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12 LETICIA GARCIA, CHRISTINA PRITCHETT, MAI VANG,

13 and BOARD OF EDUCATION OF SACRAMENTO CITY

14 UNIFIED SCHOOL DISTRICT

15 *Additional Attorneys on Final Page*

16 UNITED STATES DISTRICT COURT

17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18 BLACK PARALLEL SCHOOL BOARD et al.,

19 Plaintiffs,

20 vs.

21 SACRAMENTO CITY UNIFIED SCHOOL

22 DISTRICT et al.,

23 Defendants.

Case No. 2:19-cv-01768-TLN-KJN

**NOTICE OF JOINT MOTION AND JOINT
MOTION FOR STAY OF LITIGATION
PENDING AGREED-UPON STRUCTURED
SETTLEMENT NEGOTIATIONS; AND
[PROPOSED] ORDER**

Judge: Hon. Troy L. Nunley

Courtroom.: 7

Action Filed: September 5, 2019

**NO ARGUMENT OR APPEARANCE
NECESSARY UNLESS SPECIFICALLY
REQUESTED BY COURT**

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1 **NOTICE OF JOINT MOTION AND JOINT MOTION**

2 TO THE HONORABLE COURT:

3 PLEASE TAKE NOTICE THAT Plaintiffs Black Parallel School Board, S.A., K.E., and C.S.
4 (“Plaintiffs”), and Defendants Sacramento City Unified School District, et al., and all of them (the
5 “District”) (collectively herein, “Parties”), through their respective counsel of record, hereby jointly
6 move this Court for a stay of this litigation for seven months so that the parties may engage in agreed-
7 upon structured settlement negotiations, as set forth below.

8 As the Parties jointly move for the requested stay and agree on the propriety and scope of same,
9 the Parties do not believe argument or appearance is necessary for the Court to consider the requested
10 stay, but are prepared to appear if the Court so orders.

11 **STATEMENT OF FACTS**

12 The Parties hereby stipulate to the following facts:

13 Plaintiffs filed their Complaint and initiated the instant action on September 5, 2019 (ECF
14 No. 1).

15 Plaintiffs served the District with its Complaint on September 10, 2019, and filed the related
16 Proof of Service on October 17, 2019 (ECF No. 7).

17 Shortly after Plaintiffs’ service of the Complaint, the Parties engaged in communications to
18 negotiate a stay of this litigation for a designated period of time to allow the Parties to participate in
19 good faith negotiations toward a potential global resolution of this action, thereby preserving the
20 Parties’ and the Court’s time and resources.

21 On September 24, 2019, as the Parties’ communications described in paragraph 3 continued to
22 make progress and were ongoing, the Parties stipulated to and the Court granted an extension of time for
23 the District to respond to Plaintiffs’ Complaint to October 22, 2019 (ECF No. 5).

24 On October 21, 2019, as the Parties’ communications described in paragraph 3 continued to
25 make progress and were ongoing, the Parties stipulated to a second extension of time for the District to
26 respond to Plaintiffs’ Complaint and sought Court-approval of same; the Court granted the extension
27 on October 21, 2019 (ECF Nos. 10, 11).

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1 As the Parties' discussions as described in paragraph 3 continued and were fruitful, on
2 November 15, 2019, the Parties stipulated to a third extension of time for the District to respond to
3 Plaintiffs' Complaint and sought Court-approval of same, which the Court ordered and approved on
4 November 15, 2019 (ECF Nos. 22, 23).

5 At the time of the Parties' November 15 stipulation, the Parties anticipated that no further
6 extension of time for the District to respond to the Plaintiffs' Complaint would be necessary and that by
7 or before December 20, 2019, the Parties would reach an agreement as to the stay of this litigation for a
8 designated period of time to allow the Parties to participate in good faith negotiations to seek global
9 resolution of this action, and thereby efficiently preserve the Parties' and the Court's time and resources.

10 The Parties have reached a final Structured Negotiations Agreement, which has been
11 memorialized in writing. A true and correct copy of the Structured Negotiations Agreement is attached
12 hereto as Exhibit "A" and incorporated by reference.

13 Pursuant to the Structured Negotiations Agreement, the Parties seek this Court's approval of a
14 stay of this litigation to afford the Parties time to complete the activities described in the Structured
15 Negotiations Agreement including, but not limited to, engaging third-party, neutral experts to evaluate
16 the District's programs, policies, and services and then meeting to discuss the potential for global
17 resolution of this action.

18 GOVERNING LAW

19 This Court "has broad discretion to stay proceedings as an incident to its power to control its
20 own docket." *Clinton v. Jones* (1997) 520 U.S. 681, 706-07 (citing *Landis v. N. Am. Co.* (1936) 299
21 U.S. 248). In fact,

22 the power to stay proceedings is incidental to the power inherent in every court to control
23 the disposition of the causes on its docket with economy of time and effort for itself, for
24 counsel, and for litigants. How this can best be done calls for the exercise of judgment,
which must weigh competing interests and maintain an even balance.

25 *Landis*, 299 U.S. at 254-55.

26 Correspondingly, as this very Court has recognized, "[c]ourts have applied their discretionary
27 authority to grant stays because it appeared that settlement discussions between the parties might prove

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1 fruitful.” *Johnson v. Village*, Case No. No. 2:15-cv-02299-TLN-KJN, 2016 WL 1720710, *6 (E.D. Cal.
2 Apr. 29, 2016) (citing *EEOC v. Canadian Indemnity Co.*, 407 F. Supp. 1366, 1368 (C.D. Cal. 1976)).

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4 **REQUEST FOR STAY**

5 As outlined above, the Parties have successfully negotiated over the past several months an
6 agreed-upon structure for settlement discussions between the Parties, in the hope of reaching a global
7 resolution of this matter without the need for protracted litigation. The Parties now jointly move and
8 request that this Court stay this matter for seven months so that the Parties may engage in the activities
9 agreed-upon and outlined in the attached Structured Negotiations Agreement.

10 The Parties believe that a stay is justified because it will: (1) promote judicious use of the
11 Parties’ and Court’s time and resources; and (2) offer the opportunity for speedy resolution and relief
12 without protracted litigation, which is particularly critical where, as here, certain Plaintiffs are children
13 and Defendants are governmental entities or officials. Moreover, given the Parties negotiations to date,
14 the Parties believe that a negotiated global resolution of this matter is viable, if given time to engage in
15 the activities necessary to reach such a resolution. The Parties also agree that these activities would be
16 significantly hindered if the Parties also had to engage in simultaneous motion and discovery practice.

17 This stay will also allow the Court to have continuing oversight over the matter at hand. The
18 Parties agree to keep the Court apprised of their progress by filing joint status reports every 90 days, to
19 be counted from the day the Court grants the requested stay.

20 Pursuant to the terms of the Structured Negotiations Agreement, any Party may withdraw from
21 settlement negotiations with sufficient advance written notice. If that occurs, the Parties will inform the
22 Court so that the Court may lift the stay accordingly.

23 **CONCLUSION**

24 Based upon the foregoing, the Parties’ respectfully move the Court enter an order:

25 (1) Staying this litigation for all purposes for seven months, including temporarily excusing
26 the Parties from complying with this Court’s Initial Pretrial Scheduling Order (ECF No. 4), so that the
27 Parties can focus on and engage in structured settlement negotiations;

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1 (2) Extending the time for Defendants to respond to Plaintiffs' Complaint until 30 days after
2 this stay is lifted upon order of this Court, should negotiations be unsuccessful or terminated by the
3 Parties; and

4 (3) Scheduling a date for the Parties to file a joint status report, or scheduling a status
5 conference, that will permit the Parties to update the Court on the progress of settlement efforts 90 days
6 after the entry of an order granting this joint motion, and then scheduling a further report 90 days after
7 that during the requested stay.

8 Dated: December 19, 2019

Respectfully Submitted,

LOZANO SMITH

/s/ Sloan R. Simmons

SLOAN R. SIMMONS

ALYSSA R. BIVINS

Attorneys for Defendants

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT, JORGE A. AGUILAR, CHRISTINE
A. BAETA, JESSIE RYAN, DARREL WOO,
MICHAEL MINNICK, LISA MURAWSKI,
LETICIA GARCIA, CHRISTINA PRITCHETT,
MAI VANG, and BOARD OF EDUCATION OF
SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT

18 Dated: December 19, 2019

Respectfully submitted

**EQUAL JUSTICE SOCIETY
DISABILITY RIGHTS CALIFORNIA
NATIONAL CENTER FOR YOUTH LAW
WESTERN CENTER ON LAW AND
POVERTY**

/s/ Mona Tawatao (as authorized on 12/19/19)

MONA TAWATAO

Attorney for Plaintiffs

BLACK PARALLEL SCHOOL BOARD, S.A., by
and through his Next Friend, AMY A., K.E., by and
through his Next Friend, JENNIFER E., and C.S.,
by and through his General Guardian, SAMUEL S.

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[PROPOSED] ORDER

Pursuant to the foregoing Joint Motion of the Parties, and GOOD CAUSE APPEARING
THEREFORE, IT IS HEREBY ORDERED that:

(1) This action is temporarily stayed for seven months for all purposes to enable the Parties to focus on and engage in early settlement efforts;

(2) While this stay is in effect, the Parties are excused from complying with this Court’s Initial Pretrial Scheduling Order (ECF No. 4);

(3) While this stay is in effect, the Defendants are not required to file a responsive pleading until 30 days after any stay in this action is lifted; and

(4) The Parties shall file an initial status report no later than _____(90 days from the date of this order), and file a subsequent status report on _____ (90 days after that) so long as this stay remains in effect unless otherwise ordered by the Court.

IT IS SO ORDERED.

Dated: December ____, 2019

HON. TROY L. NUNLEY
UNITED STATES DISTRICT JUDGE

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Black Parallel School Board et al., v. Sacramento City Unified School District et al.
U.S.D.C. Eastern District, Case No. 2:19-cv-01768-TLN-KJN

**NOTICE OF JOINT MOTION AND JOINT MOTION FOR STAY OF
LITIGATION PENDING AGREED-UPON STRUCTURED SETTLEMENT
NEGOTIATIONS; AND [PROPOSED] ORDER**

EXHIBIT A

STRUCTURED NEGOTIATIONS AGREEMENT

I. PARTIES AND THEIR COUNSEL

The Parties to this Structured Negotiation Agreement (“Agreement”) are: (1) the Sacramento City Unified School District, the District’s Board of Education, Superintendent Jorge A. Aguilar, Chief Academic Officer Christine A. Baeta, and Board members Jessie Ryan, Darrel Woo, Michael Minnick, Lisa Murawski, Leticia Garcia, Christina Pritchett, and Mai Vang (collectively, “the District”); and (2) the Black Parallel School Board and three individual students identified in the instant Complaint as S.A., K.E., and C.S. (collectively, “Plaintiffs”). The District and Plaintiffs are collectively referred to hereinafter as the “Parties.”

The District is represented by Lozano Smith. Plaintiffs are represented by Disability Rights California, National Center for Youth Law, Western Center on Law & Poverty, and Equal Justice Society (collectively “Plaintiffs’ Counsel”).

II. PURPOSE

The purposes of this Agreement are:

1. To protect the interests of all Parties during the pendency of negotiations of disputed allegations and claims described in Plaintiffs’ “Class Action Complaint For Injunctive and Declaratory Relief” (hereinafter “Complaint”) in the case of *Black Parallel School Board, et al. v. Sacramento City Unified School District, et al.* (U.S. District Court, Eastern District of California, Case No. 2:19-cv-01768-TLN-KJN) (hereinafter “the Action”), including, but not limited to, the alleged policies, practices and procedures in the District’s education programs related to: (1) the segregation and isolation of students with disabilities and the disproportionate segregation and isolation of Black students with disabilities; (2) discipline and behavior management of students with disabilities, including the disproportionate suspension of students with disabilities, particularly Black students with disabilities; (3) access to programs, services and activities for students with disabilities, particularly Black students with disabilities; (4) the adequacy of and access to education, services, accommodations, and modifications for students with disabilities, particularly Black

STRUCTURED NEGOTIATIONS AGREEMENT

students with disabilities, including special education, related services, educationally related mental health services (“ERMHS”) and transition planning; (5) the provision of reasonable accommodations and/or modifications to policies and procedures to avoid discrimination against students with disabilities, particularly Black students with disabilities; (6) school safety, particularly related to bullying and harassment of students with disabilities and Black students with disabilities; and (7) any other related issue(s) that may arise during the course of the negotiations. A true and correct copy of the Complaint is attached as Exhibit A to this Agreement, and is incorporated by reference herein;

2. To provide an alternative to further adversarial litigation in the form of an expert assessment of and good faith negotiations concerning the items in paragraph II.1; and
3. To explore whether the Parties’ disputes concerning the items in paragraph II.1 of this Agreement can be resolved without the need for further adversarial litigation.

III. STAY OF THE ACTION

1. Plaintiffs’ Complaint in the Action is now pending before the United States District Court for the Eastern District of California. The deadline for the District to respond to the Complaint has been mutually extended by the Parties; to date, the District has not yet responded to the Complaint; and the Parties’ intent is that they enter into negotiations under this Agreement without the need for the District to respond to the Complaint.
2. As consideration for entering into this Agreement, Plaintiffs’ Counsel agrees to request a stay of the Action for the duration of this Agreement. The Parties will jointly request the stay from the Court, by stipulation or otherwise.
3. Upon entering into this Agreement and seeking the Court’s issuance of stay of the Action pursuant to this Agreement, the Parties will issue a joint statement and/or press release,

STRUCTURED NEGOTIATIONS AGREEMENT

mutually agreed upon by the Parties, which sets forth the Parties' reasoning, intent, and planned activities under this Agreement. A copy of this joint statement and/or press release is attached as Exhibit B to this Agreement.

4. Subsequent to the Parties' joint press release under paragraph III.3. and for the duration of the stay of the Action, the following shall govern the Parties' public comment and/or statements regarding the status of the stay of the Action and the Parties' discussions and efforts under the Agreement: (a) the Parties may, upon mutual agreement, issue further joint press releases and/or statements regarding the status of the stay of the Action and the Parties' negotiations and efforts under the Agreement; but, (b) absent agreement as to later joint press releases and/or statements, the Parties may only respond to inquiries regarding the status of the stay of the Action and/or nature, progress, etc., of the Parties' discussions and efforts under this Agreement, whether made by members of the public in general and/or news media, with the following statement: "The parties' discussions are ongoing and confidential." Notwithstanding this paragraph (III.4), the Parties and their respective counsel may, at any time and without further comment, refer members of the public and/or news media to and provide copies of any public documents, including, but not limited to, any joint press releases and any publicly filed pleadings in the Action including any stipulation to stay the Action. For the purposes of this paragraph, "members of the public in general and/or news media" does not include Plaintiffs Counsel's clients who retained Plaintiffs' Counsel in conjunction with the Action.

IV. TOPICS TO BE ADDRESSED THROUGH NEGOTIATIONS

1. During the stay described above, the Parties shall enter into good faith substantive negotiations regarding Plaintiffs' disputed allegations and claims described in paragraph II.1 of this Agreement. These negotiations will be informed, in part, by the expert input described in paragraph V, below.
2. The Parties agree that the subjects of negotiations undertaken pursuant to this Agreement will include, but are not limited to,

STRUCTURED NEGOTIATIONS AGREEMENT

the Requests for Relief described in the Complaint and the following on a District-wide basis:

- a. Timely access to services, programs, and activities for students with disabilities in the least restrictive environment;
- b. District-wide availability of inclusive placements for students with disabilities, particularly Black students with disabilities, appropriate placement of students with disabilities, particularly Black students with disabilities, in inclusive placements, and addressing the alleged disproportionate impacts of previous non-inclusive placements;
- c. District-wide and school-based discipline and behavior management systems;
- d. Use of discipline and behavior management approaches for students with disabilities, and particularly Black students with disabilities, including in relation to alleged disproportionate use of such approaches;
- e. Access to adequate education, special education, related services, accommodations, and modifications for students with disabilities and Black students with disabilities, including appropriate behavioral interventions and supports, ERMHS, and transition planning;
- f. Safe and inclusive learning environments, which includes effective and appropriate measures to address bullying and harassment of students with disabilities and Black students with disabilities;
- g. Reasonable accommodations and/or modifications to policies and procedures to avoid discrimination against students with disabilities and Black students with disabilities;
- h. Training and ongoing development for the District's personnel who serve students with disabilities and Black students with disabilities;

STRUCTURED NEGOTIATIONS AGREEMENT

- i. Plaintiffs' claims for reasonable attorneys' fees, costs and litigation expenses, as defined in the Americans with Disabilities Act, 42 U.S.C. § 12205, Section 504 of the Rehabilitation Act of 1973, 24 U.S.C. § 794, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d and any other applicable federal and state laws; and
- j. Scope and format of written agreement(s) addressing the items above, including terms that address methods for ongoing monitoring and enforcement of such agreement(s).

V. EXPERTS

1. The Parties agree that the District shall retain [REDACTED], [REDACTED], [REDACTED], and [REDACTED] as neutral, third-party subject matter experts ("the Experts"). The Experts shall evaluate the areas described above in paragraphs II.1 and IV.2 (a)-(h), and shall work together to develop comprehensive report(s) which contain findings and recommendations regarding the District's programs in the same areas.
2. The District shall bear all costs for the retention of the Experts, and said costs will be specified in the terms of the District's contract with each Expert. Said contracts shall be executed and shall go into effect no later than 30 days after execution of this Agreement.
3. The Parties agree to negotiate the terms of access for the Experts consistent with the issues and areas noted in paragraphs II and IV, above. These terms of access shall include, but not be limited to, the Experts' physical access to the District's schools, programs, and facilities; access to data and documents; access to interviewing staff, parents and students; and any other access that the Experts deem necessary to accurately and comprehensively compile their report and recommendations.
4. The District shall provide Plaintiffs' Counsel with a copy of the proposed contracts with the Experts, and shall allow Plaintiffs' Counsel to comment on and provide any proposed revisions

STRUCTURED NEGOTIATIONS AGREEMENT

prior to executing the proposed contracts. Such comments and proposed revisions by Plaintiffs' Counsel shall be considered by the District, but are not binding.

5. The Expert(s) may communicate freely with any other Expert(s) retained pursuant to this Agreement. The Expert(s) may communicate freely with the Parties, subject to counsel for that Party(ies)' consent. The Expert(s) may communicate freely with the Party(ies)' counsel, but only after providing written notice to the other Party(ies)' counsel as to intended date and subject matter of communication at least 48 hours in advance of the intended communication. Whenever any Party(ies)' counsel desires to communicate with the Expert(s) and initiates such communication, that counsel shall first make good faith efforts to schedule and coordinate such communications in such a way that ensures the other Party(ies)' counsel may also participate in that communication. Subject to the foregoing, no Party(ies) or Party(ies)' counsel shall prevent or bar any other Party(ies) or Party(ies)' counsel from reasonable access to or communications with any Expert(s). The text of this paragraph (V.5) will be provided in writing to any Expert(s) retained pursuant to paragraph V so that the Expert(s) may clearly understand the agreed upon communication parameters.
6. The Experts' report(s), including findings and recommendations, will be completed no later than four months from the effective date of the Experts entering into contracts with the District under this Agreement. The report(s) and recommendations shall include a timeline for implementation of any recommendations made by the Experts.

VI. IMPLEMENTATION OF EXPERT RECOMMENDATIONS AND SETTLEMENT

1. Following completion of the Experts' report(s) and recommendations, the Parties shall negotiate in good faith regarding said recommendations, including a plan for implementation of those recommendations agreed upon by the Parties. That plan shall include a timeline and process for: implementing the Experts' recommendations agreed upon by

STRUCTURED NEGOTIATIONS AGREEMENT

the Parties, monitoring progress of the implementation of those recommendations agreed upon by the Parties, and reporting progress on said implementation.

2. Pursuant to paragraph VI.1, any plan agreed-upon by the Parties shall be part of any final settlement agreement between and among the Parties that is filed with the Court in which the Complaint in the Action was filed. Any final settlement agreement reached between the Parties may include additional terms as negotiated by the Parties.
3. If a final settlement agreement is reached between the Parties, Court approval of the settlement will be sought, and the Parties shall jointly request that the Court retain jurisdiction over enforcement of the settlement agreement for a period of years to be negotiated and set forth in any final settlement agreement.

VII. OTHER ACTIVITIES AND AGREEMENTS DURING THE STAY OF THE ACTION

1. The Parties agree that, in order to further the negotiations that will be held pursuant to this Agreement, they will provide each other with relevant documents, data, and materials, including those that would otherwise be discoverable if this matter were to proceed to litigation. Such exchanges shall be subject to the confidentiality conditions and provisions in paragraph X of this Agreement. Such exchanges shall take place within timeframes mutually agreed to by the Parties.
2. Apart from that agreed to under paragraph VII.1, Plaintiffs' Counsel agrees to withdraw any other pending information or data request previously made to the District which Plaintiffs' Counsel believes remains outstanding, apart from student records requests relating to individual District students.
3. The Parties agree that any documents, data, and materials previously exchanged pursuant to the requests referenced in paragraph VII.2 will be considered part of the exchanged relevant documents, data, and materials described in paragraph VII.1 so that the District will not have to reproduce

STRUCTURED NEGOTIATIONS AGREEMENT

those documents, data, and materials that have already been produced. Plaintiffs' Counsel will provide the District's counsel with copies of requests referenced in paragraph VII.2 and a collated copy of all documents, data, and materials provided by the District in response to those requests within 30 days of the effective date of this Agreement.

4. As interim measures to be implemented during the pendency of the Parties' negotiations under this Agreement, the District agrees to complete the following, or, in the case of ongoing measures, commence the following, within 45 days of the effective date of this Agreement:
 - a. issue a written directive to all school site administrators directing that no student in grades kindergarten through eighth grade may be suspended by District principals or designees for violation of Education Code section 48900(k) and that no student in grades kindergarten through third grade may be suspended by District principals or designees for violation of Education Code section 48900.4;
 - b. keep written documentation of all teacher suspensions under Education Code sections 48900(k) and 48900.4;
 - c. issue a written directive to all site administrators that school-site administrators or staff shall not, in response to a student's behavior, request or require that parents or guardians of students pick students up from school and take them off of school premises during the school day;
 - d. issue a written directive to all site administrators requiring full compliance with Education Code section 48900.5 and 48911(b);
 - e. review District student discipline records to determine if any student has been suspended by a principal or designee since August 31, 2017 for violation of Education Code sections 48900(k) or 48900.4 while that student was in grades kindergarten through third grade, and if any such suspensions are identified, expunge such

STRUCTURED NEGOTIATIONS AGREEMENT

suspensions from the respective students' records, and provide written notice to the respective students' parents, guardians, and in the case of foster youth, to the juvenile court, of such expungement;

- f. add to the District's notice of suspension form a concise overview of disability-related rights in the student discipline process, the contents of which will be developed by the District, with the opportunity for Plaintiff's counsel to provide input;
- g. issue a written directive to all school site administrators and District special education staff directing that if a parent or guardian requests that their child be assessed for special education, regardless of whether the student is in the Student Study Team (SST) process, the District shall offer the parent or guardian an assessment plan within 15 days of the request for assessment;
- h. issue a written directive to all school site administrators and District special education staff directing that parents or guardians of students currently in the SST process shall receive copies of IDEA and Section 504 procedural safeguard rights;
- i. issue a written directive to all school site administrators and District special education staff directing that that upon a student's removal from their school due to student behavior and/or discipline for a cumulative total of 10 school days, the District shall conduct a manifestation determination meeting prior to issuing any further suspensions, whether or not the student's 10 cumulative days of removal are the result of a series of removals that constitute a pattern; and
- j. provide the Experts with written documentation of the District's performance on these interim measures as follows:
 - (1) For measures (a), (c), (d), (g), (h), and (i), which involve issuing written directives, the District shall

STRUCTURED NEGOTIATIONS AGREEMENT

provide the Experts with a copy of the written directive that was issued, a list of who received the directive, and a description of method of distribution including the date of distribution and a copy of any related or explanatory correspondence (e.g., cover email or accompanying notice). For measure (f), the District shall provide the Experts with a copy of the revised Notice of Suspension form, a list of who received the revised Notice of Suspension form, and a description of the method of distribution of the revised Notice of Suspension form and communication to site administrators of the subject revisions to the Notice of Suspension form. This documentation of performance shall be provided to the Experts within 15 days of issuance of the respective directive and/or revised form.

- (2) For measure (b), provide the Experts with a monthly accounting of all suspensions issued by the District, including teacher suspensions. This accounting shall include, at minimum, the statutory reason(s) for the suspension, whether it was issued by a teacher or administrator/designee, and for each student, a unique identifier, grade, race, disability status, and school site. To the extent that the District already maintains or produces a report that contains this information, the District may use or supplement that report for this purpose to avoid unnecessary duplication of work. This accounting shall be provided to the Experts by the 15th day of the month following the month being documented (e.g., January 2020 data shall be provided by February 15, 2020).
- (3) For measure (e), provide the Experts with a monthly report of the District's efforts including: (a) a statement of what time period was reviewed and for which schools and grade levels that month; (b) how many, if any, suspensions were identified that involved a principal or designee suspending a

STRUCTURED NEGOTIATIONS AGREEMENT

student who was in grades kindergarten through third grade for a violation of 48900(k) and/or 48900.4 and the race and disability status of each affected student; and (c) confirmation of expungement for each affected student, including a statement of how the parents, guardians, or other educational rights holder was notified of the expungement.

VIII. ATTORNEYS' FEES AND COSTS

1. For purposes of this Agreement and at this time, the District does not admit: (1) any of the allegations in the Complaint; (2) that the claims in the Complaint have merit; or (3) that any party is a prevailing party, whether in relation to any settlement agreement reached by the Parties or otherwise.
2. The Parties agree that, should they agree to terms for a final settlement agreement as contemplated in paragraph VI, the District will pay Plaintiffs' Counsel reasonable attorneys' fees and costs for pursuing this matter, as contemplated by applicable federal and state laws.
3. The Parties will negotiate the amount of such reasonable attorneys' fees and costs under this paragraph (VIII). The Parties agree that, in the event they cannot agree upon an amount of reasonable attorneys' fees and costs under this paragraph (VIII), and the Parties mutually agree that they are likely to resolve the matter with the aid of a neutral third-party, they may attempt to resolve this issue through an alternative dispute resolution process, which may include but is not limited to mediation through the Court, private mediation through JAMS, or use of a settlement conference magistrate judge through the Court. The expenses related to the cost of mediation shall be split evenly by the Parties.
4. If the Parties are unable to agree to an amount of reasonable attorneys' fees and costs under this paragraph (VIII) through an alternative dispute resolution process, the Parties shall seek

STRUCTURED NEGOTIATIONS AGREEMENT

judicial resolution of the disagreements, such as through a fee petition or motion to the Court.

5. For purposes of the Parties' negotiations over reasonable attorneys' fees under this paragraph (VIII), Plaintiffs' Counsel shall disclose to the District's Counsel contemporaneously kept attorney time records justifying the amount of reasonable attorneys' fees claimed.
6. For purposes of determining the reasonable attorneys' fees claimed under this paragraph (VIII), Plaintiffs' Counsel agree to calculate their attorneys' fees using their hourly rates that were in effect as of the effective date of this Agreement, so long as a final settlement agreement, independent of any agreement as to reasonable attorneys' fees, is reached within 18 months of the effective date of this Agreement.
7. For the purposes of determining the reasonable attorneys' fees claimed under this paragraph (VIII), Plaintiffs' Counsel agree that they will not seek to apply a multiplier to calculate attorneys' fees sought or obtained, so long as a final settlement agreement, independent of any agreement as to reasonable attorneys' fees, is reached within 18 months of the effective date of this Agreement.

IX. DURATION OF STAY OF THE ACTION

The agreement to stay the Action as described in paragraph III, above, shall expire 60 days following completion of the Experts' report(s) and recommendations OR 30 days after any Party serves written notice on all other Parties by certified mail that it withdraws from this Agreement, whichever occurs first. Such notice shall also be made electronically on all other Parties. The Parties' agreement to stay the Action may be extended through a subsequent written agreement.

X. CONFIDENTIAL SETTLEMENT COMMUNICATIONS

1. The Parties and their attorneys agree that all information discussed or exchanged during the negotiations contemplated by this Agreement which is not generally available to the public,

STRUCTURED NEGOTIATIONS AGREEMENT

including but not limited to the Experts' report(s) and recommendations, shall be treated as confidential settlement communications under California and federal law, and shall not be shared beyond the Parties, the Parties' counsel, or the Experts, with any third-party, except that information discussed or exchanged during the negotiations contemplated by this Agreement may be shared with each Party(ies)' independently contracted-for experts or consultants who constitute agents to the respective Party(ies). For purposes of this paragraph (X.1), independently contracted-for experts or consultants shall be experts in their subject field, consistent with the topics to be addressed under this Agreement pursuant to paragraph IV, above.

2. If, however, the Parties are unable to reach agreement regarding implementation of any portion(s) of the Experts' report(s) through the negotiation process outlined above, then the information exchanged, and the Experts' report(s) and recommendations, will no longer be treated as confidential settlement communications and may be available for use in a court of law, subject to a protective order, evidentiary objections and/or redaction as appropriate. In addition, regardless of whether the Parties reach an agreement regarding implementation of the Experts' report(s), as contemplated above, the Parties may elect and mutually agree to make any report or recommendation or part thereof public. Such mutual agreement will be documented in a subsequent, signed writing prior to the public release of any report, recommendation, or portion thereof.

XI. RULES OF CONSTRUCTION


Each Party has reviewed and participated in the drafting of this Agreement; any rule of construction to the effect that ambiguities are construed against the drafting Party shall not apply in the interpretation or construction of this Agreement. Paragraph titles used herein are intended for reference purposes only and are not to be construed as part of the Agreement. This Agreement may be executed in counterparts, and a facsimile has the same force and effect as the original.

STRUCTURED NEGOTIATIONS AGREEMENT

XII. EFFECTIVE DATE

The effective date of this Agreement is the latest date of the signatures below.

Date: 12/19/19



Sloan Simmons
Lozano Smith
Counsel for the District

Date: _____

Mona Tawatao
Equal Justice Society
Counsel for Plaintiffs

Date: _____

Michael Harris
National Center for Youth Law
Counsel for Plaintiffs

Date: _____

Carly J. Munson
Disability Rights California
Counsel for Plaintiffs

Date: _____

Antionette Dozier
Western Center on Law & Poverty
Counsel for Plaintiffs

STRUCTURED NEGOTIATIONS AGREEMENT


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The effective date of this Agreement is the latest date of the signatures below.

Date: _____

Sloan Simmons
Lozano Smith
Counsel for the District

Date: 12-19-2019



Mona Tawatao
Equal Justice Society
Counsel for Plaintiffs

Date: 12-19-2019


Michael Harris
National Center for Youth Law
Counsel for Plaintiffs

Date: 12-19-2019



Carly J. Munson
Disability Rights California
Counsel for Plaintiffs

Date: 12-19-2019



Antionette Dozier
Western Center on Law & Poverty
Counsel for Plaintiffs

Black Parallel School Board et al., v. Sacramento City Unified School District et al.
U.S.D.C. Eastern District, Case No. 2:19-cv-01768-TLN-KJN

STRUCTURED NEGOTIATIONS AGREEMENT

EXHIBIT A

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11
12 *Attorneys for Plaintiffs*

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

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

19 Plaintiffs,

20 v.

21 SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT; JORGE A. AGUILAR,
22 Superintendent for Sacramento City Unified
School District; CHRISTINE A. BAETA,
23 Chief Academic Officer for the Sacramento
City Unified School District; JESSIE RYAN,
24 DARREL WOO, MICHAEL MINNICK,
LISA MURAWSKI, LETICIA GARCIA,
25 CHRISTINA PRITCHETT, and MAI VANG,
members of the Sacramento City Unified
26 School District Board of Education; THE
BOARD OF EDUCATION OF
27 SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT,

28 Defendants.

DEMAND FOR JURY TRIAL

Case No.

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

DISABILITY RIGHTS CALIFORNIA
1831 K STREET
SACRAMENTO, CALIFORNIA 95811
(916) 504-5800

INTRODUCTION

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

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

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

24 4. In 1973, Congress echoed these values when passing the Rehabilitation Act of
25 1973. As Senator Hubert Humphrey then said, “The time has come to firmly establish the right
26 of [Americans with disabilities] to dignity and self-respect as equal and contributing members of
27 society, and to end the virtual isolation of millions of children and adults from society.” 118
28

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

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

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

24 7. The District effectively segregates almost half of its students with disabilities by
25 relegating them to separate classrooms on otherwise integrated campuses for a majority of the
26 school day or removing them to entirely segregated campuses. As alleged herein, these
27 segregated students receive disparate and sub-par academic instruction and opportunities, and are
28

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

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

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

21 10. To make matters worse, students with disabilities, particularly Black students with
22 disabilities, are disparately subjected to exclusionary school discipline and other tactics that
23 remove them from school and exacerbate this stigma. In 2017, the independent auditors noted
24 that students with disabilities in the District were 2.5 times more likely to be suspended than
25

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

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

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

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

22 **JURISDICTION**

23 13. This action for declaratory and injunctive relief arises under Title II of the
24

25
26 ² J. Luke Wood, *et al.*, *The Capitol of Suspensions: Examining the Racial Exclusion of Black*
27 *Males in Sacramento County* at 12 (2018) (available at [https://cceal.org/wp-](https://cceal.org/wp-content/uploads/2018/06/sacramento.pdf)
28 [http://blackmaleinstitute.org/wp-](http://blackmaleinstitute.org/wp-content/uploads/2018/02/GET-OUT-Black-Male-Suspensions-in-California-Public-Schools_lo.pdf)
[content/uploads/2018/06/sacramento.pdf](https://cceal.org/wp-content/uploads/2018/06/sacramento.pdf)); *see also* J. Luke Wood, *et al.*, *Get Out! Black Male*
Suspensions in California Public Schools (2018) (available at [http://blackmaleinstitute.org/wp-](http://blackmaleinstitute.org/wp-content/uploads/2018/02/GET-OUT-Black-Male-Suspensions-in-California-Public-Schools_lo.pdf)
[content/uploads/2018/02/GET-OUT-Black-Male-Suspensions-in-California-Public-](https://cceal.org/wp-content/uploads/2018/06/sacramento.pdf)
[Schools_lo.pdf](https://cceal.org/wp-content/uploads/2018/06/sacramento.pdf)).

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

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

13 VENUE

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

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

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

21 PARTIES

22 *Plaintiffs*

23 18. Plaintiff Black Parallel School Board (“BPSB”) is a community-based
24 membership organization developed to serve Black children, primarily those attending SCUSD.
25 BPSB members include parents of Black students with disabilities who reside within the District,
26 attend a wide array of schools, and are not receiving adequate, necessary, and appropriately
27 individualized services, accommodations, and modifications. Instead, children of BPSB’s
28

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

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

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

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

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

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

22 *Defendants*

23 23. Defendant Sacramento City Unified School District is a government agency
24 responsible for providing the children who reside within its boundaries with full and equal access
25 to the public education programs and activities it offers in compliance with the requirements of
26 federal and state laws and regulations. SCUSD is chartered and incorporated under California
27 law and is a recipient of federal and state financial assistance. SCUSD’s responsibilities include
28

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

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

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

19 26. Defendant Board of Education of the SCUSD (“Board of Education”) is elected
20 by the community to provide leadership and oversight of the District. Among its many
21 responsibilities, the Board of Education establishes a long-term vision for the District and
22 establishes District policies, administrative regulations, and goals. In addition, the Board of
23 Education bears a fiduciary responsibility for the management and expenditure of public funds in
24 a manner consistent with state and federal law that ensures all students, including students with
25 disabilities and Black students with disabilities, have equal access to public education programs
26 and services. The Board of Education selects, appoints, and oversees the work of the District’s
27 Superintendent, Defendant Aguilar. The Board of Education works with the District’s
28

1 Superintendent to fulfill its major responsibilities.

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

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

10 **LEGAL FRAMEWORK**

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

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

22 ***Section 504 and Title II of the ADA***

23 31. Congress enacted Section 504 and the ADA to directly address the discrimination
24 that people with disabilities face when they are unnecessarily excluded from public life, such as
25 the public school system, due to their disabilities. *See Olmstead v. L.C.*, 527 U.S. 581, 599–601
26 (1999).

27 32. Taken together, Section 504 and the ADA create a system of legal responsibilities
28

1 that are designed to ensure that students with disabilities are free from discrimination and have
2 equal access to a public education alongside their peers without disabilities. To achieve these
3 mandates, school districts are required to: (1) identify, locate and comprehensively evaluate
4 every child living in the district who is suspected of having a disability; (2) for qualifying
5 students, offer special education, related aids and services, accommodations, and modifications
6 that “are designed to meet individual educational needs of [students with disabilities] as
7 adequately as the needs of [students without disabilities] are met;” (3) to the greatest extent
8 appropriate, educate students with disabilities in inclusive settings; (4) provide appropriate
9 services so that students with disabilities are not disciplined for disability-related behavior; (5)
10 provide appropriate services so that students with disabilities are not excluded from the regular
11 education environment through harassment or bullying; and (6) provide access to education free
12 from discrimination. 34 C.F.R. § 104.33; *see also* 29 U.S.C. § 794; 42 U.S.C. § 12101 *et seq.*;
13 34 C.F.R. Pt. 104; 28 C.F.R. Pt. 35.

14 **Section 504**

15 33. Section 504 is a federal law that protects individuals with disabilities in programs
16 and activities that receive federal financial assistance. 29 U.S.C. § 794; 34 C.F.R. §§ 104.1,
17 104.4. Section 504 states that “[n]o otherwise qualified individual with a disability in the United
18 States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be
19 denied the benefits of, or be subjected to discrimination under any program or activity receiving
20 Federal financial assistance . . .” 29 U.S.C. § 794(a). Section 504 requires entities that receive
21 federal financial assistance to provide aids, benefits, and services to individuals with disabilities
22 in the most integrated setting appropriate to the individual’s needs. 34 C.F.R. § 104.4(b)(2).
23 Section 504 prohibits these entities from using “criteria or methods of administration . . . that have
24 the effect of subjecting qualified [people with disabilities] to discrimination” on the basis of
25 disability. *Id.* § 104.4(b)(4).

26 34. Section 504 applies to all school districts that receive federal financial assistance.
27 29 U.S.C. § 794(b)(2); 34 C.F.R. § 104.31. Section 504 requires that these school districts
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1 provide students with disabilities with special education and related aids and services designed to
2 meet the needs of students with disabilities as adequately as the school districts meet the needs of
3 students without disabilities. *See* 34 C.F.R. § 104.33(a), (b)(1). Qualified students with
4 disabilities must be given “equal opportunity to obtain the same result, to gain the same benefit,
5 or to reach the same level of achievement, in the most integrated setting appropriate to the
6 [student’s] needs.” *Id.* § 104.4(b)(2).

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

15 Title II of the ADA

16 36. Title II of the ADA mandates that “no qualified individual with a disability shall,
17 by reason of such disability, be excluded from participation in or be denied the benefits of the
18 services, programs, or activities of a public entity, or be subjected to discrimination by any such
19 entity.” 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130(a). Further, “[a] public entity shall
20 administer services, programs, and activities in the most integrated setting appropriate to the
21 needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). This means “a setting
22 that enables individuals with disabilities to interact with [persons without disabilities] to the
23 fullest extent possible.” 28 C.F.R. pt. 35, App. B. Additionally, a public entity may not use
24 “criteria or methods of administration . . . [t]hat have the effect of subjecting qualified
25 individuals with disabilities to discrimination on the basis of disability.” 28 C.F.R. §
26 35.130(b)(3)(i).

27 37. Congress enacted the ADA to provide a remedy for “discrimination against
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1 individuals with disabilities [which] persists in such critical areas as . . . education.” 42 U.S.C. §
2 12101(a)(3), (b). Congress specifically found that “segregat[ion]” is a “form[] of discrimination
3 against individuals with disabilities.” *Id.* § 12101(a)(2). Consequently, Title II of the ADA
4 outlaws segregation of individuals with disabilities and other forms of discrimination against
5 individuals with disabilities in public services such as education. *Id.* § 12132; 28 C.F.R. §
6 35.130. Title II of the ADA requires public entities to administer their services, programs, and
7 activities in the most integrated setting appropriate to the needs of qualified individuals with
8 disabilities. *See Olmstead*, 527 U.S. 581 (1999) (interpreting Title II of the ADA); *see also* 28
9 C.F.R. § 35.130(d).

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

Equal Protection Clause

22
23 39. The Fourteenth Amendment to the U.S. Constitution provides that “No State shall
24 . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const.
25 amend. XIV. The Equal Protection Clause was created to prevent “official conduct
26 discriminating on the basis of race.” *Washington v. Davis*, 426 U.S. 229, 239 (1976).

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

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

10 *Title VI*

11 42. Title VI of the Civil Rights Act of 1964 provides that recipients of federal
12 financial assistance may not discriminate on the basis of race, color, or national origin. 42
13 U.S.C. § 2000d. The statutory text of Title VI bars intentional discrimination on the basis
14 of race, color, or national origin. *See Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582,
15 607–08 (1983); *Alexander v. Choate*, 469 U.S. 287, 292–93 (1985). This prohibition extends to
16 recipients of federal financial assistance through the U.S. Department of Education, such as
17 public school districts. 34 C.F.R. §§ 100.1, 100.3.

18 43. Title VI ensures that students should not experience a “racially hostile
19 environment,” one in which racial harassment is “severe, pervasive or persistent so as to interfere
20 with or limit the ability of an individual to participate in or benefit from the services, activities or
21 privileges provided by the recipient.” *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022,
22 1033 (9th Cir. 1998); *see also Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 650 (1999).

23 44. In passing Title VI, Congress specifically sought to end federal financial
24 assistance to segregated institutions, including segregated schools. Representative Emanuel
25 Celler, Chairman of the House Judiciary Committee at the time of the passage of Title VI, stated,
26 “The enactment of [T]itle VI will serve to override specific provisions of law which contemplate
27 Federal assistance to racially segregated institutions.” 110 Cong. Rec. 2467 (1964) (quoted in
28

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

6 ***California Government Code Section 11135***

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

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

15 47. SCUSD's operation of schools within the District and its administration of
16 educational services within those schools are subject to California Government Code section
17 11135(a) because they constitute a program or activity which is funded directly by the State of
18 California or receive financial assistance from the State.

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

25 **FACTUAL ALLEGATIONS**

26 ***Defendants' Unlawful Policies and Practices***

27 49. On information and belief, Defendants fail to implement legally compliant
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1 policies, procedures, and programs with respect to students with disabilities who require
2 services, accommodations, and modifications to access education in the general education
3 curriculum. SCUSD's failure to implement legally-compliant policies, procedures, and
4 programs results in SCUSD discriminatorily segregating students with disabilities, particularly
5 Black students with disabilities, at rates significantly higher than both statewide and national
6 averages.

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

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

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

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

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

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

24 56. Compounding this harm is the District's refusal to provide students with
25 disabilities in segregated settings access to the full range of academic services, supports and
26 course offerings provided to other students in SCUSD. For example, the students at John Morse
27 are not instructed in music, art, sports, health, and foreign languages. Unlike other elementary
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1 and middle-school students in general education programs in SCUSD, the District does not
2 provide students at John Morse students with tutoring, college readiness and preparation
3 programs like Advancement Via Individual Determination (AVID) and Math, Engineering,
4 Science Achievement (MESA) programs, enrichment programs, or the services of academic
5 counselors, library media teachers, social/behavior or career development counselors, or staff
6 speech and language specialists. The District's discriminatory denial of access to these
7 curricular offerings to students with disabilities at John Morse exacerbates their segregation.

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

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

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

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

12 **District Policies that Deny Timely Identification and Evaluation**

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

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

23 63. These gate-keeping mechanisms include the District-created “Student Study
24 Team.” Upon information and belief, in response to parental requests for evaluations,
25 Defendants require students and parents to participate in the District-created Student Study Team
26 process. The Student Study Team process is an unnecessary extra series of meetings that, at its
27 best, delays what should be a timely assessment and, at its worst, completely denies appropriate
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1 assessment. Upon information and belief, Student Study Teams have access to no specialized
2 services that could legally be provided in lieu of an assessment for a student with a disability.
3 Upon information and belief, Student Study Teams do not provide parents and students with any
4 description of assessment processes or of their procedural rights to assessment.

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

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

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

23 67. The District has a policy of not providing parents and students with accurate
24 information regarding their rights to assessment, despite the District's knowledge that its own
25 staff both act upon misinformation and convey that misinformation to families. The District has
26 a policy of not providing parents and students with information regarding assessments even after
27 the District learns that a student has a disability. Upon information and belief, the District does
28

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

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

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

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

27 70. For example, Defendants fail to provide students with social, emotional,
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1 behavioral, and/or mental health needs access to appropriately intensive services,
2 accommodations, and modifications such as educationally-related mental health services, direct
3 behavior support, functional behavioral assessments, behavior intervention plans, individual
4 counseling, social skills services, social work services, and psychological services. Defendants’
5 failure to provide these services in the general education environment significantly contributes to
6 the segregation of students with disabilities, especially Black students with disabilities.

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

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

19 73. Despite knowledge of effective services and supports to provide students with
20 disabilities non-discriminatory access to education in the general education environment,
21 Defendants have failed to adopt these measures. Defendants ignored recommendations from the
22 2017 independent audit to develop an “Inclusive Education Vision,” and failed to implement the
23 audit’s recommendations for inclusive education practices, such as the Multi-Tiered Systems of
24 Support framework. The audit further found that SCUSD had not created sufficient tools for
25 inclusive practice in the general education environment. Upon information and belief, despite
26 the audit’s concerns and recommendations directed at the District, Defendants have failed to
27 implement inclusive education throughout SCUSD, nor provide staff meaningful or effective
28

1 training or levels of resources on inclusive education.

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

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

20 **District Policies that Result in Discriminatory Discipline**

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

27 77. The District's written student discipline board policy and administrative
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1 regulation, adopted in June 2014 in collaboration with the Black Parallel School Board, purport
2 to “avoid disparate application and treatment.” However, the District, despite being aware of the
3 discrimination rampant in its schools, has engaged in a widespread policy of non-enforcement of
4 its own written policy. Consequently, discrimination remains entrenched in the District’s
5 disciplinary practices.

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

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

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

2 81. The District's administrative regulations also mandate that the District provide the
3 school sites with disaggregated data to inform necessary reforms. Administrative Regulation
4 5144 states:

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

17 82.
18 Upon information and belief, the District has not provided school sites with this data, nor has it
19 evaluated any Monthly Action Plans created by school sites.

20 83. Upon information and belief, the District has a policy of not tracking and
21 recording all disciplinary exclusions. Students with disabilities receive a variety of informal
22 disciplinary removals that are not tracked as suspensions by the District. These informal
23 removals include parents being called to pick up their students from school, students being sent
24 to sit in an office without access to educational instruction, and students being sent to sit in the
25 hallway without access to educational instruction. The District's policy is to not track these
26 informal removals as discipline. As a consequence, the District does not provide students with
27 disabilities who experience informal removals with evaluations before disciplinary changes in
28 placement.

84. Moreover, upon information and belief, the District has a policy of not providing
students with disabilities who experience formal disciplinary removals with evaluations before
disciplinary changes in placement in a lawful and timely manner. As a result of this policy,
students with disabilities have been placed in segregated school settings without regard to the
relationship between the behavior subject to the disciplinary action and their disability.

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

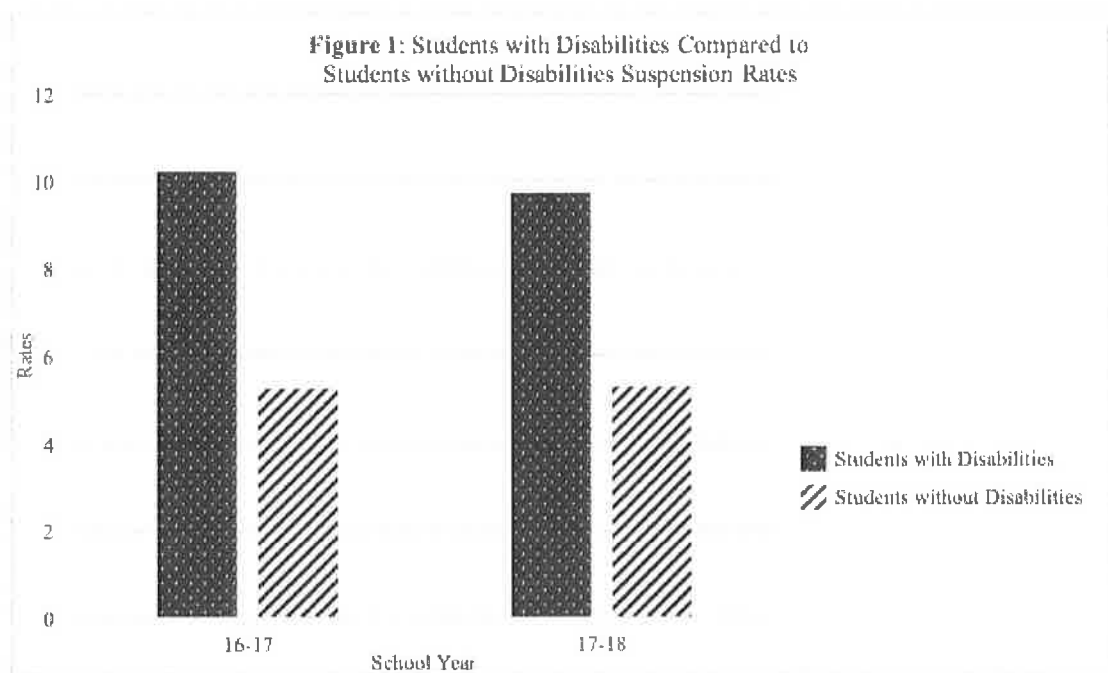
15 86. Upon information and belief, the District has a policy of not providing students
16 with disabilities access to education during periods of disciplinary exclusion. Due to the lack of
17 access to education, students with disabilities fall further behind their classmates during
18 disciplinary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

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

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

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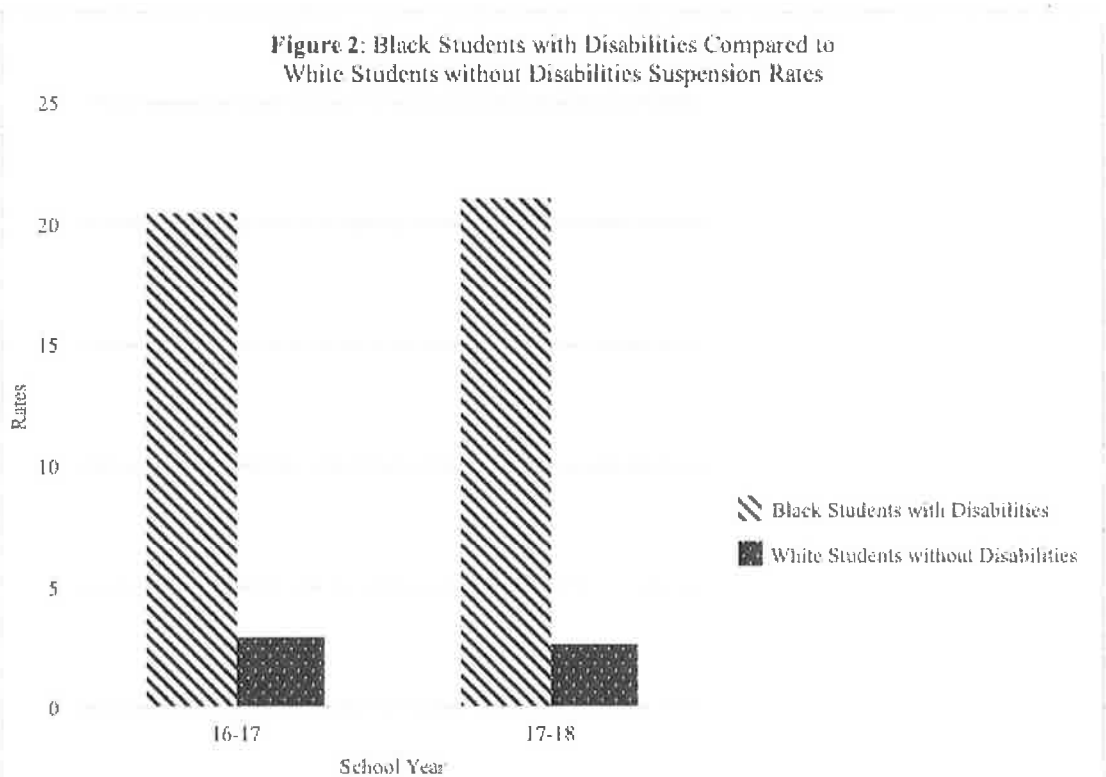
1 89. Figure 1 shows the contrast between the rate of suspensions for students with
2 disabilities and their peers without disabilities, as reported to the California Department of
3 Education for school years 2016-17 and 2017-18. During both school years, the rate of
4 suspension for students with disabilities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



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

27
28 ³ All suspension data for the 2018-19 school year included herein is based on total numbers of suspension rather than unduplicated counts and is upon information and belief.

1 91. Figure 2 displays the significant divergence between the suspension rates of Black
2 students with disabilities and their White peers without disabilities for school years 2016-17 and
3 2017-18 as reported by the California Department of Education. In both school years the
4 suspension rate for Black students with disabilities was approximately ten times as high as the
5 rate for their White peers without disabilities.

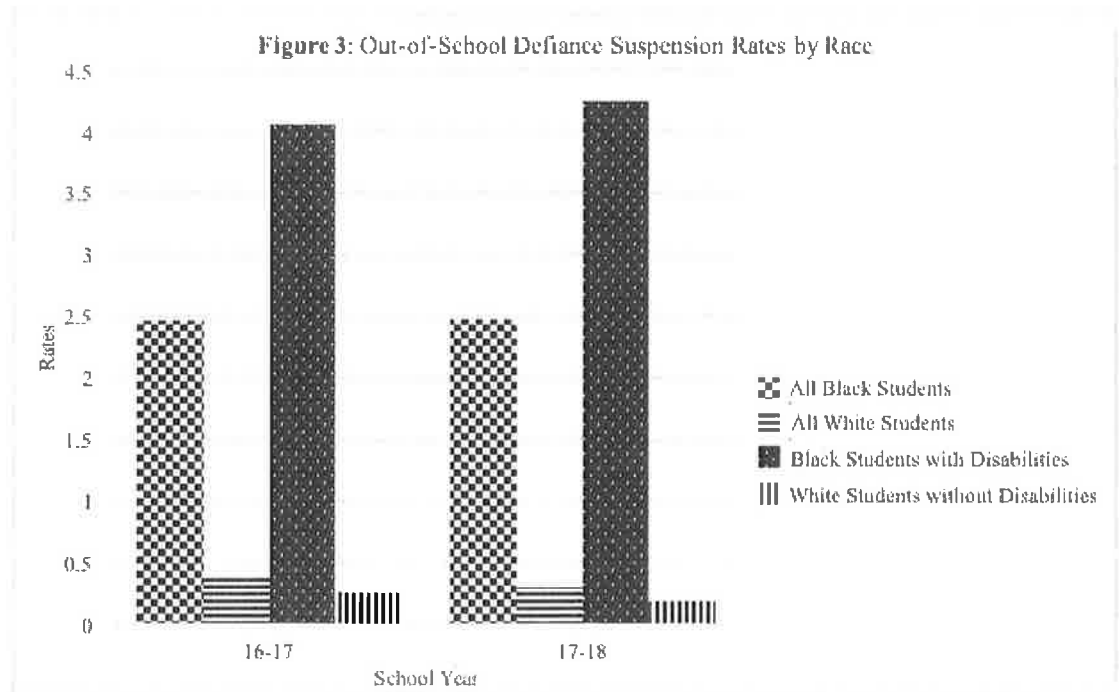


19 92. Black students with disabilities face an even greater risk of suspension under
20 highly subjective and discretionary categories like “willful defiance” and “created intimidating
21 or hostile environment.” Such offense categories are susceptible to implicit and explicit biases;
22 educators are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

25

26 ⁴ See Kurt Hugenberg & Galen V. Bodenhausen, *Facing Prejudice: Implicit Prejudice and the*
27 *Perception of Racial Threat*, 14 *Psychol. Science* 640, 643 (Nov. 2003), available at
28 <https://www.frontiersin.org/articles/10.3389/fpsyg.2017.00519/full>; Anthony Page, *Batson’s*
Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge, 85 *B.U. L. Rev.* 155, 222-
24 & n.337 (2005) (collecting studies showing that “that people will assign different significance
to identical actions depending on the actors’ race”).

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



26 94. Figure 3 compares four student groups: all Black students, all White students,
27 Black students with disabilities, and White students without disabilities for school years 2016-17
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1 and 2017-18. As reported by the California Department of Education, during both school years,
2 the rate of suspension for all Black students was significantly higher than the rate for all White
3 students – about eight times higher. Black students with disabilities were suspended at a rate
4 approximately fifteen times higher than their White peers without disabilities in 2016-17 and
5 approximately twenty-three times higher in 2017-18.

6 **District Policies that Deny Students a Safe Learning Environment**

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

9 96. The District, despite being aware of the bullying and harassment in its schools,
10 has engaged in a widespread policy of non-enforcement of its own written Board policy around
11 school-site safety planning. Taken together, Board Policy 0450 and Administrative Regulation
12 5145.5 require that each SCUSD school site create a “Comprehensive Safety Plan” with an
13 attached “bullying prevention plan” and update those plans on an annual basis. The Board is
14 required to review and approve each school’s Comprehensive Safety Plan. Upon information
15 and belief, the Board has not reviewed and approved any SCUSD school site’s Comprehensive
16 Safety Plan that includes the required bullying prevention plan.

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

27 98. Defendants have also failed to ensure that parents and students have sufficient
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1 information about reporting complaints of disability- or race-based harassment. The District
2 points to its “Title IX officer” as the proper official to investigate such complaints. Title IX of
3 the Education Amendments of 1972, 20 U.S.C. §§ 1681-88, is a federal law designed to end sex-
4 based discrimination in federally funded programs. The District’s own website states that the
5 Title IX “District compliance officer will investigate any complaints of harassment or
6 discrimination based on gender equity issues for student to student.” Upon information and
7 belief, there is no information on the District’s website that would suggest that a family should
8 make a complaint of disability- and/or race-based harassment to the District’s Title IX officer.
9 The District has consequently failed to structure its reporting mechanism for disability- and race-
10 based harassment in a way that would allow parents and students to access it.

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

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

25 101. Upon information and belief, the District continues to contract with segregated
26 placements that unnecessarily rely upon traumatic restraints and seclusion of students rather than
27 positive behavioral interventions, services and supports. Upon information and belief, students
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1 who are placed by SCUSD in segregated placements are more likely to experience seclusion and
2 restraint than students in the general education environment. Upon information and belief, for
3 similar behaviors, Black students are more likely to experience seclusion and restraint than
4 White students. Upon information and belief, in recent school years, Black students in
5 segregated settings were significantly more likely than White students to be restrained and
6 secluded for “out of seat/ disruptive behavior.” Black students were also significantly more
7 likely than White students to be restrained and secluded for behavior described as “student
8 frustrated or agitated.” Upon information and belief, Black students who were placed in
9 segregated settings by SCUSD were significantly more likely to experience physical restraints
10 than other students. Upon information and belief, when White students were restrained, they
11 were significantly more likely than Black students to receive an escort restraint, a less traumatic
12 form of restraint than a physical restraint.

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

18 *Plaintiff Facts*

19 **Black Parallel School Board**

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

24 104. The BPSB’s primary responsibility is to support the educational growth and
25 achievement of Black students by monitoring all educational activities and programs of SCUSD
26 to ensure that they are compatible with the needs of Black students in the district. BPSB
27 primarily focuses on promoting and advocating for Black student achievement and educational
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1 quality and attainment, and classroom and District practices that are supportive and culturally
2 relevant as opposed to those that punish and exclude Black children.

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

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

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

26 **Individual Plaintiffs**

27 108. Student Plaintiffs S.A., K.E., and C.S. are all school-aged children who reside
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1 within the boundaries of SCUSD. No two Student Plaintiffs currently attend or have attended
2 the same schools within the District.

3 109. Each Student Plaintiff has known disabilities that impair one or more of his or her
4 major life activities under Section 504 and the ADA, including, but not limited to, the activity of
5 learning.

6 110. All of the Student Plaintiffs are either Black or mixed-race Black. As discussed
7 below, each of the Student Plaintiffs have experienced discrimination, segregation (including
8 exclusionary discipline), and unequal educational opportunities that are illustrative and
9 symptomatic of the District's unlawful and discriminatory policies, as outlined above.

10 111. Unless and until the Defendants' address the problems outlined herein, the
11 Student Plaintiffs will be unable to be free from discrimination and receive the equal access to
12 their public education in the integrated and inclusive school setting to which they are entitled.

13 *S.A.*

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

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

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

20 115. *S.A.* is one of fewer than two dozen Black students remaining at his public
21 school. Although Black and White students each make up approximately fifteen to seventeen
22 percent of the District's overall enrollment each year, Black enrollment at *S.A.*'s school has
23 dropped below five percent whereas White student enrollment now accounts for nearly two-
24 thirds of the school's student body. Upon information and belief, all academic staff at *S.A.*'s
25 school are also White.

26 116. The District has failed to provide *S.A.* with appropriate mental health, behavioral,
27 or social evaluations, nor has the District provided him the services, accommodations, and
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1 modifications that would allow him to be successful in the general education environment. In
2 addition, upon information and belief, none of the teachers at S.A.'s school is credentialed to be
3 a primary instructor for students with Autism Spectrum Disorder.

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

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

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

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

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

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

26 123. Upon information and belief, all of these suspensions and informal removals
27 during the 2018-19 school year resulted from disability-related behavior or behavior related to
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1 his response to experiencing identity-based bullying and harassment. Nevertheless, the District
2 did not conduct a manifestation determination review or a Functional Behavior Assessment for
3 S.A..

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

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

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

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

21 128. S.A. has endured severe and pervasive identity-based bullying and harassment at
22 school from both staff and students. This has included, for example, other students calling S.A.
23 names like “stupid Black boy” and physically attacking S.A.. Despite notice, Defendants failed
24 to intervene in a timely or effective manner to ensure that S.A. has access to a safe educational
25 environment. Defendants’ actions and failures effectively endorse fear-based racial and
26 disability biases and discrimination. These actions and failures have caused S.A. to feel afraid at
27 school and isolated from his peers, creating a hostile learning environment for S.A. and other
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1 students and limiting S.A.’s access to benefits provided by the school.

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

4 *K.E.*

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

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

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

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

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

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

25 136. Also during the 2017-18 school year, K.E. endured severe and pervasive identity-
26 based bullying and harassment at school from both staff and students. K.E. was the target of
27 peers’ homophobic, race-based, and disability-based slurs. K.E. sought help from staff and was
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1 directed to fill out the bullying and harassment form. K.E. estimates that he submitted at least
2 two dozen forms that year but received no responses to those complaints. The discrimination,
3 bullying, and harassment persisted, causing K.E. to feel unsafe, unprotected, and unsupported in
4 his school. In addition, K.E.'s teacher placed a sign outside the classroom door that informed all
5 passing students and staff that the class was for "Emotionally Disturbed" students. This sign
6 remained in place throughout the school year and was not removed by the District, despite its
7 violation of students' privacy and its further perpetuating biases and stereotypes about these
8 students.

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

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

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

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

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

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

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

16 C.S.

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

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

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

25 147. From the 2015-16 school year to the 2018-19 school year, C.S. attended his
26 neighborhood elementary school in SCUSD for kindergarten through third grade. C.S. was one
27 of fewer than three dozen Black students at his neighborhood school, which was located in one
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1 of the wealthiest areas of Sacramento. Although Black and White students each make up
2 approximately fifteen to seventeen percent of the District's enrollment in any given school year,
3 Black students made up only 5.2 percent of the students at C.S.'s school between 2015 and 2019
4 whereas about half of all enrolled students are White. Upon information and belief, all or nearly
5 all of the academic staff at C.S.'s school were also White during this time period.

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

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

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

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

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

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

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

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

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

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

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

21 159. C.S. has been the repeated target of disability and race-based biases and
22 stereotypes. For example, rather than appropriately responding to and addressing his disability-
23 based needs, school staff have repeatedly characterized C.S. as an aggressor or bully. Upon
24 information and belief, C.S. – the only Black student with Autism Spectrum Disorder at his
25 school – was suspended and removed more than any other student in his school during the 2018-
26 19 school year.

27 160. Over the past few years, C.S. has become keenly aware that he is different from
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1 other students. He has started referring to himself as “bad” and struggling with suicidal thoughts
2 and actions. As recently as spring 2019, he tried to run out into traffic to get hit by a car during
3 the middle of the school day. When his grandparents and doctor requested an accommodation in
4 the form of temporary home instruction, District staff suggested in writing that he instead dis-
5 enroll from the District.

6 161. In February 2019, C.S. filed for due process alleging that the District had failed to
7 provide him with a free appropriate public education as guaranteed by the Individuals with
8 Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*, as well as violations under
9 Section 504, the ADA, Title VI, and California Government Code section 11135. In March
10 2019, the Office of Administrative Hearings dismissed all non-IDEA claims for lack of
11 jurisdiction.

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

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

19 **CLASS ALLEGATIONS**

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

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

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

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

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

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

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

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

3 168. **Typicality.** The claims of the Student Plaintiffs are typical of the claims of the
4 Classes, identified above, in that each of the Student Plaintiffs is a student with a disability that
5 qualifies him or her as eligible for services, accommodations, and modifications under Section
6 504 and/or the ADA, but Student Plaintiffs: (1) have not received a timely and appropriate
7 evaluation; (2) have not received timely and appropriate provision of services, accommodations,
8 and modifications; and (3) have been excluded from the general education environment in the
9 absence of those necessary services, accommodations, and modifications.

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

16 **LEGAL CLAIMS**

17 **FIRST CLAIM FOR RELIEF**

18 **Violations of Section 504**
19 **29 U.S.C. § 794, 34 C.F.R. Pt. 104**
20 **(On Behalf of All Plaintiffs and Class Members**
Against Defendants District and Board of Education)

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

23 171. All Plaintiffs are, and Class Members are, or are suspected of being, qualified
24 individuals with disabilities within the meaning of Section 504 and are or may be otherwise
25 qualified to participate in or receive benefits from Defendants' programs or activities. 29 U.S.C.
26 § 794(a).

27 172. Defendants SCUSD and Board of Education have been and are a recipient of
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1 federal financial assistance sufficient to invoke the coverage of Section 504. *Id.* § 794(b)(3).

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

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

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

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

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

16 **SECOND CLAIM FOR RELIEF**

17 **Violations of Title II of the ADA**
18 **42 U.S.C. §§ 12131 *et seq.*, 28 C.F.R. § 35.130**
(On Behalf of All Plaintiffs and Class Members Against All Defendants)

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

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

24 180. All Plaintiffs and Class Members are, or are suspected of being, qualified
25 individuals with disabilities within the meaning of Title II of the ADA and meet the essential
26 eligibility requirements for the receipt of services, programs, or activities of Defendants. *Id.* §
27 12131(2).

28

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

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

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

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

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

16 **THIRD CLAIM FOR RELIEF**

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

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

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

1 entitled.

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

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

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

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

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

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

24 **Fourth Claim for Relief**

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

27 194. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in
28

1 full herein.

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

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

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

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

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

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

25 **Fifth Claim for Relief**

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

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

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

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

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

13 205. As a result of the manner in which the District has administered the policies
14 described above, Plaintiffs and Subclass Members have been denied full and equal access to the
15 benefits of educational opportunities within District schools, or have been subjected to
16 discrimination under such programs or activities, on the basis of race, in violation of California
17 Government Code section 11135(a) and Title 2 of the California Code of Regulation, section
18 11154.

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

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

23 **REQUEST FOR RELIEF**

24 WHEREFORE, Plaintiffs respectfully request that the Court:

25 1. Certify this case as a class action under Federal Rules of Civil Procedure 23(a) and
26 23(b)(2).

27 2. Appoint Plaintiffs as Class Representatives of the Classes and their attorneys as Counsel
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- 1 for all Classes.
- 2 3. Declare that Defendants' policies, practices and procedures regarding segregation and
3 discipline of students with disabilities and regarding students with disabilities who
4 require access to services, accommodations, and modifications to access education in the
5 general education environment violate the rights of all Plaintiffs and Class Members
6 under Section 504, the ADA, and state law.
- 7 4. Declare that Defendants' policies, practices and procedures regarding segregation and
8 discipline of Black students with disabilities, and peer-on-peer and staff-on-student racial
9 harassment violate the rights of all Plaintiffs and Subclass Members under the Equal
10 Protection Clause, Title VI, and state law.
- 11 5. Issue permanent injunctions pursuant to Section 504, the ADA, the Equal Protection
12 Clause, Title VI, and state law that enjoin Defendants, their successors in office, agents,
13 employees and assigns, and all persons acting in concert from violating Section 504, the
14 ADA, the Equal Protection Clause, Title VI, and state law and require Defendants to
15 promulgate compliant policies, procedures, and practices.

16 And order Defendants to:

- 17 6. Immediately discontinue all policies, procedures and practices that do not comply with
18 the laws cited in this complaint;
- 19 7. Create and broadly disseminate to teachers and other District staff, parents, and students a
20 new Board of Education-approved written policy statement, which must include the
21 following, acknowledging the rights of students with disabilities and Black students with
22 disabilities as set forth in this complaint, and reasserting Defendants' commitment to
23 honor those rights, including:
- 24 a. The right of access to the same educational opportunities as their peers regardless
25 of disability or race;
- 26 b. The right to services, accommodations, and modifications necessary to remain in
27 the general education environment; and
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- 1 c. The right to an educational environment free of discriminatory discipline and
2 harassment and bullying;
- 3 8. Take immediate action to reform policies, procedures and practices to fully comply with
4 Section 504, ADA the Equal Protection Clause, Title VI, and state law; such action must
5 include securing a team of third-party experts to assist the District to:
- 6 a. Develop and implement a clear and defined plan to achieve inclusivity for all
7 students throughout the District, including students with disabilities and Black
8 students with disabilities, that enables these students to receive access to equal
9 education side-by-side with their peers without disabilities in a safe and
10 welcoming educational environment;
- 11 b. Implement a districtwide Multi-Tiered System of Supports to identify the needs of
12 and improve educational outcomes for all students using multiple data measures,
13 and to provide strategic, targeted, appropriate, and culturally relevant
14 interventions for all students that are available regardless of a student's disability,
15 status or race;
- 16 c. Establish appropriate programs, that are based on peer-reviewed research or other
17 evidence-based programs to provide services, accommodations, and modifications
18 to students with disabilities in the general education environment;
- 19 d. Provide for immediate and continuing education for all District staff and
20 evaluation of progress toward compliance with Section 504, ADA the Equal
21 Protection Clause, Title VI, and state law by qualified third-party experts; such
22 education or training must include:
- 23 i. identification of students with disabilities,
24 ii. provision of appropriate and culturally relevant instruction, services,
25 accommodations, and modifications in the least restrictive environment,
26 iii. stopping and preventing harassment and bullying based on disability or
27 race,
- 28

- 1 iv. eliminating or significantly reducing reliance on exclusionary discipline,
2 v. implicit bias, and
3 vi. administration of discipline without racial discrimination;
4 e. Develop and implement a system to identify staff who are not complying with any
5 of the laws cited in this Complaint, retrain and provide appropriate supports to
6 any such staff to enable them to come into compliance, and take appropriate
7 disciplinary action regarding any staff who fail to come into compliance after
8 such retraining or provision of supports;
9 f. Analyze the current racial make-up of the District's teachers, social workers and
10 psychologists, respectively, relative to the current racial make-up of the District's
11 student body; create and implement separate plans that include clear goals to
12 increase the diversity of the teachers, social workers, and psychologists,
13 respectively, based on the foregoing analysis; and achieve substantial compliance
14 with those plans and goals within three years and total compliance within seven
15 years;
16 g. Analyze all aspects of education for students with disabilities in the District for
17 implicit racial bias and structural discriminatory racialization; develop a
18 comprehensive plan to eliminate or mitigate such bias and discrimination; and
19 achieve substantial compliance with such plan within three years and total
20 compliance within seven years;
21 h. Review and analyze the credentials and qualifications of all District
22 administrators and staff; identify gaps in credentials or qualifications to
23 administer or instruct students with disabilities; develop a detailed plan to
24 eliminate such gaps; and achieve substantial compliance with such plan within
25 three years and total compliance within seven years; and
26 i. Determine appropriate District staffing levels, staff qualifications, methods of
27 data collection and analysis, and effective measures to prevent and protect all
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1 students, including students with disabilities and Black students with disabilities,
2 against bullying; develop a detailed plan based on such determination; and
3 achieve substantial compliance with such plan within three years and total
4 compliance within seven years.

5 9. Enjoin all disciplinary action, including any pending action, against any Black student
6 with disabilities unless a manifestation determination has been completed, and maintain
7 such injunction until a districtwide Multi-tiered System of Services and Supports has
8 been implemented and determined effective by a qualified third-party expert or experts;

9 10. Enjoin the use of so-called District Student Study Teams until a districtwide Multi-Tiered
10 System of Supports is in place and a qualified third-party expert or experts have
11 determined whether the District should continue use of such teams;

12 11. Offer assessments or reassessments to all students enrolled in the District who requested
13 assessment for disability or who were referred to a Student Study Team within the last
14 two years;

15 12. Offer all Black students currently enrolled in the District who have been classified as
16 having Emotional Disturbance the option of having an independent educational
17 evaluation at the District's expense, and provide such assessments for all students who
18 accept the offer;

19 13. Identify, offer, and provide services, accommodations, and modifications to all students
20 found eligible for the same in accordance with Section 504 and the ADA; and

21 14. Provide the Court and the public with an annual report on the District's compliance with
22 the Court's orders for four consecutive years.

23 Plaintiffs further respectfully request that the Court:

24 15. Retain jurisdiction of this case until Defendants have fully complied with the orders of
25 this Court, and there is reasonable assurance that Defendants will continue to comply in
26 the future absent continuing jurisdiction;

27 16. Award Plaintiffs reasonable attorneys' fees, costs, and disbursements as authorized by
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law; and

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

DATED: September 5, 2019

Respectfully submitted,

MONA TAWATAO
EVA PATERSON

EQUAL JUSTICE SOCIETY

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

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Black Parallel School Board et al., v. Sacramento City Unified School District et al.
U.S.D.C. Eastern District, Case No. 2:19-cv-01768-TLN-KJN

STRUCTURED NEGOTIATIONS AGREEMENT

EXHIBIT B

JOINT PRESS RELEASE

Sacramento City Unified School District and Advocacy Groups Pursue Settlement of Lawsuit Alleging Disability and Race Discrimination

SACRAMENTO, CA (December 19, 2019): The Sacramento City Unified School District (District) and plaintiffs suing the District for alleged discrimination against students based on race and disability asked the federal court to pause litigation so the parties may seek potential resolution through settlement.

The lawsuit, alleged as a class-action, was filed by a coalition of nonprofit advocacy groups on behalf of the Black Parallel School Board (BPSB) and three students in the District. The suit alleges that the District's policies and practices in the areas of special education and student discipline harm students with disabilities, and in particular, Black students with disabilities.

While the District does not agree with the allegations in the lawsuit, "we appreciate plaintiffs' willingness to work with us," said District Superintendent Jorge A. Aguilar. "The District believes that we should work cooperatively with the plaintiffs to identify potential policies and practices that may not serve the best interests of the District's students with disabilities, and to jointly find solutions to those issues, which would include addressing factors which limit service options or strategies for serving District students," said Superintendent Aguilar.

The parties have asked the Court to grant a seven-month stay of the litigation. During the stay, and by early February, the District has offered and agreed to implement several measures intended to benefit students with disabilities, including Black students with disabilities. These measures include:

- Halting all District suspensions based on “willful defiance” not only for students in kindergarten through third grade, but up and through eighth grade;
- Offering students a special education assessment plan within 15 days of a request for such assessment; and
- Directing school administrators and staff not to ask or require students to leave school as an informal response to concerns with student behavior.

“These measures are significant to students with disabilities and their parents and guardians whom we and other advocates in our community fight for and support,” said BPSB Chairperson Darryl White. “The District’s willingness to implement these interim measures has encouraged BPSB to engage in cooperative discussions with the District about potential broader and more permanent reforms and protections for our students.”

Also, during the stay, an agreed-upon set of experts will review the District’s data and practices in the areas of special education, student discipline, and implicit bias. That review will include expert interviews of students, parents, District staff, and other stakeholders. After the assessment and study of the information gathered, the experts will issue

recommendations that the parties will consider as part of a possible settlement to create positive, lasting change for students and their families.

The Court will likely make a decision on the requested stay of litigation in the coming days.

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