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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

J.R., a minor, by and through her guardian ad litem, Janelle McCammack; M.B., a minor, by and through her guardian ad litem, F.B.; I.G., a minor, by and through his guardian ad litem, M.E., on behalf of themselves and all those similarly situated,

Plaintiffs,

v.

OXNARD SCHOOL DISTRICT; CESAR MORALES, Superintendent of Oxnard School District, in his official capacity; ERNEST MORRISON, President of Board of Trustees, in his official capacity; DEBRA CORDES, Clerk of Board of Trustees, in her official capacity; DENIS O'LEARY, Trustee of Board of Trustees, in his official capacity; VERONICA ROBLES-SOLIS, Trustee of Board of Trustees, in her official capacity; MONICA MADRIGAL LOPEZ, Trustee of Board of Trustees, in her official capacity; and DOES 1 TO 10, inclusive,

Defendants

Case No.: 2:17-cv-04304-JAK-FFM

Plaintiffs' Notice of Motion and Motion for Class Certification; Memorandum of Points and Authorities in Support Thereof

[Supporting Declarations and Proposed Order Filed Concurrently]

Date: **January 29, 2018**
Time: **8:30 a.m.**
Court: **10B**
First Street Courthouse

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on January 29, 2018 at 8:30 a.m. or as soon thereafter as the matter may be heard by the Hon. John A. Kronstadt in the United States District Court, Central District of California, Courtroom 10B, located at 350 W. 1st Street, Los Angeles, California, 90012, Plaintiffs J.R., I.G. and M.B., each individually and on behalf of all others similarly situated, pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2) and any other applicable rule of civil procedure or law, will move this Court for an order: (i) certifying Plaintiffs' claims as a class action; (ii) appointing Plaintiffs as Class Representatives; and (iii) appointing Class Counsel pursuant to Fed. R. Civ. P. 23 (g).

Plaintiffs propose a Rule 23(b)(2) Class defined as follows:

> All students in Oxnard School District who have or may have disabilities and who have been or will be subject to the District's policies and procedures regarding identification and evaluation of students for purposes of providing services or accommodations under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act and/or the Americans with Disabilities Act.

To the extent the Court disagrees with the above-stated definition for the Plaintiff Class, Plaintiffs move the Court to redefine or modify that definition, as such determinations are within the Court's discretion. Fed. R. Civ. P. 24(c)(4)(B) and (c)(5).

Plaintiffs also move for the appointment of Plaintiffs J.R., I.G. and M.B. as Class Representatives. Plaintiffs further move pursuant to Fed. R. Civ. P. 23(g) for the Learning Rights Law Center, Law Office of Shawna L. Parks and Disability Rights California to be appointed as Class Counsel under Fed. R. Civ. P. 23(g)(1).

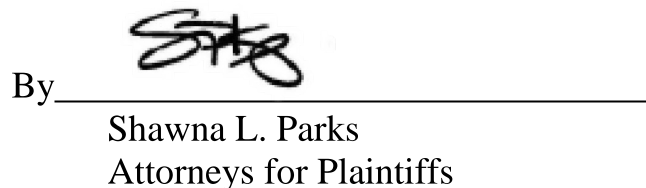
This motion is based upon this notice, the accompanying memorandum of points and authorities; the concurrently filed declarations of Plaintiffs' counsel, Shawna L. Parks, Janeen Steel and Stuart Seaborn, as well as additional declarations in support of the motion: the declarations of Peter Leone, Janelle McCammack (re J.R.), F.B. (re

M.B.), M.E. (re I.G.), C.L. (re A.L), M.A. (re J.R.), M.A. (re E.H.), L.O. (re A.V.), O.M. (re E.M.), L.H. (re J.M.), F.B. (re Meli.B.), J.A. (re W.G.), Irma Vasquez, and Tara Austin Scott; the pleadings and records on file with the Court in this action; and any argument or additional evidence as may be requested by the Court or presented at the time of hearing.

This motion follows a conference of Counsel pursuant to L.R. 7-3. The parties met and conferred about this motion on November 13, 2017, but were unable to agree as to the merits of the motion.

DATED: November 22, 2017

LEARNING RIGHTS LAW CENTER
LAW OFFICE OF SHAWNA L. PARKS
DISABILITY RIGHTS CALIFORNIA



By______________________________
Shawna L. Parks
Attorneys for Plaintiffs

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I. Introduction

Federal law, including the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act and Americans with Disabilities Act, requires that every school district provide students with disabilities a non-discriminatory and free appropriate public education ("FAPE"). These laws place specific obligations on school districts to timely locate, identify and evaluate schoolchildren who may have disabilities that impact their education and/or who require special education services, an obligation often referred to as "child find." This obligation extends to children throughout elementary school.

Oxnard School District ("OSD" or "District") systemically fails to meet these requirements. Indeed, the District's standard policy when confronted with failing students who exhibit signs of possible disability, or otherwise indicate a need for assessment, is *not* to refer such students for special education assessments. Instead, District staff either do nothing, or rely on an alternate, but illegal system the District has developed of using informal Student Success Teams ("SSTs") to discuss a student's lack of progress. These SST meetings, which exist under no education law, are provided *instead of* mandatory referrals for assessments, and result in little or no special education services or empty referrals that put the onus on parents to secure and pay for services for their children. When assessments are provided, they are often ineffective and incomplete.

Both of the Administrative Law Judges who conducted evidentiary hearings in the underlying proceedings in this matter found this problem to be widespread, with one labeling it as the District's "standard policy" not to proceed straight to a special education assessment, and another noting that District staff's misunderstanding of their obligations to identify and evaluate students with disabilities was "systemic."

While students such as named Plaintiffs J.R., M.B. and I.G. fail year after year without receiving appropriate special education services for their disability-related needs, District staff stand idly by, or at most convene an SST meeting, through which little or no real services are provided. This "wait and see" approach is both illegal and disastrous. Moreover, it is affecting hundreds of students who remain un-identified for purposes of

services and accommodations.

Indeed, the District allowed the named Plaintiffs to fail for *years* without assessing them for much-needed special education services and disability accommodations—only providing proper assessments after the students retained lawyers and filed administrative complaints. Other student declarants in this matter have strikingly similar experiences.

This is a prototypical class action brought pursuant to FRCP 23(b)(2) to effect systemic reform to Defendants' policies and practices. It meets all of the requirements for class certification, including numerosity, commonality, typicality and adequacy of representation. Consequently, class certification should be granted.

II. Statement of Facts

A. The District Has an Obligation to Have Policies and Procedures To Identify and Evaluate Students For Purposes of Providing Disability-Related Services and Accommodations.

Under the IDEA, as recipients of federal education funds, Defendants have the duty to provide what is known as a "Free Appropriate Public Education" ("FAPE") to all students with disabilities. 20 U.S.C.§§ 1412(a)(l),(b), 1413(a). A FAPE consists of special education and related services that are consistent with curriculum standards set by the state of California and conform to the student's IEP. 20 U.S.C. § 1401(9). Special education is "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability."[1] 20 U.S.C.§ 1401(29).

To carry out this mandate, the District must have in effect policies, procedures and programs to ensure that all children, "regardless of the severity of their disabilities," who are in need of special education and related aids and services are *identified, located,*

[1] To be eligible under IDEA, a child must have a qualifying disability, such as a speech or language impairment, emotional disturbance, an orthopedic impairment, autism, another health impairment, or a specific learning disability, and must, as a result, need special education and related services. 20 U.S.C. §§ 1401(3), 1414(b)(4)(A)

evaluated, and provided a specially-designed Individualized Education Program ("IEP"). 20 U.S.C. § 1412(a)(3)(A); *see also* 20 U.S.C. §§ 1412(a)(1), (a)(4)-(7), 1413(a)(1), 1414(a)-(e); 34 C.F.R. §§ 300.111, .301, .304-.311; *Timothy O. v. Paso Robles Sch. Dist.*, 822 F.3d 1105, 1110 (9th Cir. 2016) (citing 20 U.S.C. § 1412(a)(3)(A)); and *Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181, 1182-84 (9th Cir. 2010). A school district has an *independent* duty to evaluate children after notice that they may have disabilities. *JG v. Douglas Cty. Sch. Dist.*, 552 F.3d 786, 794 (9th Cir. 2008) (citing 20 U.S.C. §§ 1412(A)(3),(7)); *N.B. v. Hellgate Elem. Sch. Dist.*, 541 F.3d 1202, 1209-10 (9th Cir. 2008)). This is commonly known as "child find."

The child-find duty is triggered when a district has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability. *Dept. of Educ., Haw. v. Cari Rae S.*, 158 F. Supp. 2d 1190 (D. Haw. 2001); *W.H. ex rel. B.H. v. Clovis Unified School Dist.*, 2009 WL 1605356 at *5 (E.D. Cal. June 8, 2009). The school district has a duty to child-find "within a reasonable time after school officials are placed on notice" that a child is suspected of having a qualifying disability. *D.R. v. Antelope Valley Union High School Dist.*, 746 F.Supp.2d 1132, 1144 (C.D. Cal. 2010); *Torrance Unified Sch. Dist. v. Magee*, 2008 WL 4906088 at *1 n.1 (C.D. Cal. 2008). A district's child find obligation applies to all children who are suspected of having a disability in need of special education, even though they may be advancing from grade level to grade level. 34 C.F.R. § 300.111(c)(1).

"A disability is 'suspected' and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability." *Timothy O,* 822 F.3d at 1119-1120 (emphasis added). "Once *either* the school district or the parents suspect disability. . . *a test must be performed* so that parents can 'receive notification of, and have the opportunity to contest, conclusions regarding their children.'" *Id.* at 1120 (emphasis added) (quoting *Pasatiempo by Pasatiempo v. Aizawa*, 103 F.3d 796 (9th Cir.1996)). Courts have noted that the threshold for "suspicion" is "relatively low," in that the inquiry is not whether or not a student actually *qualifies* for

services, but rather, was whether he should be *referred* for an evaluation. *See Dept. of Educ., Haw. v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001) (referencing Administrative Law Judge decision).

Once a child is identified, school districts must promptly seek parental consent to evaluate him or her for special education, under mandated timeframes. 20 U.S.C. §§ 1414(b)(6); 34 C.F.R. §§ 300.301, 300.309(c). The IDEA requires school districts to conduct comprehensive "initial evaluations" to "determine whether a child is a child with a disability" and "determine the educational needs of such child." 20 U.S.C. §§ 1414(a)-(c); *see also* 34 C.F.R. § 300.301. School districts must evaluate a child who is referred for an evaluation by a parent unless they provide adequate written notice with the reasons for refusal. 34 C.F.R. § 300.503.

The evaluation must encompass all suspected areas of the child's disability. 20 U.S.C. § 1414(a)(3)(B). Evaluation results are then discussed with parents in an IEP team meeting to determine if the child is eligible for special education, and to determine an appropriate educational program for the child. *Id.* § 1414(a)(4).

As the Ninth Circuit has emphasized, that these evaluations are done "*early, thoroughly, and reliably is of extreme importance to the education of children*." *Timothy O.*, 822 F.3d at 1110 (emphasis added). "*Otherwise, many disabilities will go undiagnosed, neglected, or improperly treated in the classroom*." *Id.* (citing 20 U.S.C. § 1400(c)) (emphasis added).

Similarly, under Section 504 of the Rehabilitation Act and the ADA, the District may not discriminate against students with disabilities who require accommodations or other supports related to their disabilities in order to access their education, and must afford them "meaningful access" to educational programs and services.[2] 42 U.S.C.

[2] Students are covered by Section 504 or the ADA if they have qualifying disabilities, which are defined as a physical or mental impairment which substantially limits a major life activity, or if they have a record of or are regarded as having such an impairment. 42 U.S.C. § 12102(1); 28 C.F.R. § 35.108.

§ 12132 (ADA); 29 U.S.C. § 794(a) (504). This includes by providing reasonable accommodations, ensuring provision of services in integrated settings, and providing opportunities to participating in programs, services and activities. 28 C.F.R. §35.130(b)(7); 28 C.F.R. §35.130(b)(1)(iii); 28 C.F.R. at §35.130(d); 34 C.F.R. §104.4(b)(2); §104.4(b)(1)(iii). Section 504 also mandates that a student who is eligible for special education and related aids and services under Section 504 is entitled to receive FAPE. 34 C.F.R. § 104.33.

Under Section 504 school districts are required to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any later significant change in placement. 34 C.F.R. §104.35(a); *Mark H. v. Lemahieu*, 513 F.3d 922, 930 (9th Cir. 1992) (Section 504 regulations require evaluation and testing of all those who need or are believed to need special education).

B. Oxnard School District's Policy and Practice Results in the Systematic Failure to Identify and Evaluate Students Who May Need Disability-Related Special Education Services and Accommodations.

Contrary to its obligations under the law, the District's standard policy when confronted with failing students who exhibit signs of possible disability, or otherwise indicate a need for assessment, is *not* to refer such students for special education assessments, delaying a significant period of time through the SST process, if the child is ever identified at all.[3] This standard operating procedure in the District has been confirmed by testimony of school staff and officials. The named plaintiffs I.G. and M.B. proceeded through two full evidentiary hearings in front of two separate Administrative

[3] SSTs are informal school meetings and do not carry the procedural or substantive protections of Individual Education Plans and Individual Education Plan meetings under the IDEA. *Cf. Doug C. v. Hawaii Dept. of Educ.*, 720 F.3d 1038, 1043 (9th Cir. 2013) (explaining importance of IDEA procedural requirements, and in particular for IEPs).

Law Judge's from California's Office of Administrative Hearings. Between the two hearings, a total of twenty-one District Staff testified from four different District schools and District administration, over the course of nearly eleven days spread out over two separate months. *See* M.B. Order, p.1, Exh. A to Declaration of F.B. re M.B. ("F.B./M.B. Decl."), and I.G. Order, p.1, Exh. A to Declaration of M.E. re I.G. ("M.E. Decl."). Both ALJ's found systemic problems in the District's policies with respect to identification and evaluation.

In M.B.'s case, the ALJ found that the District "admitted that general education teaching staff did not receive training [in special education referrals], but instead used the COST and student study team process to address children who need help." [4] M.B. Order, ¶15, p. 36. The ALJ also found that:

- "[s]everal of the District's witnesses confirmed that District's standard process when a parent asked for an assessment…was to refer the request…to the COST team, which then determined without any parental participation whether to hold a student study team to discuss a possible referral for assessment."
- "M.B.'s kindergarten, first, second, third and fourth grade general education teachers had no District training on appropriate procedures under the IDEA for referring a child who is suspected of having a disability that may qualify that child for special education services."
- "District staff at Juan Soria School [where M.B. attended kindergarten] did not directly commence assessments of Student when Mother expressed concerns. Instead, they first met privately as part of a COST team, and then held a student study team meeting to discuss whether to assess."
- "Testimony from Elm school principal and school psychologist …demonstrated

[4] The District also includes an additional preliminary step even prior to the SST meeting that it refers to as a "COST," or Coordination of Services Team. Parents are not typically involved in a COST. M.B. Order, ¶6, p. 3; *see also* Declaration of Tara Austin Scott ("Scott Decl.") ¶¶6(b)-(d).

they also did not understand the appropriate procedural requirements under the IDEA for referring children for special education assessments."

M.B. Order, ¶¶16-17, p. 36-37.

In I.G.'s case the ALJ found that:

- "Fundamental to District's failure to timely assess was a general misunderstanding of a school district's child find obligations."
- *"District personnel's misunderstanding in this regard was systemic."*
- "General education teachers, counselors, and administrators stated that they did not suspect Student to have a disability that might need to be addressed by special education services, because Student's absences were the consequence of a medical issue. Yet everyone agreed that Student's chronic absenteeism and early removal negatively affected his academics….¶"

I.G. Order, ¶¶16-17, p. 35-36 (emphasis added).

The fact that these policies continue is confirmed by the declarations of two teachers who have come forward because of their concerns about their students. These teachers – who are from two different schools in the District – both confirm the ongoing use of the COST and SST process, which results in delays in assessments, if assessments are ever performed at all. *See generally* Declaration of Irma Gonzalez (kindergarten teacher); and *id.* at ¶¶6-7 (in addition to delays through COST and SST process, has been told to "give it another year" before making referral); and *generally* Scott Decl. (second grade teacher); and *id.* at ¶¶6-8 (many times COST and SST process never leads to referrals, verbal requests by parents ignored or parents persuaded not to pursue to "monitor progress"). Ms. Scott who teaches at Lemonwood Elementary School, identifies a number of students who she believes should have been assessed, but who were routed into the COST and SST process, and never assessed at all, or their assessments were significantly delayed. Scott Decl. ¶¶6(a)(i), (b)(i), (d)(i), (e)(i), and 7.

These illegal policies and procedures are long-standing. Indeed, six years ago the Department of Education's Office for Civil Rights ("OCR") found that Oxnard had

illegally used the SST procedure to delay evaluations and services under Section 504 and IDEA for a young student with a disability, finding the school had a "policy of requiring an SST meeting prior to referring a student for an evaluation," and "a failure to timely evaluate and cover the Student under Section 504 or the IDEA." The Office for Civil Rights held that the District, *inter alia*, "violated Section 504 by referring the student to its student support team prior to conducting any evaluations." *In Re Oxnard Sch. Dist.,* 8 ECLPR 91 (2011); and *id.* at 3 (principal stated that SST meetings are mandatory before a student can be referred for an evaluation under IDEA, Section 504).

The impact of these policies is disastrous for students with disabilities in the District. Based on data on Oxnard School District from the California Department of Education via its "Data Quest" program for 2014-2016, Plaintiffs' expert determined that there was significant under-identification of students with disabilities in the District. Declaration of Peter Leone ("Leone Decl.") ¶18. Specifically, the data show a difference in the likelihood of children in Oxnard being identified as eligible for special education when compared to all other students aged 5-15 in the state. Leone Decl. *Id*. Conservatively, if rates of identification in Oxnard approached averages for other school children aged 5-15 in the state, more than 200 additional children in Oxnard would have been identified as eligible for special education services. Leone Decl. ¶¶19-20. Thus, while all of the nearly 17,000 students in the District are subject to these policies, hundreds of young students are suffering direct and dire consequences as a result.[5]

C. The Experiences of the Proposed Class Representatives and Other Students Demonstrate the District's Policy and Practice, as Well As the Catastrophic Consequences for Students with Disabilities.

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[5] Given the demographics of the District, it is particularly important that these evaluations are completed early and thoroughly when necessary. Nearly ninety percent of the District's student population is characterized as "socially disadvantaged," and more than half are classified as English Language Learners. *See* California Department of Education, California School Dashboard, attached as Exhibit A to Declaration of Shawna L. Parks ("Parks Decl.").

1. Named Plaintiff - M.B.

M.B. is a ten-year-old girl in the fifth grade at Rose Elementary, who struggled for years with obvious disability-related challenges. Rather than comply with its obligations, the District held a series of *seven* SST meetings over the course of four years, during which time M.B. missed out on critical special education services and accommodations.

When M.B. started kindergarten in 2012 at the District's Juan Soria Elementary School, M.B.'s mother almost immediately informed the teacher that she believed her daughter had a disability that was affecting her education. M.B. Order, ¶¶3-4, p. 3. Rather than provide an assessment plan for special education, the District held the first of many SST meetings. At the meeting M.B.'s mother expressed "multiple concerns" about M.B.'s behavior and learning difficulties. M.B. Order, ¶7, p. 4.

The District finally assessed M.B. near the end of the school year, but failed to assess in all areas of disability, including those flagged by M.B.'s mother. M.B. Order, ¶37, p. 25. M.B. continued to struggle for the next three years, demonstrating profound deficits in all subjects, including deficits in memory, language and motor skills. The District did not offer a complete special education assessment until after M.B. filed her request for due process in September of 2016, at the beginning of her fourth-grade year.

The ALJ at M.B.'s due process hearing found that:

> District should have at least reassessed Student for eligibility from and after November 2013, based on her lack of any appropriate academic progress, Parents' report that Student had been diagnosed with attention deficit disorder, and Mother's concerns of possible autism and deficits in fine motor skills. . . .The team, which included special education resource teacher…deferred assessments with a "wait and see" mindset. M.B. Order, ¶41, p. 25-26.

The ALJ also noted that the District ignored signs of deficits in language and speech, fine motor skills, and academics, as well as signs of autism. *Id*. Of the four professionals who testified at M.B.'s hearing – three of whom were District

1 psychologists or administrators – "none…disagreed as to the general nature of Student's
2 disabilities, or that her difficulties were historic rather than recently developed. Her
3 levels of performance were consistently 99.9 percent below those of children the same
4 age." M.B. Order, ¶60, p. 16. M.B.'s expert "credibly opined that Student's deficits as
5 she saw them in 2017 were historic and profound, and had the District fully assessed
6 Student in all areas of need in May 2013, Student should have been found eligible. . . ."
7 M.B. Order, ¶37, p. 25. Indeed, the District's manager of special education opined at the
8 hearing that M.B. – then nearing the end of fourth grade – was at a kindergarten level in
9 reading, and first grade in math. M.B. Order, ¶60, p. 16.

10 The ALJ ultimately found that:

11 *The evidence was overwhelming that District had enough information*
12 *from November 2013 and through third grade to trigger its duty under*
13 *the IDEA to reassess Student for special education eligibility. Instead,*
14 *District relied instead on its practice of using the student study team*
15 *process to address Student's growing needs, which proved to be*
16 *disastrous for Student. . . .the persistent reliance on the student study*
17 *team process, as opposed to assessing in all areas of suspected need,*
18 *denied Student a FAPE.* With proper assessments, she should have been
19 found eligible for special education as early as fall 2013…. She would
20 have had the benefit of an IEP team knowledgeable in special education
21 procedures to evaluate her progress, establish goals, and monitor and
22 report on her progress. Student received none of those benefits through
23 the time of hearing. M.B. Order, ¶42, p. 26. (emphasis added).

24 **2. Named Plaintiff - I.G.**

25 I.G. is a ten-year-old student at Sierra Linda school in the District. M.E. Decl. ¶¶2,
26 4. He is a "bright, generally sweet and respectful child." Order, ¶9, p. 26. Despite clear
27 signs and admitted awareness of I.G.'s disabilities, including insomnia and anxiety, and
28 their impact on his school performance, the District did nothing, year after year. The

District's inaction contributed to a dangerous cycle – without tools to address his anxiety and insomnia, I.G.'s fear of attending school grew, his insomnia continued and he missed even more school, making it that much more difficult for him to return and be comfortable at school. I.G. Order, ¶80, p. 17.

By the start of the second grade in 2014, I.G. "fell asleep in class about once a week and had angry outbursts. [The teacher] then saw a pattern of frequent absences and early withdrawals, which were negatively affecting Student's performance." I.G. Order, ¶19, p. 29. I.G.'s mother told his teacher that I.G. had insomnia and "described how she struggled to get Student to sleep and that Student often was not able to wake up and come to school in the morning. Mother also told [the Teacher] that this caused Student to be sleepy and irritable at school, which contributed to his early removal." I.G. Order, ¶20, p. 29. I.G.'s teacher noted in his file that he had "many health issues, missed many school days, and became aggressive and defiant." I.G. Order, ¶50, p. 11; *see also* I.G. Order, ¶50, p. 11 (55 days absent that year). I.G.'s teacher testified that although she believed the absences, sleepiness and irritability were due to a medical issue – which can be the basis for special education eligibility - she did not make a referral for a special education assessment because she "*incorrectly believed* medical issues were not a basis for…special education intervention."[6] I.G. Order, ¶25, p. 30 (emphasis added).

I.G. continued to struggle. I.G.'s mother told his third-grade teacher that I.G.'s absences were caused by insomnia and that Student became anxious in the morning and did not want to come to school. I.G. Order, ¶51, 54, p. 12. His teacher believed the resulting absences were "alarming and compromised Student's ability to learn," but she made no referral for evaluation. I.G. Order, ¶55, p. 12. By the end of the school year he had missed 47 days. I.G.'s teacher that year never made a referral for a special education assessment.

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[6] The ALJ noted that the teacher's beliefs in this regard mirrored other District staff who testified, including the school counselor and "Student's other teachers." I.G. Order ¶22, p. 29.

After I.G. filed a due process complaint in September of 2016, the District offered a "504 plan" that finally provided some accommodations for I.G.'s insomnia and anxiety, and assessed I.G. for services under the IDEA. I.G. Order, ¶67-74, p. 15-16. Importantly, the assessment concluded that "Student had demonstrated anxious behaviors on a consistent basis, which impacted his educational performance because he had not been able to regularly attend school since kindergarten." I.G. Order, ¶84, p. 18; *see also* Order, ¶81, p. 18 (diagnosing with dysthymia (persistent depressive disorder), generalized anxiety disorder and insomnia related to anxiety). As a result, he had "missed about 25 percent of the learning experiences in the school setting since kindergarten." I.G. Order, ¶77, p. 17. This affected I.G.'s ability to learn, especially in math, where he had historically low grades and evaluation testing. I.G. Order, ¶79, p. 17; ¶60, p. 13.

The school held IEP meetings in December of 2016, finding I.G. eligible for services under emotional disturbance and other health impairment, and offered, among other things, specialized academic instruction, counseling services and social work services. I.G. Order, ¶85-91, p. 18.

As the ALJ in I.G.'s case found:

> In the fall of 2014, Student had limited strength, vitality and alertness, due to his chronic insomnia, which affected his educational performance. Student's insomnia caused "limited alertness" on some days affected his ability to waken on other days. This kept him from consistently attending school, which adversely impacted his academic performance. The evidence demonstrates that if District had assessed Student in the fall of 2014, Student would have been found to have met the eligibility criteria for [the IDEA]. I.G. Order, ¶29, p. 31.

3. Named Plaintiff - J.R.

J.R. is a thirteen-year-old eighth grader attending the District's Haydoc Academy of Arts and Sciences, but who previously attended Kamala Elementary School. Her disability-related academic difficulties manifested early, and were continuously ignored

by the District. J.R. struggled academically since kindergarten. For example, her kindergarten teacher specifically noted that she had difficulty understanding new concepts. Declaration of M.A. re J.R. ("M.A. Decl.") Exh. A. She "needed a lot of support in reading," as early as the first grade. M.A. Decl. Exh. K at p. 5. Her grades were often the lowest possible in core areas of reading, writing and math. M.A. Decl. Exhs. A-C.

J.R.'s third grade and fourth grade report cards showed that she was below basic (the lowest grade) in math and most of language arts. Her teachers noted that J.R. was making "slow progress in reading," that she made careless errors, that she had difficulty understanding new concepts, and was "easily distracted." M.A. Decl. Exhs. D & E.

By the end of fifth grade she received 1's (the lowest grade on a scale of 1-4) in many categories of math and language arts. Again, her report card noted that she had difficulty understanding new concepts, and low test scores. M.A. Decl. Exh. F. By the end of J.R.'s fifth grade year, her teacher was concerned about J.R.'s performance. However, rather than evaluate J.R. for special education, the District held an SST meeting on May 11, 2015. M.A. Decl. Exh. G.

At this meeting, the District documented numerous red flags that should have prompted an assessment for special education services: 1) J.R. "has peer issues;" 2) *Her reading level was at grade level 1.2 (despite being at the end of fifth grade)*; 3) "Word meaning inhibits her ability to complete comprehension tasks"; and 4) J.R. "[D]oes not seem to understand pragmatics and social skills." M.A. Decl. Exh. G. Despite these findings, the District did not evaluate J.R. for special education services.

In sixth grade, J.R.'s scores on her October 2015 English language assessment actually *regressed* in speaking, reading and listening. M.A. Decl. Exh. H. Similarly, her scores on state standardized testing also regressed in math. M.A. Decl. Exh. J. Also in sixth grade, in February of 2016, J.R.'s pediatrician diagnosed her with Attention Deficit Hyperactivity Disorder ("ADHD"). M.A. Decl. ¶7. By the end of her sixth-grade year, J.R.'s records indicate that she "struggled in all academic subjects." She received a "D"

in Language Arts and an "F" in math and science. M.A. Decl. Exh. I.

After filing a due process complaint in September of 2016, the District finally agreed to assess J.R. for purposes of determining special education eligibility. What those assessments found was striking:

- J.R. had severe deficits in receptive and expressive language, auditory processing, and auditory comprehension. These deficits severely impacted every aspect of her learning, e.g., on tests of oral language, J.R. – who was then twelve years old – was performing between a pre-Kindergarten and second grade level.
- J.R. was light years behind her peers academically—testing at the second percentile in reading as a seventh grader, meaning she is below 98% of her peers, and testing so low in math that she did not score a percentile.

M.A. Decl. Exh. K, p. 14 and 16-25.

On December 13, 2016, the District held an Individualized Education Plan ("IEP") meeting, and found J.R. eligible for special education services as a student with a speech or language impairment. M.A. Decl. Exh. L.

On February 9, 2016, the District entered into a stipulated decision in J.R.'s administrative case, admitting to liability under IDEA for the two years preceding the date of J.R.'s complaint – namely that it had failed to timely identify and evaluate J.R. for special education services, and had consequently failed to provide a FAPE to address J.R.'s needs. M.A. Decl. Exh. M (decision issued March 13, 2017).

4. Other Students Have Been Similarly Affected by the District's Policies and Practices.

The experiences of other students follow a strikingly similar pattern:

W.G.: W.G. is a thirteen-year-old eighth grader in the District, who enrolled at Kamala Elementary School for the sixth grade in the fall of 2015. Declaration of J.A. re W.G. ("J.A. Decl.") ¶5. In that year, W.G. was diagnosed with ADHD by a doctor and put on medication, but W.G. struggled with increasing mental health issues that affected her at school. J.A. Decl. ¶7. Instead of referring W.G. for a much-needed evaluation for

1 special education services and accommodations, the District held an SST meeting. J.A.
2 Decl. ¶8; Exh. A. In April of 2016, W.G. began hearing voices, tried to kill herself, was
3 admitted to a mental health treatment facility and diagnosed with depression and
4 anxiety. J.A. Decl. ¶9. W.G.'s mother and her doctors informed the District about her
5 disabilities, and that she had been hospitalized, but received no information about
6 evaluations or services. J.A. Decl. ¶¶10-11, Exhs. B and C. In the fall of 2016, her
7 mother asked for a "504 Plan" to provide accommodations at W.G.'s new middle school,
8 but the District did not provide one. J.A. Decl. ¶15. It was not until after W.G. filed a
9 due process complaint in September of 2016 that the school finally held a 504 Plan
10 meeting, and then conducted a special education assessment for W.G. J.A. Decl. ¶¶17-
11 19, Exh. 26. In March of 2017, the school held an IEP meeting and found W.G. eligible
12 for special education under the category of emotional disturbance, providing her with
13 special education services and accommodations. J.A. Decl. ¶20, Exh. F.

14 **A.V.:** A.V. is a sixteen-year-old student in Oxnard Union High School District.
15 Although A.V. attended school for eight years in the Oxnard School District – from
16 kindergarten through eighth grade – he was never identified as a student with a disability.
17 Academics were always difficult for him and he had trouble staying on task. Declaration
18 of L.O. re A.V. ("L.O. Decl.") ¶4. By the sixth, seventh and eighth grades the teachers
19 were telling his mother that he was not paying attention, not completing assignments, and
20 not making effort, and he received D's and F's in many classes. L.O. Decl. ¶5, Exh. A.
21 When A.V. transitioned to the ninth grade in the high school district, he failed all his
22 classes except for one. L.O. Decl. ¶8. After his mother asked for help, *the high school*
23 *district* conducted an assessment, found that he had a learning disability, and made him
24 eligible for services and accommodations through an IEP. L.O. Decl. ¶9, Exhs. B, C, D.

25 **J.M.:** Is a nine-year-old student in the fourth grade. Even though J.M. had an
26 actual diagnosis of Autism from an outside agency that the District knew about, he was
27 not identified or evaluated by the District for the purposes of providing special education
28 services or accommodations. Declaration of L.H. re J.M. ("L.H. Decl.") ¶¶4-5, Exh. A at

¶7. Even though J.M.'s parents requested an assessment in March of 2015, the District refused to provide one. L.H. Decl. Exh. A at ¶8. Instead, the District held an SST meeting for J.M. at which there were clear disability-related flags, including discussions of medication. L.H. Decl. Exh. A at ¶¶16-17. Throughout this time J.M. struggled with behavior and academics. L.H. Decl. Exh. A at ¶¶10-15. Only after J.M.'s parents hired their own special education assessor in early 2017, did the District complete an evaluation. L.H. Decl. Exh. A at ¶22. The District completed that evaluation and gave J.M. services through an IEP in March of 2017, nearly two years after his parents' original request. L.H. Decl. Exh. A at ¶23.

A.L.: A.L. is an eleven-year-old student in the sixth grade. He has attended school in the District since kindergarten. Despite struggling for years with extremely low grades – with teachers noting that he was distracted, forgetful and "struggling in all areas" – he was not identified and found eligible until his mother obtained outside help from a friend and education advocate. Declaration of C.L. re A.L. ("C.L. Decl.") ¶¶5-6, 13-14; Exhs. A, C, D, E, F. After C.L. repeatedly asked for help for her son in the fourth and fifth grade, A.L.'s teacher eventually told his mother, in fifth grade, that there was an assessment process, but that there is a "big list" of kids waiting for assessments. C.L. Decl. ¶6-13. Only after a friend showed A.L.'s mother how to make a written request for an assessment in February 2017 did the District finally assess A.L. Even then the District attempted to require A.L.'s mother to attend an SST meeting, which she refused. C.L. Decl. ¶15. The District finally completed an assessment on May 24, 2017, and held an IEP finding him eligible for special education services and accommodations in June of 2017. C.L. Decl. ¶¶16-19; Exhs. G, H.

E.H.: E.H. is an eight-year old student in the third grade. Since kindergarten District teachers reported he was "easily distracted," "consistently off task," or "misbehaving," and he often received low grades, including D and F's in his language subjects. Declaration of M.A. re E.H. ("M.A./E.H. Decl.") ¶¶5-6, Exhs. A, B. The school also put him on a discipline contract because of his behavior. M.A./E.H. Decl. ¶7, Exh.

1 C. In September of 2016, E.H. filed a due process complaint. After the complaint, the
2 District evaluated E.H., finding that E.H. had a speech disorder that affects his ability to
3 communicate and be understood, and held an IEP finding him eligible for special
4 education in January of 2017. M.A./E.H. Decl. ¶9-14, Exhs. D, E.
5 **Meli.B.:** Meli.B. – who is the twin sister of M.B. – is a ten-year-old student in the
6 fifth grade, who attended school in the District since kindergarten. Meli.B. floundered in
7 school, receiving mostly "below basic," 1's and 2's or D's and F's – depending on the
8 grading system used. Meli. B. never came close to meeting grade level standards in
9 school. Declaration of F.B. re Meli.B. ("F.B./Meli.B.") Decl. ¶7, Exhs. K, L, M, N.
10 Instead of providing required special education services or accommodations, the District
11 held a total of eight SST meetings for Meli.B. over that time, each documenting clear
12 signs of disability related needs, and continual academic struggle. F.B./Meli.B. Decl.
13 ¶11, Exhs. B-I. Meli B. filed a due process case in September 2016. After that filing, she
14 was finally assessed at the end of 2016, with a determination that she had significant
15 disabilities. F.B./Meli/B. Decl. ¶16, Exh. Q. She then obtained a Section 504 Plan, and
16 an IEP in May of 2017, at the end of her fourth-grade year. F.B./Meli.B. Decl. ¶38.
17 **E.M.:** E.M. is nine years old and in the fourth grade. He attended school in the
18 District from kindergarten through third grade, and was never identified by the District
19 as a student with a disability. E.M.'s teachers would tell his mother that E.M. was not
20 paying attention, was distracted, disorganized and was struggling in all academic areas.
21 Declaration of O.M. re E.M. ("O.M. Decl.") ¶¶5, 6, 7 and Exhs. A, B, C, D, F. E.M.'s
22 mother asked for help, but was not offered any assistance or just told to take him to
23 tutoring. O.M. Decl. ¶¶6, 8. By the third grade, the school would call E.M.'s mother to
24 pick up her son from school because of his behavior, or would punish him by removing
25 recess. O.M. Decl. ¶¶7. A school administrator told E.M.'s mother to take him to the
26 doctor because of his hyperactivity. She did and provided the school a doctor's note, but
27 that triggered no action by the District. O.M. Decl. ¶9. In November of 2017, counsel in
28 this matter had E.M. assessed by Dr. Carlos Flores, who found that E.M. also has a

learning disability and believes E.M. should have been, and currently is, eligible for special education services. O.M. Decl. Exh. E at p. 5 (preliminary summary).

III. Legal Argument

A. The Proposed Class

Plaintiffs seek certification of the following class:

> All students in Oxnard School District who have or may have disabilities and who have been or will be subject to the District's policies and procedures regarding identification and evaluation of students for purposes of providing services or accommodations under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act and/or the Americans with Disabilities Act.

See SAC ¶115.[7]

Similar classes have been certified. *See D.L. v. District of Columbia*, 860 F.3d 713 (D.C. Cir. 2017) (upholding certification of a child find class, including subclass of children who the district failed to identify for purposes of offering special education services); *M.G. v. New York City Department of Education*, 162 F.Supp.3d 216 (S.D.N.Y. 2016) (certifying class of children with Autism Spectrum Disorders who have IEPs and are subject to the District's Autism Services Policies and Practices); *P.V. v. The School District of Philadelphia*, 289 F.R.D. 227 (E.D. Penn. 2013) (certifying class of students with Autism subject to district school transfer policies); *Chester Upland School District v. Pennsylvania,* 2012 WL 1473969 (E.D. Penn. 2012) (certifying class of students within a district who were eligible for services under IDEA, Section 504 or Title I of the Elementary and Secondary Education Act); *J.S. v. Attica Central Schools*, (W.D.N.Y. 2011) (denying motion to decertify class of students under IDEA and 504).

Moreover, Plaintiffs' claims here are best remedied on a class basis. Particularly

[7] A district court has discretion to permit a revision of a class definition, if it finds it necessary. *See Bee, Denning, Inc. v. Capital App. Grp.*, 310 F.R.D. 614, 621 (S.D. Cal. 2015); *see also Aichele v. City of Los Angeles*, 314 F.R.D. 478, 485 (C.D. Cal. 2013).

in cases involving students, "[t]he risk of mootness . . . where individual Plaintiffs might move away from the school district or graduate prior to the resolution of the claims . . . suggests class certification is necessary." *CG v. Commonwealth of Pa. Dep't of Educ.*, No. CIV.A 1:06-CV-1523, 2009, WL 3182599, at *4 (M.D. Pa. Sept. 29, 2009); *see also Guckenberger v. Boston Univ.*, 957 F. Supp. 306, 326-27 (D. Mass. 1997) ("Students graduate, transfer, drop out, move away, grow disinterested, . . . [A]ll too often student-initiated disputes escape review."); *see also Ramon by Ramon v. Soto*, 916 F.2d 1377, 1380 (9th Cir. 1989) (certifying class of injured student plaintiffs).

B. Legal Standards Governing Motions for Class Certification

On a motion for class certification, the question is whether the plaintiffs can satisfy Rule 23(a), and at least one requirement of Rule 23(b). *Wal-Mart v. Dukes*, 564 U.S. 338, 350-51 (2011). First, Plaintiffs must meet the four requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy. Second, Plaintiffs must satisfy one requirement of Rule 23(b).

Here, Plaintiffs seek class certification under Rule 23(b)(2), which requires that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]" Fed. R. Civ. P. 23(b)(2); *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001). Class certification under Rule 23(b)(2) is appropriate where, as here, the "unlawful policies or practices affect such a broad range of plaintiffs that an overhaul of the system is the only feasible manner in which to address the class's injury." *Armstrong*, 275 F.3d at 870.

C. The Proposed Class Meets All the Requirements of Rule 23(a).

1. The Plaintiff Class Is Sufficiently Numerous.

Numerosity requires that the class be so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). No specific number is required, as "whether joinder is impracticable depends on the facts and circumstances of each case." *Bates v. United Parcel Serv.*, 204 F.R.D. 440, 444 (N.D. Cal. 2001) (citations omitted); *Cervantez*

v. Celestica Corp., 253 F.R.D. 562, 569 (C.D. Cal. 2008). "[V]arious courts have found that the numerosity factor is satisfied if the class comprises 40 or more members[.]" *Californians for Disability Rights, Inc. v. California Dept. of Transportation,* 249 F.R.D. 334, 346 (N.D. Cal. 2008) (citations omitted); *see also In re Cooper Companies Inc. Sec. Litig.,* 254 F.R.D. 628, 634 (C.D. Cal. 2009).

Here, numerosity is easily satisfied. There are nearly 17,000 students in the District, all of whom are subject to these policies. Moreover, there are more than 200 students who are being actively harmed by the District's policies and practices, as they are not being identified as requiring needed services. *See* Leone Decl. ¶¶18-20 and Exh. B; Parks Decl. Exh. A. Future students will continue to be harmed, absent legal action.

Further, in assessing numerosity or "impracticability," the Court considers factors other than just the number of students harmed or at risk. "[T]he task of the court here is to determine the impracticability of joinder, not simply count heads." *Sherman v. Griepentrog*, 775 F. Supp. 1383, 1389 (D. Nev. 1991). The Ninth Circuit recognized that "[a]lthough the absolute number of class members is not the sole determining factor . . . [w]here the class is not so numerous . . . the number of class members does not weigh as heavily in determining whether joinder would be infeasible." *Jordan v. Los Angeles Cnty.*, 669 F.2d 1311, 1319 (9th Cir. 1982), vacated on other grounds, 459 U.S. 810 (1982) (citing 3B Moore's Federal Practice ¶ 23.05(1) (2d ed. 1974)). In this situation, "other factors such as the geographical diversity of class members, the ability of individual claimants to institute separate suits, and whether injunctive or declaratory relief is sought, should be considered in determining impracticability of joinder." *Id.*

Joinder is particularly impractical here due the characteristics of the population in the District and the type of relief sought. Here, the student population is nearly ninety percent "socioeconomically disadvantaged," and more than half are "English Learners," which means their native language is one other than English. *See* School Dashboard,

Parks Decl., Exh. A.[8] The student population is more than ninety percent Hispanic. *See* Enrollment by Ethnicity, Parks Decl., Exh. C. These statistics suggest that the population's relative lack of legal sophistication, limited knowledge of the American legal system, and limited or nonexistent English skills, makes them unlikely to bring an action on their own. *See Leyva v. Buley*, 125 F.R.D. 512 (E.D. Wa. 1989).

2. This Action Presents Common Issues of Law and Fact.

Commonality, the second requirement of Rule 23(a)(2), requires that plaintiffs' claims share a common question of law or fact. Fed. R. Civ. P. 23(a)(2). "Class relief is 'peculiarly appropriate' when the 'issues involved are common to the class as a whole' and when they 'turn on questions of law applicable in the same manner to each member of the class.'" *General Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 155 (1982) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979)).

"What matters to class certification . . . is not the raising of common 'questions' -- even in droves -- but rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Dukes*, 564 U.S. at 350. For the purposes of commonality, "even a single common question will do." *Id.* at 358.

In civil rights lawsuits, "commonality is satisfied where the lawsuit challenges a systemwide practice or policy that affects all of the putative class members," even where there are "individual factual differences among the individual litigants[.]" *Armstrong,* 275 F.3d at 868.21 This is especially true in actions for injunctive relief, which "by their very nature often present common questions satisfying Rule 23(a)(2)." *Baby Neal v. Casey,* 43 F.3d 48, 56-57 (3d Cir. 1994); *Davis v. Astrue*, 250 F.R.D. 476, 486-88 (N.D. Cal. 2008) (individual determinations on plaintiffs' varying disabilities were not required for facial challenge to SSA's policies and procedures); *D.G. ex rel. Stricklin v. Devaughn*, 594 F.3d 1188 (10th Cir. 2010) (affirming certification of a class that challenged the social services

[8] "Socioeconomically disadvantaged" includes students where both parents have not received a high school diploma; who were eligible for the Free and Reduced Meal Program; and who are migrant, homeless or foster youth. *See* Exh. B to Parks Decl.

1 provided by a state to children in foster care); and *Rosas v. Baca,* 2012 WL 2061694, at
2 *2 (C.D. Cal. Jun. 7, 2012) (class-wide relief based on alleged harm from deputy-on-
3 inmate and inmate-on-inmate physical interactions).

4 Here, determination of liability depends not on any single class member's
5 experience, but on whether Defendants' systemic policies and practices violate the law.
6 *In re Cooper Companies Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009) ("In
7 general, a few factual variations among the class grievances will not defeat commonality
8 so long as class members' claims arise from 'shared legal issues' or 'a common core of
9 salient facts.'" (citations omitted)).

10 Courts have found commonality under circumstances similar to those presented
11 here. For example, the Court of Appeals for the District of Columbia upheld class
12 certification in circumstances very similar to the instant matter. *D.L. v. District of*
13 *Columbia,* 860 F.3d 713 (2017); *see also M.G. v. New York City Department of*
14 *Education,* 162 F.Supp.3d 216, 236 (S.D.N.Y. 2016) (noting that "although the IEP
15 process is necessarily individualized to each student's needs, plaintiffs do not seek to
16 vindicate individual students' rights to the particular Related Services they require…[,]"
17 plaintiffs in that matter were seeking injunctive relief from limitations on the policy
18 overall.). The court addressed commonality with respect to the sub-class of "children
19 with disabilities whom the District failed to find." *D.L.*, 860 F.3d at 724. "These children
20 identified a common harm, namely, denial of FAPE due to a deficient a poorly
21 implemented Child Find policy." *Id.* Distinguishing the class from that addressed in
22 *Dukes*, the Court further explained that while in *Dukes* the reason for the employment
23 decision was critical to the claim, with respect to child find:

24 > IDEA requires the District to find and serve all children with disabilities as a
25 > condition of its funding. Unlike Title VII liability, IDEA liability does not
26 > depend on the reason for a defendant's failure and plaintiffs need not show
27 > why their rights were denied to establish that they were. They need only
28 > show that the District in fact failed to identify them, failed to provide them

with timely eligibility determinations….

Id. at 725. (internal citations omitted). This is *precisely* the harm alleged here. Thus, even though the students may have individualized conditions and needs, the common issue presented is the legality of the District's policies and procedures.

3. The Class Representatives' Claims Are Typical Of The Class.

Rule 23(a) requires that the "claims or defenses of the representative parties [be] typical of the claims or defenses of the class[.]" Fed. R. Civ. P. 23(a)(3). Where an action challenges a policy or practice, "the named plaintiffs suffering one specific injury from the practice can represent a class suffering other injuries, so long as all the injuries are shown to result from the practice." *Baby Neal,* 43 F.3d at 58. The test of typicality is "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Differences in the exact nature or scope of injury does not defeat typicality. *See e.g., Armstrong*, 275 F.3d at 869 ("Although there are minor differences in the nature of the specific injuries suffered by the various class members, the differences are insufficient to defeat typicality"); *Rosas*, 2012 WL 2061694, at *3 (typicality is met even where "the precise nature of the injuries suffered by the named plaintiffs may differ from those suffered by other class members").

Here, the proposed representatives' claims are typical of the claims of the Plaintiff Class because they stem from Defendants' system-wide policies and practices. Here, I.G., M.B. and J.R. all suffered from the District's policy and practice of not providing timely and complete evaluations. They all exhibited signs of disability, had ongoing and severe problems at school as a result, and were not evaluated (or adequately evaluated) for purposes of special education. Their stories mirror those of other students, who also showed signs of disability, struggled in school, and were not identified until they sought outside help. Collectively, they challenge the District's policy of inaction and delay.

4. The Named Plaintiffs and Counsel Will Adequately Represent the Interests of the Class

Rule 23(a) requires that "the representative parties will fairly and adequately protect the interests of the class." *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1020 (9th Cir. 1998). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020. Adequate representation is usually presumed in the absence of contrary evidence. *See* 3 Conte & Newberg, § 3:72 (5th ed. 2012). The proposed class representatives have all already committed significant time and energy to prosecuting both their individual cases and this class action and are committed to protecting the class's interests. *See* Decl. of F.B./M.B. ¶¶8-11; Decl. of M.E. ¶¶7-10; Decl. of Janelle McCammack re J.R. ¶¶4-5.

Plaintiffs' counsel also meet the requirements of Rule 23(g), and should therefore be appointed class counsel. Counsel have substantial experience handling class actions and other complex litigation and have done extensive work investigating and prosecuting the claims in this action. Counsel are exceptionally well versed in disability and education law, and they have more than sufficient resources to vigorously prosecute this case. *See generally* Parks Decl.; Declaration of Stuart Seaborn; and Declaration of Janeen Steel.

D. The Proposed Class Meets The Requirements of Rule 23(b)(2)

Rule 23(b)(2) requires that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole . . . ." "[T]he primary role of this provision has always been the certification of civil rights class actions." *Parsons v. Ryan*, 754 F.3d, 657 686 (9th Cir. 2014) (citing *Amchem Prods., Inc. v. Wndsor*, 521 U.S. 591, 614 (1997); *see also Dukes*, 564 U.S. at 362 ("'Civil rights cases against parties charged with unlawful, class-based discrimination are prime

1 examples' of what (b)(2) is meant to capture." (citations omitted)); *D.L. v. District of*
2 *Columbia,* 860 F.3d 713, 726 (D.C. Cir. 2017) ("Rule 23(b)(2) exists so that parties and
3 courts, especially in civil rights cases like this, can avoid piecemeal litigation when
4 common claims arise from systemic harms that demand injunctive relief); *Walters v.*
5 *Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998) ("Rule 23(b)(2) was adopted in order to
6 permit the prosecution of civil rights actions."); *Baby Neal,* 43 F.3d at 57 (certification
7 appropriate when "defendant's conduct is central to the claims of all class members
8 irrespective of their individual circumstances" (citations omitted)). The "Rule 23(b)(2)
9 requirements are 'almost automatically satisfied in actions primarily seeking injunctive
10 relief.'" *Gray v. Golden Gate Nat'l Rec. Area*, 279 F.R.D. 501, 520 (N.D. Cal. 2011).

11 Rule 23(b)(2) is "unquestionably satisfied when members of a putative class seek
12 uniform injunctive or declaratory relief from policies or practices that are generally
13 applicable to the class as a whole." *Parsons*, 754 F.3d at 688; *accord Rodriguez v. Hayes*,
14 591 F.3d 1105, 1125 (9th Cir. 2010). "The fact that some class members may have
15 suffered no injury or different injuries from the challenged practice does not prevent the
16 class from meeting the requirements of Rule 23(b)(2)." *Rodriguez*, 591 F.3d at 1125.

17 Because Plaintiffs' central claim is that Defendants have "acted or refused to act
18 on grounds that generally apply to the class" of students who currently or may in the
19 future need to be identified for purposes of evaluation for disability-related services and
20 accommodations, Plaintiffs have satisfied Rule 23(b)(2).

21 **IV. Conclusion**

22 For the foregoing reasons, Plaintiffs request that the Court certify the class, appoint
23 the Named Plaintiffs as class representatives, and Plaintiffs' counsel as Class Counsel.

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