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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO

11 CHRISTINA TORRES,

12 Petitioner/Plaintiff,

13 v.

14 TOM TORLAKSON, in his official capacity)
as STATE SUPERINTENDENT OF PUBLIC)
15 INSTRUCTION; CALIFORNIA)
16 DEPARTMENT OF EDUCATION; the)
STATE OF CALIFORNIA; KERN COUNTY)
17 SUPERINTENDENT OF SCHOOLS; and)
MARY C. BARLOW, in her official capacity)
18 as KERN COUNTY SUPERINTENDENT OF)
SCHOOLS)

19 Respondents/Defendants.
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FILED
Superior Court Of California,
Sacramento
08/17/2017
mchapman3
By _____, Deputy
Case Number:
34-2017-00217559

1 **I. INTRODUCTION**

2 1. This is a writ of mandamus under Section 1085 of the Code of Civil Procedure
3 against Respondents Kern County Superintendent of Schools ("KCSOS" or "Superintendent") and
4 the California Department of Education ("CDE" or "Agency"). Respondents have approved and plan
5 to construct a segregated special education facility in Kern County that will serve only students with
6 behavioral and emotional disabilities, grades K-8, without first complying with the procedures
7 established by state law before such a segregated school may be constructed. Construction of this
8 segregated school facility will deny affected students their fundamental right to education under the
9 California Constitution.

10 2. Petitioner is the parent of a Kern County student with behavioral and emotional
11 disabilities who needs and will benefit from additional, more intensive services from KCSOS.
12 KCSOS provides intensive services for students with behavioral and emotional disabilities at only
13 two general education sites and at a segregated site, the Aurora school. Petitioner's son needs
14 additional services, but she wants him to receive these services at a location that is close to their
15 home and located at a school facility where he will be integrated with his nondisabled peers, and
16 where he will have equal educational opportunities. If permitted to construct a new, segregated
17 school for students with behavioral and emotional disabilities, KCSOS will irreversibly commit
18 itself to spend millions of dollars that could otherwise be used for additional special education
19 services for students with behavioral and emotional disabilities on general education campuses.
20 Petitioner will be irreparably injured if KCSOS constructs a new segregated school in Kern County,
21 instead of developing appropriate integrated special education services on general education sites.

22 3. More than 40 years of research and experience have demonstrated that the education
23 of children with disabilities is most effective by having high expectations and ensuring access to the
24 general education curriculum in the regular classroom to the maximum extent possible. *See* 20
25 U.S.C. § 1400(c)(5). Consistent with these findings, the State of California enacted the Leroy F.
26 Greene School Facilities Act of 1998, which mandates that all newly constructed special education
27 facilities be integrated with other school facilities in order to "maximize interaction between those
28 individuals with exceptional needs and other pupils as appropriate to the needs of both." Cal. Educ.

1 Code § 17070.80(a). The statute permits a local educational agency to petition CDE for a waiver of
2 the requirement that new special education school construction be integrated. The implementing
3 regulations set out the showing that a local educational agency must make to qualify for the
4 exemption to construct a segregated school site for special education students. Cal. Educ. Code §
5 17070.80(d)(1); Cal. Code Regs., tit. 5, § 14036(b)-(c).

6 4. Here, Respondent KCSOS abused its discretion when it submitted a facially
7 defective application for a waiver of the integrated school mandate in the Leroy F. Greene School
8 Facilities Act, and Respondent CDE abused its discretion when it approved this waiver, despite the
9 glaring defects. Respondent CDE approved the waiver on May 26, 2017.

10 5. Unless this Court acts to preserve the *status quo pendente lite*, construction of the
11 new segregated school soon will begin and funds soon will be irreversibly committed to building and
12 site acquisition and preparation costs. Petitioner seeks a stay of CDE's decision as only this will
13 preserve the *status quo* until a final decision on the merits of their challenge (or until KCSOS
14 submits a waiver application that comports with state law). There will be no irreparable harm to
15 Respondents from a short delay in construction plans to allow this Court to examine the legality of
16 the underlying waiver submission and approval, or to allow KCSOS to cure its defective application.

17 6. In approving construction of a segregated school for students with behavioral and
18 emotional disabilities, CDE abrogated its responsibility to provide equal educational opportunities to
19 students with behavioral and emotional disabilities as mandated by California Education Code §
20 56520 *et seq.*, and the California Constitution. *Butt v. State of California* (1992) 4 Cal.4th 668, 680
21 ("In view of the importance of education to society and to the individual child, the opportunity to
22 receive the schooling furnished by the State must be made available to all on an equal basis").

23 7. Petitioner is the parent of a child attending an elementary school served by KCSOS.
24 Petitioner brings this action under the California Constitution and the California Education Code and
25 implementing regulations as parties beneficially interested in compelling Respondents CDE and
26 KCSOS to comply with their clear and certain legal duty to ensure that children with disabilities are
27 not unnecessarily educated in segregated school facilities.

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1 **II. JURISDICTION AND VENUE**

2 8. This Court has jurisdiction to grant injunctive relief on behalf of Petitioner pursuant
3 to Code of Civil Procedure § 1085.

4 9. This Court has jurisdiction to grant declaratory relief on behalf of Petitioner pursuant
5 to Code of Civil Procedure § 1060.

6 10. Venue properly lies in the Superior Court of Sacramento County pursuant to
7 California Code of Civil Procedure § 401(1) because the Attorney General maintains an office in the
8 City of Sacramento in Sacramento County.

9 **III. PARTIES**

10 **A. Petitioner/Plaintiff**

11 11. Petitioner Christina Torres is the parent of a 10-year-old child who qualifies for
12 special education under the categories of intellectual disability and autism. She lives with her
13 husband and children in Kern County in the city of Arvin within the Arvin Union School District,
14 which is a member of the Kern Consortium SELPA. Her son attends a moderate/severe special day
15 class in his neighborhood elementary school. He is an engaged learner, particularly in math, and is
16 working on transitioning to the school's mild/moderate special day class to access a more rigorous
17 curriculum. He does display some minor behaviors when asked to do non-preferred tasks, including
18 yelling, rocking in his chair, hitting, and, on rare occasions, eloping. Over the past two school years,
19 paraprofessionals have increasingly used physical restraint to address these behaviors. At several
20 IEP meetings during the 2016-2017 school year, the district suggested that Ms. Torres transfer her
21 son to Aurora, which is more than 20 miles from their home. Ms. Torres believes that her son could
22 be successful in his neighborhood elementary school with appropriate positive behavioral
23 interventions and supports. Ms. Torres is beneficially interested in the resolution of this complaint.

24 **B. Respondents/Defendants**

25 12. Respondent State of California is the legal and political entity with ultimate authority
26 and responsibility for educating all California public school children, including the responsibility to
27 establish and maintain the system of free common schools under the California Constitution, article
28 IX, section 5, and to ensure that all public school children receive their fundamental right to a free

1 and equal education, under the equal protection clauses of the California Constitution, art. 1, § 7; art.
2 IV, § 16, subd. (a).

3 13. Respondent Tom Torlakson is the State Superintendent of Public Instruction. He is a
4 Constitutional Officer of the State charged with the supervision of all California schools and school
5 districts. Cal. Educ. Code § 33112. In such capacity, he is obligated to take all necessary steps to
6 ensure that school districts comply with state and federal legal requirements concerning educational
7 programs and services, including special education programs and services.

8 14. Respondent California Department of Education ("CDE") is an agency of the State
9 of California responsible for administering and enforcing laws related to education. Cal. Educ. Code
10 § 33308.

11 15. Respondent Dr. Mary Barlow is the Superintendent of Schools for Kern County.

12 16. Respondent Kern County Superintendent of Schools ("KCSOS") is Kern County's
13 Office of Education. KCSOS serves 181,393 students at 278 public school sites across 47 districts.
14 The Kern Consortium SELPA is part of KCSOS and serves 12,000 special education students across
15 44 school districts and 3 charter schools.

16 IV. STATEMENT OF CLAIMS

17 A. Students With Behavioral and Emotional Disabilities Do Not Benefit From 18 Placement In School Settings That Segregate Them From Their Nondisabled Peers.

19 17. Existing research shows that students with behavioral and emotional disabilities do
20 not make better social or academic progress in self-contained schools. *See, e.g.,* Lane, Barton-
21 Arwood, Nelson, & Wehby, *Academic performance of students with emotional and behavioral*
22 *disorders served in a self-contained setting* (2008) *Journal of Behavioral Education*, 17(1), 46,
23 <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1044&context=spcedfacpub>. On the
24 contrary, compared to similarly situated students in self-contained settings, students with behavioral
25 and emotional disabilities in inclusive settings are more likely to belong to a school group, secure
26 competitive employment, and live independently. Hehir, Gridal, Freeman, Lamoreau, Borquaye, &
27 Burke, S., *A summary of the evidence on inclusive education* (2016), [http://alana.org.br/wp-](http://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf)
28 [content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf](http://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf).

1 18. Inclusive educational settings in which students with disabilities are integrated with
2 their nondisabled peers are beneficial for all but a small group of students with low-incidence
3 disabilities such as deafness or blindness. *One System: Reforming Education to Serve ALL Students*,
4 Report of California's Statewide Task Force on Special Education (Mar. 2015), available at:
5 [http://www.smcoe.org/assets/files/about-smcoe/superintendents-office/statewide-special-education-](http://www.smcoe.org/assets/files/about-smcoe/superintendents-office/statewide-special-education-task-force/Task%20Force%20Report%205.18.15.pdf)
6 [task-force/Task%20Force%20Report%205.18.15.pdf](http://www.smcoe.org/assets/files/about-smcoe/superintendents-office/statewide-special-education-task-force/Task%20Force%20Report%205.18.15.pdf).

7 19. The State Taskforce on Special Education called on districts to promote more
8 inclusion, noting that California schoolchildren with disabilities are much more likely to be educated
9 in segregated schools and classrooms, compared to national averages. *Id.* Students eligible for
10 special education services under the category of emotional disturbance, which is the most common
11 eligibility category for students with behavioral and emotional disabilities, are even more likely to be
12 in segregated facilities in California. Of the students with emotional disturbance in California, only
13 25% spent 80% or more of their day inside a general education classroom, as compared to 44%
14 nationwide. *Id.* at 76. On the other end of the spectrum, another 25% of the students with emotional
15 disturbance in California were educated in a separate school, such as Aurora, or a residential
16 treatment facility, as compared to only 14.7% nationwide. *Id.* On both measures of inclusion,
17 California has ingrained patterns of segregation of children with behavioral and emotional
18 disabilities. CDE's denial of KCSOS's waiver application and enforcement of the Leroy F. Greene
19 School Facilities Act and its implementing regulations would be steps toward changing California's
20 status as a national outlier in the segregation of children with behavioral and emotional disabilities.

21 20. Students with behavioral and emotional disabilities typically require behavior
22 supports to be successful. The U.S. Department of Education stated in recent guidance that
23 behavioral supports must be available throughout a continuum of placements, including in a regular
24 education setting, to ensure that students are placed in the least restrictive environment appropriate
25 to their needs. U.S. Dep't of Educ., *Dear Colleague Letter (Guidance to Schools on Ensuring*
26 *Equity)* (Aug. 1, 2016), available at: [http://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-](http://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf)
27 [on-pbis-in-ieps--08-01-2016.pdf](http://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf).

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1 **B. Education Is a Fundamental Right under the California Constitution**

2 21. Education “is a principal instrument in awakening the child to cultural values, in
3 preparing him for later professional training, and in helping him to adjust normally to his
4 environment.” *Brown v. Bd. of Ed. of Topeka, Shawnee County, Kansas* (1954) 347 U.S. 483.

5 22. The California Constitution recognizes that the right to education is a fundamental
6 right. Cal. Const. art. IX, § 5; Cal. Const. art. I, § 7.

7 23. The California Constitution guarantees all students basic educational equality, and
8 any action that has a real and appreciable impact upon such right is subject to strict scrutiny and
9 must be supported by a compelling state interest. *Serrano v. Priest* (1976) 18 Cal. 3d 728, 761, 767-
10 768. The state is the ultimate guarantor of the fundamental right to public education under
11 California’s Constitution.

12 24. Under Education Code § 33112, the Superintendent of Public Instruction has a
13 mandatory duty to “superintend the schools of the state” that requires him to act even in the absence
14 of more specific statutory direction, to ensure that the fundamental right to a public education is not
15 impaired. *Butt v. State of California* (1992) 4 Cal. 4th 668, 683-684 (state itself “bears the ultimate
16 authority and responsibility” to ensure that the public school system does not deny equal educational
17 opportunity to any group of students).

18 25. Where the state’s actions create a real and appreciable impairment of the right to
19 education that falls substantially below prevailing statewide standards, and the state does not have a
20 compelling reason for failing to intervene, the state has denied basic educational opportunity to
21 students. *Butt v. California*, supra, 4 Cal.4th at p. 692. Children who are unnecessarily educated in
22 segregated, non-integrated school settings are denied equal educational opportunity under the
23 California Constitution.

24 **C. The Education Code Limits the Extent to Which School Districts May Construct
25 Segregated School Facilities**

26 26. The Leroy F. Greene School Facilities Act of 1998 requires all newly constructed
27 special education facilities to be integrated with other school facilities in order to “maximize
28 interaction” between students with disabilities and their nondisabled peers. Cal. Educ. Code
§§ 17070.80(a). A local education agency may circumvent this requirement only through a waiver

1 granted by the CDE.

2 27. Specifically, Cal. Educ. Code § 17070.80(d) provides: "Notwithstanding any other
3 provision of law, the requirement set forth in subdivision (a) may be waived, by the Superintendent
4 of Public Instruction, only upon compliance with the following procedure:

5 (1) The applicant school district or county superintendent of schools shall file a written
6 request for waiver that documents the reasons for its inability to comply with the
7 requirement.

8 (2) The State Department of Education shall verify the reasons set forth pursuant to
9 paragraph (1), including the documentation submitted, which verification shall be completed
10 no later than 30 days after the filing of the request for waiver with the Superintendent of
11 Public Instruction.

12 (3) The Advisory Commission on Special Education, as established under Section 33590, at
13 its first scheduled meeting following the verification conducted pursuant to paragraph (2),
14 shall review the request for waiver, accompanying documentation, and the verification
15 findings of the State Department of Education. No later than 15 days following the date of
16 that meeting, the commission shall submit its written comments and recommendations
17 regarding the request for waiver to the Superintendent of Public Instruction.

18 (4) The Superintendent of Public Instruction shall review the comments and
19 recommendations submitted by the Advisory Commission on Special Education prior to
20 approving or rejecting the request for waiver.

21 (5) Any request for waiver, submitted in accordance with this section, that is not rejected
22 within 60 days of its receipt by the State Department of Education, shall be deemed
23 approved.

24 28. CDE has duly promulgated regulations implementing this waiver application
25 procedure. Cal. Code Regs., tit. 5, § 14036(b)-(c) provides:

26 (b) A waiver to acquire or newly construct a non-integrated facility is recommended by the
27 Advisory Commission on Special Education for approval only if it includes a plan to
28 transition the individuals with exceptional needs to a regular campus setting. The waiver
includes a capacity study of the existing special education classrooms in the special
education local plan area (SELPA) to verify that no classrooms are available to house the
population targeted in the waiver.

(c) The waiver includes justification as to why the non-integrated facility is the only option
available on a long-term basis and discusses the feasibility of a short-term lease as an option
to new construction or acquisition.

**D. KCSOS Submitted a Defective Waiver Application to Construct a Segregated
School That Fails to Meet the Statutory and Regulatory Criteria**

29 29. KCSOS submitted a waiver application to CDE on November 3, 2016, seeking to
30 construct a new segregated school facility for students with behavioral and emotional disabilities.
31 The new facility is intended to house and expand the Aurora program, which is KCSOS' existing
32 segregated program for students with behavioral and emotional disabilities.

1 30. The Kern Consortium SELPA, which is part of KCSOS, operates the Aurora
2 program. Aurora is a special education school only for students in grades K-8 with behavioral and
3 emotional disabilities. It is located in East Bakersfield and serves 60 students who come from the 44
4 Kern Consortium SELPA member school districts—some from as far as 60 miles away (El Tejon
5 School District). KCSOS' waiver application lists four ways students end up at Aurora: (i) a referral
6 from one of the 44 school districts in the SELPA after the district has "exhausted all of the
7 educational and mental health avenues within their purview"; (ii) a referral by their home district
8 because their IEP calls for an NPS and they have just been placed in a foster care home or group
9 home within the SELPA; (iii) a referral from one of the two ED programs on KCSOS general
10 education sites; or (iv) a referral from a small district that does not have adequate resources.

11 31. Although the Kern Consortium SELPA serves more than 12,000 special education
12 students, it provides intensive behavioral and mental health supports specifically for students with
13 behavioral and emotional disabilities at only 3 sites, one of which is Aurora. Two other "Emotional
14 Disturbance" programs—Planz Elementary and Fairfax Middle—are the only other classrooms in
15 which KCSOS serves students with emotional disturbance and high-level needs.

16 32. KCSOS has operated Aurora from a school facility rented from the Kern County
17 Mental Health Department. The Kern County Mental Health Department recently provided notice
18 that it would not renew this lease past December 2018.

19 33. The KCSOS waiver application submitted on November 3, 2016 describes the
20 proposed new segregated school facility. The proposal calls for a new facility adjacent to the current
21 location. This facility will serve up to 120 students with severe behavioral and emotional
22 disabilities—twice its current census—and up to 92 staff. The proposed site is over six acres and can
23 fit several 1200 sq. ft. classrooms and other amenities. The proposed school will be a high security
24 facility, with interior and exterior security cameras, a scan card system for entering/exiting rooms,
25 and a "No Climb" perimeter fence.

26 (1) Transition Plan

27 34. KCSOS' proposal fails to satisfy the regulatory requirement that it include a plan to
28 transition students with special needs to a regular campus setting. Cal. Code Regs., tit. 5, § 14036(b).

1 The KCSOS proposal does not contain a clear or proven plan for transitioning Aurora students back
2 to general education campuses. The proposal states that the goal is to transition students back to
3 general education schools within "18-24 months," but it does not provide data on how this goal will
4 or has been achieved.

5 35. The Aurora program exit criteria require strict adherence to a one-size-fits-all "Level
6 System" and "Contract Card System" which a student must achieve for 4-6 weeks before they
7 qualify for the "Consideration for a Less Restrictive Environment" process. But students already
8 face great difficulty transitioning out of the existing Aurora program under this system. Between
9 2007 and 2017, 271 students passed through Aurora. About 65% of these students were not able to
10 move on to less restrictive placements. Students who do not transfer to less restrictive environments
11 remain at Aurora until they complete 8th grade and move to a segregated special education program
12 operated by the Kern High School District SELPA.

13 36. In its initial proposal, KCSOS stated that Aurora students would have opportunities
14 to mainstream at their home schools for part of the school day as their behavior improved. However,
15 the proposed school site is isolated. Students who are bussed to a distant general education campus
16 during the day will lose essential instructional time, if scheduling even permits such a part day. More
17 than 20% of the current Aurora students live more than 20 miles from the school, with some
18 traveling as far as 60 miles each way. As such, this arrangement is unlikely to facilitate a smooth
19 transition back to their neighborhood general education campus.

20 (2) Capacity Study

21 37. KCSOS' proposal fails to satisfy the regulatory requirement that it provide a capacity
22 study of the existing special education classrooms in the SELPA to verify that no classrooms are
23 available to house the population targeted in the waiver. Cal. Code Regs., tit. 5, § 14036(b). Capacity
24 studies are an essential element of the Leroy F. Greene School Facilities Act of 1998, which is the
25 governing statute. *See* Schools and School District—School Facilities, 1998 Cal. Legis. Serv. Ch.
26 407 (S.B. 50) (West), available at: http://www.leginfo.ca.gov/pub/97-98/bill/sen/sb_0001-0050/sb_50_bill_19980827_chaptered.pdf (accessed July 6, 2017). This Act describes a capacity
27 study as a quantitative analysis used to calculate new construction funding. Cal. Educ. Code §§
28

1 17071.10-17071.46. The Act defines “school building capacity” as “the capacity of a school building
2 to house pupils,” (Cal. Educ. Code § 17070.15(l)) and includes detailed mathematical formulas for
3 calculating existing school building capacity. Cal. Educ. Code § 17071.25(a). The KCSOS proposal
4 does not include such a quantitative capacity study.

5 38. Instead of providing a capacity study, KCSOS argued in its application that a new
6 segregated school facility is necessary because there are only two school sites other than Aurora—
7 Fairfax Middle School and Planz Elementary School—that have special day classes that provide the
8 same level of supports. *See* KCSOS, Educational Specifications: Aurora Program Project 5 (Sept.
9 13, 2016). KCSOS did not meet the regulatory requirement that it “verify that no classrooms are
10 available to house the population targeted in the waiver.” KCSOS serves more than 12,000 students
11 from 44 school districts. KCSOS did not survey any of its 44 districts to determine if additional
12 classrooms are available that could house a total of 60 students – the current population of Aurora.
13 Neither did KCSOS explain why the same level of supports as it currently provides at Aurora could
14 not be added to other special education sites.

15 (3) Justification As To Why Non-Integrated Facility is the Only Option on a
16 Long-Term Basis

17 39. KCSOS’ proposal fails to satisfy the regulatory requirement that it justify why a non-
18 integrated facility is the only option available on a long-term basis. Cal. Code Regs., tit. § 14036(c).
19 The proposal does not discuss any alternatives to a segregated facility, including the possibility of
20 providing intensive supports on integrated school sites across the county.

21 40. KCSOS can provide intensive services to students with disabilities at integrated
22 school sites across the county. As KCSOS points out in its waiver proposal and in subsequent
23 correspondence with CDE, the Kern County Consortium SELPA provides the mental health
24 therapists for all LEAs in Kern County. This gives KCSOS the autonomy to create programs like the
25 ones at Fairfax Middle School and Planz Elementary School in geographically diverse parts of the
26 county. Expansion of this model on a long-term basis would remove the need for a centralized, non-
27 integrated facility, reduce the amount of time students spend on the bus, and increase opportunities
28 for inclusion and extracurricular activities.

1 (4) Feasibility of a Short-Term Lease

2 41. KCSOS' proposal fails to satisfy the regulatory requirement that it justify why a
3 short-term lease is not a feasible alternative to new construction. Cal. Code Regs., tit. 5, § 14036(c).
4 Nowhere in the waiver proposal submitted to the CDE does KCSOS discuss a short-term lease as an
5 alternative to new construction or disclose any efforts to explore the option of a short-term lease.

6 **E. CDE Approved the KCSOS Application Although It Did Not Meet The**
7 **Required Criteria.**

8 42. Special Education Division ("SED") Director Kristin Wright recommended denial of
9 the KCSOS proposal in a letter dated January 31, 2017 to the School Facilities and Transportation
10 Services Division at CDE. She wrote that the "proposed nature and location of the facility conflicts
11 with the CDE's legally mandated focus on inclusion," and emphasized that the long distances
12 students travel to Aurora would "eliminate opportunity for...even partial inclusion in a general
13 education setting during normal school hours." Director Wright concluded:

14
15 The SED acknowledges that students with severe emotional challenges have
16 exceptional needs which, depending on the individual, may require they spend a
17 significant percentage of time receiving educational and related services outside of
18 the general education setting. However, the nature of the proposed facility obviates
19 the potential for inclusion during normal school hours. Furthermore, the location of
20 the proposed facility precludes the opportunity for meaningful participation with
21 peers and the larger community out of normal school hours. Accordingly, the SED
22 recommends denial of the proposal.

23 43. The School Facilities and Transportation Services Division at CDE notified KCSOS
24 of Director Wright's decision on February 7, 2017.

25 44. KCSOS submitted a response to the denial on March 30, 2017. The letter attempted
26 to address Director Wright's travel and inclusion concerns. Superintendent Barlow acknowledged
27 that some students travel 120 miles roundtrip to attend Aurora, but that 79% of students live within
28 20 miles. She admitted that Aurora students do not have opportunities for extracurricular activities,
but reasoned that they "did not participate in extracurricular activities within their home districts or
communities due to the severity of their behavior and mental illness."

45. On April 20, 2017, Superintendent Barlow and Interim Special Education Director

1 Brian Cortez presented a PowerPoint on the proposal to the Advisory Commission on Special
2 Education. A CDE staff person from the Special Education Division informed the Commission that
3 KCSOS had cured all of the deficiencies highlighted in Director Wright's initial letter. She did not
4 provide specifics.

5 46. At the Commission meeting, KCSOS Interim Director Cortez responded to a
6 question about a plan to transition students from the proposed segregated school site back to general
7 education campuses. Cortez said that he could not provide "hard data" about transitions out of
8 Aurora, but that the average length of stay was "probably 2-and-a-half years." KCSOS did provide
9 data that only 35% of students have transitioned back to general education campuses from Aurora
10 since 2007.

11 47. The Advisory Commission approved the proposal and sent the decision back to the
12 CDE for a decision within 60 days per Cal. Educ. Code § 17070.80(d)(5).

13 48. Disability Rights California wrote to CDE about the defects in the KCSOS proposal
14 in a letter dated April 24, 2017.

15 49. On May 2, 2017, KCSOS provided additional information to CDE. KCSOS
16 acknowledged Disability Rights California's objections, but again failed to produce a capacity study,
17 justify why new construction is the only option on a long-term basis, or address the feasibility of a
18 short-term lease. Letter from Mary Barlow, KCSOS Superintendent, to the Honorable Tom
19 Torlakson, State Superintendent of Public Instruction (May 2, 2017).

20 50. On May 26, 2017, Respondent State Superintendent Torlakson approved the waiver.

21 **FIRST CAUSE OF ACTION**

22 **(AGAINST RESPONDENTS SUPERINTENDENT BARLOW AND KCSOS)**

23 **(Writ of Mandate (Civ. Proc. Code, § 1085) – Violation of the California Education Code**
24 **§ 17070.80(d) and Cal. Code Regs., tit. 5, 14036(b)-(c).)**

25 51. Petitioner realleges and incorporates by reference each and every allegation
26 contained in the above paragraphs.

27 52. Respondents Superintendent Barlow and KCSOS have a clear and present duty under
28 the California Education Code to design and locate new special education facilities on integrated

1 campuses so as to “maximize interaction” between students with disabilities and their nondisabled
2 peers. Cal. Educ. Code § 17070.80(a). In order to receive a waiver of this requirement, Respondents
3 must submit a proposal to CDE that includes a plan to transition students to regular educational
4 settings, a capacity study of existing classrooms to verify that no classrooms are available,
5 justification why a non-integrated facility is the only option available, and a discussion of the
6 feasibility of a short-term lease. Cal. Code Regs., tit. 5, § 14036(b)-(c).

7 53. Respondents have submitted a waiver proposal that on its face lacks each of the
8 elements in Cal. Code Regs., tit. 5, § 14036(b)-(c). At all times relevant to this action, Respondents
9 have had the ability to fulfill their duties under the law.

10 54. Petitioner is beneficially interested in the Respondents’ performance of their duties.
11 The issues raised by this writ are matter of public right and the writ seeks enforcement of a public
12 duty.

13 55. Written demand was made upon the Respondents to perform their duties. In direct
14 contravention of the law and Petitioner’s demand, Respondents have failed and refused to perform
15 their duties expressly mandated by law, despite their ability to carry out those duties.

16 56. Petitioner seeks injunctive relief enjoining Respondents from continuing to design,
17 plan, and/or construct the proposed new Aurora facility, and expending any funds toward the same.

18 57. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law.
19 Unless this court grants the relief requested, respondents/s will continue to fail and refuse to perform
20 their legal duties. No money damages or other legal remedy could adequately compensate the
21 Petitioner and others for the hardship caused by Respondents’ failure to perform their legal duty.
22 Unless enjoined, Respondents will continue to violate the right of children with behavioral and
23 emotional disabilities to an education in integrated facilities alongside their nondisabled peers to the
24 maximum extent appropriate.

25 58. Petitioner seeks a writ of mandate to issue directing Respondents Superintendent
26 Barlow and KCSOS to perform ministerial acts required by law, namely to: (1) Withdraw its original
27 request for a waiver to build a nonintegrated facility to house its Aurora program; and (2) resubmit a
28 waiver proposal that includes the elements required by Cal. Code Regs., tit.5, § 14036(b)-(c).

1 Unless this court grants the relief requested, respondents/s will continue to fail and refuse to perform
2 their legal duties. No money damages or other legal remedy could adequately compensate the
3 Petitioner and others for the hardship caused by Respondents' failure to perform their legal duty.

4 Unless enjoined, Respondents will continue to violate the right of children with behavioral and
5 emotional disabilities to an education in integrated facilities alongside their nondisabled peers.

6 66. Petitioner seeks a writ of mandate to issue directing Respondents to perform
7 ministerial acts required by law, namely to: (1) Vacate its May 26, 2017 approval of KCSOS'
8 original waiver proposal; and (2) require KCSOS to submit a waiver proposal that contains the
9 elements required by Cal. Code Regs., tit.5, § 14036(b)-(c).

10 **THIRD CAUSE OF ACTION**
11 **(AGAINST RESPONDENTS STATE OF CALIFORNIA AND STATE SUPERINTENDENT**
12 **TORLAKSON)**

13 **(Writ of Mandate (Civ. Proc. Code, § 1085) – Violation of Article IX, Sections 1 and 5 of the**
14 **California Constitution.)**

15 67. Petitioner realleges and incorporates by reference each and every allegation
16 contained in the above paragraphs.

17 68. Respondents State of California and State Superintendent Torlakson and CDE have a
18 clear and present State-mandated duty under Article IX, Sections 1 and 5 of the California
19 Constitution to ensure that children with behavioral and emotional disabilities receive a public
20 education.

21 69. Article IX, Sections 1 and 5 of the California Constitution require Respondents to
22 “provide for a system of common schools” that are “kept up and supported in each district” so that
23 students may access the “general diffusion of knowledge and intelligence [that is] essential to the
24 preservation of the[ir] rights and liberties.” Cal. Const. art. IX, §§1, 5. Because the education of
25 children with behavioral and emotional disabilities away from their nondisabled peers can cause
26 serious damage, Respondents must ensure that this occurs only when there are no alternatives. This
27 includes assurances that students with behavioral and emotional disabilities have access to equal
28 educational opportunities as their nondisabled peers, including access to extracurricular activities,
high quality academic programs, and the ability to interact with their nondisabled peers.

1 70. With respect to children with behavioral and emotional disabilities, Respondents
2 have breached their clear and present State-mandated duty under the California Constitution to
3 ensure that children with behavioral and emotional disabilities learn in a "system of common
4 schools" that are "kept up and supported" such that students may learn and receive the "diffusion of
5 knowledge and intelligence [that is] essential to the preservation of the[ir] rights and liberties."
6 Through its existing practices and failure to act, the State is perpetuating the continued denial of
7 education by its endorsement of the construction of a new segregated school facility solely for
8 students with behavioral and emotional disabilities. Respondents are on notice that KCSOS'
9 application was defective and CDE's subsequent approval was unlawful. At all times relevant to this
10 action, Respondents have had the ability to fulfill their duties under the law.

11 71. Petitioner is beneficially interested in the Respondents' performance of their duties.
12 The issues raised by this writ are matter of public right and the writ seeks enforcement of a public
13 duty.

14 72. Written demand was made upon the Respondents to perform their duties. In direct
15 contravention of the law and Petitioner's demand, Respondents have failed and refused to perform
16 their duties expressly mandated by law, despite their ability to carry out those duties.

17 73. Petitioner seeks injunctive relief enjoining Respondents from permitting school
18 districts to educate students with behavioral and emotional disabilities in segregated settings, and
19 thereby denying them equal education opportunities, including access to extracurricular activities,
20 high quality academic programs, and the ability to interact with their nondisabled peers.

21 74. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law.
22 Unless this court grants the relief requested, respondents/s will continue to fail and refuse to perform
23 their legal duties. No money damages or other legal remedy could adequately compensate the
24 Petitioner and others for the hardship caused by Respondents' failure to perform their legal duty.
25 Unless enjoined, Respondents will continue to violate the right to a public education under the
26 California Constitution, and Petitioner, and other Kern County parents of students with behavioral
27 and emotional disabilities, will continue to suffer irreparable harm.

28 75. Petitioner seeks a writ of mandate to issue directing Respondents to perform

1 ministerial acts required by law, namely to: (1) Cease doing nothing to reverse California's status as
2 a national outlier in terms of the segregation of children with behavioral and emotional disabilities;
3 and (2) Take action to enforce existing laws designed to ensure that new construction of segregated
4 special education facilities only occurs when the petitioning local education agency has
5 demonstrated that there are no alternatives.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Petitioner requests that this Court:

8 76. Issue an immediate stay of Respondent CDE's decision to approve KCSOS'
9 application for a waiver to construct a non-integrated school facility to preserve the *status quo*,
10 pending a final determination on the merits.

11 77. Issue its alternative writ of mandate commanding Respondents Torlakson and CDE
12 to deny KCSOS' application until such time that the application complies with the requirements of
13 Cal. Code Regs., tit. 5, § 14036 and commanding Respondents Barlow and KCSOS to create a plan
14 to transition individuals with behavioral and emotional disturbance to regular campus settings,
15 conduct a capacity study of existing classrooms, provide justification why a non-integrated facility is
16 the only long-term option and why a short term lease is not a feasible option, or to show cause before
17 this Court, at a time and place specified by Court order, why they have not done so and why a
18 peremptory writ should not issue.

19 78. Upon return of the alternative writ and/or the hearing on the order to show cause, or
20 alternatively in the first instance, issue a peremptory writ ordering Respondents Torlakson and CDE
21 to deny of KCSOS' application until such time that the application complies with the requirements
22 of Cal. Code Regs., tit. 5, § 14036 and commanding Respondents Barlow and KCSOS to create a
23 plan to transition individuals with behavioral and emotional disabilities to regular campus settings,
24 conduct a capacity study of existing classrooms, provide justification why a non-integrated facility is
25 the only long-term option and why a short term lease is not a feasible option; and

26 ///

27 ///

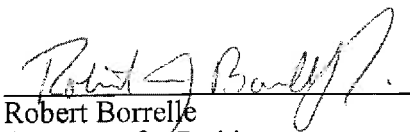
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79. Grant Petitioner her costs, reasonable attorneys' fees, and such other relief that the Court deems proper.

Dated: August 16, 2017

Respectfully Submitted,

DISABILITY RIGHTS CALIFORNIA

By: 
Robert Borrelle
Attorneys for Petitioner

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VERIFICATION

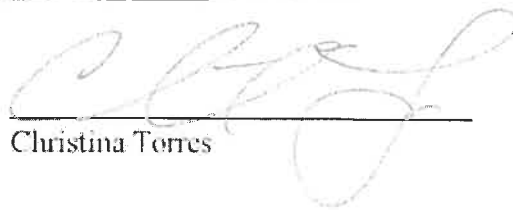
I, the undersigned, declare:

I am one of the Petitioners/Plaintiffs in this action. I have read the above "Petition for Writ of Mandate Pursuant to Code of Civil Procedure § 1085" and know its contents. All facts alleged in the Petition are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 11, 2017 at Arvin, California.

Dated: August 11, 2017

By:


Christina Torres