



EQUAL JUSTICE SOCIETY

March 28, 2022

Via Certified Mail & E-mail

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Re: Various Compliance Complaint, 34 C.F.R. § 300.153, 5 C.C.R. § 3202; Request for Direct State Intervention to Investigate Disability Discrimination, 5 C.C.R. § 4650.

On Behalf of All Students with Disabilities Against the Antelope Valley Union High School District

To Whom It May Concern:

Please see enclosed Various Compliance Complaint and Request for Direct State Intervention to Investigate Disability Discrimination against Antelope Valley Union High School District.

Sincerely,

Disability Rights California, Neighborhood Legal Services of Los Angeles County, Equal Justice Society, and Kilpatrick Townsend & Stockton LLP

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I. Introduction

Cancel the Contract-Antelope Valley (“CTC”) and students, V.X., Z.R., L.W., B.Y., and K.D., file this various complaint against the Antelope Valley Union High School District (“AVUHSD” or “District”) on behalf of all students with disabilities, and Black students with disabilities in particular. The Complaint alleges that the District’s entire special education system is punitive, segregated, ableist, and racist. It is a system devoid of meaningful emotional or behavioral support, in which District policies encourage staff to call the police on students, remove them from the classroom through formal and informal suspensions, and place them in highly restrictive settings where they are deprived of contact with nondisabled peers.

For years, these policies and unchecked staff racism have created alarming disparities for Black students with disabilities. For instance, the District suspends **more than one in four** Black students with disabilities (27.2%), a rate **nearly seven times** that for their white nondisabled peers (3.9%). The District has twice admitted to CDE that its discipline policy is a root cause of these racial disparities. Yet, it has continued to implement this and other racist policies.

Students are most successful in schools that are nurturing, inclusive, academically rigorous, and supportive. By contrast, punitive approaches such as suspension, expulsion, school policing, and segregation frustrate student success and entrap students in the pipeline to prison. Black students with disabilities are most likely to be harmed by these practices due to the compounding effects of race and disability discrimination. Despite evidence of the resulting harm, the District continues to implement policies that punish and segregate students with disabilities, especially Black students with disabilities, for disability-related behaviors. In doing so, it is squandering the potential of thousands of students entrusted to its care. This is not just contrary to best practice, it is illegal.

The Complaint alleges that the District’s policies, practices, and procedures regarding discipline, policing, and segregation of students with disabilities violate the Individuals with Disabilities Education Act (“IDEA”), California Education Code Section 56000 et seq., California Education Code Sections 200 and 220, California Government Code Section 11135, Section 504 of

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the Rehabilitation Act (“Section 504”), and Title II of the Americans with Disabilities Act (“Title II”). The Complaint asks CDE to order the District to make systemic changes that end racial disparities and transform its special education system into one that honors its students’ humanity and potential.

II. Parties

A. Complainants

Complainants include five AVUHSD students¹ and CTC. *The five students bring this Complaint solely to challenge the District’s unlawful policies. They do not allege any individual violations.*

V.X. is a Latino tenth-grade public-school student. His mother, T.X., is his education rights holder and files this complaint on his behalf. At all relevant times, V.X. has been enrolled in the District and has had an IEP with an eligibility of Specific Learning Disability (SLD) and Other Health Impairment (OHI).² V.X.’s disability substantially limits major life activities including communication, concentration, and reading. Thus, V.X. is a qualified individual under Title II³ and Section 504.⁴

Z.R. is a Black twelfth-grade public-school student. His mother, F.R., is his education rights holder and files this complaint on his behalf. At all relevant times, Z.R. has been enrolled in the District and has had an IEP with an eligibility of SLD and OHI.⁵ Z.R.’s disability substantially limits major life activities including reading, communication, and self-direction. Thus, Z.R. is a qualified individual under Title II and Section 504.

L.W. is a Black eleventh-grade public-school student. His mother, O.W., is his education rights holder and files this complaint on his behalf. At all relevant times, L.W. has been enrolled in the District and has had an IEP

¹ The Complaint refers to the students by pseudonyms. As detailed in Section III.C, the students request anonymity due to fears of retaliation. The students disclose their names and contact information in Confidential Attachment A filed with CDE.

² Decl. of T.X. at ¶ 2.

³ 42 U.S.C. § 12102(2)(A).

⁴ 34 C.F.R. § 104.3(j).

⁵ Decl. of F.R. at ¶ 3.

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with an eligibility of SLD and OHI.⁶ L.W.'s disability substantially limits major life activities including learning, concentration, and communication. Thus, L.W. is a qualified individual under Title II and Section 504.

B.Y. is a Black eleventh-grade public-school student. His mother, C.Y., is his education rights holder and files this complaint on his behalf. At all relevant times, B.Y. has been enrolled in the District and has had an IEP with an eligibility of SLD and the label Emotional Disturbance (ED).⁷ B.Y.'s disability substantially limits major life activities including language, learning, and concentration. Thus, B.Y. is a qualified individual under Title II and Section 504.

K.D. is a white twelfth-grade public-school student. His mother, A.D., is his education rights holder and files this complaint on his behalf. At all relevant times, K.D. has been enrolled in the District and has had an IEP with an eligibility of autism and the label of ED.⁸ K.D.'s disability substantially limits major life activities including communication, self-care, and concentration. Thus, K.D. is qualified under Title II and Section 504.

Cancel the Contract-Antelope Valley is a project of Reform L.A. Jails. CTC is a coalition of community organizations and leaders from the Antelope Valley calling for an end to law enforcement violence and presence in schools, a remedy for disparate exclusionary discipline and segregation of students with disabilities, and cessation of racism in the community. It files this complaint on behalf of all students with disabilities in the District.⁹

B. Respondent

AVUHSD is a public school district in Lancaster, California. As such, it is a local educational agency, subject to the requirements of the California

⁶ Decl. of O.W. at ¶ 3.

⁷ Decl. of C.Y. at ¶ 3.

⁸ Decl. of A.D. at ¶ 2.

⁹ 34 C.F.R. § 300.153(a) ("an organization...may file a signed written complaint"); *Everett H. v. Dry Creek Joint Elementary Sch. Dist.*, 5 F. Supp. 3d 1184, 1188 (E.D. Cal. 2014) (a various compliance complaint "need not involve an allegation regarding a specific student").

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Education Code and the IDEA.¹⁰ AVUHSD is subject to Government Code Section 11135 and Education Code Section 220 because it receives state funding. It is also subject to Section 504 and Title II because it receives federal financial assistance and is a local government entity providing public education.

III. Jurisdiction

A. Subject Matter and Personal Jurisdiction

This Complaint is filed pursuant to the CDE Uniform Complaint Procedures¹¹ and IDEA Complaint Procedures.¹² The Complaint alleges that various District policies, practices, and procedures violate the IDEA and California Education Code Section 56000 et seq. The Complaint requests a various investigation and systemic remedies. CDE's Special Education Division has jurisdiction over claims that a district is violating IDEA and Education Code Section 56000 et seq.¹³ Further, as the U.S. Department of Education has long maintained, CDE must investigate and resolve complaints that raise systemic allegations.¹⁴

In addition, the Complaint alleges that the District's policies, practices, and procedures violate Education Code Section 220, Government Code Section 11135, Title II, and Section 504. CDE is charged with investigating UCP complaints alleging violations of Education Code Section 220 and Government Code Section 11135.¹⁵ These laws incorporate the protections in Title II and Section 504.¹⁶ Indeed, CDE's Office of Equal Opportunity (OEO) has long maintained that violations of Title II and Section 504 fall within its jurisdiction.¹⁷

¹⁰ 5 C.C.R. §§ 3200(i), (j).

¹¹ 5 C.C.R. §§ 3200 *et seq.*

¹² 34 C.F.R. §§ 300.151-153.

¹³ 5 C.C.R. §§ 3201(a), (b).

¹⁴ 71 Fed. Reg. 46605.

¹⁵ Cal. Educ. Code § 33315(a)(1)(F).

¹⁶ Cal. Educ. Code § 201(g) (incorporating violations of Section 504 and Section 11135); Cal. Gov't Code § 11135(b) (incorporating violations of Title II and Section 504).

¹⁷ See CDE, *K.C. Settlement Agreement & Legal Advisory* (Nov. 17, 2020), <https://www.cde.ca.gov/ls/he/hn/legaladvisory.asp> ("As required by the [UCP], CDE's

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B. Timeliness of Complaint

This Complaint alleges that the District's existing policies, practices, and procedures violate the IDEA, California Education Code Section 56000 et seq., California Education Code Sections 200 and 220, California Government Code Section 11135, Title II, and Section 504. As detailed below, these policies are currently harming students with disabilities in the District and denying them their rights under these laws. Thus, this Complaint is timely filed.

C. Basis for Direct State Intervention

Complainants seek direct state intervention on two grounds. First, the Students request anonymity because they would be in danger of retaliation and would suffer immediate and irreparable harm if they filed the complaint with the District.¹⁸ The Students are aware of instances in which District staff and community members have harassed and intimidated parents, guardians and students who filed discrimination complaints.¹⁹ Thus, the Students request that OEO directly intervene in this matter without waiting for an LEA investigation.²⁰

Second, as explained *infra*, Students will continue to suffer immediate and irreparable harm as a result of the application of the District's systemic policies that are in conflict with the state and federal disability rights laws covered by the UCP. The District has long been aware that its policies are unlawful, including through the IDEA significant disproportionality process. To date, the District has not corrected these unlawful policies. Thus, filing a complaint with the District would be futile.

///

Office of Equal Opportunity will continue to accept and investigate complaints pursuant to Section 504[.]”.

¹⁸ Confidential Exhibit A lists the Students' names and contact information.

¹⁹ Decl. of T.X. at ¶ 1; Decl. of F.R. at ¶ 1; Decl. of O.W. at ¶ 1; Decl. of C.Y. at ¶ 1; Decl. of A.D. at ¶ 1.

²⁰ 5 C.C.R. § 4650(a)(2).

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IV. Factual Background

The District is located in Lancaster and Palmdale, California, in a region of north Los Angeles County called the Antelope Valley. It serves 22,476 students in grades nine through twelve. 63.3% of District students identify as Latinx, 16.7% identify as Black, 12.3% identify as white, 4.4% identify as multiple races, 2.8% identify as Asian-Pacific Islander, and 0.3% identify as American Indian or Alaska Native. 70% of District students are eligible for free and reduced-price meals.

Nearly 3,400 students, 15.1% of the population District-wide, are eligible for IEPs. Of these students, 53.9% identify as Latinx, 27% identify as Black, 12.9% identify as white, and 4.6% identify as multiracial.

The following subsections detail District policies, practices, and procedures (collectively referred to as “Policies”) regarding formal and informal discipline, referrals to Probation and police, threat assessments, and segregated placements. Data and student stories show that these Policies single out students with disabilities, especially Black students with disabilities, subject them to punitive treatment, and prevent them from accessing an inclusive and academically rigorous education.

A. The District’s Policies for suspensions and expulsions

The District’s Policies disproportionately subject students with disabilities, particularly Black students with disabilities, to exclusionary discipline.

For instance, the District publishes a matrix specifying the minimum and maximum disciplinary actions authorized for violations of various Education Code provisions.²¹ This matrix gives school staff discretion to recommend students for suspension or expulsion for *any* Education Code violation,

²¹ Exhibit B; Antelope Valley High School, Student Planner, Minimum/Maximum Penalties (2019-20), *available at* https://www.antelopevalleyhs.org/uploaded/Antelope_Valley_HS/Students/2019-2020_AVHS_Planner.pdf; Lancaster High School, Discipline Policies, Minimum/Maximum Penalties, *available at* <https://www.lancasterhs.org/uploaded/Lancaster/Parents/mou.pdf>.

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including conduct as benign as profanity and “disrupting” the classroom.²² Such conduct is often disability-related. The matrix does not guide school staff about how to exercise their discretion in decisions about discipline and avoid bias in these decisions.²³

The District itself has twice admitted to CDE that this matrix contributes to racial disparities in discipline, yet it has failed to make any revisions. Beginning in 2018, the District reported significant disproportionality in the discipline of Black students with disabilities. In its subsequent 2020 Comprehensive Coordinated Early Intervening Services Plan (“CCEIS Plan”),²⁴ the District stated:

We identified that our current discipline policy [the matrix] contributes to root cause #2, inequitable campus discipline policies and practices. The current policy is outdated (revised in 2014) and subjectively inconsistent in its implementation from school to school.

Despite admitting that its discipline policy creates racial disparities, the District did not revise the policy. Nor did CDE require it to revise the policy. As a result, the District’s discipline data remained significantly disproportionate for Black students with disabilities, as detailed below. Then, in its 2021 CCEIS Plan,²⁵ the District *again* admitted that the matrix contributes to racial disparities:

While updating the SigDis Policies, Practices and Procedures Review Matrix 2021, we identified that the current policy continues to contribute to root cause #2, inequitable campus discipline policies and practices. Although the current policy continues to be outdated and subjective in its implementation from school to school, the district has made significant strides in hiring a Director of Equity to serve as a resource to organize and focus the district’s effort in examining all Policies, Practices, and Procedures to identify barriers hindering equitable access to supports and services and eradicating any

²² Id.

²³ Id.

²⁴ Exhibit C.

²⁵ Exhibit D.

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disparities in the discipline practices and procedures that have led to the LEA's significantly disproportionate identification.

The District went on to reiterate that "the current discipline policy, which was revised in 2014, is outdated and lacks specificity, therefore, discipline practices differ greatly from school to school." Nevertheless, the District again did not revise the matrix, nor did CDE require it to do so. **To date, the District has not revised the matrix, and it remains in effect.**

Under its punitive and discretionary Policies, including the matrix, the District suspends and expels students with disabilities, especially Black students with disabilities, at rates drastically higher than those for their nondisabled peers and particularly their white nondisabled peers.

1. Data Regarding Suspensions:

- At 8.3%, the District's suspension rate is **nearly 2.5 times** the state average (3.6%) and **over twenty times** the rate in Los Angeles Unified School District (0.4%);²⁶
- The District's suspension rate for students with disabilities (16.9%) is **over 2.5 times** its suspension rate for nondisabled students (6.7%);²⁷
- The District suspends **more than one in four** Black students with disabilities (27.2%). This rate is **nearly seven times** the suspension rate for white nondisabled students (3.9%);²⁸
- **47.6%** of Black students with disabilities who receive a suspension are suspended multiple times, compared to just 10.5% of white nondisabled students;²⁹
- In the 2018-19 and 2019-20 school years, Black students comprised **nearly two-thirds** of the students with disabilities suspended for more than ten days in a single school year.³⁰

²⁶ AVUHSD, DataQuest, 2018-19 Suspension Rate, *available at* <https://dq.cde.ca.gov/dataquest/dqCensus/DisSuspRate.aspx?year=2018-19&agglevel=District&cds=1964246>.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Exhibit E.

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2. Data Regarding Expulsions:

- The District's overall expulsion rate (2.6 per 1,000 students) is **nearly 29 times** the state average;³¹
- The District has a **higher number of expulsions** than Los Angeles Unified School District, a district which is twenty-one times its size;³²
- The expulsion rate for students with disabilities (3.3 per 1,000 students) is **32% higher** than the rate for nondisabled students;³³
- Black students with disabilities comprise **half** of the students with disabilities who are expelled, despite representing just 27% of students with disabilities District-wide;³⁴ and
- Between the 2018-19 school year and the present, **more than two-thirds (67.6%)** of students with disabilities who were expelled had no Behavior Intervention Plan in place at the time of expulsion.³⁵

Removals from the classroom create far-reaching consequences that extend beyond lost instructional time. Students who are frequently suspended are more likely to feel targeted, singled out, or unsupported by teachers and administrators. They may feel disconnected from school, fall behind on schoolwork, and ultimately drop out of school. Students affected by exclusionary discipline practices are less likely to attend college and more likely to experience economic insecurity.³⁶ Moreover, suspensions and expulsions often result in law enforcement contact and are thus an entry point to the school-to-prison pipeline.³⁷

³¹ AVUHSD, DataQuest, 2018-19 Expulsion Rate, *available at* <https://dq.cde.ca.gov/dataquest/dqCensus/DisExpRate.aspx?year=2018-19&agglevel=District&cds=1964246>.

³² Id.

³³ Id.

³⁴ Id.

³⁵ Exhibit F.

³⁶ K.D. Bacher-Hicks, Stephen B. Billings & David Deming, *The School to Prison Pipeline: Long Run Impacts of School Suspension on Adult Crime*, National Bureau of Economic Research (2019) https://www.nber.org/system/files/working_papers/w26257/w26257.pdf.

³⁷ ACLU, *No Police in Schools: A Vision for Safe and Supportive Schools in CA* (2021) https://www.aclusocal.org/sites/default/files/field_documents/no_police_in_schools_report_aclu_082421.pdf.

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B. The District's Policies for on-campus detention and the Student Support Center

The District reports fewer suspensions and expulsions than actually occur because it uses several types of informal disciplinary removals to exclude students from school without documentation and reporting.

1. On-Campus Detention

First, many District sites operate on-campus detention rooms, which are holding spaces where staff can send students out of class. The District has no written policy dictating when staff may refer students to on-campus detention. In practice, the District allows staff to send students to on-campus detention for behaviors as minor as cellphone use during class. It also permits staff to send students to on-campus detention for disability-related behaviors, even if the student needs reasonable accommodations or their IEP requires other methods to support behavior.

The District delegates surveilling on-campus detention rooms to campus security. Students have no access to teachers or service providers and sit in the room without schoolwork or special education services.

2. The Student Support Center

Second, many District sites also operate Student Support Centers ("SSCs"). SSCs claim to provide positive behavioral interventions and supports, but in practice, they function as rooms for informal and sometimes multiple day-long, in-school suspensions. As with on-campus detention, District Policy permits staff to send students to the SSC for disability-related behaviors, regardless of IEP provisions or reasonable accommodations needs.³⁸ Students have access to a special education teacher in the SSC for just one class period per day, even if their IEP requires more minutes of Specialized Academic Instruction (SAI).

³⁸ Exhibit G.

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Further, the District's SSC Fidelity Inventory encourages schools to ensure that "security has a clearly define[d] role in student pickup."³⁹ Using security to escort students to the SSC stigmatizes students and institutionalizes the SSC as a punitive, rather than restorative, intervention. **Some school sites also allow the School Resource Officer to be present while the staff member running the SSC questions the student about their behavior.**

3. Data Regarding Removals to On-Campus Detention and the SSC

District Policy does not require staff to document removals to on-campus detention and the SSC as suspensions and report them to CDE as such.⁴⁰ Nor does it require staff to document these removals in students' educational records, track the total days of removal, or hold Manifestation Determination Reviews (MDRs) for students with disabilities whose removals exceed ten school days.⁴¹

However, the District does maintain internal logs tracking referrals to the SSC, including the length of the removal and the student's name, race, gender, and disability status. Consistent with the disparities in formal discipline, this data shows that the District disproportionately removes students with disabilities, especially Black students with disabilities, to the SSC. During the 2019-20 school year:⁴²

- The District removed **284 students** with disabilities to the SSC, a rate of **83.6 per 1,000 students**;
- The District removed Black students with disabilities to the SSC at an even more excessive rate of **149.4 per 1,000 students**,⁴³

³⁹ Exhibit H.

⁴⁰ Exhibits G & H.

⁴¹ A.R. 5144.2 is the District's Suspension & Expulsion policy that discusses MDR requirement. It does not mention in-school suspensions, and does not require that the District hold MDRs for in-school suspensions that amount to a total of more than ten days in the aggregate over the school year. AVUHSD, A.R. 5144.2, "Suspension/Expulsion Due Process (Students with Disabilities)" (Apr. 3, 2013), available at <http://www.gamutonline.net/district/antelopevalley/DisplayPolicy/728153/5>.

⁴² Exhibit I.

⁴³ Id. These rates would have been even higher had the District not transitioned to distance learning in March 2020.

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- **48.2%** of students with disabilities removed to the SSC were Black, though Black students comprise just 27% of students with disabilities and 16.7% of all students District-wide;
- **84.9%** of students with disabilities removed to the SSC had no Behavior Intervention Plan in place at the time of removal.

4. Student Experiences in On-Campus Detention and the SSC

District staff have sent all five individual complainants to the SSC.⁴⁴ The District repeatedly referred B.Y. to on-campus detention for disability-related behaviors, such as talking during class and struggling to focus.⁴⁵ Security and Probation have also sent B.Y. to on-campus detention several times in order to search him.⁴⁶ B.Y. spent approximately one hour in detention each time he was searched, losing valuable instructional time.⁴⁷ B.Y.'s probation officer then reported the on-campus detention referrals to the juvenile court, negatively impacting his delinquency case.⁴⁸

Similarly, Z.R.'s teachers have repeatedly sent him to the SSC for daydreaming in class or not completing work due to lack of academic support.⁴⁹ Teachers characterized these disability-related behaviors as "disruptive."⁵⁰ While in the SSC, he fell further behind and did not receive any SAI.⁵¹ K.D.'s teachers have also sent him to the SSC for disability-related behaviors and to separate him from peers who themselves are not receiving appropriate behavioral supports.⁵² None of those referrals have been appropriate, and all of them have deprived him of class time.⁵³

⁴⁴ Decl. of T.X. at ¶ 3; Decl. of F.R. at ¶¶ 5, 7, 9; Decl. of O.W. at ¶ 5; Decl. of C.Y. at ¶ 6; Decl. of A.D. at ¶ 9.

⁴⁵ Decl. of C.Y. at ¶ 6.

⁴⁶ Id. at ¶¶ 6-7.

⁴⁷ Id. at ¶ 7.

⁴⁸ Id.

⁴⁹ Decl. of F.R. at ¶¶ 5, 7, 9.

⁵⁰ Id.

⁵¹ Id.

⁵² Decl. of A.D. at ¶ 9.

⁵³ Id.

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C. The District's Policies for involuntary transfers

Similar to its practice of underreporting suspensions, the District underreports expulsions by using involuntary transfers. Through involuntary transfers, the District removes students from general education campuses and sends them to an alternate setting – often the same setting to which they would have been sent had they been expelled. The District's policies regarding these transfers permit staff to shuffle students to alternative schools as punishment for minor disability-related behaviors, such as school avoidance or “disrupting” the classroom. The policies also permit involuntary transfer for disability-related academic challenges.

The Policies do not provide students subjected to involuntary transfer with procedural protections, such as an expulsion hearing and MDR. The District's Involuntary Transfer policy, Administrative Regulation (A.R.) 6185,⁵⁴ does not mention MDRs and does not require school sites to hold an MDR before involuntarily transferring a student with a disability. The District's implementation guide for transfers also does not require school sites to implement these protections.⁵⁵

Relatedly, on information and belief, the District has implemented a “waiver” system. This system permits staff to use coercion, intimidation, and misrepresentation to convince parents and students to waive due process protections and consent to immediate “voluntary” transfer to an alternative school. Staff portray these waivers as a way to avoid expulsions. However, voluntary transfers are functionally similar to expulsions because they remove students from the general education setting and place them in academic settings that are less supportive, less resourced, and less academically rigorous. Again, these are often the same settings to which students would have been sent had they been expelled. District Policy does not require IEP teams to discuss the appropriateness of the new placement before a voluntary transfer.

Data regarding transfers to alternative schools shows:

⁵⁴ AVUHSD, A.R. 6185, “Community Day School (Involuntary Transfer)” (Dec. 12, 2019) available at <http://www.gamutonline.net/district/antelopevalley/DisplayPolicy/728302/6>.

⁵⁵ Exhibit J.

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- In the 2018-19 school year the District transferred **573 students** to alternative schools;⁵⁶
- Between 2016 and 2019, it averaged **623 transfers per year**. This is **7.5 times** the average number of formal expulsions in the District during this time period;⁵⁷
- The rates of transfers for Black students are even more disproportionate than those for formal expulsions. In the 2018-19 school year, Black students were **59%** of the 29 students voluntarily transferred, despite comprising just 16.7% of students District-wide;⁵⁸
- Black and Latinx students received all but two of the voluntary transfers that school year.⁵⁹

Students transferred to alternative school campuses are denied the full educational opportunities and experiences available on general education campuses. District alternative schools do not offer competitive athletics, honors or advanced placement courses, elective courses, or even all courses necessary to enroll in college. Students at alternative school campuses also do not consistently receive special education services. For instance, while at an alternative school in the District, Z.R. received no IEP services and was left to work on packets independently.⁶⁰

From the 2018-19 school year to the present, Black students comprised **nearly two-thirds (62.5%)** of students with disabilities subjected to a voluntary or involuntary transfer, disciplinary placement, or IEP team placement at an alternative school site.⁶¹ **93.8%** of students with disabilities sent to an alternative site were students of color.⁶² **Over two-thirds** had no Behavior Intervention Plan in place at the time of placement.⁶³

⁵⁶ Exhibit K.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Decl. of F.R. at ¶ 16.

⁶¹ Exhibit L.

⁶² Id.

⁶³ Id.

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After years of placement in alternative schools, students' academic deficits can become insurmountable, leading to higher drop-out rates. In 2016-17, the last year that data was available, the average drop-out rate at the District's four⁶⁴ alternative campuses (14.2%) was **nearly eleven times higher** than the dropout rate at its comprehensive campuses (1.3%).⁶⁵

D. The District's School Resource Officer and campus security programs

The District contracts with the Los Angeles County Sheriff's Department ("LASD") to place School Resource Officers (SROs) on each high school campus.⁶⁶ The District spends about \$1.7 million per year on this contract.⁶⁷ In addition to the SRO program, the District employs dozens of "Campus Security Supervisors," who are responsible for "assist[ing] in the supervision and control of persons in or around campus buildings, facilities, and areas adjacent to the school sites" and possessing knowledge of "customs and activities indicative of undesirable youth groups."⁶⁸

District Policies empower SROs and campus security to intervene in minor and disability-related school discipline incidents, incidents which would be

⁶⁴ Data for Desert Pathways High School, a highly restrictive small site placement for students with emotional and behavioral needs, is reported to the state with Desert Winds High School's data.

⁶⁵ AVUHSD, DataQuest, 2016-17 Dropout Rate, <https://dq.cde.ca.gov/dataquest/DropoutReporting/DrpByEth.aspx?cDistrictName=ANT&ELOPE%20VALLEY%20UNION%20HIGH&CDSCCode=1964246000000&Level=District&TheReport=EthSex&ProgramName=All&cYear=2016-17&cAggSum=DTotGrade&cGender=B>.

⁶⁶ Exhibit M; AVUHSD, "Our LASD Partnership" (last accessed Nov. 25, 2020), available at <https://www.avdistrict.org/community/our-lasd-partnership>.

⁶⁷ Id.; Julie Drake, "Alumni: No deputies in schools: Three AVUHSD grads want partnership ended," ANTELOPE VALLEY PRESS (Jun. 22, 2020), available at: https://www.avpress.com/news/alumni-no-deputies-in-schools/article_1c5ef96e-b431-11ea-a019-fb4c73eca0a5.html. On February 9, 2022, CTC and an AVUHSD parent filed an LCAP UCP complaint with AVUHSD, arguing that the District illegally spent Supplemental & Concentration funds on law enforcement. On March 23, 2022, the District issued a report finding no illegal expenditures.

⁶⁸ AVUHSD, "Vacancy Announcement #19-20-80, Position: Campus Supervisor" (Jan. 30, 2020), available at <https://www.edjoin.org/JobDescriptions/362/19-20-80%20Campus%20Supervisor-20200129144131.pdf>.

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better handled by teachers and administrators. Officer involvement often escalates these situations, with officers criminally citing students or using force, such as restraint or handcuffs, against students. Officers disproportionately target students with disabilities, especially Black students with disabilities, with these traumatic interventions.

1. The District's Policies for referrals to police

The same matrix discussed in Section IV.A above also governs referrals to police in the District.⁶⁹ As with expulsions, this matrix gives school staff the discretion to refer students to police for *any* Education Code violation, including conduct as benign as profanity or “disrupting” the classroom. Such conduct is largely non-criminal and often disability-related.⁷⁰

The matrix also fails to reference legal requirements to make reasonable modifications for students with disabilities and to implement Behavior Intervention Plans.⁷¹ In fact, A.R. 5144.2 explicitly denies accommodations, stating that “law enforcement notification requirements involving students with disabilities shall be the same as those specified for all students[.]”⁷²

2. The District's Policies for restraint

A.R. 5131.41 describes the District’s “Use of Seclusion and Restraint” policy.⁷³ The policy does not incorporate any of the procedural requirements for students with disabilities in Education Code Section 56520, *et seq.*⁷⁴ For instance, it does not require staff to complete a Behavioral Emergency Report (BER), notify the parent/guardian/residential care provider within one school day, or hold an IEP meeting within two school days after restraining or secluding a student with a disability.⁷⁵

⁶⁹ Exhibit B.

⁷⁰ *Id.*

⁷¹ *Id.*; 28 C.F.R. § 35.130(b)(7) (describing the requirement to reasonably modify policies, practices, and procedures for students with disabilities).

⁷² AVUHSD, A.R. 5144.2.

⁷³ AVUHSD, A.R. 5131.41, “Use of Seclusion and Restraint” (Oct. 10, 2019), *available at* <http://www.gamutonline.net/district/antelopevalley/DisplayPolicy/1148922/5>.

⁷⁴ *Id.*

⁷⁵ *Id.*; E 5145.6 also fails to incorporate most procedural and documentation requirements in Educ. Code § 56521.1, mentioning only the requirement to notify

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Due to this policy, staff fail to complete BERs for **at least one-third** of all incidents of restraint. Although the District reported 71 incidents of restraint of students with disabilities between the 2018-19 school year and the present,⁷⁶ it completed just 47 BERs during this time period. As an example, in September 2021, a classroom aide tackled Z.R. to the floor and pinned him face down in a prone restraint.⁷⁷ School staff did not create a BER or notify his parent of the restraint.⁷⁸

Further, A.R. 5131.41 does not prohibit staff from using seclusion or restraint “as a substitute for a systematic behavioral intervention plan.”⁷⁹ As a result, **over half (57.7%)** of the 71 reported incidents of restraint involved students with disabilities who had no BIP in place at the time of restraint.⁸⁰

District Policy also allows security staff to use physical force, including on students with disabilities, “to the extent reasonably necessary to maintain order,”⁸¹ even where there is no “clear and present danger of serious physical harm” to the student or others.⁸²

3. As a result of its Policies, the District disproportionately restrains students with disabilities, particularly Black students with disabilities, and refers them to police

Data confirms that the District refers students with disabilities, and Black students with disabilities in particular, to police at disproportionate rates:

parents of the use of an emergency behavioral intervention within one school day. AVUHSD, E 5145.6, “Parental Notifications” (Jun. 11, 2018), *available at* <http://www.gamutonline.net/district/antelopevalley/DisplayPolicy/728167/>.

⁷⁶ Exhibit N.

⁷⁷ Decl. of F.R. at ¶ 10.

⁷⁸ Id. at ¶ 10.

⁷⁹ AVUHSD, A.R. 5131.41.

⁸⁰ Exhibit N.

⁸¹ AVUHSD, “Vacancy Announcement #19-20-80, Position: Campus Supervisor” (Jan. 30, 2020), *available at* <https://www.edjoin.org/JobDescriptions/362/19-20-80%20Campus%20Supervisor-20200129144131.pdf>.

⁸² Cal. Educ. Code § 56521.1(a).

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- Further, the District referred 298 students to police during the 2017-18 school year, 124 of whom had disabilities.⁸³ This means that disabled students were **nearly three times as likely** to be referred to police as compared to their nondisabled peers;⁸⁴
 - Of the students with disabilities that the District referred to police during the 2017-18 school year, **44% were Black**, compared to just 17% of students District-wide who are Black;⁸⁵
- In the first two months of the current school year, SROs issued at least **70 citations/arrests** to students with disabilities on campus;⁸⁶
 - Of these citations/arrests, **nearly two-thirds** (62.9%) were issued to Black students with disabilities;⁸⁷
 - Of these citations/arrests, **almost three-fourths** (72.9%) were issued to students who had no Behavior Intervention Plan in place at the time of referral.⁸⁸

Data also shows that SROs and other District staff restrain students with disabilities at excessively high rates:

- According to the U.S. Department of Education, District staff or SROs handcuffed **41 students** during the 2017-18 school year and **48 students** during the 2015-16 school year;⁸⁹
- Of the students handcuffed in the 2015-16 school year, **half** were students with disabilities;⁹⁰

⁸³ AVUHSD, Civil Rights Data Collection, Discipline Report (2017-18), *available at* <https://ocrdata.ed.gov/profile/9/district/26617/disciplinereport>.

⁸⁴ 3.75% of students with disabilities were referred to law enforcement, versus a referral rate of only 1.3% of students as a whole.

⁸⁵ AVUHSD, Civil Rights Data Collection, Discipline Report (2017-18), *available at* <https://ocrdata.ed.gov/profile/9/district/26617/disciplinereport>.

⁸⁶ Exhibit O.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ AVUHSD, Civil Rights Data Collection, Restraint and Seclusion – Instances (2015-16), *available at* <https://ocrdata.ed.gov/profile/8/district/26617/restraints/instances>; AVUHSD, Civil Rights Data Collection, Restraint and Seclusion – Instances (2017-18), *available at* <https://ocrdata.ed.gov/profile/9/district/26617/restraints/instances>.

⁹⁰ AVUHSD, Civil Rights Data Collection, Restraint and Seclusion – Instances (2015-16).

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- During the 2017-18 school year, District staff or SROs physically restrained an additional eleven students, **all of whom had disabilities**;⁹¹
- Black students with disabilities are most likely to be subjected to this on-campus trauma. From the 2018-19 school year to the present, **nearly two-thirds** of the students with disabilities who were handcuffed were Black and **nearly three-quarters** of students with disabilities who were physically restrained were Black.⁹²

One of these students is B.Y., who has been arrested twice on campus, including once merely for being late to class.⁹³ The District did not attempt any alternative interventions before resorting to law enforcement referrals and arrests.⁹⁴ During both incidents, officers handcuffed B.Y. in front of his peers.⁹⁵ These interactions with law enforcement were not simply humiliating for B.Y., they were traumatizing – in an out-of-school interaction with LASD (which is not uncommon for Black youth in the Antelope Valley), deputies used such extreme force on him that they fractured his hips.⁹⁶

Another student, L.W., was recently restrained by campus security after they escalated a simple truancy issue by harassing, insulting, and goading L.W. to the point of anger.⁹⁷ The District's problematic restraint practices have also garnered public attention. As described by a mother of a Black student with disabilities, SROs handcuffed and arrested her daughter on campus for minor misbehavior.⁹⁸ Her daughter felt so stigmatized that she later dropped out of school.

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⁹¹ AVUHSD, Civil Rights Data Collection, Restraint and Seclusion – Instances (2017-18).

⁹² Exhibit N.

⁹³ Decl. of C.Y. at ¶ 9.

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Decl. of O.W. at ¶ 7.

⁹⁸ <https://www.newsweek.com/students-teachers-fight-police-antelope-valley-school-california-1602562>

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4. The District's lack of training for officers

On information and belief, the District does not provide security staff with any training related to students with disabilities. None at all. It does not train security staff regarding how to effectively meet the needs of students with disabilities or even regarding the special legal protections that exist for students with disabilities.⁹⁹

It also appears that the District fails to provide many security staff with training on how to use physical restraints, such as Nonviolent Crisis Intervention ("NCI") training. For example:¹⁰⁰

- Only four of the twelve security officers currently staffed at Antelope Valley High School have received NCI certification at any time. Of those four officers, two of the officers' certifications are out of date;
- Only two of the seven security officers currently staffed at Lancaster High School have received NCI certification at any time. Both officers' certifications are out of date;
- Only four of the twelve security officers currently staffed at Palmdale High school have received NCI certification at any time. All four officers' certifications are out of date.

District training for security staff regarding physical interventions also fails to include the requirements in Education Code Section 56520, *et seq.* The training does not instruct security staff to create a BER, notify the parent/guardian/residential care provider within one school day, or hold an IEP meeting within two school days after restraining a disabled student.¹⁰¹

⁹⁹ Exhibit P. AVUHSD's list of security training online modules does not include any training sections related to students with disabilities.

¹⁰⁰ Exhibits Q & R. Exhibit Q is a list of NCI certified staff in AVUHSD and their certification dates. Exhibit R includes sign-in sheets listing names of security staff who completed training on handcuffing. Complainants' Counsel cross-referenced these two exhibits to identify security staff who were trained on handcuffing but not NCI certified.

¹⁰¹ Exhibit S.

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Security and other staff also place students in prone restraint, even though, on information and belief, they do not have the required training to do so.¹⁰² For instance, in September 2021, an aide pinned Z.R. in a prone restraint on the floor of his classroom.¹⁰³ Security staff also restrain students with metal handcuffs, even though they have received no formal training from the District on the use of mechanical restraints, and only informal training from SROs or other campus security on how to use handcuffs.¹⁰⁴ The District also permits security staff to choose whether to use District-issued handcuffs or handcuffs they bring from home, suggesting that the District does not verify that mechanical restraints used on its students are safe.¹⁰⁵

Finally, the District does not ensure that security staff comply with the minimal training requirements that are in place. For instance, in 2012 (the most recent year for which the District provided a report), security staff had failed to complete nearly half of the required training modules almost two years after they were due.¹⁰⁶ It does not appear that the District disciplined security staff for this noncompliance.

5. The District fails to investigate officers' use of force against its students

On information and belief, SROs and security staff use uncertified restraints on students without consequence. For instance, in 2014, campus security allegedly placed a 17-year-old student in a chokehold, leaving red marks and bruising on his neck.¹⁰⁷ An AVUHSD teacher also reported witnessing an SRO pin down a student with a disability and place a knee in their back.¹⁰⁸ In 2021, an SRO was caught on video forcefully body slamming a female Black student with disabilities onto the concrete because she

¹⁰² On February 15, 2022, the District's counsel confirmed that AVUHSD has no documents regarding staff training on prone restraint.

¹⁰³ Decl. of F.R. at ¶ 10.

¹⁰⁴ Exhibit R.

¹⁰⁵ Id.

¹⁰⁶ Exhibit P.

¹⁰⁷ THE ANTELOPE VALLEY TIMES, "Student Allegedly Put in Chokehold by School Security" (Nov. 17, 2014), available at <http://theavtimes.com/2014/11/17/student-allegedly-put-in-chokehold-by-school-security/>.

¹⁰⁸ <https://www.newsweek.com/students-teachers-fight-police-antelope-valley-school-california-1602562>

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declined his demands to hand him her phone.¹⁰⁹ After this incident, school staff and the SRO mocked, bullied, harassed, and humiliated her on social media and on campus.¹¹⁰

B.Y. also reports seeing campus security and law enforcement use force on students at his school. A police officer slammed B.Y.'s brother, who also has disabilities, to the ground.¹¹¹ Campus security slammed another classmate to the ground for resisting going to on-campus detention.¹¹² In each of these violent incidents, it appears the officers did not attempt to deescalate the situation or implement other reasonable accommodations before using force.

On information and belief, the District does not investigate or discipline SROs who use force on students with disabilities or fail to make reasonable accommodations for students with disabilities. The District also discourages staff from reporting police violence to Child Protective Services.¹¹³

E. The District's Policies for on-campus Probation officers

In addition to SROs and campus security, the District stations Los Angeles County Probation Department ("Probation") juvenile probation officers on each campus. The District permits staff to refer students to Probation, yet it has no formal memorandum of understanding in place to govern the relationship with Probation. Often, referrals to Probation punish students for disability-related behaviors or for using accommodations, such as taking a break from class. District Policy does not require staff to send a student's special education file to Probation after a referral.

¹⁰⁹ https://www.avpress.com/news/student-files-claim-against-avuhsd/article_1a582e52-28ba-11ec-bf28-efaa985e8356.html

¹¹⁰ Id.

¹¹¹ Decl. of C.Y. at ¶ 10.

¹¹² Id.

¹¹³ Exhibit T; District training materials state that abuse and neglect (for purposes of the mandated reporting requirement) does not include: "Injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of [their] employment." The training materials do not explain how an employee would determine whether the officer's use of force was "reasonable and necessary," nor do they require employees to consult with other staff for assistance in making that determination.

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B.Y. reports that his ninth-grade special education teacher threatened to call his probation officer because he was talking to his peers.¹¹⁴ At the time, B.Y. had already finished his work and his peers – who were not court-involved – were not penalized for the same behavior.¹¹⁵ Moreover, his probation officer continually harasses and intimidates him. Once, she cited B.Y. for a probation violation because he was outside of class, despite the fact that B.Y. has an accommodation in his IEP allowing him to take breaks outside of the classroom as needed.¹¹⁶ The harm and humiliation he experienced from being formally cited by his probation officer for using his accommodations makes him afraid to access other supports in his IEP.¹¹⁷

F. The District’s Policies for threat assessments

“Threat assessments” refer to a growing and problematic practice, which varies widely in implementation.¹¹⁸ The stated intent of threat assessments is evaluating and responding to communicated and perceived “threats” to a campus.¹¹⁹ But, “in the field, ‘threat assessment’ is used in a broad range of circumstances, including in circumstances involving no actual threat. It is often an informal process that varies not only from district to district, but also from day to day and child to child within the same district.”¹²⁰

As part of the threat assessment process, threat assessment teams must distinguish “transient” threats from substantive threats.¹²¹ Transient threats are “an expression of anger or frustration that can be quickly or easily

¹¹⁴ Decl. of C.Y. at ¶ 6.

¹¹⁵ Id.

¹¹⁶ Id. at ¶ 8.

¹¹⁷ Id.

¹¹⁸ National Disability Rights Network, *K-12 Threat Assessment Processes, Civil Rights Impacts* (February 2022), available at <https://www.ndrn.org/wp-content/uploads/2022/02/K-12-Threat-Assessment-Processes-Civil-Rights-Impacts-1.pdf>.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ National Association of School Psychologists, *Threat Assessments for School Administrators and Crisis Teams*, available at <https://www.nasponline.org/resources-and-publications/resources-and-podcasts/school-climate-safety-and-crisis/systems-level-prevention/threat-assessment-at-school/threat-assessment-for-school-administrators-and-crisis-teams>.

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resolved,” which includes: non-genuine expression, non-enduring intent to harm, temporary feelings of anger, tactic in an argument, words intended as a joke or figure of speech, incidents that are resolved on the scene, or statements that end with an apology, retraction, or clarification.¹²²

The District uses “threat assessments” to punish and exclude students for disability-related behaviors. Although its threat assessment team includes both law enforcement and mental health professionals, the District’s first call when handling a student experiencing a mental health crisis is to law enforcement. Law enforcement, who are not trained in identifying or supporting students with disabilities or in need of mental health interventions, have total discretion on whether to handle the issue within the Department or reach out to mental health providers. This exacerbates and escalates mental health emergencies by removing a supportive safety net and replacing it with criminal legal system contact.

In addition, on information and belief, the District’s threat assessment policies do not require staff to document and consider students’ disabilities, obtain parental consent to assess, incorporate input from parents and the IEP team, or use objective tools to distinguish substantive threats from transient threats. Nor does the District count its threat assessments as “referrals to law enforcement” for purposes of reporting to the U.S. Department of Education’s Civil Rights Data Collection, even though SROs are members of the threat assessment teams at several school sites.¹²³

G. The District’s Policies for the Special Day Class-Behavioral (SDC-B)

The SDC-B program is a placement into which the District segregates students with emotional and behavioral disabilities. Most or all District campuses have at least one SDC-B, and District Policy ensures that these classrooms remain segregated and punitive. For instance, the District locates most SDC classrooms, including SDC-B classrooms, in portable buildings, physically segregated from the main campus.

¹²² Id.

¹²³ On February 15, 2022, District’s counsel confirmed that the District does not count threat assessments as referrals to law enforcement for CRDC collection and reporting.

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The District also implements a “level system” in all SDC-B classrooms. Based on a student’s behavior, the teacher places them on level one through four. Students who have not met behavioral expectations – levels one and two – must remain in the SDC-B during lunch and passing period. Unlike the positive behavior supports widely proven effective with disabled students, this level system punishes students for disability-related behavior by depriving them of contact with their peers. The result is to keep them in the SDC-B, segregated from nondisabled peers, for most of the day. Because the level system is built into the structure of each SDC-B, all students in the SDC-B are automatically subject to this system, regardless of whether it is appropriate to their unique individual needs.

In addition, the District places students enrolled in different courses into the same SDC-B classroom. For instance, in a third-period SDC-B classroom, one student is enrolled in Biology while another is enrolled in Geometry. This often precludes teachers from providing live instruction to students because it is unfeasible to do so when students are simultaneously enrolled in different courses. Instead, teachers mostly provide students with packet work, which they complete independently. The District does not maintain a similar practice in general education (GE) classes. As a result, GE classes are more likely to offer live instruction than are SDC-B classes.

The District segregates students with disabilities from nondisabled peers at rates far exceeding the targets set by the State. The District places **less than one-third** of students with disabilities in general education classes for the majority of the day.¹²⁴ This is about half the target rate set by the State.¹²⁵ Further, the District segregates **nearly one in three** students with disabilities into special education classes for the majority of the day.¹²⁶ This is over 10 percentage points higher than the target rate set by the State.¹²⁷

¹²⁴ The District places just 28.9% of students with disabilities in the general education classroom for more than 80% of the day. AVUHSD, Annual Performance Report Measures (2019-20), available at <https://www.cde.ca.gov/sp/se/ds/leadatarpts.asp>.

¹²⁵ The State’s target rate for this data point is 53.2%. Id.

¹²⁶ The District segregates 31.7% of students with disabilities into special education classes for at least 60% of the day. Id.

¹²⁷ The State’s target rate for this data point is 20.6%. Id.

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The District segregates Black students with disabilities into the SDC-B at disproportionate rates. Of the students currently enrolled in the SDC-B, **43.3% are Black**, even though Black students comprise just 27% of students with disabilities and 16.7% of all students District-wide.¹²⁸ Further, nearly half of the students currently enrolled in the SDC-B have no BIP.¹²⁹

B.Y. is currently enrolled in an SDC-B, and his experiences show the harm that students are subjected to in this setting. Before the District segregated B.Y. into the SDC-B, it offered him just sixty minutes *per month* of counseling services.¹³⁰ This was plainly not enough to meet his significant social and emotional needs.¹³¹ Rather than providing B.Y. more intensive supports, the District segregated him into the SDC-B for more than half his school day.¹³² In the SDC-B, he is subject to the punitive level system, which is inappropriate to his needs.¹³³

Other students may be at risk of placement in the SDC-B due to inadequate mental health support:

- The District has never offered counseling services to F.R.¹³⁴ Due to unmet emotional needs, he has fallen behind academically and faced disciplinary action and police referrals;¹³⁵
- Until this month, the District offered L.W. just 30 minutes *per month* of counseling services.¹³⁶ Due to unmet emotional needs, he received repeated probation violations on campus, fallen behind academically, and experienced harassment and restraints by security.¹³⁷

Finally, although K.D. enrolled in Lancaster High School optimistic about his chances of engaging with non-disabled peers and taking classes with

¹²⁸ Exhibit U.

¹²⁹ Id.

¹³⁰ Decl. of C.Y. at ¶ 4.

¹³¹ Id.

¹³² Id. at ¶ 5.

¹³³ Id.

¹³⁴ Decl. of F.R. at ¶ 6.

¹³⁵ Id. at ¶¶ 5-16.

¹³⁶ Decl. of O.W. at ¶ 8.

¹³⁷ Id. at ¶¶ 5-7.

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diverse groups of students, he receives limited live instruction in his SDC-B classes and has next to no opportunities to learn alongside students taking the same courses or subjects as him.¹³⁸ He now has trouble engaging with the material and reports low motivation.¹³⁹ His grades and test scores have plummeted in the last year at Lancaster High School.¹⁴⁰ He has very limited interaction with students outside of his SDC-B classes, and again finds himself a frequent victim of bullying and harassment from peers.¹⁴¹

H. The District's Policies for Desert Pathways

The District offers an even more segregated and restrictive placement than the SDC-B: Desert Pathways. There are no nondisabled students at Desert Pathways; all attending students have emotional and behavioral disabilities. The District refuses to offer intensive behavioral and emotional supports in general education classrooms and campuses, so IEP teams have no choice but to segregate students needing these supports into Desert Pathways. This also complicates students' ability to return to less restrictive settings; leaving Desert Pathways ensures more access to rigorous curriculum and nondisabled peers, but it also means losing intensive behavioral and emotional supports that are only offered in that setting.

District Policy separates and stigmatizes Desert Pathways students. While Desert Pathways is located on the campus of Quartz Hill High School (QHHS), a comprehensive high school, it is entirely segregated in a dirt parking lot adjacent to the QHHS football field. It is at least a five to ten-minute walk to the QHHS main campus. Further, under District Policy, Desert Pathways students are not enrolled at QHHS, even though Desert Pathways is physically located on QHHS' campus.¹⁴² As a result, the District denies Desert Pathways students the opportunity to participate in enriching activities available to their QHHS peers, such as rallies, clubs, and competitive athletics. The District will not even permit Desert Pathways students to eat lunch with QHHS peers.

¹³⁸ Decl. of A.D. at ¶ 8.

¹³⁹ Id.

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² Desert Pathways does not have its own SARC – although it is physically located on QHHS' campus, the District classifies it as part of Desert Winds, an alternative school.

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The District segregates Black students with disabilities into Desert Pathways at a rate even more disproportionate than that for the SDC-B. In the current school year, **nearly half** of the 32 students enrolled at Desert Pathways are Black (46.8%), despite Black students comprising just 27% of students with disabilities and 16.7% of all students District-wide. In previous years, Black students have comprised up to **71%** of students enrolled at Desert Pathways. By contrast, just 9.4% of Desert Pathways students are white, even though white students comprise 12.9% of students with disabilities District-wide.

Before transferring to an SDC-B, K.D. was segregated at Desert Pathways for two years.¹⁴³ The District never suggested or considered any programs for K.D. besides Desert Pathways, even though K.D. could have succeeded with supports in a less restrictive setting.¹⁴⁴ The District's justification for this restrictive placement was that it offered intensive behavioral supports and therapies that were not available at other District campuses, such as elevated access to Educationally Related Intensive Counseling Services, individualized SAI, and enrollment in Boys Town.¹⁴⁵ Now, back on a comprehensive campus, K.D. is in a less segregated setting, but he has lost supports that are only available at Desert Pathways.¹⁴⁶ The District offers no option for him to receive these supports and also learn alongside nondisabled peers.

V. The District's Policies violate the IDEA and California Education Code Section 56000 et seq.

The District's policies, practices, and procedures violate the IDEA and the California Education Code, as described below.

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¹⁴³ Decl. of A.D. at ¶ 5.

¹⁴⁴ Id.

¹⁴⁵ Id.

¹⁴⁶ Id. at ¶¶ 7-9.

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1. The District's Policies violate the IDEA's requirement to hold MDRs before placement changes based on discipline code violations.

Districts must hold an MDR within 10 school days of changing a disabled student's placement due to a code of conduct violation.¹⁴⁷ If the MDR team determines that the behavior at issue was caused by the student's disability or the district's failure to implement the IEP, then the student must return to the placement from which they were removed.¹⁴⁸

These provisions still apply when districts exclude students from the classroom without initiating formal discipline proceedings. A removal from the classroom counts for purposes of the MDR requirement when it interferes with the student's opportunity to: (1) be involved in and make progress in the GE curriculum; (2) receive the instruction or services specified in their IEPs; or (3) participate with nondisabled peers to the same extent they would have in their current placement.¹⁴⁹ A district must hold an MDR when it subjects a student to a pattern of classroom removals amounting to more than ten days of lost instruction.¹⁵⁰

Here, while the District does not formally record removals to on-campus detention and the SSC as suspensions, they function as such. In these settings, the District denies students full access to the GE curriculum. Students in on-campus detention are surveilled by campus security and sit without instruction or classwork. Students in the SSC have access to special education teachers for just one period per day. In both settings, students do not receive all of the SAI and related services in their IEPs, and they interact with few nondisabled peers. Thus, these informal removals trigger procedural protections, including MDRs.

¹⁴⁷ 34 C.F.R. § 300.530(e).

¹⁴⁸ 34 C.F.R. § 300.530(e), (f)(2).

¹⁴⁹ OSERS, Inclusion of Behavioral Supports in Individualized Education Programs (August 1, 2016), available at <https://sites.ed.gov/idea/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>; 71 Fed. Reg. 46715 (Aug. 14, 2006).

¹⁵⁰ Id.

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However, District Policy does not require school sites to hold MDRs when staff remove students with disabilities to on-campus detention or the SSC for more than ten days. The District does not require staff to log these removals as suspensions, record them in a student's educational file, or track total days of removal. Thus, District Policy violates IDEA's requirement to hold MDRs before effecting placement changes for code of conduct violations.

In addition, District Policy does not require school sites to hold MDRs for students involuntarily transferred as a result of code of conduct violations. This policy also violates the IDEA provision described above.¹⁵¹

2. The District's Policies violate the IDEA's requirement to implement the instruction, services, and accommodations in students' IEPs.

After an IEP is written, the District must provide the special education and related services listed in the IEP.¹⁵² A District's material failure to implement the IEP denies FAPE, regardless of whether the student experiences "demonstrable educational harm."¹⁵³ Here, the three sets of District Policies described below violate the IDEA requirement to fully implement IEPs.

- a. The District's Policies encourage staff to refer students to on-campus detention, the SSC, and police rather than implementing students' IEPs and BIPs.

District Policy permits staff to send students to on-campus detention or the SSC for disability-related behaviors, even when the student's IEP requires alone time for a break or other accommodations that are not provided in these settings. Thus, District Policy violates the IDEA by allowing, and even encouraging, staff to fail to implement the instruction, services, and accommodations in students' IEPs and BIPs.

¹⁵¹ See *Student v. Lompoc Unif. Sch. Dist.*, OAH Case No. 2019040859/2019070446 (finding that a district violated the IDEA when it transferred a student with a disability to a continuation school for code of conduct violations without holding an MDR).

¹⁵² 34 C.F.R. § 300.323(c); Cal. Educ. Code § 56043(i).

¹⁵³ See *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 812 (2007).

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Similarly, the Minimum/Maximum Penalties matrix permits school staff to refer students to police for minor, disability-related behaviors, such as profanity or disruption. A.R. 5144.2 specifically states that staff are to refer students with disabilities to law enforcement just as they would their nondisabled peers. This policy violates the IDEA by encouraging staff to refer students to police instead of implementing the instruction, services, and accommodations in students' IEPs and BIPs.

- b. The District's Policies deny students access to their IEP instruction, services, and accommodations while they are in on-campus detention and the SSC.

District Policy denies students any access to teachers or service providers while they are in on-campus detention, and it largely denies students in the SSC access to these resources as well. Thus, in both settings, the District materially denies students the instruction and services in their IEPs.

These IEP implementation failures are material and trap students in a vicious cycle. Students often end up in on-campus detention or the SSC due to unmet disability-related academic, emotional and behavioral needs. But, in these settings, the District denies them the very supports that they require to address these needs. After returning to the classroom, students are even further behind academically than they were before and have received the message that they are unwelcome in the classroom.

Further, on-campus detention and the SSC are counterproductive to the goal of encouraging positive student behavior. District Policy permits staff to use on-campus detention and the SSC even if it is inappropriate to the student's needs, such as where these interventions reinforce student behaviors that are motivated by a desire to escape the classroom setting.

- c. The District's Policies deny students access to SAI in the SDC-B.

The District has a practice of placing students enrolled in different courses into the same SDC-B classroom, which renders live instruction unfeasible. Even if a student's IEP requires all-day SAI, in practice, students in the SDC-B often spend much of their day working independently on packets,

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with minimal access to meaningful SAI. Thus, District Policy violates the IDEA's requirement to implement IEPs for SDC-B students.¹⁵⁴

3. The District's Policies violate California Education Code Section 56521.1.

The circumstances in which districts may use emergency interventions, including restraint and seclusion, are few and narrowly defined by law. Staff may never use emergency interventions as a "substitute for a systematic positive behavior plan which is designed to change, replace, modify, or eliminate a target behavior" or to control predictable behaviors.¹⁵⁵ In the rare situations where staff can use emergency interventions, they shall not use an amount of force "exceeding that which is reasonable under the circumstances."¹⁵⁶ To "prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions," the district must notify parents within one school day of an emergency intervention.¹⁵⁷

The district must also immediately create a BER to be maintained in the student's file.¹⁵⁸ Staff must immediately forward the report to a designated school administrator, who must then review the report.¹⁵⁹ Each BER must contain at a minimum: (1) the name and age of the child with disabilities; (2) the setting and location of the incident; (3) the name of the staff or other persons involved; (4) a description of the incident and the emergency intervention used, and whether the child with disabilities is currently engaged in any systematic behavioral intervention plan; and (5) details of any injuries to the child with disabilities, or others, during the incident.¹⁶⁰

¹⁵⁴ Courts have held that providing packet-based instruction rather than teacher-led instruction violates the IDEA. See *Charles H. v. District of Columbia*, 2021 WL 2946127 at *7-10 (D.C. Jun. 16, 2021); *V.W. by & through Williams v. Conway*, 236 F. Supp. 3d 554, 567, 589 (N.D.N.Y. 2017); *Buckley v. State Corr. Inst.-Pine Grove*, 98 F. Supp. 3d 704, 708, 709, 719 (M.D. Pa. 2015).

¹⁵⁵ Cal. Educ. Code § 56521.1(a), (b).

¹⁵⁶ *Id.* at (c), (d)(3).

¹⁵⁷ *Id.* at (e).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at (f).

¹⁶⁰ *Id.* at (e)(1)-(5).

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If the incident involves a student who does not have a BIP, who experiences a “previously unseen behavior problem” or “where a previously designed intervention is ineffective,” the student’s IEP team must meet to discuss the incident.¹⁶¹

The District’s Policy regarding restraint and seclusion, A.R. 5131.41, does not incorporate *any* of these requirements. Thus, the policy violates the California Education Code.

4. The District’s Policies violate the IDEA by permitting staff to refer students with disabilities to Probation without transmitting their special education records.

After a district reports a student for a “crime,” it must send copies of their special education records to the agency to which it made the report.¹⁶² Here, the District permits staff to refer students to Probation without sending special education records to the probation officer. This policy directly conflicts with IDEA regulations. Further, having never seen the student’s IEP or 504 plan, probation officers are more likely to cite students for disability-related behaviors and for using their accommodations.

5. The District’s Policies violate the IDEA’s Least Restrictive Environment requirement.

Districts must place students with disabilities in the least restrictive environment (LRE), meaning that they are educated alongside nondisabled peers to the maximum extent appropriate.¹⁶³ Districts may remove students with disabilities from GE only when “the nature or severity of the disability is such that education in [GE] classes *with the use of supplementary aids and services* cannot be achieved satisfactorily.”¹⁶⁴

¹⁶¹ Id. at (h).

¹⁶² 34 C.F.R. § 300.535(b)(1).

¹⁶³ 34 C.F.R. §§ 300.114, 300.116.

¹⁶⁴ 20 U.S.C. § 1412(a)(5)(A); Cal. Educ. Code § 56031; 34 C.F.R. § 300.114(a)(2)(ii) (emphasis added).

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District Policies segregate students, especially Black students, into the SDC-B. This segregation is needless and violates the LRE requirement. Most or all students in an SDC-B could be effectively served in a GE classroom with intensive aids and services. For instance, over half of the students currently enrolled in the SDC-B have no BIP in place.¹⁶⁵ Many receive only minimal mental health services.¹⁶⁶ These supports could enable students to progress in a less restrictive setting. Instead, the SDC-B is both highly segregated and devoid of any intensive supports. The main features that distinguish an SDC-B from a GE classroom are its punitive level system, location in portable buildings, and lack of live instruction, all of which harm students rather than serving them.

Similarly, the District needlessly segregates students, especially Black students, to Desert Pathways. Most or all Desert Pathways students could be effectively served on general education campuses, such as QHHS, with intensive aids and services. But, IEP teams often cannot offer this option because certain supports and services are only available at Desert Pathways. For instance, the District only offers the Boys Town social skills curriculum at Desert Pathways. As a result, if an IEP team determines that a student requires Boys Town, they have no choice but to place the student at Desert Pathways. If the District made Boys Town and other intensive supports available on general education campuses, this needless segregation would be reduced. Thus, District policies force IEP teams to place students in Desert Pathways, even if that placement is not the LRE.

6. The District's Policies violate IDEA's requirement that students with disabilities participate in nonacademic and extracurricular services and activities to the maximum extent appropriate.

Districts must ensure that students with disabilities participate in nonacademic and extracurricular services and activities with nondisabled peers to the maximum extent appropriate to the needs of the child.¹⁶⁷ These services and activities include meals, recess periods, athletics,

¹⁶⁵ Exhibit U.

¹⁶⁶ Decl. of C.Y. at ¶ 4.

¹⁶⁷ 34 C.F.R. § 300.117.

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clubs, and recreational activities.¹⁶⁸ The district must provide supplementary aids and services to enable the student's participation in nonacademic settings.¹⁶⁹

Here, District Policy denies SDC-B and Desert Pathways students the opportunity to participate in nonacademic and extracurricular activities to the maximum extent appropriate. The District places the majority of its SDCs in portable buildings, physically segregated from the main campus. The punitive leveling system in the SDC-B further segregates students from nondisabled peers during meals and passing periods. Similarly, the District segregates Desert Pathways students by prohibiting them from eating meals with nondisabled QHHS peers and from participating in other enriching activities, such as athletics, rallies, and clubs.

VI. The District's Policies violate Title II and Section 504.

The ADA and Section 504 prohibit districts from excluding students with disabilities from participating in services, programs, and activities; denying them the benefits of those services, programs, and activities; or subjecting them to discrimination on the basis of disability.¹⁷⁰ To prevent discrimination, districts must make reasonable modifications for students with disabilities.

Section 504 and the ADA also prohibit districts, either "directly or through contractual or other arrangements," from using "criteria or methods of administration" that: (1) have the effect of discriminating against students with disabilities; (2) have the purpose or effect of "defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities"; or (3) "perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State."¹⁷¹

¹⁶⁸ Id.; 34 C.F.R. § 300.107.

¹⁶⁹ 34 C.F.R. § 300.117.

¹⁷⁰ Title II of the ADA, 42 U.S.C. §§ 12131 *et seq.*, 12181 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, 34 C.F.R. 104.4(a); Cal. Educ. Code § 201(g) (incorporating violations of Section 504 and Section 11135); Cal. Gov't Code § 11135(b) (incorporating violations of Title II and Section 504).

¹⁷¹ 28 C.F.R. § 35.130(b)(3); 34 C.F.R. § 104.4(b)(4).

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The District violates the ADA and Section 504 by:

1. Failing to make reasonable modifications to policies, practices, and procedures to avoid discrimination against students with disabilities;
2. Using methods of administration that discriminate against students with disabilities and have the effect of defeating or substantially impairing the accomplishment of the objectives of the District's programs for students with disabilities, including:
 - a. Implementing the matrix, which grants staff discretion to recommend students for expulsion and refer them to police for *any* Education Code violation, such that staff biases against students with disabilities, and Black students with disabilities in particular, influence these decisions;
 - b. Requiring staff to implement the same criteria for discipline and police referrals to student with disabilities as they do for their nondisabled peers;
 - c. Using police to enforce school rules, rather than teachers and administrators;
 - d. Removing students from the classroom to on-campus detention and the SSC based on behaviors caused by their disabilities;
 - e. Using threat assessments that fail to consider disability and use objective assessment tools; and
 - f. Reporting students to Probation for disability-related behaviors and for using their accommodations;
3. Denying students with disabilities an opportunity to participate in and benefit from educational services that is equal to that afforded to other students;
4. Denying students with disabilities at Desert Pathways and in the SDC-B an equal and equally effective educational opportunity in the most integrated setting appropriate, and instead providing a separate, unequal, and inferior educational experience;
5. Aiding or perpetuating discrimination against students with disabilities by providing significant assistance to the Los Angeles County Sheriff's Department, a public entity that discriminates based on disability;
6. Subjecting students with disabilities to disability-based harassment that is so severe and pervasive that it creates a hostile learning

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environment. This harassment includes referring students with disabilities to police, Probation, on-campus detention, and the SSC for behaviors caused by their disabilities;

7. Subjecting students with disabilities in SDCs to differential treatment, including denying them access to live instruction and extracurricular activities and placing them in portable classrooms; and
8. Denying students with disabilities an equal opportunity to participate in nonacademic and extracurricular activities, including meals, passing periods, athletics, rallies and clubs.

VII. Proposed Resolution

The violations here stem from the District's unlawful policies, rather than from decisions made by students' IEP teams. Thus, Complainants request that CDE order the District to implement the following systemic remedies:¹⁷²

1. Engage with a nationally recognized expert to assist the District in revising the following policies, such that they comply with the California Education Code, IDEA, Title II, and Section 504:
 - a. All policies, practices, and procedures for suspensions and expulsions, including the matrix of minimum/maximum disciplinary actions;
 - b. All policies, practices, and procedures for on-campus detention and the Student Support Center;
 - c. All policies, practices, and procedures for voluntary and involuntary transfers, including A.R. 6185;
 - d. All policies, practices, and procedures for the District's SRO and campus security programs, including the MOU with LASD, the matrix of minimum/maximum disciplinary actions, and A.R. 5144.2;
 - e. All policies, practices, and procedures for restraint and seclusion, including A.R. 5131.41;
 - f. All policies, practices, and procedures for on-campus probation officers;

¹⁷² See 34 C.F.R. §300.151(b)(2) ("In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA...must address...[a]ppropriate future provision of services for all children with disabilities").

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- therapists, paraprofessionals, and behaviorists at each school site to meet the level of need of its students and ensure that students with disabilities are not unnecessarily segregated from nondisabled peers;
7. Implement a districtwide Multi-Tiered System of Supports and Restorative Justice 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;
 8. 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;
 9. Provide for immediate and continuing education and training for all District staff and school-based law enforcement, and evaluation of progress towards compliance with Section 504, the ADA, the Equal Protection Clause, Title VI, and state law by qualified third-party experts. Such education or training must include, at a minimum, how to: (i) identify students with disabilities; (ii) provide appropriate and culturally relevant instruction, services accommodations and modifications in the least restrictive environment; (iii) stop and prevent harassment and bullying based on disability or race; (iv) eliminate or significantly reduce reliance on exclusionary discipline and school-based law enforcement; (v) address implicit bias; and (vi) administer discipline without racial or disability discrimination;
 10. Develop and implement a system of oversight and accountability to identify staff who are not complying with the laws cited in this Complaint, retrain and provide appropriate supports to enable them to come into compliance, and take appropriate disciplinary action against staff who fail to come into compliance after such retraining or provision of supports;
 11. Analyze the current racial make-up of the District's teachers, social workers, administrators, and psychologists relative to

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- 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 teachers, social workers, administrators, and psychologists such that they reflect the composition of the student body; and achieve substantial compliance with those plans and goals within three years and total compliance within seven years;
12. 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;
 13. 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;
 14. 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, 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;
 15. Engage with nationally recognized experts to adopt culturally sustaining pedagogy District-wide, including offering Ethnic Studies courses on every campus;¹⁷³
 16. Enjoin all disciplinary action, including any pending action, against any student with disabilities unless a Manifestation Determination Review has been completed, and maintain such injunction until a districtwide Multi-Tiered System of

¹⁷³ In its 2018 CCEIS plan, the District itself identified the lack of culturally sustaining pedagogy as one of the root causes of discipline disparities. However, it does not appear that the District has taken steps to implement culturally sustaining pedagogy.

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- Services and Supports has been implemented and determined effective by a qualified third-party expert or experts;
17. Enjoin the use of on-campus detention or disciplinary removals to the Student Support Center 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 measures;
 18. Enjoin the use of referrals to school-based law enforcement 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 measures;
 19. Provide students with positive supports and services in lieu of SRO and security intervention so that they may enjoy full and equal access to the District's programs; and
 20. Permanently enjoin SROs and security staff from mechanically restraining students and intervening in low level and disability-related behaviors, up to and including voiding the contract with LASD and removing security from campus.

VIII. Conclusion

Thank you in advance for your attention to this complaint. We look forward to receiving notice of the assigned investigator and reserve the right to submit additional documentation.¹⁷⁴ We also ask that the investigator conduct a phone interview with the parents of the Students.

We look forward to receiving an investigation report within sixty days. Please notify DRC and NLS in writing if you determine that "exceptional circumstances" warrant an extension of the sixty-day timeline.¹⁷⁵

¹⁷⁴ See 5 C.C.R. §4663(b).

¹⁷⁵ USDOE, *Part B Dispute Resolution in COVID-19 Environment Q-&-A Document* (June 22, 2020)

<https://sites.ed.gov/idea/idea-files/part-b-dispute-resolution-in-covid-19-environment-q-a-document-june-22-2020/#Q2>

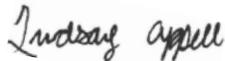
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Please contact us with any questions or concerns. The contact information for Lindsay Appell is (213) 213-8113 and Lindsay.Appell@disabilityrightsca.org, and the contact information for Chelsea Helena is (818) 834-7595 and ChelseaHelena@nlsia.org.

Sincerely,



Disability Rights California
Lindsay Appell
Melinda Bird
Meeth Soni



**Neighborhood Legal Services of
Los Angeles County**
Chelsea Helena
Sahar Durali
David Pallack
Rachel Steinback
Jackie Dai



Equal Justice Society
Alexandra Santa Ana
Mona Tawatao
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