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8 CALIFORNIA

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12 **THE PEOPLE OF THE STATE OF**
13 **CALIFORNIA, EX. REL. XAVIER**
14 **BECCERRA, ATTORNEY GENERAL OF**
THE STATE OF CALIFORNIA,

15 Plaintiff,

16 v.

17 **MOJAVE UNIFIED SCHOOL DISTRICT,**

18 Defendant
19

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF**

20 The People of the State of California, by and through Xavier Becerra, Attorney General of
21 the State of California, allege on information and belief as follows:

22 **JURISDICTION AND VENUE**

23 1. This Court has jurisdiction over the allegations and subject matter of the People's
24 Complaint filed in this action and the parties to this action; venue is proper in this County; and
25 this Court has jurisdiction to enter this Judgment.

26 **PARTIES**
27
28

2. Plaintiff Xavier Becerra is the Attorney General of the State of California. The Attorney General is the chief law officer of the state and has the duty to see that the State's laws are uniformly and adequately enforced for the protection of public rights and interests. (Cal. Const., art. V, § 13.)

3. Defendant Mojave Unified School District (Defendant or the District) receives state funds, is a public school district organized and existing under the laws of the State of California, and is responsible for providing public education to District students.

FACTUAL BACKGROUND

4. The right to education is a fundamental right and students have a right to both substantive and procedural due process. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 608-609, 616-617.) The State of California and the District are required to ensure that all students, regardless of national origin, ethnicity, and immigration status, are treated equally in all aspects of education. (Cal. Const., art. I, § 7, subds. (a)-(b); Ed. Code, §§ 220, 262.3, & 262.4; *Butt v. State of California* (1992) 4 Cal.4th 668, 685–686.)

5. In May 2019, the Attorney General's office began an investigation to determine whether the District's policies and practices had subjected student [REDACTED] and his family and others similarly situated to denial of educational opportunity, benefit, or access on account of advocacy for rights under state law and/or based on national origin, ethnicity, or immigration status. On October 24, 2019, the California Department of Education notified the Parties that it had referred its investigation of allegations by [REDACTED] and his family against the District of retaliation and discrimination and improper use of independent study, supervised suspension, special education evaluation processes, school removal, and search and seizure tactics to the Attorney General's office for appropriate action.

6. The Attorney General's office conducted a comprehensive investigation of the aforementioned allegations as to [REDACTED] and his family and others similarly situated. The investigation included review of thousands of pages of District documents and data regarding student [REDACTED] and independent study, supervised suspension, and involuntary transfer and

1 disenrollment practices, oral examinations taken under oath, and interviews of more than twelve
2 witnesses.

3 7. Upon conclusion of the investigation, in January 2020, the Attorney General's office
4 found that the District failed to: (a) implement a legally compliant procedure for responding to
5 complaints of discrimination and retaliation; and (b) timely and properly investigate and respond
6 to allegations of retaliation by a former District principal against [REDACTED], his family, and a District
7 staff member. The investigation identified a violation of anti-retaliation law with respect to the
8 actions taken by a former District principal against [REDACTED], his family, and a District staff member.

9 8. The investigation also identified deficiencies under state law in the District's
10 independent study and supervised suspension programs, search and seizure practices, special
11 education evaluation and alternative placement in County Community Day School processes, and
12 student record confidentiality training and protocols.

13 9. The Parties have worked cooperatively to agree to a remedial plan that includes, but
14 is not limited to: (1) a four-year monitoring period; (2) designation of a District-wide anti-
15 discrimination coordinator responsible for reviewing and responding to all complaints consistent
16 with law; (3) revisions to discrimination and retaliation grievance procedures; (4) training for
17 school staff and leadership in anti-bias strategies, discrimination and retaliation law, grievance
18 procedures, and confidentiality; (5) development of a centralized tracking and response system
19 for all reports and complaints of discrimination and retaliation; and (6) review of District
20 discrimination, harassment, and retaliation reports and complaint investigations and responses to
21 ensure compliance with state law and implementing regulation.

22 10. The District has begun to take positive steps to revise policies and procedures and
23 implement the remedial plan. The District has eliminated the in-school suspension program at its
24 school-site. The District has agreed to conduct quarterly audits of students in the independent
25 study program for review by the Attorney General's office, provide annual training to staff on
26 independent study legal requirements, and contract with an independent expert to assess whether
27 students involuntarily transferred to a County Community Day School were improperly
28 transferred and ensure immediate reenrollment in the District for students who want to return.

1 The District is in the process of revising its special education evaluation policies and procedures
2 to ensure compliance with state law. In addition, the District will provide equitable relief in the
3 form of a bank of one hundred and twenty-five hours of compensatory education and mental
4 health services to [REDACTED].

5 **A. FAILURE TO IMPLEMENT A LEGALLY COMPLIANT PROCEDURE FOR**
6 **RESPONDING TO ORAL REPORTS AND WRITTEN COMPLAINTS OF**
7 **DISCRIMINATION, HARASSMENT, INTIMIDATION, AND RETALIATION.**

8 11. The Attorney General's investigation revealed that the District failed to have a
9 consistently identified Uniform Complaint Procedures Coordinator during the 2016-17 through
10 2018-19 school years, and a consistent system to respond to and track oral and written complaints
11 received at the school site and the District office.

12 12. The District did not provide Uniform Complaint Procedures information and
13 complaint forms to parents alleging discrimination, harassment, and retaliation on most
14 occasions. This failure resulted in parents, including [REDACTED]'s parent, being deprived of state-law
15 protected rights, such as the right to appeal to the California Department of Education and to a
16 written decision of findings.

17 13. Although the Uniform Complaint Procedures investigation process requires the
18 District to interview parties and witnesses, issue a written decision with the right to appeal, and
19 provide the parties with the opportunity to present evidence, the District's process did not include
20 these required steps in all cases.

21 14. During the 2016-17 through 2018-19 school years, the District did not provide
22 staff training regarding the Uniform Complaint Procedures and anti-discrimination and anti-
23 retaliation requirements with respect to national origin, ethnicity, and immigration status. Some
24 District staff were unaware of their role in reporting complaints to designated compliance staff.

25 15. The investigation found one or more District annual notices deficient for the
26 failure to include immigration as a protected category, apply the Uniform Complaint Procedures
27 to retaliation complaints, and provide notice that investigations shall proceed regardless of
28 whether a complaint is in writing.

1 **B. FAILURE TO APPROPRIATELY AND TIMELY RESPOND TO NOTICE OF**
2 **DISCRIMINATION AND RETALIATION AND FAILURE OF RESPONSIBLE**
3 **EMPLOYEES TO REPORT THE SAME.**

4 16. The Attorney General's investigation identified that District leadership received an
5 oral complaint from ■■■■■'s parent that a former District principal had threatened ■■■■■'s parents'
6 employer with immigration consequences if ■■■■■'s family's employment was not terminated.

7 17. Approximately one month prior to receiving this oral complaint, the District received
8 written notice that a civil rights advocacy organization was representing ■■■■■ and his family to
9 address concerns about discriminatory treatment.

10 18. The Attorney General's investigation found that no one in the District's
11 administrative office took any action to investigate ■■■■■'s complaint of discrimination and
12 retaliation, other than requesting a response by electronic mail from a former District principal.
13 The District did not offer ■■■■■'s family the Uniform Complaint Procedures, interview any
14 witnesses, make any findings, or issue a determination. The District failed to timely investigate
15 and respond to the allegations of discrimination.

16 19. When ■■■■■'s parent complained a second time to a school-site staff member in
17 leadership, this staff member did not timely report the complaint to the District administrative
18 office or the designated compliance officer.

19 20. The Attorney General's investigation found that the District's failure to provide
20 appropriate staff training regarding anti-retaliation protections and reporting obligations and to
21 provide proper notice of the District's compliance coordinator contributed to this failure.

22 21. The Attorney General's investigation also found, based on the testimony of four
23 witnesses and other evidence, that a former District principal made threatening and disparaging
24 statements to ■■■■■'s family's employer that resulted in the family's employment being
25 terminated.

26 22. After learning of these statements and not receiving any response from the District,
27 ■■■■■'s family reasonably feared further adverse action by a former District principal. With the
28 support of a school-site administrator, ■■■■■'s parent decided to place ■■■■■ on independent study,
even though it was not in his best interest, because the independent study program did not provide

1 adequate support for him and he was already behind academically. Shortly thereafter, because of
2 the actions by a former District principal, [REDACTED]'s family removed [REDACTED] from the District and
3 enrolled him in another school district.

4 23. Based on the timing between the family's civil rights advocacy for [REDACTED] and notice of
5 the same to the District and a former District principal on or about December 6, 2018, and the
6 actions taken later that same month to negatively affect the family's employment, the Attorney
7 General's office found a prima facie case of retaliation. The Attorney General's office also found
8 that the District did not defend the action taken or provide any legitimate reason for the action.

9 24. The investigation also raised concerns that a former District principal may have taken
10 another adverse action against [REDACTED] on account of the protected activity of subsequently initiating
11 a complaint with the California Department of Education, when, in May 2019, she directed staff
12 not to send written notice to [REDACTED] that he could not participate in end of year events, even though
13 such notice was provided to other affected students as a matter of course.

14 25. The Attorney General's investigation also found that the District failed to investigate
15 a staff member's allegation of retaliation by a former District principal after the District's
16 administrative office received notice of alleged retaliation in Spring 2019. The investigation
17 separately found that a former District principal retaliated against a staff member by taking away
18 specific duties and removing the staff member from important meetings, after the staff member
19 confronted her regarding the allegations of unlawful behavior toward [REDACTED] and his family and
20 stated that a report would be made to the District's administrative office, if asked.

21 **C. REMOVAL AND POTENTIAL LOSS OF CONFIDENTIAL STUDENT RECORDS.**

22 26. The Attorney General's investigation also revealed that, on June 18, 2019, after a
23 former District principal received the electronic subpoena from that Attorney General's office
24 directing all staff members in the District not to remove anything from the District, a former
25 District principal sent an electronic mail copy of some of [REDACTED]'s student records to a personal
26 email address.

27 27. The Attorney General's investigation also identified that District staff received
28 written notice that supervised suspension program records, including [REDACTED]'s records, were

1 missing after a Spring 2019 school break-in. No one in the District conducted an investigation
2 regarding this issue or reported the concern to any potentially impacted families.

3 28. The Attorney General's investigation also raised concerns that training regarding
4 confidentiality of student records for staff who regularly handle student records was inadequate
5 because evidence gathered failed to identify any staff members who had received training on
6 confidentiality of students records from the District.

7 **D. IMPORTANT ASPECTS OF THE DISTRICT'S PRACTICES WITH RESPECT TO**
8 **PLACEMENT, TRACKING, AND EVALUATION OF STUDENTS IN**
9 **INDEPENDENT STUDY ARE LEGALLY DEFICIENT.**

10 29. The Attorney General's investigation found that the District provided insufficient
11 protection for parents and guardians of students facing discipline who were placed in the
12 independent study program at one of the District's schools. The Attorney General's investigation
13 raised concerns that the District engaged in practices, including presenting independent study as
14 the only option for students facing discipline, that were inconsistent with state law requiring
15 independent study to be a voluntary school option. While District policy did not permit staff to
16 place students in independent study to address discipline issues, the District nevertheless
17 authorized the practice.

18 30. For students below grade level, the District provided only ten to fifteen minutes of
19 support per week, and the District did not have a process for providing the supports necessary for
20 students below grade level to receive educational benefit and be successful, as required. The
21 investigation raised significant concerns that the independent study program did not meet the
22 legal requirement of "equivalent quality and rigor" to the classroom instruction available to other
23 students. Students could also be in the program for multiple years, raising additional concerns
24 that such long-term placement has occurred without timely evaluations and findings regarding
25 students' best interests.

26 31. The District did not have adequate training for staff implementing independent study
27 to ensure compliance or a process to assess whether a student who was behind academically
28 required special education prior to placement.

1 32. The investigation revealed that [REDACTED]'s parent was informed that placement in
2 independent study in February 2018 was the only option available to [REDACTED], if he did not want to
3 be referred for expulsion. During placement in independent study, [REDACTED] fell further behind grade
4 level and missed close to 46 days of independent study instruction, but the District did not
5 evaluate whether his continued placement was appropriate or record findings regarding the same,
6 as required.

7 33. The District failed to produce annual data intended to assist the District with
8 identifying whether independent study placement meets state law requirements and student needs.

9 **E. SUPERVISED SUSPENSION PRACTICES AT A DISTRICT SCHOOL VIOLATED**
10 **STATE LAW REQUIREMENTS.**

11 34. The Attorney General's investigation revealed that the supervised suspension
12 program in the District's Middle School did not have a credentialed teacher for at least half of a
13 school year, students received an hour less of school time each day for one or more school years,
14 counseling services were provided infrequently, time in supervised suspension was not recorded
15 as required, and maximum time limits for placement in suspension per disciplinary incident and
16 per year were not followed.

17 35. District records show that during his eighth grade year, the District removed [REDACTED]
18 from school for 35 days, including multiple days of supervised suspension, a total for the year
19 that exceeded the 20-day state law maximum.

20 36. The District did not have a system to track in-school suspension days for students
21 with special needs in relation to the legal requirement to hold a manifestation determination
22 meeting.

23 37. The District has discontinued its supervised suspension program at its Middle School
24 as of June 2020.

25 **F. THE DISTRICT'S SEARCH AND SEIZURE PRACTICES RAISED COMPLIANCE**
26 **CONCERNS.**

27 38. The investigation revealed that on several occasions during the 2018-19 school year,
28 the backpacks of students in entire classrooms or grade levels were searched based on a report

1 that a few students were in possession of drugs on campus and that prior to every field trip the
2 backpacks of all students participating in the field trip were searched.

3 39. The District has no policies or procedures in place that would permit random searches
4 of the kind identified during the investigation, and the investigation showed that school
5 administrators had not received training to conduct searches and were not familiar with Board
6 policy requirements on searches and seizures.

7 **G. THE DISTRICT’S IMPLEMENTATION OF THE CHILD FIND AND SPECIAL**
8 **EDUCATION EVALUATION REQUIREMENTS ARE LEGALLY DEFICIENT.**

9 40. The Attorney General’s investigation raised significant concerns because [REDACTED] was
10 not timely referred for a special education evaluation, even though an aide requested one in 2017,
11 and school records identified a potential disability, and no evidence was provided of training for
12 staff on the process required under state law to identify students with suspected disabilities.

13 41. After [REDACTED]’s parent made a written request for a special education evaluation in May
14 2019, the District acknowledged that instead of providing one, a screening was initiated without
15 notice to or consent of [REDACTED]’s parent, procedures for screening were not followed, and [REDACTED] was
16 denied a special education evaluation, in part due to the District’s placement of [REDACTED] in
17 independent study.

18 42. The District has discontinued its special education screening process, which did not
19 provide an opportunity for parental notice or consent prior to evaluation and employed screening
20 criteria that was not disclosed to parents or routinely followed.

21 **H. THE DISTRICT MAY HAVE IMPROPERLY TRANSFERRED STUDENTS TO**
22 **COUNTY COMMUNITY DAY SCHOOL AND IMPROPERLY RECORDED SUCH**
TRANSFERS.

23 43. The Attorney General’s investigation revealed that the District’s Middle School
24 Handbook stated that the “suspension for a period of 20 days during the school year will result” in
25 referral to alternative placement (or expulsion). However, suspension of a student for a 20-day
26 period is not a legally permissible reason to involuntarily transfer a student to a County
27 Community Day School.

1 44. Parents of Middle School students did not receive documentation explaining the right
2 to object to placement when transfer to a County Community Day School occurs outside of the
3 expulsion process and evidence suggested that involuntary placement in a County Community
4 Day School may have been used to remove students and families for improper reasons, such as
5 animus toward a particular family or student.

6 45. District data reflected a number of students from the Middle School placed in a
7 County Community Day School with a record notation of “moved,” raising concerns about
8 improper placement.

9 **I. INSUFFICIENT STAFF TO PROVIDE TRANSLATION AND INTERPRETATION**
10 **SERVICES.**

11 46. The Attorney General’s investigation raised concerns regarding meaningful access for
12 some parents because the Middle School did not have an assigned bilingual aide for at least the
13 first half of the 2019-20 school year and, on several occasions, staff improperly asked a student to
14 translate for a parent.

15 **J. PROPOSED RESOLUTION BY THE PARTIES**

16 47. Since March 2020, the Parties have negotiated in good faith on numerous policy and
17 procedure changes and have come to an agreement to address the findings of the investigation, as
18 discussed *supra*. The District has begun to make changes to its policies, procedures, and
19 practices, and is in the process of implementing several terms agreed upon by the Parties.

20 48. Plaintiff now seeks an order requiring the District to implement the agreed-upon
21 reforms and respectfully requests that the Court enter Judgment as set forth in the proposed
22 Stipulated Judgment.

23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**

25 **(Failure to Respond to Complaints of Retaliation and Discrimination and Provide a Legally**
26 **Compliant Response Process in Violation of Education Code sections 200 et seq. and 33315)**

27 49. Plaintiff realleges all paragraphs set forth above and incorporates them by reference
28 as though they were fully set forth in this cause of action.

1 50. The right to education is a fundamental right in California. (*Serrano v. Priest* (1971)
2 5 Cal.3d 584, 608-609, 616-617.)

3 51. Education Code section 220 prohibits discrimination on the basis of protected
4 characteristics, such as national origin, ethnicity, and immigration status, in state-funded
5 programs and activities and retaliation for advocacy to protect rights under any anti-
6 discrimination statute or the right to access education. Schools districts are responsible for the
7 conduct of employees acting in the scope of their duties.

8 52. When a school district receives notice of an allegation of potential discrimination,
9 harassment, or retaliation, Education Code section 33315 requires the District to investigate and
10 provide a timely and effective response to end the discrimination, harassment, or retaliation,
11 prevent its recurrence, and remedy the effects using the Uniform Complaint Procedures.

12 53. The Uniform Complaint Procedures is the state's uniform process for investigating
13 and resolving such reports and complaints and requires an independent investigation, an
14 opportunity for the complainant and respondent to present and respond to evidence, a written
15 decision of finding, and a right to appeal to the California Department of Education. (Ed. Code, §
16 33315; Cal. Code Regs., tit. 5, §§ 4610, et seq.)

17 54. The Uniform Complaint Procedures require schools to adopt policies and procedures
18 for investigation and resolution, provide annual notice of such procedures and the contact
19 information for the individual designated to oversee and coordinate compliance, ensure
20 employees are aware of their responsibilities for reporting complaints, provide non-discrimination
21 and retaliation law training, and encourage complainants to file in writing. School districts are
22 also required to establish a system for tracking receipt of oral and written complaints to assess for
23 trends and address compliance issues. (*Ibid.*)

24 55. Defendant has violated Education Code sections 200 et seq. and 33315 by failing to
25 provide a prompt, adequate, and procedurally compliant response to notice of discrimination and
26 retaliation by [REDACTED] and his family and a school-site staff member, by subjecting [REDACTED] and his
27 family and a school-site staff member to retaliation for protected activity, and by failing to have a
28 legally compliant discrimination and retaliation complaint investigation and resolution process.

56. Due to Defendant's violations of Education Code sections 200 et seq. and 33315, and their implementing regulations, injunctive relief and equitable relief, in the form of compensatory education service for [REDACTED], are appropriate remedies.

SECOND CAUSE OF ACTION

**(Student Record Confidentiality Breaches in Violation of
Education Code sections 49076 & 234.7)**

57. Plaintiff realleges all paragraphs set forth above and incorporates them by reference as though they were fully set forth in this cause of action.

58. School districts and their staff members are required to keep student records confidential, and it is generally unlawful to release information in a student's records to a third party without parental consent, a court order, or a subpoena. (Ed. Code, §§ 49076, subd. (a), 234.7, subds. (f)(1), (g).)

59. Because confidential students records were sent to a personal account and other student records were reported missing and not located, Defendant may have violated Education Code sections 49076, subd. (a), 234.7, subds. (f)(1), (g), and injunctive relief is an appropriate remedy.

THIRD CAUSE OF ACTION

(Failure to Appropriately Place, Track, and Evaluate Students in Independent Study in Violation of Education Code sections 51745-51747 and 51749.5.)

60. Plaintiff realleges all paragraphs set forth above and incorporates them by reference as though they were fully set forth in this cause of action.

61. A school district may not claim apportionments for independent study by pupils unless it has adopted policies that include: (1) the number of permissible missed assignments before an evaluation is conducted and a written record of finding made to determine whether it is in the best interests of the pupil to remain in independent study; (2) the duration of the independent study agreement (which shall not be longer than a year); (3) a requirement that independent study is voluntary and a written agreement signed by the parent prior to commencement. (Ed. Code, §§ 51747, 51749.5.)

1 62. A school district must certify annually that independent study courses are of “the
2 same rigor and educational quality as equivalent classroom-based courses.” (Ed. Code, §
3 51749.5, subd. (a)(4)(A).) Districts shall provide appropriate services to enable pupils to
4 complete independent study successfully and to ensure the same access to services and resources
5 in the pupil’s school as are available to other pupils in that school. (Ed. Code, §§ 51745-51746.)

6 63. A student whose academic performance is not at grade level may participate in
7 independent study only if the program is able to provide appropriate support, such as
8 supplemental instruction, tutoring, counseling, and ongoing diagnostic assessments, to enable the
9 student to be successful. (Ed. Code, § 51745.)

10 64. The District is required to report the duration and the number of equivalent daily
11 instructional minutes for each schoolday that a pupil is enrolled, number of equivalent total
12 instructional minutes, and number of course credits for each course. (Ed. Code, § 51749.5.)

13 65. Because the District involuntarily placed one or more students, including ■■■■, in
14 independent study, provided independent study courses that were not of the same rigor and
15 quality as equivalent classroom-based courses, failed to provide appropriate services to one or
16 more students who were below grade level, including ■■■■, to allow successful completion of
17 independent study, did not conduct evaluations and make record of findings to determine whether
18 it was in the best interests of one or more students, including ■■■■, to remain in independent
19 study, and did not report required information about independent study, Defendant violated
20 Education Code sections 51745 through 51747 and 51749.5. Injunctive relief and equitable relief,
21 in the form of compensatory education service for ■■■■, are appropriate remedies.

22 **FOURTH CAUSE OF ACTION**

23 **(Supervised Suspension Classroom in Violation of Education Code sections 48900.8, 48903,**
24 **48911, 48911.1, and 48915.5)**

25 66. Plaintiff realleges all paragraphs set forth above and incorporates them by reference
26 as though they were fully set forth in this cause of action.

27 67. Education Code section 48911.1 requires that students assigned to supervised
28 suspension classrooms be provided a credentialed teacher and access to counseling services.

68. School districts must identify in all appropriate official records and report to the District's board each suspension of a pupil for commission of any Education Code offense. (Ed. Code, §§ 48900.8, 48911, subd. (e).)

69. A suspension for one disciplinary incident may not be for more than five consecutive schooldays, with limited exceptions. (Ed. Code, § 48911, subds. (a), (g).)

70. The total number of days for which a pupil may be suspended shall not exceed 20 schooldays in any school year. For students with a disability, prior to the student being removed from class for more than 10 school days, a manifestation determination meeting shall be held to determine whether the behavior was caused by disability or a failure to implement the student's Individualized Education Program. (Ed. Code, §§ 48903, subd. (a), 48915.5, subds. (a), (b).)

71. Defendant has violated Education Code sections 48900.8, 48903, 48911, 48911.1, and 48915.5, by failing to: (a) accurately record and track supervised suspensions; (b) provide a credentialed teacher for a at least a half year during which supervised suspension was conducted; and (c) provide access to counseling services, and by placing students, including [REDACTED], in supervised suspension for longer than the statewide maximum.

72. Due to Defendant's violation of Education Code sections 48900.8, 48903, 48911, 48911.1 and 48915.5, injunctive relief and equitable relief, in the form of compensatory education service for [REDACTED], are appropriate remedies.

FIFTH CAUSE OF ACTION

(Search and Seizure Absent Reasonable Suspicion in Violation of the Fourth Amendment of the United States Constitution)

73. Plaintiff realleges all paragraphs set forth above and incorporates them by reference as though they were fully set forth in this cause of action.

74. Under the Fourth Amendment, reasonable suspicion is required for school officials to search students or their belongings. (*New Jersey v. T.L.O.* (1985) 469 U.S. 325, 333; *In re William G.* (1985) 40 Cal.3d 550, 557.)

75. A random search by school officials, absent reasonable suspicion, is permissible because of the “special needs” of public schools if: (1) the expectation of privacy is low; (2) the

1 degree of intrusion is minimal; and (3) the intrusion will fulfill an important governmental
2 interest that would otherwise be compromised by requiring suspicion (e.g., addressing a current
3 drug problem at the school). (See *Veronia Sch. Dist. 47J v. Acton* (1995) 515 U.S. 646, 653-660,
4 663.)

5 76. Because school administrators at the Middle School conducted searches absent
6 reasonable suspicion, under circumstances where no special need was demonstrated, and in the
7 absence of governing school district policy or regulation, the District may have violated students'
8 rights under the Fourth Amendment of the United States Constitution.

9 **SIXTH CAUSE OF ACTION**

10 **(Abrogation of the Rights of Students with Disabilities in Violation of Education Code** 11 **sections 56300 et seq.)**

12 77. Plaintiff realleges all paragraphs set forth above and incorporates them by reference
13 as though they were fully set forth in this cause of action.

14 78. Government Code section 11135 prohibits discrimination based on disability in state-
15 funded programs and activities, including prohibiting unlawful denial of full and equal access to
16 the benefits of and unlawful discrimination under any such program or activity receiving funding
17 or financial assistance from the state. Government Code section 11135 incorporates requirements
18 that agencies that receive state funding provide students with disabilities and suspected
19 disabilities with procedural protections, reasonable accommodations, and modifications.

20 79. Education Code section 220 prohibits discrimination based on disability in state-
21 funded programs and activities and requires school districts to provide students with disabilities
22 and suspected disabilities with procedural protections, reasonable accommodations, and
23 modifications.

24 80. School districts are required to actively and systematically seek out all individuals
25 with special needs from birth to 21 years of age, and all children with disabilities shall be
26 identified, located, and assessed. (Ed. Code, §§ 56300-56302.) This systemic method of seeking
27 out students with potential disabilities is called "Child Find."

28 81. Education Code section 220 incorporates similar requirements to ensure non-

1 discrimination.

2 82. Once a student is referred for evaluation, a proposed evaluation plan shall be
3 developed within 15 calendar days. (Ed. Code, § 56043, subd. (a).) The parent must consent to
4 the evaluation plan, and the pupil must be assessed in all areas of suspected disability, including
5 behavior health. (Ed. Code, §§ 56320, subd. (f), 56321.) If the parent disagrees with the
6 evaluation results, the parent has a right to obtain an educational assessment at public expense.
7 (Ed. Code, § 56329(b).)

8 83. Defendant has violated Government Code section 11135, Education Code sections
9 56300 et seq. and 220 by failing to actively and systematically seek out all individuals with
10 exceptional needs who reside in a school district and to identify, locate, and assess such students,
11 after receiving parental consent, in order to plan for an educational program that will meet their
12 unique needs.

13 84. Due to Defendant's violations of Government Code section 11135 and Education
14 Code sections 220 and 56300 et seq. and implementing regulations, injunctive relief is an
15 appropriate remedy.

16 **SIXTH CAUSE OF ACTION**

17 **(Involuntary Placement in a County Community Day School in Violation of Education Code** 18 **section 1981)**

19 85. Plaintiff realleges all paragraphs set forth above and incorporates them by reference
20 as though they were fully set forth in this cause of action.

21 86. Involuntary placement in a County Community Day School is prohibited, unless a
22 student is probation-referred, expelled or recommended for expulsion, or recommended by a
23 Student Attendance Review Board. A parent has a right to object to an involuntary transfer for
24 statutorily provided reasons, such as lack of transportation. A student may be transferred to a
25 County Community Day School upon a parent's enrollment request with district approval and the
26 right to return. (Ed. Code, § 1981.)

27 87. Because Defendant involuntarily transferred one or more students to a County
28 Community Day School for reasons that are not permitted under state law and recorded one or

1 more involuntary transfers as “moved,” Defendant may have violated Education Code section
2 1981.

3 88. Due to Defendant’s violation of Education Code section 1981, injunctive relief is an
4 appropriate remedy.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff respectfully prays for the Court to enter judgment as follows:

7 89. For the Court to issue an order enjoining Defendant from engaging in the unlawful
8 practices challenged in this Complaint, requiring Defendant to implement the injunctive and
9 equitable relief provisions as set forth in the proposed Stipulated Judgment, and entering final
10 judgment;

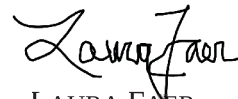
11 90. For the Court to exercise, pursuant to the terms of the Stipulated Judgment,
12 continuing jurisdiction over this action to ensure that Defendant complies with the judgment as
13 set forth in the proposed Stipulated Judgment; and

14 91. For such other and further relief as the Court deems just and proper.

15 Dated: July 22, 2020

16 Respectfully Submitted,

17 XAVIER BECERRA
18 Attorney General of California
19 MICHAEL L. NEWMAN
20 Senior Assistant Attorney General
21 SARAH E. BELTON
22 Supervising Deputy Attorney General

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24 LAURA FAER
25 Deputy Attorney General
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