CHRISTINE A. BAETA, Chief Academic Officer for the Sacramento City Unified School District; JESSIE RYAN, DARREL WOO, MICHAEL MINNICK, 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

INTRODUCTION

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

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

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

4. In 1973, Congress echoed these values when passing the Rehabilitation Act of 1973. As Senator Hubert Humphrey then said, "The time has come to firmly establish the right of [Americans with disabilities] to dignity and self-respect as equal and contributing members of society, and to end the virtual isolation of millions of children and adults from society." 118

Cong. Rec. 32310 (1972). In 1990, Congress once again affirmed these values by passing the Americans with Disabilities Act to serve as a remedy for "discrimination against individuals with disabilities [which] persists in such critical areas as . . . education." 42 U.S.C. § 12101(a)(3). Congress specifically found that "segregat[ion]" is a "form[] of discrimination against individuals with disabilities." *Id.* § 12101(a)(2). Accordingly, students with disabilities have the right to be educated side-by-side with their peers without disabilities to the "maximum extent" appropriate. 34 C.F.R. § 104.34.

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

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

7. The District effectively segregates almost half of its students with disabilities by relegating them to separate classrooms on otherwise integrated campuses for a majority of the school day or removing them to entirely segregated campuses. As alleged herein, these segregated students receive disparate and sub-par academic instruction and opportunities, and are

less likely to graduate from high school, less likely be ready for college or a career, and less likely to meet the grade-level education standards established by the State. Upon information and belief, this disparate education is even greater for Black students with disabilities.

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

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

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

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

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

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

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

JURISDICTION

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

[2] J. Luke Wood, *et al.*, *The Capitol of Suspensions: Examining the Racial Exclusion of Black Males in Sacramento County* at 12 (2018) (available at 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-content/uploads/2018/02/GET-OUT-Black-Male-Suspensions-in-California-Public-Schools_lo.pdf).

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

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

VENUE

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

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

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

PARTIES

Plaintiffs

18. Plaintiff Black Parallel School Board ("BPSB") is a community-based membership organization developed to serve Black children, primarily those attending SCUSD. BPSB members include parents of Black students with disabilities who reside within the District, attend a wide array of schools, and are not receiving adequate, necessary, and appropriately individualized services, accommodations, and modifications. Instead, children of BPSB's

members experience high rates of exclusionary discipline, segregated placements, discrimination, and harmful and hostile school conditions. BPSB has diverted its resources from its primary activities and mission to address the District's unlawful policies and practices.

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

20. Plaintiff K.E. is an eleventh-grade Black student with mental health conditions and a likely history of trauma who resides within SCUSD. Unfortunately, K.E. has never received a proper, comprehensive assessment and his disabilities and needs remain unclear to the District. Instead, K.E. has been pushed out of his neighborhood school and enrolled in a nonpublic school exclusively for students with disabilities. His nonpublic school serves fewer than 100 students spanning kindergarten through twelfth grade. K.E. does not have access to his peers without disabilities, or typical high school experiences and coursework. Instead, he is subjected to restraints and stigma, and feels daily frustration that he is not learning. K.E. wants to return to a public school, but cannot do so until SCUSD removes the systemic, structural

barriers that prevent his meaningful inclusion and access to his education. The last time that K.E. tried to return to public school in the ninth grade, he experienced repeated exclusionary discipline. In fact, before the end of the school year, he was unlawfully removed from school entirely and forced to languish at home without any instruction or school placement. Because of SCUSD's policies, K.E. also faces a choice between two discriminatory options: remain in his segregated setting where he is isolated and not learning, or return to a District school that is not equipped to educate him and meet his disability-related needs. K.E. brings this suit through his guardian, Jennifer E..

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

22. Plaintiffs S.A., K.E., and C.S. are referred to herein as "Student Plaintiffs." The Student Plaintiffs will file a motion with the Court to proceed under fictitious names.

Defendants

23. Defendant Sacramento City Unified School District is a government agency responsible for providing the children who reside within its boundaries with full and equal access to the public education programs and activities it offers in compliance with the requirements of federal and state laws and regulations. SCUSD is chartered and incorporated under California law and is a recipient of federal and state financial assistance. SCUSD's responsibilities include

adopting policies and practices, and making and implementing administrative decisions for the schools and students within its jurisdiction.

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

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

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

Superintendent to fulfill its major responsibilities.

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

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

LEGAL FRAMEWORK

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

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

Section 504 and Title II of the ADA

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

32. Taken together, Section 504 and the ADA create a system of legal responsibilities

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

Section 504

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

34. Section 504 applies to all school districts that receive federal financial assistance. 29 U.S.C. § 794(b)(2); 34 C.F.R. § 104.31. Section 504 requires that these school districts

provide students with disabilities with special education and related aids and services designed to meet the needs of students with disabilities as adequately as the school districts meet the needs of students without disabilities. *See* 34 C.F.R. § 104.33(a), (b)(1). Qualified students with disabilities must be given "equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the [student's] needs." *Id.* § 104.4(b)(2).

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

Title II of the ADA

36. Title II of the ADA mandates that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130(a). Further, "[a] public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R § 35.130(d). This means "a setting that enables individuals with disabilities to interact with [persons without disabilities] to the fullest extent possible." 28 C.F.R. pt. 35, App. B. Additionally, a public entity may not use "criteria or methods of administration . . . [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability." 28 C.F.R. § 35.130(b)(3)(i).

37. Congress enacted the ADA to provide a remedy for "discrimination against

individuals with disabilities [which] persists in such critical areas as . . . education." 42 U.S.C. § 12101(a)(3), (b). Congress specifically found that "segregat[ion]" is a "form[] of discrimination against individuals with disabilities." *Id.* § 12101(a)(2). Consequently, Title II of the ADA outlaws segregation of individuals with disabilities and other forms of discrimination against individuals with disabilities in public services such as education. *Id.* § 12132; 28 C.F.R. § 35.130. Title II of the ADA requires public entities to administer their services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. *See Olmstead*, 527 U.S. 581 (1999) (interpreting Title II of the ADA); *see also* 28 C.F.R. § 35.130(d).

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

Equal Protection Clause

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

40. "[T]he opportunity of an education . . . where the state has undertaken to provide

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

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

Title VI

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

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

44. In passing Title VI, Congress specifically sought to end federal financial assistance to segregated institutions, including segregated schools. Representative Emanuel Celler, Chairman of the House Judiciary Committee at the time of the passage of Title VI, stated, "The enactment of [T]itle VI will serve to override specific provisions of law which contemplate Federal assistance to racially segregated institutions." 110 Cong. Rec. 2467 (1964) (quoted in

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

California Government Code Section 11135

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

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

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

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

FACTUAL ALLEGATIONS

Defendants' Unlawful Policies and Practices

49. On information and belief, Defendants fail to implement legally compliant

policies, procedures, and programs with respect to students with disabilities who require services, accommodations, and modifications to access education in the general education curriculum. SCUSD's failure to implement legally-compliant policies, procedures, and programs results in SCUSD discriminatorily segregating students with disabilities, particularly Black students with disabilities, at rates significantly higher than both statewide and national averages.

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

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

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

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

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

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

56. Compounding this harm is the District's refusal to provide students with disabilities in segregated settings access to the full range of academic services, supports and course offerings provided to other students in SCUSD. For example, the students at John Morse are not instructed in music, art, sports, health, and foreign languages. Unlike other elementary

and middle-school students in general education programs in SCUSD, the District does not provide students at John Morse students with tutoring, college readiness and preparation programs like Advancement Via Individual Determination (AVID) and Math, Engineering, Science Achievement (MESA) programs, enrichment programs, or the services of academic counselors, library media teachers, social/behavior or career development counselors, or staff speech and language specialists. The District's discriminatory denial of access to these curricular offerings to students with disabilities at John Morse exacerbates their segregation.

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

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

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

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

District Policies that Deny Timely Identification and Evaluation

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

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

63. These gate-keeping mechanisms include the District-created "Student Study Team." Upon information and belief, in response to parental requests for evaluations, Defendants require students and parents to participate in the District-created Student Study Team process. The Student Study Team process is an unnecessary extra series of meetings that, at its best, delays what should be a timely assessment and, at its worst, completely denies appropriate

assessment. Upon information and belief, Student Study Teams have access to no specialized services that could legally be provided in lieu of an assessment for a student with a disability. Upon information and belief, Student Study Teams do not provide parents and students with any description of assessment processes or of their procedural rights to assessment.

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

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

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

67. The District has a policy of not providing parents and students with accurate information regarding their rights to assessment, despite the District's knowledge that its own staff both act upon misinformation and convey that misinformation to families. The District has a policy of not providing parents and students with information regarding assessments even after the District learns that a student has a disability. Upon information and belief, the District does

not have any process to review school-site parent/student handbooks in the District to ensure that parents and students receive information about seeking assessments, nor does the District have any other systemic way to ensure that parents and students are provided accurate information about assessments. On the contrary, misinformation about assessment is rampant through the District. For example, the 2017 independent audit revealed that some District staff believed that they had to suspend students before students could receive assessment, which, on information and belief, disproportionately harms Black students with disabilities. Yet the District has failed to take the most basic steps to ensure that parents and students understand their right to request assessments.

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

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

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

70. For example, Defendants fail to provide students with social, emotional,

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

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

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

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

training or levels of resources on inclusive education.

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

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

District Policies that Result in Discriminatory Discipline

76. Defendants further segregate students with disabilities through inappropriate exclusionary discipline. Because SCUSD fails to provide these students with appropriate services, accommodations, and modifications, students continue to struggle with their disability-related behaviors. In response, SCUSD punishes its students with disabilities and overly relies on time outside of the classroom, suspensions, and expulsions, which denies students with disabilities, particularly Black students with disabilities, access to educational opportunities.

77. The District's written student discipline board policy and administrative

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

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

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

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

own.

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

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

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

83. Upon information and belief, the District has a policy of not tracking and recording all disciplinary exclusions. Students with disabilities receive a variety of informal disciplinary removals that are not tracked as suspensions by the District. These informal removals include parents being called to pick up their students from school, students being sent to sit in an office without access to educational instruction, and students being sent to sit in the 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 disciplinary changes in placement in a lawful and timely manner. As a result of this policy, students with disabilities have been placed in segregated school settings without regard to the relationship between the behavior subject to the disciplinary action and their disability.

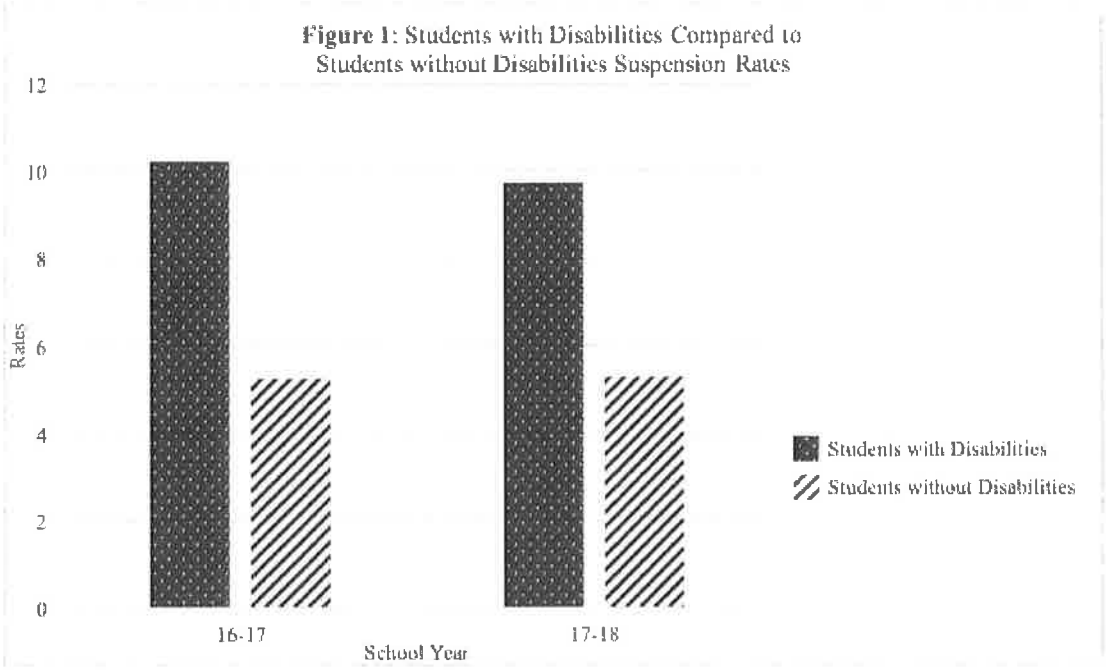
85. Upon information and belief, the District has a policy of suspending students enrolled in kindergarten through third grade for willful defiance and/or creating an intimidating or hostile environment, in violation of state law prohibiting such suspensions for students in kindergarten through third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

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

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

88. Upon information and belief, during the 2018-19 school year, students with disabilities were significantly more likely to receive an out-of-school suspension than their peers without disabilities.

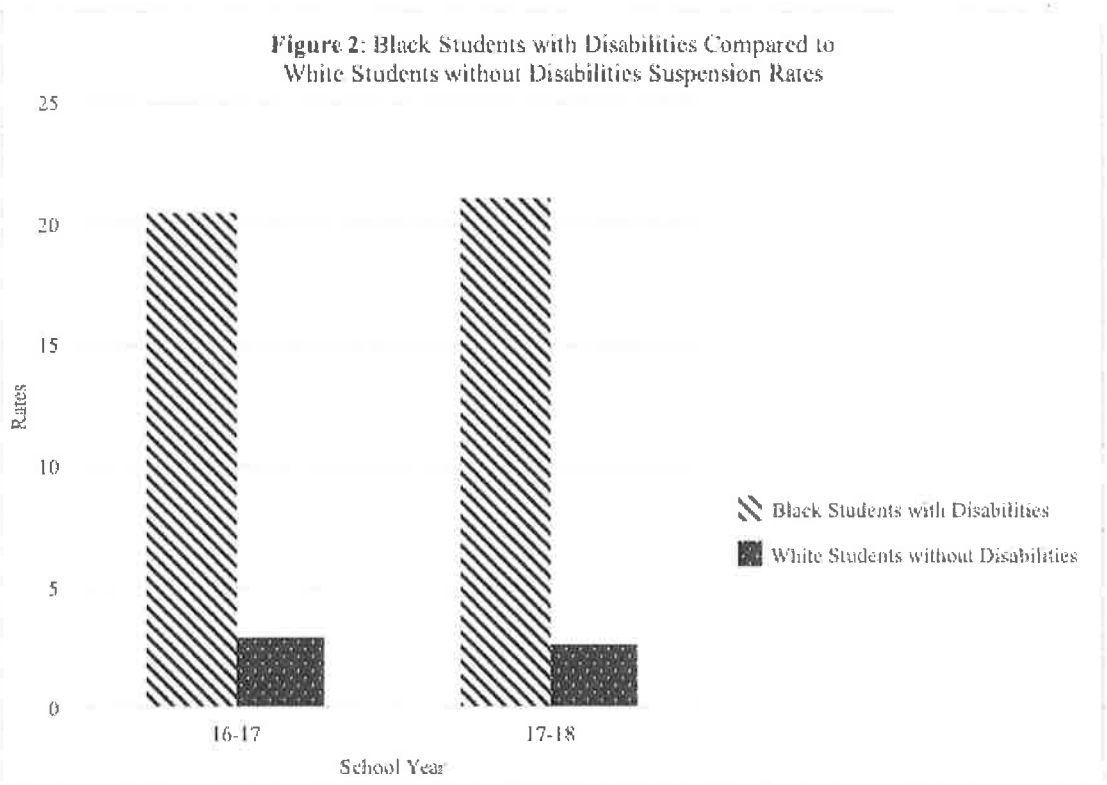
89. Figure 1 shows the contrast between the rate of suspensions for students with disabilities and their peers without disabilities, as reported to the California Department of Education for school years 2016-17 and 2017-18. During both school years, the rate of suspension for students with disabilities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



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

[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.

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

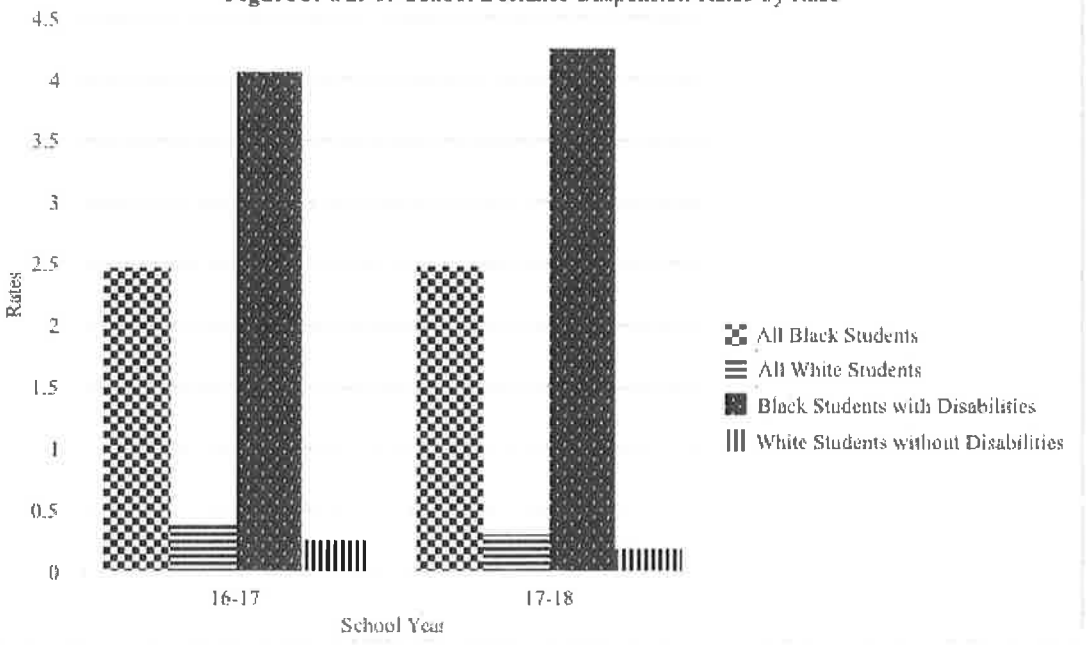


92. Black students with disabilities face an even greater risk of suspension under highly subjective and discretionary categories like "willful defiance" and "created intimidating or hostile environment." Such offense categories are susceptible to implicit and explicit biases; educators are more likely to view ambiguous behavior as more hostile when performed by Black rather than White actors.[4] Thus, highly discretionary and subjective offenses can be expected to result in disparate outcomes for Black students when districts fail to mitigate this risk.

[4] *See* Kurt Hugenberg & Galen V. Bodenhausen, *Facing Prejudice: Implicit Prejudice and the 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, 222-24 & n.337 (2005) (collecting studies showing that "that people will assign different significance to identical actions depending on the actors' race").

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

Figure 3: Out-of-School Defiance Suspension Rates by Race



94. Figure 3 compares four student groups: all Black students, all White students, Black students with disabilities, and White students without disabilities for school years 2016-17

and 2017-18. As reported by the California Department of Education, during both school years, the rate of suspension for all Black students was significantly higher than the rate for all White students – about eight times higher. Black students with disabilities were suspended at a rate approximately fifteen times higher than their White peers without disabilities in 2016-17 and approximately twenty-three times higher in 2017-18.

District Policies that Deny Students a Safe Learning Environment

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

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

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

98. Defendants have also failed to ensure that parents and students have sufficient

information about reporting complaints of disability- or race-based harassment. The District points to its "Title IX officer" as the proper official to investigate such complaints. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88, is a federal law designed to end sex-based discrimination in federally funded programs. The District's own website states that the Title IX "District compliance officer will investigate any complaints of harassment or discrimination based on gender equity issues for student to student." Upon information and belief, there is no information on the District's website that would suggest that a family should make a complaint of disability- and/or race-based harassment to the District's Title IX officer. The District has consequently failed to structure its reporting mechanism for disability- and race-based harassment in a way that would allow parents and students to access it.

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

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

101. Upon information and belief, the District continues to contract with segregated placements that unnecessarily rely upon traumatic restraints and seclusion of students rather than positive behavioral interventions, services and supports. Upon information and belief, students

who are placed by SCUSD in segregated placements are more likely to experience seclusion and restraint than students in the general education environment. Upon information and belief, for similar behaviors, Black students are more likely to experience seclusion and restraint than White students. Upon information and belief, in recent school years, Black students in segregated settings were significantly more likely than White students to be restrained and secluded for "out of seat/ disruptive behavior." Black students were also significantly more likely than White students to be restrained and secluded for behavior described as "student frustrated or agitated." Upon information and belief, Black students who were placed in segregated settings by SCUSD were significantly more likely to experience physical restraints than other students. Upon information and belief, when White students were restrained, they were significantly more likely than Black students to receive an escort restraint, a less traumatic form of restraint than a physical restraint.

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

Plaintiff Facts

Black Parallel School Board

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

104. The BPSB's primary responsibility is to support the educational growth and achievement of Black students by monitoring all educational activities and programs of SCUSD to ensure that they are compatible with the needs of Black students in the district. BPSB primarily focuses on promoting and advocating for Black student achievement and educational

quality and attainment, and classroom and District practices that are supportive and culturally relevant as opposed to those that punish and exclude Black children.

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

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

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

Individual Plaintiffs

108. Student Plaintiffs S.A., K.E., and C.S. 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.

S.A.

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

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

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

115. S.A. 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 S.A.'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 S.A.'s school are also White.

116. The District has failed to provide S.A. with appropriate mental health, behavioral, or social evaluations, nor has the District provided him the services, accommodations, and

modifications that would allow him to be successful in the general education environment. In addition, upon information and belief, none of the teachers at S.A.'s school is credentialed to be a primary instructor for students with Autism Spectrum Disorder.

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

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

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

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

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

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

123. Upon information and belief, all of these suspensions and informal removals during the 2018-19 school year resulted from disability-related behavior or behavior related to

his response to experiencing identity-based bullying and harassment. Nevertheless, the District did not conduct a manifestation determination review or a Functional Behavior Assessment for S.A..

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

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

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

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

128. S.A. has endured severe and pervasive identity-based bullying and harassment at school from both staff and students. This has included, for example, other students calling S.A. names like "stupid Black boy" and physically attacking S.A.. Despite notice, Defendants failed to intervene in a timely or effective manner to ensure that S.A. has access to a safe educational environment. Defendants' actions and failures effectively endorse fear-based racial and disability biases and discrimination. These actions and failures have caused S.A. to feel afraid at school and isolated from his peers, creating a hostile learning environment for S.A. and other

students and limiting S.A.'s access to benefits provided by the school.

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

K.E.

130. K.E. is a sixteen-year-old student who has been placed by SCUSD in a nonpublic school that exclusively serves students with disabilities. K.E. is an eleventh-grade student.

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

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

133. K.E. is Black. He lives with his siblings and guardian, Jennifer E., within the boundaries of the District.

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

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

136. Also during the 2017-18 school year, K.E. endured severe and pervasive identity-based bullying and harassment at school from both staff and students. K.E. was the target of peers' homophobic, race-based, and disability-based slurs. K.E. sought help from staff and was

directed to fill out the bullying and harassment form. K.E. estimates that he submitted at least two dozen forms that year but received no responses to those complaints. The discrimination, bullying, and harassment persisted, causing K.E. to feel unsafe, unprotected, and unsupported in his school. In addition, K.E.'s teacher placed a sign outside the classroom door that informed all passing students and staff that the class was for "Emotionally Disturbed" students. This sign remained in place throughout the school year and was not removed by the District, despite its violation of students' privacy and its further perpetuating biases and stereotypes about these students.

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

138. Upon information and belief, all of these suspensions and informal removals during the 2017-18 school year resulted from disability-related behavior or behavior related to his response to experiencing identity-based bullying and harassment. Nevertheless, the District did not intervene appropriately or conduct a Functional Behavior Assessment. Although the District conducted one manifestation determination review in May 2018, it failed to return K.E. to his school after determining that his alleged behavior was a manifestation of his disabilities.

139. Instead of providing K.E. with services, accommodations, modifications, and equal access at his neighborhood school, the District unilaterally removed K.E. from his public high school in May 2018. The District failed to provide him with any instruction or school placement between May 2018 and September 2018, causing K.E. to miss the last eleven days of his ninth grade year and approximately the first seven days of his tenth grade year.

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

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

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

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

C.S.

144. C.S. is a nine-year-old student who attends a public elementary school operated by SCUSD. C.S. is a fourth-grade student.

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

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

147. From the 2015-16 school year to the 2018-19 school year, C.S. attended his neighborhood elementary school in SCUSD for kindergarten through third grade. C.S. was one of fewer than three dozen Black students at his neighborhood school, which was located in one

of the wealthiest areas of Sacramento. Although Black and White students each make up approximately fifteen to seventeen percent of the District's enrollment in any given school year, Black students made up only 5.2 percent of the students at C.S.'s school between 2015 and 2019 whereas about half of all enrolled students are White. Upon information and belief, all or nearly all of the academic staff at C.S.'s school were also White during this time period.

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

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

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

151. C.S. has never received culturally relevant and responsive education, programs, and services while attending a District school.

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

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

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

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

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

157. Upon information and belief, on one or more occasions, C.S. was suspended for "willful defiance" while he was in kindergarten through third grade in violation of state law.

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

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

160. Over the past few years, C.S. has become keenly aware that he is different from

other students. He has started referring to himself as "bad" and struggling with suicidal thoughts and actions. As recently as spring 2019, he tried to run out into traffic to get hit by a car during the middle of the school day. When his grandparents and doctor requested an accommodation in the form of temporary home instruction, District staff suggested in writing that he instead dis-enroll from the District.

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

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

163. Upon information and belief, C.S.'s experiences are illustrative of and result from the District's unlawful policies as outlined above.

CLASS ALLEGATIONS

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

CLASS 1: All students who currently or will in the future reside within the boundaries of SCUSD, who have known or suspected disabilities, who require or may require services, accommodations, and/or modifications to access and benefit from their public education in the general education environment, and who have been or will be deprived of those

services, accommodations, and/or modifications due to the policies alleged herein.

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

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

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

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

Whether SCUSD's policies, procedures and practices related to segregating students with disabilities, including through lack of timely identification and evaluation; denial of services, accommodations, and modifications; discriminatory exclusionary discipline; and failure to provide a safe learning environment violate Section 504, and the ADA; and

Whether SCUSD's policies, procedures and practices related to segregating students with disabilities, including through lack of timely identification and evaluation; denial of services, accommodations, and modifications; discriminatory exclusionary discipline;

and failure to provide a safe learning environment violate Title VI, the Equal Protection Clause, and state law.

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

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

LEGAL CLAIMS

FIRST CLAIM FOR RELIEF

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

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

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

172. Defendants SCUSD and Board of Education have been and are a recipient of

federal financial assistance sufficient to invoke the coverage of Section 504. *Id.* § 794(b)(3).

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

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

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

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

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

SECOND CLAIM FOR RELIEF

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

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

179. Each Defendant is either a public entity subject to Title II of the ADA or an official responsible for supervising the operations of a public entity subject to Title II of the ADA. 42 U.S.C. § 12131(1).

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

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

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

187. Defendants Aguilar, Baeta, Ryan, Woo, Minnick, Murawski, Garcia, Pritchett, and Vang have, on the basis of race, intentionally discriminated against Plaintiffs and the Subclass Members by excluding and segregating Black students with disabilities from an equal education. These Defendants have excluded and segregated Black students with disabilities by disciplining or allowing the discipline of Black students with disabilities and denying Black students with disabilities the services, accommodations, and modifications to which they are

entitled.

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

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

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

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

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

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

Fourth Claim for Relief

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

194. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in

full herein.

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

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

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

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

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

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

Fifth Claim for Relief

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

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

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

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

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

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

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

207. Plaintiffs and Subclass Members are entitled to injunctive relief to enjoin the District's violation of California Government Code section 11135.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Certify this case as a class action under Federal Rules of Civil Procedure 23(a) and 23(b)(2).
2. Appoint Plaintiffs as Class Representatives of the Classes and their attorneys as Counsel

for all Classes.

3. Declare that Defendants' policies, practices and procedures regarding segregation and discipline of students with disabilities and regarding students with disabilities who require access to services, accommodations, and modifications to access education in the general education environment violate the rights of all Plaintiffs and Class Members under Section 504, the ADA, and state law.
4. Declare that Defendants' policies, practices and procedures regarding segregation and discipline of Black students with disabilities, and peer-on-peer and staff-on-student racial harassment violate the rights of all Plaintiffs and Subclass Members under the Equal Protection Clause, Title VI, and state law.
5. Issue permanent injunctions pursuant to Section 504, the ADA, the Equal Protection Clause, Title VI, and state law that enjoin Defendants, their successors in office, agents, employees and assigns, and all persons acting in concert from violating Section 504, the ADA, the Equal Protection Clause, Title VI, and state law and require Defendants to promulgate compliant policies, procedures, and practices.

And order Defendants to:

6. Immediately discontinue all policies, procedures and practices that do not comply with the laws cited in this complaint;
7. Create and broadly disseminate to teachers and other District staff, parents, and students a new Board of Education-approved written policy statement, which must include the following, acknowledging the rights of students with disabilities and Black students with disabilities as set forth in this complaint, and reasserting Defendants' commitment to honor those rights, including:
    a. The right of access to the same educational opportunities as their peers regardless of disability or race;
    b. The right to services, accommodations, and modifications necessary to remain in the general education environment; and

c. The right to an educational environment free of discriminatory discipline and harassment and bullying;

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

a. Develop and implement a clear and defined plan to achieve inclusivity for all students throughout the District, including students with disabilities and Black students with disabilities, that enables these students to receive access to equal education side-by-side with their peers without disabilities in a safe and welcoming educational environment;

b. Implement a districtwide Multi-Tiered System of Supports to identify the needs of and improve educational outcomes for all students using multiple data measures, and to provide strategic, targeted, appropriate, and culturally relevant interventions for all students that are available regardless of a student's disability, status or race;

c. Establish appropriate programs, that are based on peer-reviewed research or other evidence-based programs to provide services, accommodations, and modifications to students with disabilities in the general education environment;

d. Provide for immediate and continuing education for all District staff and evaluation of progress toward compliance with Section 504, ADA the Equal Protection Clause, Title VI, and state law by qualified third-party experts; such education or training must include:

i. identification of students with disabilities,

ii. provision of appropriate and culturally relevant instruction, services, accommodations, and modifications in the least restrictive environment,

iii. stopping and preventing harassment and bullying based on disability or race,

iv. eliminating or significantly reducing reliance on exclusionary discipline,

v. implicit bias, and

vi. administration of discipline without racial discrimination;

e. Develop and implement a system to identify staff who are not complying with any of the laws cited in this Complaint, retrain and provide appropriate supports to any such staff to enable them to come into compliance, and take appropriate disciplinary action regarding any staff who fail to come into compliance after such retraining or provision of supports;

f. Analyze the current racial make-up of the District's teachers, social workers and psychologists, respectively, relative to the current racial make-up of the District's student body; create and implement separate plans that include clear goals to increase the diversity of the teachers, social workers, and psychologists, respectively, based on the foregoing analysis; and achieve substantial compliance with those plans and goals within three years and total compliance within seven years;

g. Analyze all aspects of education for students with disabilities in the District for implicit racial bias and structural discriminatory racialization; develop a comprehensive plan to eliminate or mitigate such bias and discrimination; and achieve substantial compliance with such plan within three years and total compliance within seven years;

h. Review and analyze the credentials and qualifications of all District administrators and staff; identify gaps in credentials or qualifications to administer or instruct students with disabilities; develop a detailed plan to eliminate such gaps; and achieve substantial compliance with such plan within three years and total compliance within seven years; and

i. Determine appropriate District staffing levels, staff qualifications, methods of data collection and analysis, and effective measures to prevent and protect all

students, including students with disabilities and Black students with disabilities, against bullying; develop a detailed plan based on such determination; and achieve substantial compliance with such plan within three years and total compliance within seven years.

9. Enjoin all disciplinary action, including any pending action, against any Black student with disabilities unless a manifestation determination has been completed, and maintain such injunction until a districtwide Multi-tiered System of Services and Supports has been implemented and determined effective by a qualified third-party expert or experts;
10. Enjoin the use of so-called District Student Study Teams until a districtwide Multi-Tiered System of Supports is in place and a qualified third-party expert or experts have determined whether the District should continue use of such teams;
11. Offer assessments or reassessments to all students enrolled in the District who requested assessment for disability or who were referred to a Student Study Team within the last two years;
12. Offer all Black students currently enrolled in the District who have been classified as having Emotional Disturbance the option of having an independent educational evaluation at the District's expense, and provide such assessments for all students who accept the offer;
13. Identify, offer, and provide services, accommodations, and modifications to all students found eligible for the same in accordance with Section 504 and the ADA; and
14. Provide the Court and the public with an annual report on the District's compliance with the Court's orders for four consecutive years.

Plaintiffs further respectfully request that the Court:

15. Retain jurisdiction of this case until Defendants have fully complied with the orders of this Court, and there is reasonable assurance that Defendants will continue to comply in the future absent continuing jurisdiction;
16. Award Plaintiffs reasonable attorneys' fees, costs, and disbursements as authorized by

law; and

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

DATED: September 5, 2019

Respectfully submitted,

MONA TAWATAO
EVA PATERSON

EQUAL JUSTICE SOCIETY

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

Mona Tawatao
Attorneys for Plaintiffs

CARLY J. MUNSON
BRIDGET CLAYCOMB

DISABILITY RIGHTS CALIFORNIA

/s/ Carly J. Munson

Carly J. Munson
Attorneys for Plaintiffs

MICHAEL HARRIS

NATIONAL CENTER FOR YOUTH LAW

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

Michael Harris
Attorneys for Plaintiffs

ANTOINETTE DOZIER
RICHARD ROTHSCHILD

WESTERN CENTER ON LAW AND POVERTY

/s/ Antoinette Dozier (as authorized on 9/5/2019)

Antoinette Dozier
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

NO. **2:19-CV-01768-TLN-KJN**

BLACK PARALLEL SCHOOL BOARD , ET AL. ,

Plaintiff,

vs.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT , ET AL. ,

Defendant(s).

INITIAL PRETRIAL SCHEDULING ORDER

This action has been assigned to the Honorable Troy L. Nunley. Pursuant to the provisions of Rule 16 of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED:

I. SERVICE OF PROCESS

Plaintiff(s) shall complete service of process on all parties within ninety (90) days of the date of the filing of the complaint. Concurrently with the service of process, or as soon thereafter as possible plaintiff(s) shall serve upon each of the parties named in the complaint, and upon all parties subsequently joined, a copy of this Order, and shall file with the Clerk of the Court a proof of service. Any party who impleads a third-party defendant shall serve upon that party a copy of this Order and shall file with Clerk of the Court a proof of service reflecting such service.

In the event this action was originally filed in a state court and was thereafter removed to this Court, the removing party shall, immediately following such removal, serve upon each of the other

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parties named in the complaint and upon all parties subsequently joined a copy of this Order. The removing party shall also file with the Clerk of the Court a proof of service reflecting such service.

In order to assist the Court in meeting its recusal responsibilities, any non–governmental corporate party to this action shall file a statement identifying all its parent corporations and listing any publicly–held company that owns ten percent (10%) or more of the party's stock. This statement shall be filed no later than fourteen (14) days after the non–governmental corporate party is served with a copy of this Order. Thereafter, if there is any change in the information, the party shall file and serve a supplemental statement within a reasonable time after such change occurs.

II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

Within sixty (60) days[1] of service of the complaint on the last party, or from the date of removal, whichever is later, the parties shall amend the complaint or join any parties pursuant to the Federal Rules of Civil Procedure. No other joinder of parties or amendments to pleadings is permitted without leave of court, good cause having been shown.

III. DISCOVERY

Within sixty (60) days of service of the complaint on any party, or from the date of removal, whichever is later, the parties shall confer as required by Federal Rule of Civil Procedure 26(f).

All discovery, with the exception of expert discovery, shall be completed no later than two hundred forty (240) days from the date upon which the last answer may be filed with the Court pursuant to the Federal Rules of Civil Procedure. In this context, "completed" means that all discovery shall have been conducted so that all depositions have been taken and any disputes relative to discovery shall have been resolved by appropriate order if necessary, and where discovery has been ordered, the order has been obeyed. All motions to compel discovery must be noticed on the magistrate judge's calendar in accordance with the Local Rules.[2]

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[1] The parties shall refer to Federal Rule of Civil Procedure 6(a) in computing the time periods specified in this Order.

[2] A copy of the current Local Rules is available at http://www.caed.uscourts.gov/caednew/index.cfm/rules/local-rules/

IV. DISCLOSURE OF EXPERT WITNESSES

All counsel are to designate in writing, file with the Court, and serve upon all other parties the name, address, and area of expertise of each expert that they propose to tender at trial not later than sixty (60) days after the close of discovery. The designation shall be accompanied by a written report prepared and signed by the witness. The report shall comply with Federal Rule of Civil Procedure 26(a)(2)(B).

Within thirty (30) days after the designation of expert witnesses, any party may designate a supplemental list of expert witnesses who will express an opinion on a subject covered by an expert designated by an adverse party. The right to designate a supplemental expert for rebuttal purposes only shall apply to a party who has not previously disclosed an expert witness on the date set for expert disclosure by this Order.

Failure of a party to comply with the disclosure schedule as set forth above in all likelihood will preclude that party from calling the expert witness at the time of trial. An expert witness not appearing on the designation will not be permitted to testify unless the party offering the witness demonstrates: (a) good cause for the party's failure to designate the expert witness in accordance with this Order; (b) that the Court and opposing counsel were promptly notified upon discovery of the witness; and (c) that the witness was promptly made available for deposition.

For purposes of this Order, an "expert" is any person who may be used at trial to present evidence under Federal Rules of Evidence 702, 703, and 705, which include both "percipient experts" (persons who, because of their expertise, have rendered expert opinions in the normal course of their work duties or observations pertinent to the issues in the case) and "retained experts" (persons specifically designated by a party to be a testifying expert for the purposes of litigation).

Each party shall identify whether a disclosed expert is percipient, retained, or both. It will be assumed that a party designating a retained expert has acquired the express permission of the witness to be so listed. Parties designating percipient experts must state in the designation who is responsible for arranging the deposition of such persons.

All experts designated are to be fully prepared at the time of designation to render an informed opinion, and given their bases for their opinion, so that they will be able to give full and complete

testimony at any deposition taken by the opposing party. Experts will not be permitted to testify at the trial as to any information gathered or evaluated, or opinion formed, after their deposition is taken subsequent to designation.

Counsel are instructed to complete all discovery of expert witnesses in a timely manner in order to comply with the Court's deadline for filing dispositive motions.

V. SUPPLEMENTAL DISCOVERY

Pursuant to Federal Rule of Civil Procedure 26(e), the parties shall exchange any supplemental disclosures and responses (including expert supplemental materials) no later than thirty (30) days prior to the dispositive motion hearing date. Any supplemental disclosures and responses necessary after said date will require leave of Court good cause having been shown.

VI. DISPOSITIVE MOTIONS

The parties shall file dispositive motions no later than one hundred eighty (180) days after the close of discovery. All papers should be filed in conformity with the Local Rules. Absent leave of the Court, all issues the parties wish to resolve on summary judgment must be raised together in one (1) motion or cross–motion. Should the parties wish to file additional motions for summary judgment, they must seek leave of the Court.

All purely legal issues are to be resolved in timely pretrial motions. When appropriate, failure to comply with Local Rules 230 and 260, as modified by this Order, may be deemed consent to the motion and the Court may dispose of the motion summarily. With respect to motions for summary judgment, failure to comply with Local Rules 230 and 260, as modified by this Order, may result in dismissal for failure to prosecute (or failure to defend) pursuant to this Court's inherent authority to control its docket and/or Federal Rule of Civil Procedure 41(b). Further, failure to timely oppose a summary judgment motion[3] may result in the granting of that motion if the movant shifts the burden to the nonmovant to demonstrate that a genuine issue of material fact remains for trial.

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[3]The Court urges any party that contemplates bringing a motion for summary judgment or who must oppose a motion for summary judgment to review Local Rule 260.

The Court places a page limit for points and authorities (exclusive of exhibits and other supporting documentation) of twenty (20) pages on all initial moving papers, twenty (20) pages on oppositions, and ten (10) pages for replies. Sur–replies are viewed with disfavor and will only be considered upon a showing of good cause. All requests for page limit increases must be made in writing with a proposed order setting forth any and all reasons for any increase in page limit at least fourteen (14) days prior to the filing of the motion. These page limits shall apply to any and all motions filed with the Court.

The parties are directed to the Court's website for available hearing dates and Judge Nunley's standard procedures. (www.caed.uscourts.gov – select "Judges" – select "Judge Nunley" – select "Standard Information").

Citations to the Supreme Court Lexis database shall include parallel citations to the Westlaw database.

The parties are reminded that a motion in limine is a pretrial procedural device designated to address the admissibility of evidence. The Court will look with disfavor upon dispositional motions presented at the Final Pretrial Conference or at trial in the guise of motions in limine.

The parties are cautioned that failure to raise a dispositive legal issue that could have been tendered to the Court by proper pretrial motion prior to the dispositive motion cut–off date may constitute waiver of such issue.

VII. TRIAL SETTING

The parties are ordered to file a Joint Notice of Trial Readiness not later than thirty (30) days after receiving this Court's ruling(s) on the last filed dispositive motion(s). If the parties do not intend to file dispositive motions, the parties are ordered to file a Joint Notice of Trial Readiness not later than one hundred twenty (120) days after the close of discovery and the notice must include statements of intent to forgo the filing of dispositive motions.

The parties are to set forth in their Notice of Trial Readiness, the appropriateness of special procedures, their estimated trial length, any request for a jury, their availability for trial, and if the parties are willing to attend a settlement conference. The parties' Notice of Trial Readiness Statement shall also estimate how many court days each party will require to present its case, including opening

statements and closing arguments. The parties' estimate shall include time necessary for jury selection, time necessary to finalize jury instructions and instruct the jury.

After review of the parties' Joint Notice of Trial Readiness, the Court will issue an order that sets forth dates for a final pretrial conference and trial.

VIII. SETTLEMENT CONFERENCE

If the parties agree to a settlement conference, a magistrate judge will be randomly assigned to the case to preside over the settlement conference. If the parties specifically request that the assigned District Judge or Magistrate Judge conduct the settlement conference, the parties shall file the appropriate waiver of disqualification in accordance with Local Rule 270(b). If the parties elect to participate in the Voluntary Dispute Resolution Program (VDRP), a stipulation of election is required pursuant to Local Rule 271. See, Attachments 2–1 and 2–2 of this Order.

In accordance with Local Rule 160, counsel are to immediately file a notice of settlement or other disposition of this case.

IX. MODIFICATION OF INITIAL PRETRIAL SCHEDULING ORDER

The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, the Initial Pretrial Scheduling Order shall not be modified except by leave of court upon a showing of **good cause**. Agreement by the parties pursuant to stipulation alone to modify the Initial Pretrial Scheduling Order does not constitute good cause. Except in extraordinary circumstances, unavailability of witnesses or counsel will not constitute good cause.

X. COURTESY COPIES

No party shall submit paper courtesy copies of pleadings or exhibits to the Court unless expressly ordered to do so.

XI. SPECIAL CASES

In any cases involving E.R.I.S.A, Class–Actions, or Administrative Appeals, the parties shall file a short joint statement with the Court identifying the type of case within thirty (30) days of service on all defendant(s). Based upon the provided information, the Court may issue a supplemental pretrial scheduling order.

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XII. OBJECTIONS TO INITIAL PRETRIAL SCHEDULING ORDER

This Initial Pretrial Scheduling Order will become final without further order of the Court unless objections are filed within sixty (60) days of service on all defendant(s).

DATED: September 6, 2019

TROY L. NUNLEY
U.S. DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BLACK PARALLEL SCHOOL BOARD , ET AL. ,

V.

SUMMONS IN A CIVIL CASE

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT , ET AL. ,

CASE NO: **2:19-CV-01768-TLN-KJN**

TO: **Jorge A. Aguilar, Christine A. Baeta, Leticia Garcia, Michael Minnick, Lisa Murawski, Christina Pritchett, Jessie Ryan, Sacramento City Unified School District, Sacramento City Unified School District Board of Education, Mai Vang, Darrel Woo**
Defendant's Address:

YOU ARE HEREBY SUMMONED and required to serve on

Carly J. Munson
Disability Rights California
1831 K Street
Sacramento, California 95811

an answer to the complaint which is served on you with this summons, within **21** days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

MARIANNE MATHERLY

CLERK

(By) DEPUTY CLERK
/s/ L. Reader

ISSUED ON 2019-09-06 17:58:51.0 , Clerk
USDC EDCA

RETURN OF SERVICE

Service of the Summons and complaint was made by me (1)	DATE
NAME OF SERVER *(PRINT)*	TITLE

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served: _____

_____

☐ Left copies thereof at the defendant's dwelling house or usual place of bode with a person of suitable age and discretion then residing therein.

☐ Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____

_____

_____

☐ Other (specify) : _____

_____

_____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

_____
Signature of Server

_____
Address of Server

NOTICE OF AVAILABILITY

VOLUNTARY DISPUTE RESOLUTION

Pursuant to the findings and directives of Congress in 28 U.S.C. §§ 651 *et seq.,* and in recognition of the economic burdens and delay in the resolution of disputes that can be imposed by full formal litigation, Local Rule 271 governs the referral of certain actions to the Voluntary Dispute Resolution Program ("VDRP") at the election of parties. Plaintiff or removing party is to provide all other parties with copies of the notice at the time service is effected or, for parties already served, no more than fourteen (14) days after receiving notice from the Court. After filing of the original complaint or removal action, any party who causes a new party to be joined in the action shall promptly serve a copy of the notice on the new party.

It is the Court's intention that the VDRP shall allow the participants to take advantage of a wide variety of alternative dispute resolution methods. These methods may include, but are not limited to, mediation, negotiation, early neutral evaluation and settlement facilitation. The specific method or methods employed will be determined by the Neutral and the parties.

PLEASE TAKE NOTICE that pursuant to Local Rule 271, ***this Local Rule applies to*** all civil actions pending before any District Judge or Magistrate Judge in the District except that actions in the following categories are exempt from presumptive inclusion: (i) prisoner petitions and actions, including habeas corpus petitions, (ii) actions in which one of the parties is appearing pro se, (iii) voting rights actions, (iv) social security actions, (v) deportation actions, (vi) Freedom of Information Act actions, and (vii) actions involving the constitutionality of federal, state or local statutes or ordinances. The fact that a case falls in a category that is exempt from the presumptive applicability of this Local Rule neither (1) precludes the parties to such a case from agreeing to participate in an Alternative Dispute Resolution ("ADR") process, nor (2) deprives the Court of authority to compel participation in an appropriate ADR proceeding.

Parties may elect Voluntary Dispute Resolution with the Court indicating that all parties to the action agree to submit the action to VDRP pursuant to Local Rule 271. Actions may not be assigned to VDRP over the objection of a party. (Copy of sample stipulation attached hereto.) **At the time of filing, a copy of the stipulation shall be provided to the VDRP Administrator designated below:**

Sacramento Cases
Voluntary Dispute Resolution
Program Administrator
United States District Court
501 "I" Street, Suite 4–200
Sacramento, CA 95814
(916) 930–4278

Fresno Cases
Voluntary Dispute Resolution
Program Administrator
United States District Court
2500 Tulare Street, Suite 1501
Fresno, CA 93721
(559) 499–5600

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BLACK PARALLEL SCHOOL BOARD , ET AL.,

Plaintiff(s)

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT , ET AL.,

Defendant(s)

NO: **2:19-CV-01768-TLN-KJN**

STIPULATION TO ELECT REFERRAL OF ACTION TO VOLUNTARY DISPUTE RESOLUTION PROGRAM (VDRP) PURSUANT TO LOCAL RULE 271

Pursuant to Local Rule 271, the parties hereby agree to submit the above-entitled action to the Voluntary Dispute Resolution Program.

DATED: **SEPTEMBER 6, 2019**

Name:
Attorney for Plaintiff(s)

Name:
Attorney for Defendant(s)

NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE

TO EXERCISE JURISDICTION AND APPEAL INSTRUCTIONS

You are hereby notified in accordance with 28 U.S.C §636(c), F.R.Civ.P.73 and Local Rule 305, the United States Magistrate Judges sitting in Sacramento and Fresno are available to exercise the court's case dispositive jurisdiction and to conduct any or all case despositive proceedings in this action, including motions to dismiss, motions for summary judgment, a jury or non jury trial, and entry of a final judgment. Exercise of this jurisdiction by a Magistrate Judge is however, permitted only if all parties voluntarily consent. You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's case dispositive jurisdiction from being exercised by a Magistrate Judge.

Any appeal from a judgment entered by a Magistrate Judge is taken directly to the United States Court of Appeals for the Ninth Circuit or, where appropriate, for the Federal Circuit in the same manner as an appeal from any other judgment of a District Court.

Whether or not the parties consent pursuant to 28 U.S.C. § 636(c), the assigned Magistrate Judge will hear all motions except those case dispositive motions set forth in 28 U.S.C. § 636(b)(1)(A).

A copy of the Form for "Consent to / Decline of Jurisdiction of United States Magistrate Judge" is attached hereto for pro per use and attorney information. This form is available in fillable .pdf format on the court's web site at www.caed.uscourts.gov for all attorney ECF filers. This form may be filed through CM/ECF or by pro se litigants at the appropriate Clerk's Office location.

Office of the Clerk
501 I Street, Room 4–200
Sacramento, CA 95814

Office of the Clerk
2500 Tulare Street, Suite 1501
Fresno, CA 93721

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BLACK PARALLEL SCHOOL BOARD , ET AL. ,
Plaintiff(s)/Petitioner(s),

vs.

CASE NO. **2:19-CV-01768-TLN-KJN**

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT , ET AL. ,
Defendant(s)/Respondent(s).

IMPORTANT

IF YOU CHOOSE TO CONSENT OR DECLINE TO CONSENT TO JURISDICTION OF A UNITED STATES MAGISTRATE JUDGE, CHECK AND SIGN THE APPROPRIATE SECTION OF THIS FORM AND RETURN IT TO THE CLERK'S OFFICE.

☐ **CONSENT TO JURISDICTION OF UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of Title 28, U.S.C Sec. 636(c)(1), the undersigned hereby voluntarily consents to have a United States Magistrate Judge conduct all further proceedings in this case, including trial and entry of final judgment, with direct review by the Ninth Circuit Court of Appeals, in the event an appeal is filed.

Date: _____ Signature: _____

Print Name: _____

( ) Plaintiff/Petitioner ( ) Defendant/Respondent

Counsel for_____*

☐ **DECLINE OF JURISDICTION OF UNITED STATES MAGISTRATE JUDGE**

Pursuant to Title 28, U.S.C. Sec 636(c)(2), the undersigned acknowledges the availability of a United States Magistrate Judge but hereby declines to consent.

Date: _____ Signature: _____

Print Name: _____

( ) Plaintiff/Petitioner ( ) Defendant/Respondent

Counsel for_____*

If representing more than one party, counsel must indicate the name of each party responding.