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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF DEL NORTE**

11 OLIVIA R., a minor by and through her Guardian  
ad Litem MELONY LENOVER, MONICA C., a  
12 minor by and through her Guardian ad Litem  
LISA FINTEL, CALEB W., a minor by and  
13 through his Guardian ad Litem GLORIA  
SANCHEZ, JONAH B., by and through his  
14 Guardian ad Litem JENNIFER GABALL, RAJ  
K., a minor by and through his Guardian ad Litem  
15 DANIEL MCQUILLEN, and SHAWN T., a  
minor by and through his Guardian ad Litem  
16 LINDA VANG,

17 Plaintiffs,

18 v.

19 STATE OF CALIFORNIA; TONY  
THURMOND, in his official capacity as STATE  
20 SUPERINTENDENT OF PUBLIC  
INSTRUCTION; STATE BOARD OF  
21 EDUCATION; CALIFORNIA DEPARTMENT  
OF EDUCATION; and DOES 1-100,  
22 INCLUSIVE,

23 Defendants.

Case No CV 231304

UNLIMITED JURISDICTION

**PLAINTIFFS' DECLARATIONS IN  
SUPPORT OF PLAINTIFFS' REPLY  
BRIEF AND PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

Date: February 13, 2024  
Time: 9:30 a.m.  
Dept: Courtroom 4  
Judge: The Honorable William H.  
Follett

[Filed concurrently herewith: Plaintiffs'  
Reply Brief ISO Motion for Preliminary  
Injunction; Plaintiffs' Responses to  
Defendants' Objections to Plaintiffs'  
Evidence; and Plaintiffs' Objections to  
Defendants' Evidence Offered]

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1                                   **EXPERT DECLARATION OF DR. JAIME HERNANDEZ**

2           I, Jaime Hernandez, Ed.D., declare as follows:

3           1.       I make this declaration based on my knowledge of Federal and State Special  
4 Education Laws and Regulations, my experience as an educator and court monitor, and my  
5 review of all the filings in support of and in opposition to Plaintiffs’ Motion for Preliminary  
6 Injunction.

7           2.       If called to testify, I would and could testify competently as to the facts described  
8 within this declaration.

9                                   **PERSONAL AND PROFESSIONAL BACKGROUND**

10          3.       I have over 25 years professional experience in education and have worked as a  
11 court monitor, general and special education teacher, school psychologist, consultant, advocate,  
12 and adjunct professor. I received a doctorate in educational leadership from the University of  
13 Southern California in 2005. I have a master’s degree in teaching from Azusa Pacific University,  
14 a master’s degree in counseling with an emphasis on school psychology from California State  
15 University, Los Angeles, and a bachelor’s in psychology from the University of Southern  
16 California. I am certified with a Pupil Personnel Credential in School Psychology. My  
17 curriculum vitae is attached as Exhibit A.

18          4.       For 15 years I served as the research director for the Office of the Independent  
19 Monitor (“OIM”), the court appointed entity charged with overseeing the *Chanda Smith*  
20 *Modified Consent Decree (MCD) v. Los Angeles Unified School District (LAUSD)*. In this  
21 capacity I was responsible for developing monitoring systems and monitoring 18 data-based  
22 compliance and performance outcomes, the development and implementation of two large data  
23 systems, and the program accessibility requirements of Title II of the Americans with Disabilities  
24 Act (Title II) for the second largest school district in the nation with more than 80,000 students  
25 with disabilities (“SWDs”) enrolled at approximately 1,000 schools.

26          5.       As the research director for the OIM, I designed and carried out a range of data  
27 collection activities to identify root causes of systemic problems that contributed to  
28 noncompliance and poor educational outcomes for SWDs. Two outcomes dealt with similar

1 problems alleged in Plaintiffs' Complaint for Declaratory and Injunctive Relief and established  
2 by the factual record in support of Plaintiffs' Motion for Preliminary Injunction. The first was  
3 Outcome 13 – Service Provision, which required the LAUSD to improve their service delivery  
4 system to ensure SWDs received their special education services. The second was Outcome 16 –  
5 Qualified Providers, which aimed to increase the number of highly qualified special education  
6 teachers and reduce the disparity between highly qualified general education teachers.

7         6.       As court monitor, I studied these issues and the effectiveness of numerous  
8 interventions designed to increase providers and provision of special education services. This  
9 included working with researchers from the American Institutes for Research (“AIR”) for over  
10 10 years conducting research such as focus groups and surveys of providers and central office  
11 administrators, as well as auditing the service delivery system including provider logs, to better  
12 understand the root causes of the problem.

13         7.       I have worked with many notable researchers, scholars, and consultants on issues  
14 related to disproportionality, noncompliance with special education laws and regulations,  
15 provision of special education services and the service delivery system, placement in the least  
16 restrictive environment, and have authored many reports as part of the oversight duties of the  
17 OIM. I have also been published in a peer-reviewed journal regarding the systemic interventions  
18 used as part of the Modified Consent Decree (“MCD”).

19         8.       As a consultant I have investigated and examined many systemic issues that  
20 impact the special education delivery system and compliance with special education laws and  
21 regulations. Recently, I investigated various compliance complaints to examine systemic issues  
22 that contribute to racial and disability related disparities in areas including but not limited to,  
23 exclusionary discipline, special education identification (in general and specific categories),  
24 placement in more restrictive settings, restraints, and law enforcement referrals. I am currently a  
25 consultant/expert on several cases regarding systemic issues that result in the disproportionate  
26 overrepresentation of SWDs and Black SWDs in various areas.

27         9.       I have also worked in a district under state receivership related to financial  
28 mismanagement (FCMAT) where the state administrator charged me with investigating the use

1 of private non-public agency behavioral programs including teachers and aides. This also  
2 enabled me to compare and better understand the effectiveness of third-party oversight structures  
3 such as court oversight and state receivership.

4 **ANALYSIS OF THE STATE AND NATION-WIDE STAFFING SHORTAGE**  
5 **PROBLEM**

6 10. The staffing shortages across California and the nation are undeniable but not a  
7 new phenomenon. The complexities of the problems created by such shortages cannot be  
8 minimized and do not resolve themselves by simply adding new staff. The following analysis of  
9 the problem and potential solutions is offered to provide a basis for my conclusions regarding the  
10 factual record in this case.

11 11. The heart of the staffing shortage problem and solution is a resource constraint  
12 issue. The shortage of qualified special education and related service providers such as school  
13 psychologists, behavioral aides, and speech therapists, is real and impacted by circumstances that  
14 may be outside a district's control. For example, districts that offer competitive pay, good  
15 working conditions such as assignments with reasonable caseloads and workloads, as well as  
16 positive administrative support and minimal bureaucratic tasks not related to the direct provision  
17 of services, will be desirable to potential hires. Geography also plays a role as many  
18 professionals are willing to relocate for access to good schools, areas of entertainment and  
19 quality of life factors.

20 12. As noted above, the MCD contained two outcomes that aimed to increase the  
21 number of qualified providers including teachers, related service providers such as school  
22 psychologists, speech and language therapists, and behavioral support staff including BCBAs  
23 and aides, in order to improve service delivery rates and systemic compliance.

24 13. To summarize some of the lessons learned, the effective recruitment and retention  
25 of special education service providers requires school districts to navigate variables that are  
26 outside their control, while simultaneously addressing systemic weaknesses within the  
27 organization's control that result in providers leaving for a variety of reasons including choosing  
28 employment at competing districts.

1 14. Despite constant monitoring and various efforts carried out by the LAUSD over  
2 the 15 years of the MCD, the two outcomes were never met due to the complexities of the  
3 problem and variables required to recruit and retain enough qualified providers as well as those  
4 not considered highly qualified such as special education teachers on an emergency credential  
5 and paraprofessionals. Moreover, by the end of the MCD, despite all these efforts and resources  
6 allocated to improve service delivery, more than 10,214 (8.85%) SWDs received less than 70%  
7 of their services, 6,239 (5.4%) received less than 50% of their services, while 3,540 (3.0%)  
8 received no services over the course of the 2018-19 school year. This shows how difficult these  
9 staffing challenges can be even with court oversight and access to resources.

10 15. State and national teacher shortages are factors contributing to the lack of  
11 qualified providers but can be mitigated by a district's commitment to additional or  
12 supplementary resources necessary to recruit and hire new personnel. For example, at the  
13 beginning of the MCD (2003), 70.6% of special education teachers had a special education  
14 credential and thus were considered highly qualified. The Los Angeles Unified School District  
15 ("LAUSD") showed the most growth in recruiting qualified staff between the 2007-08 (87.9%)  
16 and 2013-14 (96.4%) school years, which coincided with economic recessions that required  
17 neighboring districts to lay off or freeze hiring of new providers. Because of court oversight, the  
18 LAUSD was not affected by these shortages during the economic downturn experienced  
19 nationally but rather seized the opportunity to attract and employ qualified special education  
20 teachers and providers from other school districts because it committed the resources to hire  
21 providers.

22 16. Some recruitment practices that were effective included, but not limited to,  
23 national and state recruitment efforts including attending out-of-state recruitment fairs,  
24 partnerships with all local universities, recalling retired teachers and providers, the creation of a  
25 new salary schedule for speech therapists who had previously been on the teacher's salary  
26 schedules, and other financial incentives such as relocation costs. The LAUSD also had  
27 committed to establishing a career ladder that incentivized paraprofessionals to become special  
28

1 education teachers through scholarships and stipends, which was also extended to high school  
2 students who wished to pursue a career in education.

3 17. Additionally, the LAUSD used alternative methods for providing student services  
4 such as using speech and language pathologist assistants (“SLPAs”) and telehealth providers.  
5 Although not ideal for meeting the needs of severely impacted students, the use of SLPAs is a  
6 cost-effective solution that helps reduce the workload of speech and language therapists.  
7 Telehealth providers enable remote workers to provide services in areas without the need for  
8 relocation.

9 18. As noted earlier, this issue is first and foremost a resource constraint problem that  
10 can exceed the current and potential capacity of a district. The use of third-party providers is  
11 necessary since this expands the pool of available providers that have already been recruited and  
12 trained by their respective agencies. In addition, these agencies are responsible for the  
13 supervision of their employees, minimizing the impact of this role on district administrators. For  
14 some services, the demand will often exhaust the existing resources leaving the only short-term  
15 solution to contract these services out.

16 19. The LAUSD committed to partnering with private agency providers for related  
17 service providers, primarily speech and language pathologists and especially behavioral aides.  
18 Despite this commitment and allocation of resources, these efforts were still not enough to meet  
19 the needs of students’ IEPs. However, without the procurement of these third-party providers, the  
20 LAUSD would have had more vacancies and fewer students receiving their services, especially  
21 services that are consumed by one or a few students, such as behavioral aides who serve five to  
22 ten students compared to a speech therapist who can serve 50 or more students. Without the use  
23 of third party Non-Public Agency (“NPA”) behavioral aide providers, the LAUSD would not  
24 have had the capacity to recruit, hire, and train all of these providers in an effective and timely  
25 manner.

26 20. However, effective recruitment is only one part of the solution. Despite these  
27 increases, the number of qualified teachers decreased annually thereafter, and five years later  
28

1 when the MCD concluded, the number of qualified teachers had fallen to a level below the 88%  
2 target (84.9%).

3         21.     The regression in this outcome was not for a lack of trying to continually recruit  
4 new hires but rather because the LAUSD failed to focus on and address the retention of its  
5 qualified providers. Retaining qualified providers can be challenged by events outside a district's  
6 control such as retirement or family issues such as relocations, illness, or leaving the workforce  
7 for childcare. In addition, the rapid growth of independent charter schools also contributed to the  
8 loss of qualified teachers as some employees and new teachers chose to work at these schools.

9         22.     As part of our monitoring efforts, I conducted several large-scale surveys of all  
10 service providers and teachers, as well as focus groups of providers and administrators, and  
11 found that many employees viewed structural and systemic problems as impediments for  
12 providing services that in addition were exacerbating their feelings of burnout. Some of these  
13 factors included, but are not limited to, administrators basing staffing decisions on caseloads  
14 versus workload, needless bureaucratic tasks, punitive working environments, and difficulties  
15 created by inadequate and ineffective systems.

16         23.     The retention of NPA providers was also an issue, as many contracted speech  
17 therapists left due to higher caseloads than LAUSD employees, which skirted union agreements  
18 and were justified with higher pay for these NPA providers. In addition, the use of third-party  
19 NPA behavioral aides also presented some limitations, due to the contractual limitations agreed  
20 to by the LAUSD, that limited certain responsibilities to NPA providers such as assisting  
21 students with basic needs such as toileting, thereby increasing these responsibilities to other  
22 LAUSD employees.

23         24.     Another factor that contributes to staffing shortages is the numerous leaves that  
24 occur each year. Teachers and providers may exercise extended leaves of absence for reasons  
25 such as maternity or illness that handcuff a district from hiring additional staff. In the LAUSD,  
26 these schools remained uncovered for an extended period with the LAUSD requiring the  
27 provider to make up missed services through compensatory services upon their return. This  
28



1 practice resulted in effectively punishing staff for exercising their right to a leave of absence  
2 while abdicating the district's responsibility to provide these services.

3 25. Staffing shortages and leaves of absences are not new, and these impacts can be  
4 proactively anticipated and planned and budgeted for by school districts. As part of MCD, the  
5 LAUSD attempted to create substitute pools for related service providers and aides. While these  
6 efforts had mixed results, it is an important part of ensuring service provision with minimal  
7 impact on compliance with students' IEPs. These substitute pools could rely on retirees, NPA  
8 agencies, or internal floating staff that fill in as needed.

9 26. Adequate staffing of trained professionals and paraprofessionals is the foundation  
10 of a district's service delivery system and has wide implications on systemic compliance with  
11 special education laws and regulations. Limited staff and unqualified or undertrained providers  
12 impact the following non-exhaustive list: compliance with assessment timelines, service  
13 provision including behavioral supports, access to the general education curriculum and  
14 placement in the Least Restrictive Environment, progress toward Individualized Education  
15 Program ("IEP") goals and performance on statewide assessments, increase in exclusionary  
16 discipline, and the use of restraints and law enforcement referrals. These impacts most often  
17 disproportionately impact students with disabilities compared to their nondisabled peers.

18 27. Lastly, the effective management and allocation of existing resources must also be  
19 examined to ensure available providers are being directed to maximize service delivery. In  
20 LAUSD, many schools lacked providers while a sizable number of qualified professionals  
21 supported site-level staff from local district or central office positions. Although training and  
22 supervision duties are important, districts must prioritize their obligations to ensuring students  
23 are provided the supplementary supports and services on their IEPs.

#### 24 **BASIS FOR OPINIONS**

25 28. To make this declaration, I reviewed materials provided and referenced herein,  
26 documents such as: the Plaintiffs' Complaint for Declaratory and Injunctive Relief, Plaintiffs' Ex  
27 Parte Application for Order to Show Cause Why Preliminary Injunction Should not be Issued  
28 and Declarations in Support Thereof, Plaintiffs' Supplemental Request for Judicial Notice in

1 Support Motion for Preliminary Injunction and Declaration in Support Thereof, Declarations in  
2 Support of Defendants' Opposition to Plaintiffs' Request for Preliminary Injunction of Shiyloh  
3 Duncan-Becerril, Ana Marsh, and Mary Nicely, and Reply Declarations in Support of Plaintiffs'  
4 Reply Brief.

5 **OPINIONS**

6 29. This discussion offers my opinions relating to four salient areas of the factual  
7 record: 1) the staffing shortages of various service providers in the Del Norte County Unified  
8 School District ("District") indicate systemic constraints; 2) the impact of these staffing  
9 shortages on the learning of SWDs and their ability to access the general education curriculum  
10 and least restrictive environments; 3) the impact of staffing shortages on SWDs' fundamental  
11 constitutional right to an education that meets statewide standards; and 4) the resolution to the  
12 numerous problems associated with the staffing shortages require higher levels of intervention  
13 than the California Department of Education's ("CDE") Compliance and Improvement  
14 Monitoring ("CIM") Process affords.

15 **STAFFING SHORTAGES OF VARIOUS SERVICE PROVIDERS ARE INDICATIVE**  
16 **OF SYSTEMIC CONSTRAINTS**

17 30. The factual record establishes the staffing shortages of special education service  
18 providers including but not limited to special education teachers, behavioral aides, board  
19 certified behavior analysts ("BCBAs"), speech and language therapists, physical therapist that  
20 are systemic in nature.

21 31. The staffing shortages described by various staff and parents reflect systemic  
22 problems and do not appear to be idiosyncratic, random, or limited to specific schools or  
23 provider groups. District staffs' declarations reported staffing shortages across various schools  
24 affecting several classes at these schools.

25 32. These same staff described how these staffing shortages impact the availability of  
26 providers to serve students in their classrooms, as well the impact on their caseloads and ability  
27 to carry out services as specified on students' IEPs. Shortages contribute to caseloads above and  
28

1 beyond state and contractual norms that impact compliance with service provision as the quality  
2 of the service. For example, at Hamilton Elementary School one special education resource  
3 teacher has a caseload of 50 students, much higher than the contractual norm set at 28 students,  
4 resulting in limiting their ability to provide direct academic support to these students.

5 33. The CDE has designated the District as “Needs Assistance” in its targeted  
6 monitoring and support category and level 3 tier for differentiated monitoring under its  
7 Compliance and Improvement Monitoring framework. This designation is indicative of the  
8 CDE’s acknowledgement that the District’s staffing shortages are systemic in nature.

9 34. As part of the CIM process, the District identified issues with processes in its  
10 personnel commission as a root cause of hiring difficulties contributing to these shortages. The  
11 personnel commission represents the structural component of the District to address these  
12 staffing shortages through the recruitment and hiring of new staff, confirming the structural and  
13 systemic nature of the problem.

14 35. Various levels of District staff including the special education director, site  
15 administrators, and classroom teachers engage in the informal removal of SWDs due to the lack  
16 of providers. These practices do not appear to be idiosyncratic and reflect a common practice in  
17 response to these staffing shortages. The fact that teachers feel empowered to tell families to  
18 have their students not attend school because of the District’s failure to have sufficient staff is  
19 indicative of a generally accepted practice with no fear of repercussions from administrators.

20 36. The use of compensatory services to mitigate the lack of service provision and  
21 inability to offer a better solution further perpetuates the District’s resource constraint problems.  
22 The delivery of compensatory services by District staff further exacerbates the constraints caused  
23 by these staffing shortages. Staff appear to have high caseloads and workloads that prevent them  
24 from providing daily services and instruction. Requiring the same staff to provide compensatory  
25 services is not feasible or realistic.

1                   **STAFFING SHORTAGES IMPACT THE LEARNING OF SWDS AND THEIR**  
2                   **ABILITY TO ACCESS THE GENERAL EDUCATION CURRICULUM AND**  
3                   **LEAST RESTRICTIVE ENVIRONMENT (LRE)**

4           37.     The factual record establishes that the lack of service providers has numerous  
5 impacts on the learning and participation of SWDs in their classrooms and the least restrictive  
6 environment. School staff deny students access to school and their classrooms when their  
7 behavioral aides are not available or assigned. The record establishes staffing shortages have  
8 resulted in learning loss and regression of academic, communication, social, behavioral, and  
9 adaptive skills for SWDs.

10          38.     Various declarations of District providers and parents describe staffing shortages  
11 that impact the provision of special education services, including behavioral supports, that have a  
12 direct impact on their ability to be in school (students are told to stay home), receive the services  
13 in their IEPs, and access instruction and the general education curriculum in the least restrictive  
14 environment. The lack of staff, in particular trained behavioral aides, requires teachers and  
15 related service providers to address these needs limiting their ability to work on IEP goals and  
16 deliver instruction. Several teachers and related service providers reported only being able to  
17 provide a fraction of their daily lessons and service time due to the constraints placed upon them  
18 because of these staffing shortages. This learning loss is the equivalent of reducing students'  
19 school days.

20          39.     Staff also note that the high caseloads limit the quality of their services and must  
21 serve students in larger groups and/or for less time than prescribed. Staff and parents report  
22 observing regression in the communication, behavioral, social, and academic skills of students  
23 because of the lack of services.

24          40.     Staff describe the impact of such shortages as resulting in an increase in students'  
25 maladaptive disability-related behaviors and misconduct resulting in disciplinary procedures and  
26 use of restraints. This practice is troubling since the failure to provide students with the services  
27 necessary to implement their IEPs results in punitive and traumatic measures that are  
28

1 preventable. In essence, students are being punished for disability related behaviors, which is a  
2 discriminatory practice.

3 41. The District lacks viable solutions to ensure service provision and make up  
4 missed services, further perpetuates the harmful effects on learning. Parents describe  
5 compensatory services that are offered during the instructional day, making it difficult to  
6 program and implement, and limits providers from providing direct non-compensatory services  
7 to students. For services such as behavioral intervention implementation delivered by aides, it is  
8 very difficult to make up these services that are most effective at the time the student is attending  
9 class. Furthermore, the Defendants' evidence indicates compensatory services are offered only to  
10 students whose parents have filed a complaint to the CDE or as part of the IEP process.

11 42. The learning loss caused by these shortages have variable impact on SWDs, with  
12 some students likely to be more impacted than others and carries implications on the long lasting  
13 developmental and learning impact for students. For example, younger students who do not  
14 receive special education services for extended period of times miss the opportunity to remediate  
15 the impact of their disability at a time when the achievement gap is smaller. The extended loss of  
16 learning will only widen the achievement gap for these students and could have serious  
17 implications over the course of their academic careers, such as the failure to graduate with a  
18 diploma. Similarly, students with disabilities such as autism and dyslexia benefit from early  
19 intervention and continuous services across their developmental years. Research has shown that  
20 services are most effective during the early developmental periods when the child's brain  
21 requires the necessary experiences provided by these services to form and strengthen neural  
22 connections to mitigate the impact of their disabilities that place them at risk for poor outcomes.  
23 Students with moderate to severe disabilities may not acquire the necessary skills to promote  
24 independent communication, social, behavioral and adaptive skills. In addition, these students  
25 require repeated practice to generalize these skills and without a consistent delivery of services  
26 they are likely to experience regression and at rates much faster than less impacted SWDs.

1                   **THE IMPACT OF STAFFING SHORTAGES LIMITS SWDS' ACCESS TO**  
2                   **THEIR FUNDAMENTAL CONSTITUTIONAL RIGHT TO AN EDUCATION**  
3                   **THAT MEETS STATEWIDE STANDARDS**

4           43.     The complaint identifies two statewide standards that make up the fundamental  
5 constitutional right afforded to all students as defined by the State's constitution: access to a  
6 school year of 180 school days and the provision of a free and appropriate education (FAPE).

7           44.     The District's staffing shortages denies students with disabilities their  
8 fundamental constitutional rights as compared to their nondisabled peers enrolled in the District,  
9 as well as compared to SWDs enrolled in districts statewide.

10          45.     District staff report these shortages impact their ability to deliver daily instruction  
11 as well as special education services, noting that they can only get through a fraction of the daily  
12 lessons, with one teacher reporting only being able to provide 10% of their planned instruction  
13 daily. This learning loss is the equivalent of reducing students' school days. The degree of this  
14 impact is not common in districts I have examined, and the direct admission of these individuals  
15 is indicative of high levels of concerns by staff for failing to provide an adequate instructional  
16 program.

17          46.     Although staffing shortages are a reality statewide and nationally, the systemic  
18 nature of the problem that primarily impacts SWDs in the District appears to be more severe in  
19 nature than other districts. Moreover, the ineffective responses to these shortages such as the  
20 high use of informal removals is not a common practice deployed by other districts contending  
21 with staffing shortages. In all my years examining service provision as a court monitor and  
22 consultant, I have never heard of such widespread or systemic use of these discriminatory  
23 practices. The fact that teachers, site administrators and even the special education director  
24 encourage students to stay home is an anomaly and indicative of a system that lacks the  
25 necessary safeguards to prevent discrimination on the basis of disability.

26          47.     The practice of informal removals due to staffing shortages appears to be used for  
27 extended periods of time, limiting SWDs subjected to such removals from accessing the full  
28

1 school calendar year, compared to their nondisabled peers enrolled in the District, as well as their  
2 disabled counterparts across the State.

3 48. These removals also have implications on the District's obligation to provide  
4 FAPE consistent with California Education Code section 56000 *et seq.* Staffing shortages impact  
5 the District's ability to provide special education services and implement students' IEPs, which  
6 deprives students of access to literacy instruction, mathematics, socio-emotional skills, and  
7 functional skills all necessary for independent living and making grade-to-grade progress.  
8 Moreover, these removals may constitute changes in placements made without parental consent  
9 and/or through the IEP process. These removals constitute informal disciplinary removals  
10 because they are in response to a student's disability-related behavior and circumvent the  
11 procedural safeguard protections afforded by special education law.

12 49. The lack of staff also has further implications on the provision of FAPE and  
13 systemic compliance with special education laws and regulations. In addition to the impact on  
14 compliance with service provision and discipline procedures, these shortages will have a direct  
15 impact on other areas of compliance such as assessment and IEP timelines, performance on  
16 statewide assessments and graduation, access to the LRE and general education setting.

17 **THE RESOLUTION TO THE NUMEROUS PROBLEMS ASSOCIATED WITH**  
18 **THE STAFFING SHORTAGES REQUIRE HIGHER LEVELS OF**  
19 **INTERVENTION THAN THE CDE'S COMPLIANCE AND IMPROVEMENT**  
20 **MONITORING PROCESS AFFORDS**

21 50. The factual record establishes a problem that requires intervention and relief  
22 beyond what the CDE's CIM process can provide. The CDE claims that its response to these  
23 complaints is adequate to ensure the District is fully staffed by 2023-2024. This assertion is short  
24 sighted and fails to recognize the complexities and challenges in recruiting and hiring qualified  
25 staff, particularly in rural areas that have limited availability to talent pools such as universities  
26 or even neighboring school districts.

27 51. In my opinion, this issue is very complex and requires an infusion of resources to  
28 attract qualified professionals and individuals who can be trained to serve as paraprofessional

1 behavioral aides. As noted earlier, I oversaw a consent decree in LAUSD that included two  
2 outcomes aimed at improving staffing shortages and service provision, which were never met in  
3 15 years, even while being under court oversight and exhausting many recruiting efforts. This  
4 was extremely challenging even for a district with a high level of resources.

5 52. Context matters. The rural nature of the District may pose even greater challenges  
6 in recruiting more staff than suburban or urban districts that are larger and have access to more  
7 resources. It is my opinion that without hands-on external third-party oversight, and  
8 supplemental funds and assistance by the CDE, these staffing challenges will not improve. This  
9 means that learning loss and discriminatory practices will continue to negatively impact SWDs  
10 and further marginalize these students limiting the future educational opportunities.

11 53. Third-party oversight is necessary as the deep rooted structural and systemic  
12 issues of the District cannot be reasonably remediated internally. The District has identified its  
13 own personnel commission as a root cause of these shortages, schools and staff exercise informal  
14 removals that blatantly discriminate against students for their disability-related behaviors, and  
15 the District proposes unrealistic solutions by offering compensatory services that relies on its  
16 already limited and diminished resources. These actions are indicative of a District that fails to  
17 understand the complexities of staffing shortages and how to solve them.

18 54. The CDE provided descriptions of the general programs available to all districts  
19 to help recruit qualified staff, as well as the monitoring and assistance programs designed to  
20 remediate these systemic problems. The CDE does not provide any specific proposed  
21 interventions to assist the District, rather it continues to rely on the failing system to remedy  
22 itself. The result of these efforts is predictable, and intervention cannot be delayed further. In my  
23 opinion, even with a mandatory injunction, the solution will take time to change the tide of the  
24 failing service delivery model of the District.

25 55. The CDE claims the District has yet to seek technical assistance as part of the  
26 CIM process, which shows vulnerabilities of this model that rely on underperforming Districts to  
27 engage and hold itself accountable, when they clearly have not. Third-party oversight would  
28 provide a more direct level of support and accountability that the CIM process lacks.



1           56.     The CIM process is too narrowly focus to addresses recruitment and hiring  
2 challenges and not the multitude of performance and compliance problems that have resulted  
3 because of these staffing shortages. This limited scope is insufficient for the harms perpetuated  
4 due to the failure to have adequate staffing levels and qualified personnel.

5           57.     In my opinion, the number of vacancies required to ensure equitable access to  
6 special education services is an underestimation. The declarations focus on vacancies and do not  
7 factor in personnel on leaves that inevitably occur each year. In addition, the analysis of vacant  
8 positions does not appear to align with the high level of staffing vacancies described by staff.  
9 The analysis of vacant positions notes that 23 Behavior Interventionist positions are needed,  
10 which appears to undercount the need reported by two staff members. For example, one staff  
11 member establishes that her class of eight students requires two “floating” aides, one student  
12 requires two-to-one aides, and six students require one-to-one aides, for a total of 10 aides and  
13 one teacher for a class of eight students. The teacher reports only having one “floating” aide and  
14 that those students with a two-to-one and one-to-one aide have “missed most or all of the school  
15 days” due to these shortages. Another teacher who teaches a similar class of eight students  
16 describes a similar unmet need of two “floating” aides, one two-to-one aide, and three one-to-one  
17 aides. These two classes alone require 17 aides and most do not appear to be consistently  
18 available. Even if half of these aides have been assigned, this would mean that 8 to 9 of the  
19 vacant positions would be filled by the 23 new hires proposed. This would leave only 14 to 15  
20 new hire aides for the rest of the schools and classrooms that need aides.

21           58.     The high level of aides in these classes also raises concerns regarding the overall  
22 adequacy of the districtwide and school based behavioral supports and behavior management  
23 training available to staff. This is indicative of a capacity problem that extends beyond having  
24 sufficient staff. Moreover, this may also be a cultural problem within the District that overly  
25 prescribes individual aides to students with specific disabilities and placements. The use of  
26 informal removals and statements made by several teachers that students cannot attend school  
27 without their one-to-one aides, is indicative of deep-rooted cultural deficit model thinking.



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# EXHIBIT A

# Jaime E. Hernandez, Ed.D.

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## Education

<b>Ed.D. in Educational Leadership</b> University of Southern California – Los Angeles, CA	2005
<b>M.S. in Counseling, School Psychology/Pupil Personnel Services Credential</b> California State University, Los Angeles – Los Angeles, CA	2002
<b>M.Ed. in Teaching/Multiple Subject Teaching Credential</b> Azusa Pacific University – Azusa, CA	1999
<b>B.S. in Psychology</b> University of Southern California – Los Angeles, CA	1997

## Professional Experience

### Expert/Consultant

*C.B. v. Moreno Valley Unified School District, et al.* May 2023 – November 2023

Case No. EDCV 21-0194 JGB (SPx)

- Provide data analysis and expert report to identify systemic deficiencies that result in the disproportionate use of suspension, physical restraints, and law enforcement referrals for students with disabilities and Black students with disabilities.

*Disability Rights California's Various Compliance Complaints against the Antelope Valley Union High School District* March 2022 - May 2023

- Design and conduct an investigation regarding various compliance complaints including the disproportionate identification and placement of Black students with disabilities, the disproportionate discipline (out-of-school, in-school suspension, expulsion) of Black students and Black students with disabilities, the overuse of restraints and arrests of Black students and Black students with disabilities.

*Black Parallel School Board et al., v. Sacramento Unified School District,* February - December 2022  
Case No. 2:19-cv-01768-TLN-KJN

- Provide expert guidance on issues related to the disproportionate identification and segregation of Black students in special education, disproportionate discipline of Black students and Black students with disabilities, inequitable access to general education and special education supports and services for Black students and Black students with disabilities, performance based outcome development, and compliance monitoring.

*J.R., et al. v. Oxnard School District, et al., Case No. 2:17-cv-04304-JAK-FFM* August 2022 - Present

- Provide expert consultation on systemic shortcomings related to Child Find practices and Multi-Tiered Systems of Support (MTSS), and issues related to the appropriate referral and identification of English language learners.

*Mark S. et al. v. State of California et al., Case No. MSN21-1755* October 2022 - Present

- Consultation and analysis of data regarding the disproportionate identification, placement and school discipline of students with disabilities and English Learners (EL). Examine the CDE's proposed monitoring systems associated with the *Emma C.* consent decree, and the state's capacity to monitor LEAs and investigate complaints.

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## Advocate

Vanaman German LLP - Los Angeles

2022 - Present

- Work with families to navigate the IEP process, secure special education supports and services, and ensure meaningful participation as members of the IEP team.

CASE Advocates – Orange County and Inland Empire

2021 - 2022

- Work with families to navigate the IEP process, secure special education supports and services, and ensure meaningful participation as members of the IEP team.

## Research Director

2003 - 2019

Office of the Independent Monitor – Los Angeles, CA

- Oversaw the Los Angeles Unified School District's (LAUSD) compliance with the 18 outcomes of the *Modified Consent Decree (MCD)*, and federal and state special education laws and regulations
- Developed and coordinated monitoring systems through research and program evaluation activities to provide oversight of more than 80k students with disabilities at over 1,000 schools
- Led negotiations and renegotiations of compliance and performance outcomes
- Developed a substantial compliance framework that guided the District's disengagement from the MCD and court oversight
- Drafted annual reports and correspondence for the Independent Monitor
- Oversaw the development and implementation of two large data systems, the My Integrated Student Information System (MiSiS), and Welligent special education data system
- Examined and monitored performance and progress in areas such as: performance on state-wide assessments (CST), parent participation at IEP meetings, timeliness of initial evaluations, time spent in the Least Restrictive Environment, suspensions, graduation rates, due process filings, and provision of special education services
- Led the evaluation of the district's referral and identification processes to identify factors (root causes) contributing to the disproportionate identification of African-American students as emotionally disturbed. Developed an intervention that resulted in systemic changes to the referral, identification and placement processes, as well as a reduction in the overrepresentation of African-American students in the ED category and placements in non-public schools.
- Conducted an investigation regarding the authority of IEP teams and the predetermination of offers of a Free and Appropriate Education (FAPE). Established corrective actions to improve IEP practices
- Conducted two audits of the District's complaint management system to determine if parent complaints were appropriately identified as violations and if a corresponding lawful response was provided to ensure noncompliance was addressed
- Conducted studies on the impact of charter and magnet schools on compliance with the MCD and special education law
- Developed and directed the implementation of a two-year district-wide survey of 2,000 parents in collaboration with SRI International and Dr. Beth Harry to measure levels of parent satisfaction with their involvement within the special education process, satisfaction with their children's special education services and awareness of their special education rights
- In collaboration with the American Institute for Research (AIR), conducted longitudinal research and oversight of the service delivery system for more than 80k students with

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disabilities

- Conducted on-going audits and oversight of the District's compliance with Title II of the Americans with Disabilities Act (ADA), and obligations under the Modified Consent Degree to improve program accessibility of school facilities
- Oversaw efforts to improve inclusive practices and time students with disabilities spend in the general education setting, including the reduction of special education centers, and integration of preschool (PALS) programs on general education campuses
- Conducted outreach with parents of students with disabilities, advocates and disability support groups and held semiannual public hearings on the District's compliance with special education laws and the MCD

## **Professional Services Coach and Consultant**

2015 - 2019

Pivot Learning – Oakland, CA

- Provided expert consultation and guidance into proposal development and program design for MTSS- and SPED-based projects with the Houston Independent School District (HISD)
- Conducted HISD staff interviews and a review of data to evaluate ongoing practices and design a plan of action for implementing MTSS
- Provided special education compliance and reform consultation to the state administrator overseeing state receivership in the Inglewood Unified School District (IUSD)
- Conducted an audit of a behavioral programs provided by an external vendor in IUSD

## **Advisory Committee Member - Chair**

2015 - Present

The Cook-Weintraub Memorial Education Fund – Los Angeles, CA

- The Cook-Weintraub Memorial Education Fund supports the improvement of inclusive education for preschool to 12th grade students with disabilities in the Los Angeles Unified School District, through annual grants.

## **Dissertation Committee Member**

2013 - 2014

California State University, Long Beach – Long Beach, CA

- Participated as the external expert on disproportionality, with Dr. Nat Hadsuvadha (Chair) and Dr. Beverly Booker on Dorothy Cotton's doctoral dissertation, titled *The Golden State: Shedding light on the improvement plans of California's TK-12 districts to reduce the disproportionate identification of emotional disturbance*

## **Consultant**

2008 - 2011

San Diego Unified School District – San Diego, CA

- Conducted focus groups with administrators, school psychologists, counselors, and English learner support teachers to gauge the effectiveness of policies and procedures to be implemented to improve the referral and identification practices for culturally and linguistically diverse students in special education
- Conducted a comprehensive audit of the pre-referral, referral, and identification processes to examine the impact of policy and practice on the over-identification of African-American students with emotional disturbance and English learners with learning disabilities and speech and language impairments
- Provided on-going consultation and support for developing policy interventions aimed at improving the pre-referral, referral and identification processes for culturally and

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linguistically diverse students

- Developed six white papers to determine the District's baseline performance on various facets of their special education program. These areas included: student achievement on the statewide assessment program, out-of-school suspension and expulsion, time spent in the least restrictive environment, home school placement, the disproportionate identification of minority students in special education and graduation rate

## **Adjunct Professor**

2007 - 2008

California State University, Dominguez Hills – Carson, CA

- Taught graduate level courses for the College of Education, Teacher Education Division on the assessment of students with mild to moderate and moderate to severe disabilities; and the assessment of pre-school students with disabilities

## **Consultant**

2004 - 2005

New York City Department of Education – New York City, NY

- In collaboration with a team of researchers from the Harvard Graduate School of Education, led by Dr. Thomas Hehir, designed and conducted a large-scale program evaluation to examine the effects of the district's reorganization on the system's special education programs and compliance with the *Jose P.* consent decree

## **Consultant**

2004

Soledad Enrichment Action Charter School – Los Angeles, CA

- Conducted a comprehensive audit of the special education programs of a charter school system with 17 satellite sites serving at-risk adolescents. Provided recommendations to improve compliance with the Los Angeles County Office of Education (LACOE) requirements and state and federal special education law

## **Bilingual School Psychologist**

2001 - 2003

Los Angeles Unified School District – Los Angeles, CA

- Provided bilingual psychological services at two middle schools and an elementary school in large, urban, and diverse communities. Responsibilities included conducting psycho-educational assessments, counseling, consultation, and pre-referral and behavioral interventions. Provided on-site supervision to four school psychologist interns

## **Special Education and General Education Teacher**

1998 - 2001

Los Angeles Unified School District – North Hollywood, CA

- Taught in a special education classroom for students with mild to moderate disabilities in grades three through six
- Taught in a bilingual general education third grade classroom

## **General Education Teacher**

1997 - 1998

Santa Ana Unified School District – Santa Ana, CA

- Taught in a bilingual general education second grade classroom

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## *Reports and Publications*

Hernandez, J. (2023). *Investigation of Various Compliance Complaints Against the Antelope Valley Union High School District*. [https://www.disabilityrightsca.org/system/files/file-attachments/May%202023%20AVUHSD%20Final%20Report\\_Hernandez.pdf](https://www.disabilityrightsca.org/system/files/file-attachments/May%202023%20AVUHSD%20Final%20Report_Hernandez.pdf)

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Hernandez, J., Rostetter, D., and Alleman, J. (2015). *Follow-up Survey of the Impact of MiSiS on Students with Disabilities*. Office of the Independent Monitor.

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Hernandez, J., Weintraub, F.J., and Alleman, J. (2012). *Report of the Findings of Focus Groups to Identify Factors that may be Limiting the Ability to Deliver Services in Accordance with the Individualized Education Programs of Students with Disabilities*. Office of the Independent Monitor



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Hernandez, J., Gamm, S., Alleman, J., and Weintraub, F.J. (2011). Study of Magnet Schools' Compliance with the Modified Consent Decree and the LAUSD Special Education Policies and Procedures. Office of the Independent Monitor. Report reprinted in June 2011 by LRP in SpecialEdConnection.com, EducationDaily.com and EducationDaily.net

Hernandez, J. (2011). *Report of the Findings of Focus Groups on Efforts to Improve the Pre-Referral, Referral and Identification Practices for Culturally and Linguistically Diverse Students in the San Diego Unified School District*. San Diego.

Hernandez, J. (2009). *Study to Examine the Disproportionate Identification of Minority and Linguistically Diverse Students in Special Education in the San Diego Unified School District*. San Diego Unified School District Board of Education.  
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Hernandez, J., Gamm, S., Alleman, J., and Weintraub, F. (2009). *Pilot Study of Charter Schools' Compliance with the Modified Consent Decree and the LAUSD Special Education Policies and Procedures*. Office of the Independent Monitor.

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Hernandez, J. & Alleman, J. (2009). *Study on the Graduation Data of Students with Disabilities in the LAUSD, 2007-2008 School Year*. Office of the Independent Monitor.

Hernandez, J. E., Ramanathan, A. K., Harr, J., and Socias, M. (2008). Study of the effects of an intervention to reduce the disproportionate identification in the category of emotional disturbance in the Los Angeles Unified School District. *Journal of Special Education Leadership*, 21(2), 64-74.

Hernandez, J. E., Harry, B., Newman, L., and Cameto, R. (2008). Survey of Family Involvement in and satisfaction with the Los Angeles Unified School District special education processes. *Journal of Special Education Leadership*, 21(2), 84-93.

Hernandez, J., Socias, M., and Harr, J. (2008). *Study of the sources of the disproportional identification of African-American students as emotionally disturbed in the Los Angeles Unified School District. Year V*. Office of the Independent Monitor.

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Hernandez, J., Socias, M., and Harr, J. (2007). *Study of the sources of the disproportional identification of African-American students as emotionally disturbed in the Los Angeles Unified School District. Year IV*. Office of the Independent Monitor.

Hernandez, J. & Alleman, J. (2006). *Study on the Graduation Data of Students with Disabilities in the LAUSD, 2005-2006 School Year*. Office of the Independent Monitor.

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Newman, L., Cameto, R., and Hernandez, J. (2006). *Family involvement in and satisfaction with LAUSD special education process: Findings from the Office of the Independent Monitor year two parent interviews*. Office of the Independent Monitor.

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Hernandez, J., Ramanathan A., Socias, M., and Harr, J. (2005). *Study of the sources of the disproportional identification of African-American students as emotionally disturbed in the Los Angeles Unified School District*. Year II. Office of the Independent Monitor.

Ramanathan, A., Hernandez, J., Harr, J., and Socias, M. (2005). *Study of the accuracy of computerized individual education plan (IEP) data on the placement of students with disabilities in the least restrictive environment (LRE)*. Office of the Independent Monitor.

Hehir, T., Figueroa, R., Gamm, S., Katzman, L., Gruner, A., Karger, J., and Hernandez, J. (2005). *Comprehensive Management Review and Evaluation of Special Education*. New York City Department of Education.

Ramanathan, A., Alleman, J., and Hernandez, J. (2004). *Study of the sources of the increase in due process filings in the Los Angeles Unified School District from 2000-2004 and a comparative analysis of filing rates in other large school districts*. Office of the Independent Monitor.

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## *Presentations*

Kame'enui, E., Turnbull, R., Rostetter, D., Hernandez, J., Friend, M., and Gerber, M. (2015). *Tribute Session – PL 94-142: As Enduring Vision, Ideation, and Opportunity: In Honor of Frederick J. Weintraub*. Panel presentation at the annual meeting of the Council of Exceptional Children (CEC). San Diego, CA.

Hernandez, J., Howell, S., and Cox, D. (2014). *Urban Education Leadership in Action: How targeted strategy planning helped LAUSD focus limited resources to produce progress toward meeting performance benchmarks of the Modified Consent Decree*. Panel presentation at the annual meeting of the Council for Exceptional Children (CEC). Philadelphia, PA.

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Hernandez, J., Howell, S., and Cox, D. (2011). One District's Efforts to Improve Special Education at Charter Schools. Paper presented at the annual meeting of the Council for Exceptional Children (CEC). National Harbor, MD.

Hernandez, J., Weintraub, F., and Gamm, S. (2010). *Impact of Charter Schools on a District's Compliance with Special Education Law*. Paper presented at the annual meeting of the Council for Exceptional Children (CEC). Nashville, TN.

Hernandez, J. (2009). *Disproportionality and Inclusive Practices in Urban Education*. Paper presented at the annual meeting of the National Association of School Psychologists (NASP). Boston, MA.

Hernandez, J., Adame, C., Puga, M., Adams, S., and Taccariello, N. (2006). *Study of the causes of disproportional identification of African-Americans in the category of emotional disturbance in the Los Angeles Unified School District: Year II*. Poster presented at the annual meeting of the National Association of School Psychologists (NASP). Anaheim, CA.

Hernandez, J. & Ramanathan, A. (2006). *Study of the causes of disproportional identification of African-Americans in the category of emotional disturbance in the Los Angeles Unified School District: Year II*. Paper presented at the annual meeting of the National Center for Culturally Responsive Education Systems (NCRESSt). Denver, CO.

Hernandez, J. & Ramanathan, A. (2006). *Study of the causes of disproportional identification of African-Americans in the category of emotional disturbance in the Los Angeles Unified School District: Year II*. Paper presented at the annual meeting of the California Association of School Psychologists (CASP). Monterey, CA.

Hernandez, J. & Ramanathan, A. (2005). *Study of the causes of disproportional identification in the category of emotional disturbance in the Los Angeles Unified School District: Year I*. Paper presented at the annual meeting of the California Association of School Psychologists (CASP). Riverside, CA.

## *Additional Information*

Reports for Office of the Independent Monitor can be accessed at <http://oimla.com>

1 **EXPERT DECLARATION OF DR. JUDITH ELLIOTT**

2 I, Judith Lynn Elliott, Ph.D., declare as follows:

3 1. I make this declaration based on my knowledge of Federal and State Special  
4 Education Laws and Regulations, my extensive experience as a teacher of students with  
5 emotional disabilities, school psychologist, district administrator, former adjunct professor of  
6 graduate classes for teacher of students with disabilities and my review of the filings in support  
7 of and in opposition to Plaintiffs’ motion for preliminary injunction.

8 2. If called to testify, I would and could testify competently as to the facts described  
9 within this declaration.

10 **BASIS FOR OPINIONS**

11 3. To make this declaration, I have reviewed, among other relevant materials  
12 referenced herein, the following documents: 1) Plaintiffs’ Complaint for Declaratory and  
13 Injunctive Relief; 2) Plaintiffs’ Motion for Preliminary Injunction; 3) All of the declarations filed  
14 in support of Plaintiffs’ Motion for Preliminary Injunction (“Supporting Declaration”); 4)  
15 Plaintiffs’ Request for Judicial Notice in Support of Plaintiffs’ Motion for Preliminary  
16 Injunction; 5) The Defendants’ Opposition to Plaintiffs’ Motion for Preliminary Injunction; 6)  
17 All of the all the declarations submitted in support of Defendants’ Opposition to Plaintiffs’  
18 Motion for Preliminary Injunction; and 7) All of the declarations submitted in support of  
19 Plaintiffs’ Reply in support of Plaintiffs’ Motion for Preliminary Injunction (“Reply  
20 Declarations”).

21 4. The preceding body of information and materials provided to me continues to  
22 provide support and a robust basis for reaching my opinions in this matter.

23 **OPINION ON IMPACT OF THE LACK OF SERVICE DELIVERY FOR**  
24 **STUDENTS WITH DISABILITIES**

25 5. The conclusions reached by parent declarants in their Supporting Declarations and  
26 Reply Declarations that their students’ loss of school days, instructional time, and special  
27 education services and supports caused the students’ academic, socio-emotional, physical, and  
28 behavioral regression has strong basis in research regarding the effect of service disruption. The

1 argument put forth by State Defendants that the parents have no basis to conclude that their  
2 child's regression in academic, socio-emotional, communication, or behavioral skills stem from  
3 the lack of special education services is simply not supported by research in special education.  
4 Research studies clearly indicate that the amount of time students with disabilities receive  
5 needed services (as indicated by the IEP) predicts the rate of student growth.

6         6. Academic Engaged Time (“AET”), the amount of time each day that students are  
7 engaged in the delivery of quality academic, behavioral and social-emotional instruction is,  
8 statistically, the best predictor of student growth in school. A direct relationship exists between  
9 the number of minutes/week of instruction received and the rate of academic growth (Harbor,  
10 Evanovick, Sweigart & Hughes, 2014). Harbor et al, conclude that “Student engagement is one  
11 of the most well-established predictors of achievement; when students are more engaged in  
12 academic instruction, they tend to have greater academic and social success.”

13         7. Typically, the average number of days students receive instruction in public  
14 schools is 176 days with 6 hours of instruction per day. A number of causes can significantly  
15 reduce AET and result in a decrease of the rate of student growth and an increase in the rate of  
16 regression. These causes include:

- 17         a. Shortened school days-fewer minutes of instruction each week;
- 18         b. Lack of staff to provide high-quality specially designed instruction to meet the  
19             needs of students with disabilities;
- 20         c. High rates of staff turnover resulting in inconsistent instructional strategies or loss  
21             of instructional minutes during the process of teacher turnover;
- 22         d. High rates of use of substitute teachers-another form of teacher turnover;
- 23         e. Student absence resulting in loss of instructional time. Student absence can occur  
24             in a number of ways. First, the absence can occur when students do not show up  
25             for school. Second, the absence can occur when the school creates the condition  
26             for absence, including shortening school days for particular student groups (e.g.,  
27             students with disabilities) or by asking parents/caregivers to keep students’ home  
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1 because the school does not have the resources to provide instruction for  
2 particular student groups (e.g., students with disabilities).

3 8. The Supporting Declarations of parents are consistent with this research. For  
4 example:

5 9. In her declaration, Ms. Gloria Sanchez states *“Because Caleb does not have an*  
6 *aide to model and help him use his AAC device to help him in speech therapy, he has not been*  
7 *making any progress this year in using that device . . .”* The Defendants allege that *“Ms. Sanchez*  
8 *fails to establish any foundation to opine that the alleged lack of an aide for Caleb from*  
9 *September 5 to October 17, 2023, was the cause of his alleged difficulties at present.”*

10 10. Defendants’ statement indicates a lack of understanding of Caleb’s disability,  
11 including a severe communication disorder, and of the research that demonstrates the impact of  
12 the use of an Alternative Augmentative Communication (“AAC”) device and student growth.  
13 The use of an AAC device is important, but the amount of time (AET) that the device is used is  
14 of great importance. An AAC device supplements or compensates for the impairments of  
15 individuals with severe expressive communication disorders. The more time that the AAC device  
16 is used and the greater the number of personnel using the AAC device with the student directly  
17 impacts student growth. This is an issue not only of AET but ensuring that the number of staff is  
18 available to ensure that the time of the use of the AAC device is maximized. Without direct  
19 instruction with the AAC device Caleb is unable to communicate, participate in school, converse  
20 with peers, engage in instruction, make his needs known (i.e., the need to use the bathroom).

21 11. Reducing or eliminating the use of paraeducators can significantly reduce the  
22 AET that students receive. Research has demonstrated that, for instance, the use of  
23 paraeducators can improve rates of growth for students with disabilities. Individuals with  
24 complex communication needs who rely on augmentative and alternative communication (AAC)  
25 to communicate in school and community activities often have paraeducators as communication  
26 partners. Findings from seven studies suggest that communication partner training to  
27 paraeducators can have positive outcomes for the communication behaviors of both  
28 paraeducators and individuals using AAC (Douglas, 2012).

1           12.     It is not coincidental that regression of students like Caleb is occurring within the  
2 same timeframe that parents are told to keep their child at home and/or student behavior episodes  
3 have increased due to the lack of paraeducator support and lack of teaching personnel. Students  
4 at the District are losing the opportunity to attain skills at critical development ages when their  
5 brains are still developing and most capable of learning and mastering those skills because  
6 students are not receiving sufficient AET in areas necessary for their school success. It is  
7 important to provide evidence that research exists to fully understand the devastating impact of  
8 instructional loss.

9           13.     In general, research studies conclude that loss of instructional time occurs  
10 disproportionately for specific student groups (e.g., students of color, students from high poverty  
11 environments and students with disabilities). This disproportional loss of AET across a variety  
12 of causes (absence, lack of available staff and/or services, COVID-19) corresponds to  
13 disproportionate rates of low achievement and academic growth (Ginsburg, Jordan & Chang,  
14 2014).

15           14.     The impact of loss of AET in early grades (pre-K through grade 2) has a dramatic  
16 effect on the development of literacy skills in later grades with little chance of “catching up.”  
17 (Attendance Works, 2016). Research results indicate that students in grade levels with higher  
18 teacher turnover score lower in both English language arts (ELA) and math (Ronfeld, Loeb &  
19 Wyckoff, 2013).

20           15.     Compensatory education may be required when there has been a denial or delay  
21 of IEP services that has caused a student not to progress as expected. For instance, a student may  
22 not have been able to receive the number of minutes per week allocated for speech/language  
23 therapy. This missed time may cause a student not only to have stopped improving their  
24 speech/language but also, in some cases, to have returned to older patterns of speaking and  
25 understanding (Kozleski, 2021). Accordingly, compensatory education, after the fact might not  
26 make up for all educational deficits in a manner that would allow students to stay or get on track  
27 to matriculate to the next level timely and may have long lasting impacts. To date, no  
28 compensatory instruction/services have been delivered to any of the plaintiff students.

1           16. Collaborative relationships between parents/caregivers and teachers are a strong  
2 predictor of academic achievement for students with disabilities. Research with children with  
3 disabilities indicates that the quality of teacher–parent relationships is a stronger predictor of  
4 academic achievement than are quantifiable behaviors such as parental attendance at IEP  
5 meetings and the frequency of contact between teachers and parents (Hughes, Gleason, & Zhang,  
6 2005). Teacher–parent relationships are also a stronger predictor of academic achievement  
7 among young students with disabilities than is general parental involvement in school (Hughes et  
8 al., 2005; Hughes & Kwok, 2007; Wong & Hughes, 2006).

9           17. One indicator of the quality of these relationships is the frequency of is the level  
10 of disagreement that occurs between parents/caregivers and schools. Although some level of  
11 disagreement is likely due to the number of people involved with the education of students with  
12 disabilities, the national trend for this level of disagreement is downward. This is a positive  
13 indicator given the impact of parent/caregiver and teacher relationships on student growth.  
14 However, California does not share this downward trend. In fact, levels of disagreements have  
15 risen significantly in California. The [Office of Administrative Hearings \(OAH\)](#) reported that  
16 complaints to the state have risen from 2,677 in 2009 to 4,904 in the 2018–19 fiscal year, an  
17 increase of 83%. This contrasts with the national trend of decreasing special education  
18 complaints reported by the [Center for Appropriate Dispute Resolution in Special Education](#)  
19 [\(CADRE\)](#) (Kozleski, 2021)

20           18. Finding solutions to resolving parent/caregiver concerns and complaints clearly  
21 would improve outcomes for students with disabilities.

22           **OPINION ON IMPACT OF STAFF SHORTAGES/VACANCIES IN CRITICAL**  
23           **PERSONNEL FOR STUDENTS WITH DISABILITIES**

24           19. On January 11, 2024 an analysis entitled Analysis of Vacant Positions—  
25 “Equipping Students for Success” was presented to the District’s Board of Education. (See  
26 Exhibit A to Plaintiffs’ Supplemental Request for Judicial Notice in Support of Motion for  
27 Preliminary Injunction). The presentation shows the current staff vacancies in the District,  
28 including 23 Behavior Interventionists for “Severely Handicap” children, one Behavior



1 Intervention Technician, 1 Board Certified Behavior Analyst (BCBA), 1 Counselor, one  
2 Licensed Clinical Social Worker, 1 Occupational Therapist, 10 Paraprofessional I positions  
3 (aides), 5 Paraprofessional II positions (aides), 3 Paraprofessional III positions (aides), 2  
4 Psychologists, five Social Workers, three Speech and Language Pathologists, three Speech and  
5 Language Pathology Assistants, and 4 SPEC (Special Education) Teachers.

6 20. The majority of the positions are for teachers and support and related services  
7 personnel necessary to ensure that the District provides the legally required system of special  
8 education and related services. The lack of these personnel is the primary reason why students  
9 with disabilities are not receiving their service and the necessary amount of the service (AET)  
10 that will result in their school success. In my experience, these vacancies, in a small school  
11 district like Del Norte County Unified School District, indicate a systemic problem that touch  
12 every school in the District. This systemic problem is also consistent with the learning loss and  
13 regression reported in the Supporting Declarations and Reply Declarations.

#### 14 **CONCLUSIONS**

15 21. The District continues to be grossly out of compliance with the requirement to  
16 deliver appropriate and sufficient related services as required by California Education Code §  
17 56040(a).

18 22. While the State has received complaints regarding the lack of providing special  
19 education services and supports and has set forth corrective actions (see Declaration of Ana  
20 Marsh), it has not resulted in addressing the continued noncompliance of service delivery for  
21 students with disabilities. No compensatory education has been delivered as directed by the  
22 state's corrective action.

23 23. The District reports egregious personnel vacancies, the majority of which are  
24 special education. This is never an acceptable reason for the failure to provide IEP services. The  
25 District would not send general education students home because they do not have a substitute  
26 teacher or qualified teacher to teach classes. Hence, the current circumstances in the District (i.e.,  
27 sending students home, not providing related services and other supports) is unacceptable and is  
28 a clear case of discrimination against students with disabilities.

1           24.     The continued failure to provide IEP driven special education services and  
2 support is resulting in significant inequitable gaps in learning new skills and the regression of  
3 those previously learned in academic, behavior and social emotional areas.

4           25.     The gross denial of AET is the reason that these students do not demonstrate  
5 expected levels of growth. Students with disabilities require more instructional time, a greater  
6 level of instructional supervision (providing corrective feedback and scaffolding instruction for  
7 success), instructional behavior supports to maximize engagement, collaboration with general  
8 education teachers to ensure alignment of the pacing and content of instruction and engagement  
9 with families and caregivers. Therefore, the loss of AET puts students with disabilities at greater  
10 risk for educational failure than students without disabilities. This is what makes the practice of  
11 keeping students with disabilities home or reducing instructional time/instructional supports not  
12 only illegal but unfair. This is not just a legal issue or equity issue—it is a moral issue.

13           26.     I reserve the right to supplement this declaration if new information becomes  
14 available and to respond to opinions offered by the Defendants in their reports or testimony.

15           I declare under penalty of perjury of the laws of the State of California that the foregoing  
16 is true and correct.

17           I declare the above to be true and correct under penalty of perjury of the laws of the State  
18 of California and the United States of America, executed in Naperville, Illinois on February 2,  
19 2024.

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Dr. Judith Elliot

1 **DECLARATION OF MELONY LENOVER**

2 I, MELONY LENOVER, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I submit this declaration in support of Plaintiffs’ Reply Brief and Plaintiffs’  
6 Motion for Preliminary Injunction.

7 3. In paragraph three of my initial declaration in support of Plaintiffs’ Motion for  
8 Preliminary Injunction, I stated: “When there is no one-to-one aide to work with Olivia or the  
9 classroom aide cannot fill in that role, the District tells me that Olivia cannot attend school.”

10 4. As further context, the District staff member who told me that Olivia cannot  
11 attend school, without Olivia’s one-to-one aide, is Sarah Elston. Ms. Elston is Olivia’s special  
12 education teacher. Ms. Elston tells me almost daily that she does not have an aide to work with  
13 Olivia and that I should therefore keep Olivia out of class. This has been the case for all but  
14 seven of the school days this year. I also personally know this is true because if I log on to  
15 Olivia’s zoom class, no one-to-one aide is available. So, on those days, I do not have Olivia log  
16 on to Zoom to attend class virtually. Olivia needs a one-to-one aide for all of her classes, so it is  
17 not feasible for her to engage in class without an aide.

18 5. In paragraph 4 of my initial declaration, I stated: “[D]uring the 2022-23 school  
19 year, Olivia missed at least 50 school days because staffing shortages prevented her from having  
20 a one-to-one aide.”

21 6. I personally know that Olivia could not attend class for at least 50 school days  
22 because of staffing shortages because when no one-to-one aide is available, I do not have Olivia  
23 log on to Zoom to attend class virtually. There are some days when I have Olivia log onto to  
24 Zoom to attend virtually anyways. But on those days, no one-on-one aide shows up, which  
25 prevents Olivia from communicating with her peers and engaging in classroom instruction. As a  
26 result, I have Olivia log off of Zoom and do work with me instead.

27 7. In paragraph 4 of my initial declaration, I stated: “I feel that the District has cut  
28 off Olivia’s communication with her family and the outside world.”

1           8.       As further context, this statement is based on my knowledge and observation that  
2 when Olivia does not attend school, she does not interact with anybody except for me and her  
3 immediate family. When Olivia does attend school, I have observed that her one-on-one aide and  
4 special education teacher help Olivia practice using her AAC device. But when she does not  
5 attend school, she does not get that practice. After not attending school consistently this  
6 academic year, Olivia's use of her AAC device has dropped drastically, which has hindered her  
7 ability to communicate with people, including me. The number of words she uses has dropped  
8 significantly, as has the complexity of the sentences she creates. This all started when Olivia  
9 stopped attending school because of the lack of a one-on-one aide.

10           9.       In paragraph 5 of my initial declaration, I stated: "Olivia's teacher, Sarah Elston,  
11 has had to cancel these individual sessions because the class is so short-staffed . . ." and that "she  
12 cannot meet all of Olivia's needs by herself. She needs help. Because she has missed so many  
13 reading sessions, Olivia's reading progress has been at a standstill this year."

14           10.      I have personal knowledge of these facts because when Sarah Elston cancels the  
15 individual reading sessions, she communicates with me directly and tells me I should not have  
16 Olivia log onto Zoom to attend the virtual instruction session because Ms. Elston is short staffed.  
17 Since Olivia has not been able to receive instruction in these reading sessions, I have observed  
18 that her ability to read has stagnated.

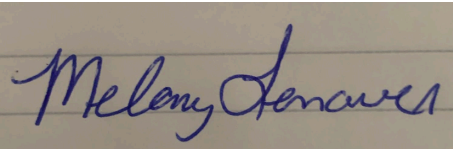
19           11.      In paragraph 6 of my initial declaration, I stated: "But because [Olivia] has missed  
20 so much physical therapy this year, Olivia's physical abilities have regressed. She is never able  
21 to raise her arms in the air. She refuses to wear her [gait] trainer. And her ability to move around  
22 the house on her hands and knees has substantially regressed. She is becoming increasingly  
23 dependent on me to carry her and move her places."

24           12.      I know that the lack of physical therapy is the cause of Olivia's physical  
25 regressions because when Olivia was consistently receiving physical therapy, her physical  
26 abilities were improving. It was only when she stopped getting physical therapy consistently that  
27 these skills regressed. There have been no other changes in Olivia's daily routine or medical  
28 history besides missing school and the lack of special education services that could have caused

1 these regressions. I have taken Olivia to medical appointments twice in the last month for  
2 physical check-ups and have not learned of any medical reason why Olivia's physical skills are  
3 regressing.

4 13. To this date, I have not received any offer for compensatory education from the  
5 District.

6 I declare the above to be true and correct under penalty of perjury of the laws of the State  
7 of California and the United States of America, executed in Crescent City, California, on January  
8 28, 2024.

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1 **DECLARATION OF LISA FINTEL**

2 I, LISA FINTEL, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I submit this declaration in support of Plaintiffs’ Reply Brief and Plaintiffs’  
6 Motion for Preliminary Injunction.

7 3. In paragraph 8 of my initial declaration, I stated that the Plaintiff Monica R. had  
8 not received special education services this academic year and that the “District told me this  
9 happened because it did not have enough special education teachers or service providers to  
10 provide Monica with services.”

11 4. I know these facts because last academic year, Monica R. and Derek Burke’s  
12 Home and Hospital special education teacher, Jennifer Freer, consistently told me during Zoom  
13 sessions that the District did not have any special education teachers to provide Monica and  
14 Derek with services when she was unavailable or out on medical leave. Ms. Freer went out on  
15 medical leave in May 2023. Since then, neither Monica nor Derek has received consistent special  
16 education services. I know this because I help Monica and Derek log onto Zoom to receive their  
17 special education services and instruction for their Home and Hospital placement. From May  
18 2023 to October 19, 2023, no special education teacher or service provider appeared to provide  
19 Derek with special education instruction or services. From May 2023 to December 4, 2023, no  
20 speech therapist appeared to provide Monica with services. From May 2023 to December 19,  
21 2023, no special education teacher appeared to provide Monica with special education  
22 instruction or services.

23 5. On October 16, 2023, I submitted a Complaint Resolution Process (“CRP”)  
24 complaint to the California Department of Education (“CDE”) regarding the District’s failure to  
25 provide Monica with special education services and supports. On December 19, 2023, the CDE  
26 submitted an amended investigation report finding that the District failed to provide 2100  
27 minutes of specialized academic instruction from August 28 to October 16, 2023, 2820 minutes  
28 of specialized academic instruction from March 1 to May 22, 2023, 90 minutes of speech and

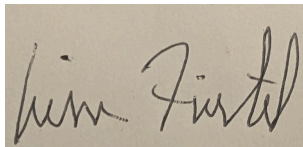
1 language services, and 60 minutes of physical therapy. The CDE ordered the District to provide  
2 compensatory education to Monica by June 1, 2024. To this date, the District has not provided  
3 this compensatory education. Attached as Exhibit A to this declaration is the CDE’s investigation  
4 report.

5           6.       In paragraph 9 of my initial declaration, I stated: “Because of all the services  
6 Monica missed, she has regressed substantially in her academic skills and speech skills.”

7           7.       I know that the lack of special education services, and not other factors, is the  
8 cause of Monica’s academic and speech regressions because when Monica was consistently  
9 receiving services last academic year, her academic and speech abilities were improving. It was  
10 only when she stopped receiving services this academic year that these skills began to regress.  
11 For example, when Monica was receiving consistent services last academic year, she was able to  
12 read full paragraphs about diverse topics, frequently decode new words in unfamiliar contexts,  
13 count consistently to 50, count by 10’s to 100, and do simple addition and subtraction. Since  
14 Monica stopped receiving special education services, she lost the ability to read even simple  
15 sentences or do addition or subtraction. There have been no other changes in Monica’s daily  
16 routine besides missing school and that lack of special education services that could have caused  
17 these regressions. I have observed Monica receive instruction virtually from the District over the  
18 last three academic years. And this academic year, I have been providing extra support to  
19 Monica to make up for the lack of instruction from the District. Through this exposure, I have  
20 become familiar with the type of instruction and practice that is correlated with an improvement  
21 in Monica’s academic skills. This academic year, she has not received that instruction or practice  
22 for over 90% of the school year and has at the same time regressed in the academic skills I  
23 outlined in my initial declaration.

24           8.       On December 19, 2023, Monica started receiving her Home and Hospital  
25 instruction. But that service has not been consistently provided because Monica’s new teacher  
26 has been absent on multiple occasions without a substitute. The teacher has told me she will  
27 make up her absences, but has not been able to. The District has not offered any compensatory  
28 education to make up for this time.

1 I declare the above to be true and correct under penalty of perjury of the laws of the State  
2 of California and the United States of America, executed in Crescent City, California, on January  
3 29, 2024.

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# Exhibit A

**CALIFORNIA DEPARTMENT OF EDUCATION  
Amended Investigation Report  
Case S-0361-23/24**

<b>Public Agency</b> Jeff Harris, Superintendent Del Norte County Unified School District 301 West Washington Boulevard Crescent City, CA 95531	<b>Complainant</b> Lisa Fintel P.O. Box 220 Crescent City, CA 95531
<b>Special Education Director</b> Craig Kimball, Director, Special Education Del Norte County Unified School District	<b>Parent</b> Lisa Fintel
<b>Special Education Local Plan Area (SELPA)</b> Haley Jones, Interim Director Humboldt-Del Norte SELPA 624 Harris Street Eureka, CA 95503	<b>Student</b> 
<b>Complaint Received</b> October 16, 2023	<b>Report Mailed</b> December 14, 2023  <b>Amended Report Mailed</b> <b>December 19, 2023</b>

The report has been amended to correct an error in the conclusion of Allegation Four. New information is bolded. Deleted information is struck through.

**INVESTIGATION PROCEDURES**

The investigation and conclusions are based on the investigator’s review of materials and documents provided by the Complainant and the District, as well as telephone contact with the Complainant on October 13, 2023, and with the District on November 16, 2023. Email contact with the Complainant occurred on October 13 and 16, 2023, and with the District on October 24 and November 7, 8, 15, 17, and 21, 2023.

A complaint filed with the California Department of Education (CDE) shall allege a violation of the federal Individuals with Disabilities Education Improvement Act (*United States Code*, Title 20, sections 1400 et seq.), or a provision of this part, that occurred not more than one year before the date that the complaint is received by the CDE, pursuant to California *Education Code (EC)* Section 56500.2 and *Code of Federal Regulations*, Title 34 (34 *CFR*), Section 300.153(c).

The investigation period associated with this complaint investigation is from October 16, 2022, to October 16, 2023; however, the report includes a chronology of events outside of the one-year timeframe to provide context.

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## **SUMMARY OF ALLEGATION ONE**

The Complainant alleges the District failed to comply with individualized education program (IEP) requirements set forth in 34 *CFR* Section 300.323(c)(2), when the District did not provide home and hospital specialized academic instruction (SAI) for the 2023–24 school year.

## **APPLICABLE CITATION**

34 *CFR* Section 300.323(c)(2) requires, “Each public agency must ensure that . . . (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.”

## **FINDINGS OF FACT**

1. The student’s May 23, 2022, IEP was amended on March 7, 2023, to update services and renew the student’s home and hospital placement to May 22, 2023. The IEP requires the student to receive SAI virtually for 300 minutes weekly. Evidence for this finding is based on the March 7, 2023, amendment IEP, signed in agreement on the same day, and the February 16, 2023, physician’s statement.
2. August 28, 2023, was the first day of the 2023–24 school year. Evidence for this finding is based on the 2023–24 school year calendar.
3. On September 19, 2023, the District approved a physician’s statement requesting home and hospital instruction (HHI) from August 31, 2023, to August 31, 2024; however, the IEP team had not met to review and update the IEP. Evidence for this finding is based on the August 31, 2023, physician’s statement, and the District response.
4. For seven weeks from August 28 to October 16, 2023, the date the CDE received the complaint, the District did not have a home and hospital instructor to provide SAI services. The District did not provide 2,100 minutes of SAI services. Evidence for this finding is based on the 2023–24 school year calendar, and a November 16, 2023, District email.

## CONCLUSION

The District failed to meet the requirements of 34 *CFR* Section 300.323(c)(2). The District did not provide 2,100 minutes of SAI services from August 28 to October 16, 2023, as required by the May 23, 2022, IEP. **The District is out of compliance.**

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## SUMMARY OF ALLEGATION TWO

The Complainant alleges the District failed to comply with IEP requirements set forth in 34 *CFR* Section 300.323(c)(2), when the District did not provide speech and language (S/L) services for the 2023–24 school year.

## APPLICABLE CITATION

34 *CFR* Section 300.323(c)(2) requires, “Each public agency must ensure that . . . (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.”

## FINDINGS OF FACT

5. The student’s May 23, 2022, IEP was amended on March 7, 2023, to update the student’s services and renew the student’s home and hospital placement. The IEP requires the student to receive pull-out S/L services for 90 minutes monthly. Evidence for this finding is based on the March 7, 2023, amendment IEP, signed into agreement on the same day.
6. On September 19, 2023, the District approved a physician’s statement requesting HHI from August 31, 2023, to August 31, 2024; however, the IEP team had not met to review and update the IEP. Evidence for this finding is based on the August 31, 2023, physician’s statement, and the District response.
7. For the month of September 2023, the District did not provide any S/L services and for the month of October 2023, the complaint was received on October 16, 2023, so the District still had time to provide the required S/L services. Evidence for this finding is based on the 2023–24 school year calendar, and a November 17, 2023, District email.

## CONCLUSION

The District failed to meet the requirements of 34 *CFR* Section 300.323(c)(2). The District did not provide 90 minutes of S/L services in the month of September 2023, as required by the May 23, 2022, IEP. **The District is out of compliance.**

### **SUMMARY OF ALLEGATION THREE**

The Complainant alleges the District failed to comply with IEP requirements set forth in 34 *CFR* Section 300.323(c)(2), when the District did not provide physical therapy (PT) for the 2023–24 school year.

### **APPLICABLE CITATION**

34 *CFR* Section 300.323(c)(2) requires, “Each public agency must ensure that . . . (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.”

### **FINDINGS OF FACT**

8. The student’s May 23, 2022, IEP was amended on March 7, 2023, to update the student’s services and renew the student’s home and hospital placement. The IEP requires the student to receive PT either virtually or in person for 60 minutes monthly. Evidence for this finding is based on the March 7, 2023, amendment IEP, signed into agreement on the same day.
9. On September 19, 2023, the District approved a physician’s statement requesting HHI from August 31, 2023, to August 31, 2024; however, the IEP team had not met to review and update the IEP. Evidence for this finding is based on the August 31, 2023, physician’s statement, and the District response.
10. For the month of September 2023, the District did not provide any PT services and for the month of October 2023, the complaint was received on October 16, 2023, so the District still had time to provide the required PT services. Evidence for this finding is based on the 2023–24 school year calendar, and a November 17, 2023, District email.

### **CONCLUSION**

The District failed to meet the requirements of 34 *CFR* Section 300.323(c)(2). The District did not provide 60 minutes of PT services in the month of September 2023, as required by the May 23, 2022, IEP. **The District is out of compliance.**

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### **SUMMARY OF ALLEGATION FOUR**

The Complainant alleges the District failed to comply with IEP requirements set forth in 34 *CFR* Section 300.323(c)(2), when the District did not provide behavior intervention services (BIS) for the 2023–24 school year.

### APPLICABLE CITATION

34 *CFR* Section 300.323(c)(2) requires, “Each public agency must ensure that . . . (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.”

### FINDINGS OF FACT

11. The student’s May 23, 2022, IEP was amended on March 7, 2023, to update the student’s services and renew the student’s home and hospital placement. The IEP requires the student to receive BIS on a virtual platform for 240 minutes yearly. Evidence for this finding is based on the March 7, 2023, amendment IEP, signed into agreement on the same day.
12. On September 19, 2023, the District approved a physician’s statement requesting HHI from August 31, 2023, to August 31, 2024; however, the IEP team had not met to review and update the IEP. Evidence for this finding is based on the August 31, 2023, physician’s statement, and the District response.
13. From August 28 to October 16, 2023, the date the CDE received the complaint, the District did not provide any of the 240 minutes of the required yearly service. Evidence for this finding is based on the 2023–24 school year calendar, and a November 17, 2023, District email.

### CONCLUSION

The District did not fail to meet the requirements of 34 *CFR* Section 300.323(c)(2). The student’s May 23, 2022, IEP requires **BIS** ~~PT~~ services to be provided as a yearly service and the District still has time to provide the required **BIS** ~~PT~~ services. **The District is not out of compliance.**

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### SUMMARY OF ALLEGATION FIVE

The Complainant alleges the District failed to comply with IEP requirements set forth in *EC* Section 56343.5, when the District did not convene an IEP within 30 days of the September 18, 2023, request.

### APPLICABLE CITATION

*EC* Section 56343.5 implements 34 *CFR* Section 300.324.

*EC* Section 56343.5 requires:

A meeting of an [IEP] team requested by a parent to review an [IEP] pursuant to subdivision (c) of Section 56343 shall be held within 30 days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's written request. . . .

## **FINDINGS OF FACT**

14. On September 18, 2023, the parent called the special education director and requested an IEP meeting to discuss home and hospital, compensatory services, and a transition back to school. On September 25, 2023, the District states that an informal meeting was convened with the parent, but it was not an IEP meeting, as a general education (GE) teacher was not available for the meeting. Evidence for this finding is based on the District's phone log; the September 25, 2023, meeting notes; and a November 17, 2023, District email.
15. On September 28, 2023, the parent emailed the District requesting that an IEP meeting be convened, as the last annual IEP that was due on March 22, 2023, was not convened. Evidence for this finding is based on a September 28, 2023, email from the parent.
16. The complaint was received by the CDE on October 16, 2023, which was 28 days after the parent's September 18, 2023, request for an IEP meeting. Evidence for this finding is based on the 2023–24 school year calendar and the District response.

## **CONCLUSION**

The District did not fail to meet the requirements of *EC* Section 56343.5. As of the date the CDE received this complaint, October 16, 2023, the District still had two days to convene an IEP meeting in response to the parent's September 18, 2023, request. **The District is not out of compliance.**

---

## **SUMMARY OF ALLEGATION SIX**

The Complainant alleges the District failed to comply with IEP requirements set forth in 34 *CFR* Section 300.321(a), when the District did not include a GE teacher and school nurse at the September 25, 2023, IEP meeting.

## APPLICABLE CITATION

34 *CFR* Section 300.321(a) requires:

General. The public agency must ensure that the IEP Team for each child with a disability includes—(1) The parents of the child; (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; (4) A representative of the public agency who—(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) Is knowledgeable about the [GE] curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency. (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section; (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) Whenever appropriate, the child with a disability.

## FINDINGS OF FACT

17. On September 25, 2023, an informal meeting was convened with the parent to review parent concerns. A GE teacher and nurse were not required to attend the meeting as it was not an IEP team meeting. Evidence for this finding is based on the September 25, 2023, meeting notes, and a November 17, 2023, District email.

## CONCLUSION

The District did not fail to meet the requirements of 34 *CFR* Section 300.321(a). The District did not convene an IEP meeting on September 25, 2023, but an informal meeting with the parent, so the GE teacher and school nurse were not required to attend. **The District is not out of compliance.**

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## SUMMARY OF ALLEGATION SEVEN

The Complainant alleges the District failed to comply with IEP requirements set forth in 34 *CFR* Section 300.323(c)(2), when the District did not provide the student SAI throughout the 2022–23 school year.



## APPLICABLE CITATION

34 *CFR* Section 300.323(c)(2) requires, “Each public agency must ensure that . . . (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.”

## FINDINGS OF FACT

18. The student’s May 23, 2022, IEP requires the student to receive home and hospital SAI services for 300 minutes weekly starting on August 27, 2022. Extended school year was offered by the District, but the parent informed the District that the student would not be attending. Evidence for this finding is based on the May 23, 2022, IEP, signed into agreement on September 8, 2022.
19. The student’s May 23, 2022, IEP was amended on March 7, 2023, to update services and renew the student’s home and hospital placement through May 22, 2023. The IEP requires the student to receive SAI virtually for 300 minutes weekly. Evidence for this finding is based on the March 7, 2023, amendment IEP, signed into agreement on the same day, and the February 16, 2023, physician’s statement.
20. From October 16, 2022, to February 28, 2023, the student’s home and hospital SAI services were not tracked, so it is unclear if the service was provided. From March 1, 2023, to May 22, 2023, for approximately 11 weeks, the District provided 2,820 minutes of virtual SAI services of the required 3,300 minutes required by the IEP. From May 23, 2023, to June 15, 2023, the last day of school, the service was not tracked so it is unclear if the service was provided. Evidence for this finding is based on the special education database log; the 2022–23 school year calendar; the May 23, 2022, IEP, signed into agreement on September 8, 2022; and two November 21, 2023, District emails.

## CONCLUSION

The District failed to meet the requirements of 34 *CFR* Section 300.323(c)(2). Although the District provided SAI for 2,820 minutes from March 1 to May 22, 2023, the District did not provide 480 minutes of SAI services during this time period. The District did not provide the student’s SAI service from October 16, 2022, to February 28, 2023, and May 23 to June 15, 2023. **The District is out of compliance.**

## **REQUIRED CORRECTIVE ACTIONS**

### Allegation One

1. On or before June 1, 2024, the District shall provide evidence it has provided 2,100 minutes of compensatory SAI services to the student. Acceptable evidence should include the student's service logs or other documentation, including the dates, provider, and amount of services.

### Allegation Two

2. On or before June 1, 2024, the District shall provide evidence it has provided 90 minutes of compensatory S/L services. Acceptable evidence should include the student's service logs or other documentation, including the dates, provider, and amount of services.

### Allegation Three

3. On or before June 1, 2024, the District shall provide evidence it has provided 60 minutes of compensatory PT services by a District contracted service provider. Acceptable evidence should include the student's service logs or other documentation, including the dates, provider, and amount of services.

### Allegations One, Two, Three, and Seven

4. On or before February 29, 2024, the District shall provide evidence it has conducted a training for all administrators and District staff involved in this case regarding the requirements of 34 *CFR* Section 300.323(c)(2) and this finding of noncompliance. The training is to be conducted by the SELPA or an outside provider not associated with the District. Acceptable evidence should include a copy of the training agenda and a list of participants, including names and titles.
5. On or before January 30, 2024, the District shall provide evidence it has developed a plan to hire a home and hospital instructor. Acceptable evidence should include a copy of the plan.

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## **RECONSIDERATION NOTICE**

The findings in this investigation report are specific to this case. While general rules are cited, findings in other investigations may differ due to the facts and issues in each case.

Within 30 days of the “Report Mailed” date on this CDE report, either party may request reconsideration [*California Code of Regulations*, Title 5, Section 3204]. The request for reconsideration must state and explain the reason for the request based on one or more of the following:

1. The report lacks material findings of fact.
2. The material findings of fact in the report are unsupported.
3. The legal conclusion in the report is inconsistent with the law.
4. The corrective actions in the report fail to provide proper remedy.

Pending the Superintendent’s reconsideration, the Department report, including corrective actions, remains in effect and enforceable.

A request for reconsideration of the CDE’s Investigation Report must be postmarked within 30 days of the “Report Mailed” date on the CDE report and sent to:

**Ana Marsh, Education Administrator II**  
**Complaint Resolution Unit**  
**[speceducation@cde.ca.gov](mailto:speceducation@cde.ca.gov) Email**  
**or**  
**916-327-8878 Fax**

**or**  
**California Department of Education**  
**Complaint Resolution Unit**  
**1430 N Street, Suite 2401**  
**Sacramento, CA 95814**

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Evidence of required corrective actions or questions regarding corrective actions shall be directed to:

**Corrective Actions**  
**Complaint Resolution Unit**  
**California Department of Education**  
**1430 N Street, Suite 2401**  
**Sacramento, CA 95814 or**  
**916-327-8878 Fax or Email:**  
**[SEDCorrectiveAction@cde.ca.gov](mailto:SEDCorrectiveAction@cde.ca.gov)**

When submitting evidence please make sure to include the case number.

If compliance is determined in this investigation and no corrective actions are required, consider this case closed.

Ana Marsh  
Education Administrator II  
Complaint Resolution Unit

Melissa Branson  
Education Administrator I  
Complaint Investigation Unit I

Jane Canty  
Education Administrator I  
Complaint Investigation Unit II

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California Department of Education  
Special Education Division

1 **DECLARATION OF GLORIA SANCHEZ**

2 I, GLORIA SANCHEZ, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

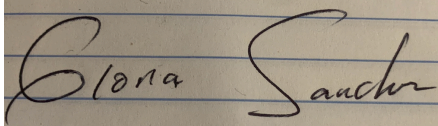
5 2. I submit this declaration in support of Plaintiffs’ Reply Brief and Plaintiffs’  
6 Motion for Preliminary Injunction.

7 3. In paragraph 5 of my initial declaration, I stated: “Because Caleb does not have an  
8 aide to model and help him use his AAC device to help him in speech therapy, he has not been  
9 making any progress this year in using that device . . . [T]he lack of an aide has cut Caleb off  
10 from the world.”

11 4. I made this statement based on my personal observations that when Caleb did not  
12 have an aide at school to model the use of his AAC device, his ability to use his AAC device  
13 regressed substantially. This has, in turn, hindered his ability to communicate with people,  
14 including me. For example, while at home Caleb usually used his AAC device to ask for food  
15 and would use more complex sentences. However, when he did not have an aide at school, he  
16 could not use create these sentences and instead would say one word like “fish.” During that  
17 time, Caleb was stuck making the same four requests for food that he was making at the  
18 beginning of the school year. This stagnation started only when he did not have his aide. When  
19 Caleb consistently had his aide, he was not having trouble using his AAC device and had shown  
20 progress in using it, including through creating more complex requests for food.

21 5. To this date, the District still has not offered Caleb any compensatory education to  
22 make up for lost services.

23 I declare the above to be true and correct under penalty of perjury of the laws of the State  
24 of California and the United States of America, executed in Crescent City, California, on January  
25 28, 2024.

26 

27  
28 Gloria Sanchez

1 **DECLARATION OF JENNIFER GABALL**

2 I, JENNIFER GABALL, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I submit this declaration in support of Plaintiffs’ Reply Brief and Plaintiffs’  
6 Motion for Preliminary Injunction.

7 3. In paragraph 4 of my initial declaration, I stated: “When one of the two aides is  
8 absent from school, the District tells me to keep Jonah at home.” Similarly, in paragraph 5 of my  
9 initial declaration, I stated: “This school year, the District has forced me to keep Jonah at home  
10 from school for five to ten days because his primary or secondary aide was absent. Some days,  
11 the District offers an aide who does not have the proper credentials, so I keep Jonah home from  
12 school.”

13 4. As more context, I drop off Jonah at school every day and his aides wait for him  
14 to be dropped off. In doing so, I observe whether there are two aides available to work with  
15 Jonah. When aides are not available or don’t have the proper qualifications, I must take Jonah  
16 home. I also have personal knowledge of Jonah’s IEP and that it requires Jonah’s aides to have  
17 specific qualifications for his disability. Last school year, a District staff member had told me on  
18 multiple occasions via phone that the aides who are assigned to work with Jonah do not have the  
19 qualifications required by Jonah’s IEP to work with him. This school year, the principal of  
20 Jonah’s school, Debby Reynolds, has either greeted me during my morning drop-offs or called  
21 me to tell me that one or more aides are unavailable to work with Jonah and that the remaining  
22 aides do not have the proper qualifications and therefore cannot work with Jonah, according to  
23 his IEP. Because the school cannot meet Jonah’s IEP needs, I must keep him home.

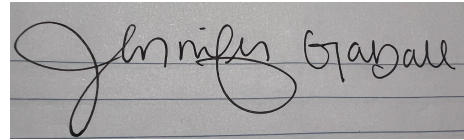
24 5. In paragraph 4 of my initial declaration, I stated: “When Mr. Tyce has been  
25 absent, I have observed that other aides do not follow Jonah’s IEP, which causes Jonah to hurt  
26 himself.”

27 6. As more context, on days when Mr. Tyce has been absent, other aides greet me  
28 and Jonah when I drop Jonah off at school. Jonah’s IEP requires his aides to always carry around

1 certain supportive equipment, including large pads to prevent Jonah from hitting his head against  
2 surfaces and headphones to help Jonah block out sounds. But I have observed that these aides do  
3 not carry around this equipment.

4 7. Jonah has still not received the compensatory education to which he is entitled.  
5 The District's special education director, Craig Kimbell, has offered to provide Jonah  
6 compensatory education, but he stated that his plan was to double the amount of time that Jonah  
7 received speech and occupational therapy services a week to make up for lost time. But I  
8 declined this plan because it would have forced Jonah to miss his regular classroom time to  
9 receive compensatory education and created an additional need for compensatory education.

10 I declare the above to be true and correct under penalty of perjury of the laws of the State  
11 of California and the United States of America, executed in Crescent City, California, on January  
12 27, 2024.

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16 Jennifer Gaball  
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**DECLARATION OF DANIEL MCQUILLEN**

I, DANIEL MCQUILLEN, declare as follows:

1. I make this declaration based on my own personal knowledge and if called as a witness, I could and would testify to the following matters.

2. I submit this declaration in support of Plaintiffs’ Reply Brief and Plaintiffs’ Motion for Preliminary Injunction.

3. In paragraph 4 of my initial declaration, I stated: “This school year, the District has forced Raj to stay at home from school for at least ten days because the District did not have a one-on-one aide, the District has not properly trained the aide to work with Raj and develop a positive and trusting relationship.”

4. As further context, the District would send him home because an aide was not there to work with him. Melissa Renee Peideman who normally works as part of the lunch staff or ground staff on the playground, was at the front desk. She said they could not handle his behavior and they didn’t have the staff to deal with him that day. Each time they sounded panicked because of the stress of having to deal with his behavior.

5. In paragraph 5 of my initial declaration, I stated: “Instead, the principal of Margaret Keating Elementary School told me that there was no one else to be Rajs’s aide and that he had instructed Raj’s one-to-one aide to not interact with Raj anymore and to just follow him around and record data about Raj’s behaviors. Because of this Raj’s aggressive behaviors have continued. Raj’s teacher tells me that Raj engages in physically aggressive behaviors and elopes from class almost every day. The Principal has also told me that every day Raj elopes from his classroom and wanders the halls of the school while his aide follows him. I do not understand why the District will not properly train the aide to keep Raj in class or get him a new aide. I am afraid that Raj is going to get hurt and that the District will continue to suspend him.”

6. As further context, from October through November of 2023, Ashton Osborne, a teacher’s aide at Raj’s school, repeatedly called me while she was in school to tell me that she was in that moment observing Raj eloping from his classroom and wandering the halls of the



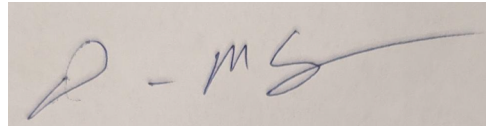
1 school while his aide followed him around and recorded data while making no attempt to redirect  
2 his behavior and get him back to the classroom.

3 7. In paragraph 6 of my initial declaration: “Raj’s teacher told me that Raj is reading  
4 at a first-grade level despite being in the fifth grade.”

5 8. As further context, I read with Raj almost every day. I have bought him books for  
6 different grade levels. Right now, he is only able to read the book that is made for first-grade  
7 reading levels. He cannot read anything more advanced.

8 9. To this date, the District still has not offered Raj any compensatory education to  
9 make up for lost services.

10 I declare the above to be true and correct under penalty of perjury of the laws of the State  
11 of California and the United States of America, executed in Klamath, California, on January 28,  
12 2024.

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16 Daniel McQuillen  
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1 **DECLARATION OF LINDA VANG**

2 I, LINDA VANG, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I submit this declaration in support of Plaintiffs' Reply Brief and Plaintiffs'  
6 Motion for Preliminary Injunction.

7 3. In paragraph three of my initial declaration, I stated: "When one of Shawn's aide  
8 is absent, the District tells me to keep Shawn home."

9 4. As additional context, for the entire first week of this academic year in September  
10 2023, District staff turned me away from dropping off Shawn at school because Shawn's aide  
11 was absent. The District staff that said to keep Shawn at home because they do not have an aide  
12 to provide him services, include the District's special education director, Craig Kimball, the Del  
13 Norte High School principal, Alison Eckhart, and Nicole Medrano, the Del Norte High School  
14 Program Specialist. They made these statements to me both in-person and over email. ,Either Mr.  
15 Kimbell, Ms. Eckhart, or Ms. Medrano has communicated this to me on each day that Shawn has  
16 been forced to stay home due to absence of his aide. Ms. Eckhart communicated this to me on  
17 September 5 and 8, 2023. Ms. Medrano communicated this to me on September 6 and 7, 2023.  
18 Mr. Kimball called me at the end of summer 2023 to tell me that no staff were available to  
19 provide Shawn with 20 of his compensatory education hours.

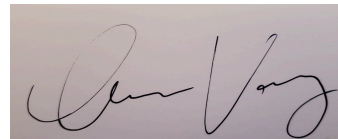
20 5. In paragraph 7 of my initial declaration, I stated: "The [California] department [of  
21 Education] conducted an investigation and found that the District owed Shawn 96 hours of  
22 compensatory education. The District agreed to add over 100 hours, which brought the total to  
23 200 hours. The District and I agreed to split these 200 hours between the summer of 2023 and  
24 2024. But during the summer of 2023, the District again did not have the two-to-one aide to  
25 support Shawn and told him to stay home for 20 hours."

26 6. Attached as Exhibit A to this declaration is the California Department of  
27 Education's investigation report confirming these facts. In reviewing that investigation report, I  
28

1 noticed that I made a mistake in my initial declaration. The CDE ordered 94 hours of  
2 compensatory education instead of 96 hours.

3           7.       In paragraph 7 of my initial declaration, I described how during the summer of  
4 2023, the District did not have the required two-to-one aide to support Shawn, which deprived  
5 him of 20 hours of compensatory education to which he was entitled. The District still has not  
6 provided Shawn that compensatory education. Additionally, the District still has not provided  
7 Shawn with any compensatory education for the days he has missed this academic year.  
8 Although Craig Kimbell offered to provide compensatory education to Shawn for one hour after  
9 school, Shawn has never received that compensatory education because his aide has never been  
10 available to work during that time.

11           I declare the above to be true and correct under penalty of perjury of the laws of the State  
12 of California and the United States of America, executed in Crescent City, California, on January  
13 28, 2024.

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Linda Vang

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# Exhibit A

**CALIFORNIA DEPARTMENT OF EDUCATION**  
**Investigation Report**  
**Case S-0907-22/23**

<b>Public Agency</b> Jeff Harris, Superintendent Del Norte County Unified School District 301 West Washington Boulevard Crescent City, CA 95531	<b>Complainant</b> Linda Vang 1335 Harrold Street Crescent City, CA 95531
<b>Special Education Director</b> Thomas Kissinger, Assistant Superintendent, Educational Services Del Norte County Unified School District	<b>Parent</b> Linda Vang
<b>Special Education Local Plan Area (SELPA)</b> Heather Quigley-Cook, Director Humboldt-Del Norte SELPA 624 Harris Street Eureka, CA 95503	<b>Student</b> 
<b>Complaint Received</b> April 6, 2023	<b>Report Mailed</b> May 24, 2023

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**INVESTIGATION PROCEDURES**

The investigation and conclusions are based on the investigator's review of materials and documents provided by the Complainant and the District, as well as telephone contact with the Complainant on April 18, 2023. Email contact with the District occurred on April 19 and May 3, 5, and 8, 2023.

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**SUMMARY OF THE ALLEGATION**

The Complainant alleges the District failed to comply with individualized education program (IEP) requirements set forth in *Code of Federal Regulations*, Title 34 (34 CFR), Section 300.323(c)(2), when the District did not provide special education and related services due to the student not having a one-to-one (1:1) aide from February 28 to April 6, 2023.

**APPLICABLE CITATION**

34 CFR Section 300.323(c)(2) requires, "Each public agency must ensure that . . . (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP."

## FINDINGS OF FACT

1. The student's February 21, 2023, IEP requires the student to receive specialized academic instruction (SAI) for 1,131 minutes weekly with five periods of life skills special education classes and one period of general education physical education, intensive individual services (IIS) with a 1:1 aide for 1,875 minutes weekly, behavior intervention services (BIS) for 30 minutes monthly, and career awareness for 30 minutes monthly. Evidence for this finding is based on the February 21, 2023, IEP.
2. On February 27, 2023, there was an incident with the student, and the 1:1 aide was unable to return. From February 28 to April 6, 2023, the date the complaint was received by the California Department of Education (CDE), there was a period of five weeks. The District was unable to find a 1:1 aide so that the student could return to school. During this time, the student did not receive SAI for 5,655 minutes, IIS for 9,375 minutes, BIS for 30 minutes, and career awareness for 30 minutes. Evidence for this finding is based on a behavior response report; the District's May 5, 2023, response to the CDE; the student's attendance record; and the 2022–23 school calendar.
3. The student is passing all academic classes. Evidence for this finding is based on the student's grade report.
4. On April 7, 2023, the student returned to school and started receiving special education and related services. Evidence for this finding is based on the May 8, 2023, District email.

## CONCLUSION

The District failed to meet the requirements of 34 *CFR* Section 300.323(c)(2). The District did not provide special education and related services due to the District not having a 1:1 aide to support the student as required by the student's February 21, 2023, IEP from February 28 to April 6, 2023. **The District is out of compliance.**

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## REQUIRED CORRECTIVE ACTIONS

1. On or before July 1, 2023, the District shall provide evidence that it has provided a memorandum to all staff and administrators involved in this case related to the requirements of 34 *CFR* Section 300.323(c)(2), and the findings of noncompliance in this case, with a directive to comply with the law. Acceptable evidence should include a copy of the memorandum and the distribution list, including staff names, titles, and signatures of the recipients.

2. On or before March 1, 2024, the District shall provide evidence it has provided 94 hours of compensatory SAI services to the student. The compensatory SAI services shall focus on supporting the student's areas of need. Acceptable evidence should include a copy of the service logs or other documentation showing the date(s) of services, the amount of time services was provided, and the name(s) of the service provider(s).
3. On or before September 1, 2023, the District shall provide evidence that it has provided 30 minutes of BIS services to the student. Acceptable evidence should include a copy of the service logs or other documentation showing the date(s) of services, the amount of time services was provided, and the name(s) of the service provider(s).
4. On or before September 1, 2023, the District shall provide evidence that it has provided 30 minutes of career awareness services to the student. Acceptable evidence should include a copy of the service logs or other documentation showing the date(s) of services, the amount of time services was provided, and the name(s) of the service provider(s).

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## RECONSIDERATION NOTICE

The findings in this investigation report are specific to this case. While general rules are cited, findings in other investigations may differ due to the facts and issues in each case.

Within 30 days of the "Report Mailed" date on this CDE report, either party may request reconsideration [*California Code of Regulations*, Title 5, Section 3204]. The request for reconsideration must state and explain the reason for the request based on one or more of the following:

1. The report lacks material findings of fact
2. The material findings of fact in the report are unsupported
3. The legal conclusion in the report is inconsistent with the law
4. The corrective actions in the report fail to provide proper remedy

Pending the Superintendent's reconsideration, the Department report, including corrective actions remains in effect and enforceable.

A request for reconsideration of the CDE's Investigation Report must be postmarked within 30 days of the "Report Mailed" date on the CDE report and sent to:

**Ana Marsh, Education Administrator II  
Complaint Resolution Unit  
[speceducation@cde.ca.gov](mailto:speceducation@cde.ca.gov) Email  
or  
916-327-8878 Fax  
or  
California Department of Education  
Complaint Resolution Unit  
1430 N Street, Suite 2401  
Sacramento, CA 95814**

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Evidence of required corrective actions or questions regarding corrective actions shall be directed to:

**Corrective Actions  
Complaint Resolution Unit  
California Department of Education  
1430 N Street, Suite 2401  
Sacramento, CA 95814 or  
916-327-8878 Fax or Email:  
[SEDCorrectiveAction@cde.ca.gov](mailto:SEDCorrectiveAction@cde.ca.gov)**

When submitting evidence please make sure to include the case number.

If compliance is determined in this investigation and no corrective actions are required, consider this case closed.

Ana Marsh  
Education Administrator II  
Complaint Resolution Unit

Jane Canty  
Education Administrator I  
Complaint Investigation Unit II

Melissa Branson  
Education Administrator I  
Complaint Investigation Unit I

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California Department of Education  
Special Education Division



1  
2 **DECLARATION OF MONIQUE BRUNDIN**

3 I, MONIQUE BRUNDIN, declare as follows:

4 1. I make this declaration based on my own personal knowledge and if called as a  
5 witness, I could and would testify to the following matters.

6 2. I submit this declaration in support of Plaintiffs' Reply Brief and Plaintiffs'  
7 Motion for Preliminary Injunction.

8 3. In paragraph 4 of my initial declaration, I stated: "As a result, the District required  
9 Alexandrew to miss 90 days of the 2022-23 school year from February through June."

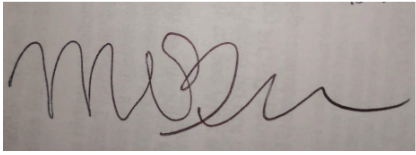
10 4. As further context, in January 2023, I had an in-person meeting with  
11 Alexandrew's principal Katherine and Superintendent Thomas Kissinger. Both of them told me  
12 to keep Alexandrew at home because they did not have an aide to prevent his behaviors from  
13 escalating at school. As a result, I was forced to keep Alexandrew at home and put him in  
14 distance learning for 90 days through June 2023. Although Alexandrew received instruction, he  
15 was deprived of in-person contact with his peers and teachers necessary to develop his socio-  
16 emotional, behavioral, and self-soothing skills.

17 5. In paragraph 6 of my initial declaration, I stated: "Because he did not socially  
18 interact with other kids for such a long period of time, he is awkward at school and inappropriate  
19 with students. During play, he will push kids if they take a ball from him. He becomes upset  
20 when other students answer a question before him because he does not understand the concept of  
21 raising hands and answering questions in order."

22 6. As further context, I observed Alexandrew engage in the exact same awkward and  
23 inappropriate behavior at home with his siblings and other neighborhood kids. This only started  
24 to happen after Alexandrew was forced to stay at home for 90 days. Before that, Alexandrew was  
25 engaging in appropriate behavior.

26 I declare the above to be true and correct under penalty of perjury of the laws of the State  
27 of California and the United States of America, executed in Crescent City, California, on January  
28 28, 2024.

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Monique Brundin

1 **DECLARATION OF CHRIS JONES**

2 I, CHRIS JONES, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I submit this declaration in support of Plaintiffs' Reply Brief and Plaintiffs'  
6 Motion for Preliminary Injunction.

7 3. In paragraph 5 of my initial declaration, I stated: "During that time, other students  
8 physically and sexually assaulted Noah. I know this because I heard Noah tell a school  
9 psychologist during a Zoom call with his psychiatrist from the regional center. One of Noah's  
10 classmates told me he saw Noah crying at school without an aide with him."

11 4. As further context, when Noah's classmate told me he saw Noah crying at school  
12 without an aide with him, the classmate sounded worried, frantic, and in a panicked state in  
13 regards to the information he was providing to me. He was speaking really quickly and his voice  
14 sounded cracked in a nervous tone.

15 5. In paragraph 5 of my initial declaration, I stated: "At the meeting, the vice  
16 principal of the high school said he knew that there were a group of kids who were physically  
17 and sexually assaulting students, but that he did not know they were doing it to Noah. The vice  
18 principal assured us that the District would hire a new one-to-one aide who would be trained to  
19 work with Noah. But the new aide that the District hired was not trained to work with Noah."

20 6. As further context, while the vice principal was explaining this information, she  
21 sounded nervous, frantic, and excited because she realized that we found out about the physical  
22 and sexual assault, and she did not tell us about it. And Noah's new aide told me and my wife  
23 that she was feeling nervous and panicked about being Noah's aide because she was not given  
24 training to work with students with special needs like Noah.

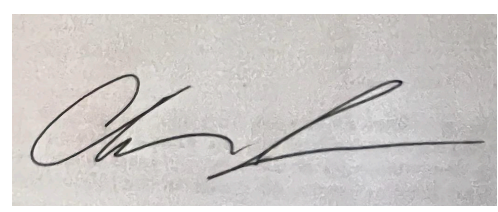
25 7. In paragraph 7 of my initial declaration, I stated: "I pulled Noah out of school  
26 because the students who assaulted Noah during junior high school also attend the high school  
27 and I do not feel Noah is safe without an aide with him at all times."  
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8. As further context, I know that the students who assaulted Noah during junior high school also attend the high school because Noah’s IEP was written to address the presence of these students and avoid them.

9. I am part of the Blackfeet Native American Tribe and my enrollment number is 201-U14676. Noah is also part of the Tribe.

I declare the above to be true and correct under penalty of perjury of the laws of the State of California and the United States of America, executed in Crescent City, California, on January 29, 2024.



Chris Jones

1 **DECLARATION OF TABITHA MADDOX**

2 I, TABITHA MADDOX, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I submit this declaration in support of Plaintiffs’ Reply Brief and Plaintiffs’  
6 Motion for Preliminary Injunction.

7 3. In paragraph 4 of my initial declaration, I stated: “During that year, Jax’s teacher,  
8 Ms. Beyers, told me that a staff member restrained Jax because he refused to go on the bus and  
9 did not calm down.”

10 4. As further context, on November 8, 2023, police officers arrived at my home to  
11 tell me that Jax had been restrained. I went with the police officer to Jax’s school. The police  
12 officer told me that the aide who restrained Jax was willing to speak to me about the incident.  
13 The name of the aide is Colleen White. I went into a room with Colleen and the police officer.  
14 Colleen sounded nervous and panicked about the restraint as she explained to me what happened.  
15 Colleen explained that she had previously met Jax at a barbeque and therefore felt she could help  
16 Jax when she observed him in an escalated state. She explained to me that because she had  
17 thought she had made a connection with Jax that she thought she could help. She admitted she  
18 should not have gone to help Jax. She explained that she restrained him even though she should  
19 not have.

20 5. In paragraph 4 of my initial declaration, I stated: “At the beginning of the 2023-24  
21 school year on September 11, Jax’s father went to pick Jax up from school and observed that Jax  
22 had run away from his classroom and was wandering school grounds. The general education  
23 teacher, Ms. Cole, told Jax’s father that Jax left the classroom while her back was turned. On a  
24 call later that afternoon, Ms. Cole told me that she would assign a ‘kid buddy’ to prevent Jax  
25 from eloping.”

26 6. As further context, I called Ms. Cole that same night of September 11. Ms. Cole  
27 sounded nervous and panicked about the incident as she explained to me that Jax had run away  
28 from his after school program group while her back was turned and was wandering the school

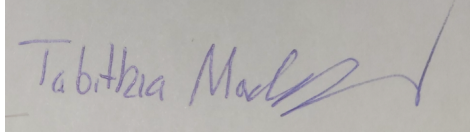
1 grounds, and she did not have enough aide support to help him. She told me that she would  
2 assign a “kid buddy” to prevent Jax from eloping.

3 7. In paragraph 5 of my initial declaration: “On September 12, 2023, I spoke to the  
4 principal of Bes Maxwell Elementary School, Diane Weiss. I told her that the school had put Jax  
5 in danger twice and requested that the District provide a one-to-one aide for Jax. Ms. Weiss told  
6 me that the school was short staffed and could not provide a one-to-one aide. Because I was  
7 afraid for Jax’s safety, I pulled him out of school until the District agreed to provide a one-to-one  
8 aide. During an October 2, 2023 IEP meeting, I again requested the District provide a one-to-one  
9 aide. The District agreed that Jax needed a one-to-one aide but said that the District did not have  
10 enough staff to provide one. The District refused to document the one-to-one aide service in  
11 Jax’s IEP.”

12 8. As further context, the person who agreed that Jax needed a one-to-one aide but  
13 said that the District did not have enough staff to provide one was Diane Weiss, the principal of  
14 Bes Maxwell Elementary School. Based on my review of the IEP, the District did not document  
15 the one-to-one aide service in Jax’s IEP. Since that time, Jax has not been provided a one-to-one  
16 aide.

17 9. To this date, the District still has not offered Jax any compensatory education to  
18 make up for lost services.

19 I declare the above to be true and correct under penalty of perjury of the laws of the State  
20 of California and the United States of America, executed in Crescent City, California, on January  
21 28, 2024.

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25  
26 Tabitha Maddox

1 **DECLARATION OF ALISHA BEERS**

2 I, ALISHA BEERS, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I submit this declaration in support of Plaintiffs’ Reply Brief and Plaintiffs’  
6 Motion for Preliminary Injunction.

7 3. In paragraph 9 of my initial declaration, I stated the following: “Based on my  
8 observation and thirteen years of special education experience, the aides in the special education  
9 classrooms at Mary Peacock Elementary School lack the training necessary to provide positive  
10 behavioral supports and reduce disruptive student behavior. Multiple aides in these classrooms  
11 have told me that they have not received any training on how to implement the behavioral  
12 supports in their students’ IEPs. I have also heard them say that they have never read students’  
13 IEPs and do not know whether students require a one-to-one aide. I believe this lack of training  
14 stems from the shortage of BCBAs, who do not have enough time to provide training to RBTs  
15 and BITs who in turn cannot train classroom aides.”

16 4. In addition to hearing from the aides in every special education classroom at Mary  
17 Peacock Elementary School that they have not received sufficient training and do not know how  
18 to read students’ IEPs, I have observed actions of these aides that clearly indicate they have not  
19 been sufficiently trained on IEPs or read students’ IEPs. As a speech pathologist, my  
20 responsibility is to review the IEPs of any student who receives speech services in these  
21 classrooms. I need to review these IEPs not only to provide speech services, but also because I  
22 need to be prepared to provide behavioral interventions. I also attend all of these students’ IEP  
23 meetings and help facilitate each student’s supports and accommodations. As a result, I have  
24 become familiar with the accommodations and positive behavioral interventions and supports  
25 required by students’ IEPs. And throughout my 13 years of special education experience, I have  
26 become deeply knowledgeable about how behavioral interventions and accommodations should  
27 be implemented based on students’ disability profile. I have also received training in the Crisis  
28 Prevention Institute’s de-escalation training, which is an evidence-based strategy for de-

1 escalating and preventing aggressive student behavior. Thus, when observing the actions of aides  
2 in response to students' disability-related behaviors, I can easily assess whether the aides are  
3 properly trained to provide required behavioral interventions and accommodations.

4         5.       Through my observations, I have determined that most of the aides in each special  
5 education classroom at Mary Peacock Elementary School are not properly trained to provide  
6 behavioral interventions and accommodations. For example, many of the students' IEPs state  
7 that aides and other staff members should not use the word "punish" to respond to a student who  
8 breaks a school rule. Instead, the staff member should provide choices for alternative tasks that  
9 teach students positive behaviors while providing specific types of positive reinforcement and  
10 different intervals. But the aides in these classrooms regularly do the opposite, demonstrating to  
11 me that they have not been properly trained on or read the students' IEPs. As another example,  
12 many non-verbal students' IEPs state that their aide should be modeling the use of an Alternative  
13 Augmentative Communication ("AAC") device. Modeling means that the aides should verbalize  
14 the emotions of students and the activities in which students are trying to engage. Aides should  
15 then prompt students to use specific phrases on their AAC devices and provide specific types of  
16 positive reinforcement. But most of the aides in these classrooms regularly do not provide this  
17 modeling accommodation. These issues have not arisen for aides who I know have received  
18 sufficient training and who have read and understood students' IEPs.

19         6.       In paragraph 10 of my initial declaration, I stated the following: "Day to day, this  
20 lack of training results in aides who cannot identify when disabled students are about to engage  
21 in problem behavior and do not provide proactive behavioral interventions to prevent those  
22 students from escalating. Instead, these aides utilize punitive strategies that are known to be  
23 harmful and explicitly forbidden by students' IEPs. For example, I have witnessed aides corner  
24 students, restrain them, use the word punishment, and provide negative reinforcement. As a  
25 result, students in these classrooms have become increasingly physically aggressive, throw more  
26 tantrums, and disrupt classroom instruction. Special education teachers in these classrooms are  
27 able to provide academic instruction for a maximum of 10% of each day."  
28



1           7.       As previously stated in paragraphs 4 through 5, I am deeply familiar with the IEPs  
2 of the students in every special education classroom in Mary Peacock Elementary School; the  
3 accommodations and behavioral interventions that these IEPs require to be provided and  
4 prohibit; how these accommodations and interventions should be provided based on my  
5 experience in special education; and how aides who have been sufficiently trained properly  
6 provide these accommodations and interventions. These experiences support my observation that  
7 most of the aides in special education classrooms at Mary Peacock Elementary School fail to  
8 provide required accommodations and interventions while using ones that are explicitly  
9 prohibited.

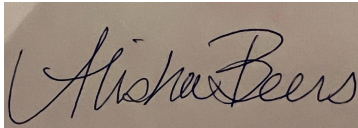
10           8.       I am also familiar with the lesson plans of the special education teachers in each  
11 of the special education classrooms in Mary Peacock Elementary School because I coordinate  
12 with those teachers to provide speech services to students while they are in the classroom. It is  
13 through my knowledge of these lesson plans, review of students' IEP goals and progress,  
14 combined with my 13 years of special education experience, that I know what instructional  
15 content is meant to be covered each school day and subsequently, which instructional content is  
16 not covered because teachers are overwhelmed by staff shortages and having to provide  
17 behavioral interventions..

18           9.       In paragraph 11 of my initial declaration, I stated "I have also observed that most  
19 aides do not provide or understand how to provide the visual and verbal supports in students'  
20 IEPs. For example, many students in these classrooms are nonverbal and use Augmentative and  
21 Alternative Communication ("AAC") devices, which is a tool that helps people who have  
22 difficulty communicating using speech. Most aides in these classrooms do not properly using  
23 [sic] students' AAC devices, which prevents those students from communicating with teachers,  
24 aides, and peers or from participating in classroom instruction."

25           10.       As a licensed speech pathologist, I regularly provide trainings to District staff  
26 members on how to use AAC and other communicative devices for non-verbal students. It is  
27 through providing these trainings and working closely with District staff members to implement  
28 the trainings' core concepts that I have become familiar with whether aides are able to

1 comprehend students' IEPs and use and model AAC devices. As previously stated, modeling the  
2 use of an AAC devices requires aides to verbalize the emotions that students might be feeling  
3 and the activities in which students are trying to engage. Aides should then prompt students to  
4 use specific phrases on their AAC devices and provide positive reinforcement tailored to each  
5 student. But based on my observations of them, most of the aides in every special education  
6 classroom at Mary Peacock Elementary School are not properly trained in modeling AAC  
7 devices and regularly do not provide this modeling accommodation. These issues have not arisen  
8 for aides who I know have received sufficient training and who have read and understood  
9 students' IEPs.

10 I declare the above to be true and correct under penalty of perjury of the laws of the State  
11 of California and the United States of America, executed in Crescent City, California, on January  
12 27, 2024.

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18 Alisha Beers  
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1 **DECLARATION OF EMILY CALDWELL**

2 I, EMILY CALDWELL, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I submit this declaration in support of Plaintiffs’ Reply Brief and Plaintiffs’  
6 Motion for Preliminary Injunction.

7 3. In paragraph 11 of my initial declaration, I stated the following: “While providing  
8 speech therapy services, collecting data, and conducting speech assessments for students on my  
9 caseload, I observe classroom time every day. I also have access to the IEPs of the students on  
10 my caseload and therefore know and understand their need for support from aides. At Bess  
11 Maxwell Elementary School, I regularly observe two special education classrooms for students  
12 with significant support needs. In both classrooms I have observed a substantial shortage of  
13 classroom aides and one-to-one aides. I have also observed that the aides have not received  
14 appropriate training in understanding the disabilities of and providing proactive behavioral  
15 interventions to students. As a result, the aides in the classroom are not able to identify when  
16 disabled students are about to engage in problem behavior and do not provide proactive  
17 behavioral interventions to prevent those students from escalating. Students with IEPs in these  
18 schools have become increasingly more physically aggressive, throw more tantrums, and disrupt  
19 classroom instruction. Because they spend so much time managing and reacting to these  
20 behaviors, the special education teachers spend only 20% of classroom time on providing  
21 academic, social, emotional, and functional skills instruction.”

22 4. Similarly, in paragraph 12 of my initial declaration, I stated the following: “At  
23 Del Norte High School, I regularly observe three special education classrooms for students with  
24 significant support needs and nine special education classrooms for students with less significant  
25 support needs. In these classrooms, I have observed a substantial shortage of classroom aides and  
26 one-to-one aides. I have also observed that the aides have not received appropriate training in  
27 understanding the disabilities of and providing proactive behavioral interventions to students. As  
28 a result, the aides in the classroom are not able to identify when disabled students are about to

1 engage in problem behavior and do not provide proactive behavioral interventions to prevent  
2 those students from escalating.”

3           5.       As further context, I know that the aides in each of the special education  
4 classrooms at Bess Maxwell Elementary School and Del Norte High School have not received  
5 appropriate training in understanding students’ disabilities and providing proactive behavioral  
6 interventions because I am deeply familiar with the training necessary to provide these  
7 interventions and have observed actions of these aides that clearly indicate they have not been  
8 sufficient trained to do so. I have been a speech pathologist for eight years. During two of those  
9 years, I worked for a company providing autistic students with Applied Behavior Analysis—an  
10 evidence-based behavioral intervention for students with autism. In that role, I received the  
11 following trainings: 1) Speech Language Pathologist and Board Certified Behavior Analyst for  
12 Alternative Augmentative Communication: Finding Common Ground in April 2021; 2)  
13 Successful Classroom Engagement for Students with Autism Spectrum Disorders in April 2021;  
14 3) Children with Autism: intervention Strategies in March 2020; Autism Focused Intervention  
15 Resources and Modules in September 28, 2018; and Positive Behavior Intervention and Supports  
16 Modules 1-3B in September 2017; Applied Behavior Analysis and Crisis Prevention Institute de-  
17 escalation techniques. I also received a recertification training in Crisis Prevention Institute de-  
18 escalation techniques in September 2023.

19           6.       Additionally, as a speech pathologist, my responsibility is to review the IEPs of  
20 any student who receives speech services in each of the special education classrooms at Bes  
21 Maxwell Elementary School and Del Norte High School. I need to review these IEPs not only to  
22 provide speech services, but also because I need to be prepared to initiate behavioral  
23 interventions in response to students’ disability-related behaviors. As a result, I have become  
24 familiar with the various accommodations and positive behavioral interventions and supports  
25 required by students’ IEPs.

26           7.       Thus, when observing the actions of aides in response to students’ disability-  
27 related behaviors, I can easily assess whether the aides are familiar with and properly trained to  
28 provide required interventions and accommodations. For example, many students’ IEPs identify

1 the tell-tale signs that a student is starting to escalate. The IEPs state that the student may start to  
2 divert their eyes and lose attention, clench their fists, and say that they hate themselves. In  
3 response, the IEPs state that staff members should use a calm and soothing tone, offer choices for  
4 alternative tasks that can break students' frustration, and provide positive reinforcement to get  
5 the student to use self-soothing techniques. But the aides in these classrooms regularly do not  
6 recognize these signs or provide the proactive interventions. As another example, many non-  
7 verbal students' IEPs state that their aide should be modeling the use of an Alternative  
8 Augmentative Communication ("AAC") device. Modeling the use of an AAC devices requires  
9 aides to verbalize the emotions that students might be feeling and the activities in which students  
10 are trying to engage. Aides should then prompt students to use specific phrases on their AAC  
11 devices and provide positive reinforcement tailored to each student. But the aides in these  
12 classrooms regularly do not provide this modeling accommodation and do not demonstrate an  
13 understanding of how to do so. These issues have not arisen for aides who I know have received  
14 sufficient training and who have read and understood students' IEPs.

15 8. I have also observed aides in these classrooms reinforce negative and dangerous  
16 behaviors like physical aggression, which is antithetical to the training they receive. For  
17 example, when students are pinching and biting to gain access to a preferred toy, I have observed  
18 aides withhold that toy until the aides cannot tolerate the physical aggression anymore. These  
19 negative reinforcement techniques contradict the students' IEPs and evidence-based principles of  
20 Applied Behavior Analysis. I have also observed these aides using physical restraints that are  
21 dangerous and illegal and in contradiction to Crisis Prevention Institute de-escalation training.  
22 For example, I have observed that during incidents when students are being aggressive, aides pin  
23 students to the ground or to a chair and physically grab their arms and hold them down.

24 9. As of December 10, 2023, one of the special education teachers in the Bess  
25 Maxwell Elementary School special education classroom for students with significant support  
26 needs, Nick Byers, resigned. He has been replaced with a substitute teacher who does not have a  
27 special education credential, Mr. Shane Small. I know this because Mr. Small has told me he  
28 does not have a special education credential and also because I have observed Mr. Small struggle

1 with basic tasks that I have observed individuals with special education credentials are able to  
2 perform. For example, I have observed Mr. Small’s unfamiliarity with Alternative Augmentative  
3 Communication (“AAC”) devices, which non-verbal students use to communicate. He struggles  
4 to both use the device and help model the device for students.

5 10. Another special education teacher in the Bess Maxwell Elementary School special  
6 education classroom for students with significant support needs (“moderate/severe”), Jamie  
7 Wanke, also resigned as a special education teacher and will only teach general education  
8 beginning February 2, 2024. Additionally, the Bes Maxwell principal, Diane Wiese, has  
9 resigned.

10 I declare the above to be true and correct under penalty of perjury of the laws of the State  
11 of California and the United States of America, executed in Crescent City, California, on January  
12 28, 2024.

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17 Emily Caldwell  
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1 **DECLARATION OF SARAH ELSTON**

2 I, SARAH ELSTON, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I submit this declaration in support of Plaintiffs’ Reply Brief and Plaintiffs’  
6 Motion for Preliminary Injunction.

7 3. As I stated in my initial declaration, the Del Norte County Unified School  
8 District’s (“District”) staffing shortage has created a shortage of classroom and one-to-one  
9 behavioral aides in my classroom. This shortage has meant that multiple students in my  
10 classroom have had to stay home from school because they do not have a one-to-one aide to  
11 assist them in school. One of these students is Plaintiff Olivia R. Olivia is entitled to a one-to-one  
12 aide, but because of staffing shortages and a lack of a one-to-one aide for her, she has been  
13 forced to remain at home for at least 50 days this academic year and at least 50 days during the  
14 2022-23 academic year. Additionally, the shortage of aides in my classroom has meant that I am  
15 overwhelmed and cannot attend to all of my tasks. As a result, I have had to cancel Olivia R.’s  
16 individualized reading services at least six times this academic year.

17 4. Olivia R. and other students in my special education classroom are owed  
18 hundreds of hours of compensatory education because the staffing shortage has either forced  
19 them to stay home from school or prevented me from completing 80% of my lesson plan this  
20 academic year. But because I do not have enough behavioral aides, I will not be able to provide  
21 any compensatory education to my students this academic year. Meanwhile, these students are  
22 continuing to accumulate more compensatory education time. Even then, the provision of  
23 compensatory education after the fact will not make up for all the educational deficits in a  
24 manner that would allow students to stay or get on track to timely matriculate to the next level,  
25 and will have long lasting impacts. The District does not have staff to provide compensatory  
26 education. I provided compensatory education to Plaintiff Shawn T. in the summer of 2023.  
27 Because the District could not find an aide to work with him, we could not provide all of the  
28 compensatory education time to him. The District cannot provide all of his compensatory

1 education hours. Moreover, Shawn T.'s aides were absent three times during the week of January  
2 22, 2023 which forced me to fill in as his one-to-one aide and deprived other students of  
3 specialized academic instruction, including and especially Olivia R.

4 5. In paragraph 16 of my initial declaration, I stated: "Due to staffing shortages,  
5 these nine special day classrooms have not have any aides on approximately 12 out of the first 50  
6 days. The classrooms have been staffed by only one aide for the other 38 out of 50 days. Based  
7 on my observations and reports from special education teachers in these classes, the remaining  
8 staff in these classrooms cannot provide the accommodations and behavior support strategies to  
9 their students by themselves. The special education teachers spend most of their time managing  
10 students' behaviors, providing redirection, and checking for understanding instead of providing  
11 actual academic instructions. As a result, these teachers do not finish more than 40% of their  
12 daily lesson plans and have fallen far behind their progress on the content they need to cover by  
13 the end of the academic year. These teachers also do not have the time to collect data about their  
14 students' present levels of performance, which are necessary to writing new and accurate IEP  
15 goals and modifying instruction to students' needs."

16 6. Similarly, in paragraph 17 of my initial declaration, I stated: "The learning  
17 regression of students in these classrooms is similar to that of students in the special day content  
18 classes without significant support."

19 7. As further context, I know this information from hearing it from the special  
20 education teachers in my role as the president of the teacher's union. When these teachers told  
21 me about this situation, they sounded panicked, anxious, and nervous about the shortages and  
22 resulting learning loss. Their language is rushed, frantic, and visceral. I also know this  
23 information because I regularly enter these classrooms to provide support to these special  
24 education teachers and have observed the absence of aides and the fact that the teachers are  
25 forced to spend most of their time managing students' behaviors while finishing no more than  
26 40% of their lesson plans.

27 8. In paragraph 19 of my initial declaration, I stated: "Because this teacher's  
28 caseload is so high, she has little to no time to provide her students with academic instruction.



1 Instead, she is forced to rely on a general education teacher and behavioral aide who do not have  
2 a special education credential to provide that instruction.”

3 9. As further context, I learned this information from the teacher herself over email  
4 on November 7, 2023. The teacher told me that her caseload is at 51 students and that she  
5 estimated it would rise to 60 before the school year is over. She said she was overwhelmed with  
6 managing everything from writing IEPs, orchestrating IEP team meetings, to liaising with  
7 parents and coordinating behavioral aide schedules. This is as violation of the teachers union  
8 contract with the District, which caps special education teachers’ caseload at 25 students.

9 10. In December 2023, Nick Byers, a former special education teacher in Bess  
10 Maxwell Elementary School, resigned because of lack of support from the District’s special  
11 education department.

12 11. On January 24, 2024, a former special education director at Bess Maxwell  
13 Elementary School, Jaime Wanke, told the District special education director, Craig Kimball,  
14 that a one-to-one aide for one of her students had not been provided for the previous five school  
15 days and asked me to contact the student’s guardian to let her know that it is not safe for the  
16 student to be at school without the support detailed in his IEP and that he needs to be picked up  
17 and may not return until his aide is there to ensure everyone’s safety. Ms. Wanke also told me  
18 that she does not know how to make up specialized academic instructional minutes that she had  
19 not been able to deliver due to the staff shortage and, as a result, had not been able to collect  
20 students’ data, deliver instruction, get special education students to the general education  
21 classroom for mainstreaming, allow students to participate in their grade level field trips, or  
22 provide one-on-one support.

23 12. As of February 5, 2024, Bes Maxwell Elementary school will not have any  
24 teachers with special education credentials in the special education classrooms. The school has  
25 one long-term substitute without a credential between the two classrooms. I know this because of  
26 my access to this information as the president of the Del Norte Teacher’s Union and because I  
27 was told this on February 2, 2024 by an instructional coach in the school.

1 I declare the above to be true and correct under penalty of perjury of the laws of the State  
2 of California and the United States of America, executed in Crescent City, California, on January  
3 29, 2024.



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Sarah Elston

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1 **DECLARATION OF AMBER MCADAMS**

2 I, AMBER MCADAMS, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I submit this declaration in support of Plaintiffs’ Reply Brief and Plaintiffs’  
6 Motion for Preliminary Injunction.

7 3. In paragraph 7 of my initial declaration, I stated: “Based on my professional  
8 opinion, multiple other students in my classroom need one-to-one aide support but have not been  
9 offered that support. I believe the District has not offered this support because of the shortage of  
10 aides.” One of the students did actually get the one-to-one aide support from the District. We are  
11 charting the frequency of the students’ behaviors and the frequency and severity of the students’  
12 behaviors are consistent with those of students who do have a one-to-one aide and generalized  
13 attention has not been sufficient to de-escalate the students’ behaviors.

14 4. In paragraph 10 of my initial declaration, I stated: “This year, I have received  
15 minimal training from District RBTs on how to provide PBIS and other de-escalation techniques  
16 to the students in my classroom. This has made it almost impossible to prevent the frequency of  
17 and deescalate aggressive behavior of students in my classroom.”

18 5. As further context to both of these statements, I currently work as a classroom  
19 aide in a special education classroom serving second through fifth grade students with significant  
20 support needs. My class has eight students. Most of the students in my class require some degree  
21 of behavioral aide support because they engage in physically aggressive and/or self-injurious  
22 behavior. As a result, I interact with students who engage in aggressive behavior on a daily basis  
23 and am responsible for providing proactive behavior interventions to de-escalate that behavior.  
24 Because of the minimal training I have received on how to provide Positive behavioral  
25 interventions and supports (“PBIS”) and other de-escalation techniques, I have found it difficult  
26 to provide them. When I was hired by the District, the District did not provide me with any  
27 training on how to de-escalate the behaviors of students with whom I was working. For example,  
28 my classroom has more than one student with a behavior intervention plan—a plan that outlines

1 disabled students' behaviors and which interventions are effective to prevent behavior escalation.  
2 But I never received training in how to implement the interventions in these plans and was  
3 expected to be able to implement them by only reading them. But when I tried to implement the  
4 interventions in these plans, they were not working. For example, one student's behavior  
5 intervention plan required that we use visual icons to help him follow a step-by-step process. But  
6 the student kept getting frustrated by the complexity of the steps. The same plan required the use  
7 of a visual timer for completing tasks, but he would consistently get frustrated and throw the  
8 timer across the room. I was only trained to follow the behavior plan. When I voiced that  
9 following the plan was not working and needed training to discuss his behavior plan to change it  
10 to something that would work, I did not receive that support until this January.

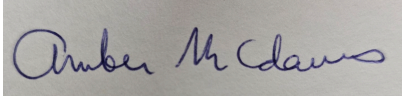
11 6. I emailed the District's special education director, Craig Kimbell, four different  
12 times on November 8, November 13, November 14, and November 27, 2023, asking for a  
13 meeting with the District's behaviorist to address my concerns about not feeling safe in the  
14 classroom because of students' behaviors. The District did not provide a training or even a  
15 meeting.

16 7. In November 2023, the special education teacher in my classroom stopped  
17 working and was replaced by a substitute teacher without special education teaching credentials.  
18 I know this because the teacher told me he did not have a credential and he was unfamiliar with  
19 tasks that teachers with their credentials know, like implementing students' IEP goals or  
20 collecting data to track students' progress on their goals. The change in environment has also  
21 made students in the classroom more frustrated. This is to be expected because many of their  
22 IEPs state that they struggle with changes in their environment, including new personnel.

23 8. On January 27, 2024, I resigned from the District because I was not receiving  
24 enough support from the District.

25 I declare the above to be true and correct under penalty of perjury of the laws of the State  
26 of California and the United States of America, executed in Crescent City, California, on  
27 November 28, 2023.

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Amber McAdams

1 **DECLARATION OF MIKE TYCE**

2 I, MIKE TYCE, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I submit this declaration in support of Plaintiffs’ Reply Brief in support of  
6 Plaintiffs’ Motion for Preliminary Injunction to respond to Defendants’ Evidentiary Objections  
7 to Plaintiffs’ Evidence Offered in support of Plaintiffs’ Request for Preliminary Injunction.

8 3. In paragraph 12 of my initial declaration, I stated: “Because Jonah’s IEP requires  
9 that he spend fifteen minutes each week in a special education classroom, I have observed the  
10 shortage of special education teachers at Pine Grove Elementary School. The special education  
11 classroom in which Jonah spends these fifteen minutes is staffed by only one special education  
12 credentialed teacher and two BIAs. But the teacher must leave the room for at least 30% of each  
13 day to observe students in other classrooms. This leaves the BIAs in charge of providing  
14 instruction to the classroom. The BIAs have told me they do not have a special education  
15 credential necessary to provide that instruction. Moreover, Jonah has not been observed by the  
16 special education teacher all year. The teacher is working diligently, but cannot attend to all of  
17 her tasks without more staff support.”

18 4. As further context, I know that the special education teacher cannot attend to all  
19 of her tasks because I have observed her not spending the time required by Jonah’s IEP to  
20 observe Jonah working in the classroom setting or to help me modify Jonah’s curriculum. When  
21 I take Jonah to the special education teacher’s classroom for observation, she has constantly been  
22 occupied with other tasks, including observing and providing behavioral interventions to other  
23 students because she does not have enough aides to help her. As a result, she does not test  
24 Jonah’s progress in all of his subjects and does not help me modify Jonah’s curriculum for his  
25 level. This forces me to modify Jonah’s curriculum myself, which I am not allowed to do  
26 because I do not have a special education credential.

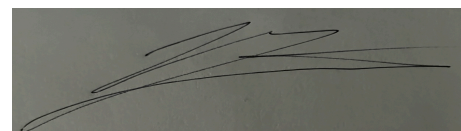
27 5. In paragraph 16 of my initial declaration, I stated: “Jonah also requires speech  
28 therapy for 30 minutes each week. Although Jonah receives these services in-person, the

1 individual responsible for providing these services told me she does not have a SLP credential.  
2 As a result, Jonah is being pulled out of his classroom learning time to receive inadequate speech  
3 therapy services from an uncredentialed provider.”

4           6.       When I stated that Jonah is being “pulled out of his classroom,” I was referring to  
5 the fact that Jonah’s IEP requires speech therapy services provided as a “pull out” service,  
6 meaning that he leaves his classroom to receive the service. Since I wrote my initial declaration,  
7 the individual responsible for providing speech services to Jonah quit, which has caused Jonah to  
8 lose over 200 minutes of speech services. The District still has yet to provide compensatory  
9 education to make up for this loss. I know this because I would be in attendance if those  
10 compensatory hours were provided. The District finally found another individual who is  
11 providing Jonah those services virtually via Zoom because the District has not been able to  
12 provide someone who can provide the services in-person. But providing those services via Zoom  
13 is not nearly as effective as in-person. For example, the speech pathologist works with Jonah to  
14 match words with three action figures—a fire man, policeman, and doctor. When this exercise  
15 has been done in-person, Jonah benefited from the speech pathologist moving the correct action  
16 figure closer to him and asking him the same question to make it easier for him. But via Zoom,  
17 the speech pathologist cannot manipulate the tools she uses, which has made it harder for Jonah  
18 to get to the correct answer.

19           7.       Jonah has also not received 20-40% of his required occupational therapy services  
20 this academic year because of the District’s shortage of occupational therapists. I know this  
21 because I would be in attendance if any of those services were provided.

22           I declare the above to be true and correct under penalty of perjury of the laws of the State  
23 of California and the United States of America, executed in Crescent City, California, on January  
24 28, 2024.

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Mike Tyce

1 **DECLARATION OF BRITTANY WYCKOFF**

2 I, BRITTANY WYCKOFF, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I submit this declaration in support of Plaintiffs' Reply Brief and Plaintiffs'  
6 Motion for Preliminary Injunction.

7 3. In paragraph 10 of my initial declaration, I stated the following: "[O]ne of my  
8 students broke doors and windows and was not able to return to school because of his anxiety.  
9 He is now 19 years old and not able to return in-person, and is getting education online because  
10 we still lack sufficient staff for him. In the 2021-22 school year, during a community trip to a  
11 grocery store, one of our students lacked a one-to-one aide to which he was entitled and  
12 destroyed property, chased after elderly people in the store, and tried to break the school bus  
13 windows. Over the course of that year, he had over 30 instances of severe aggression where he  
14 was hitting people throwing chairs and caused someone spinal injury to her neck who is now  
15 unable to return to work."

16 4. As further context, I know that this student is not able to return to school in-  
17 person based on my experience as the Del Norte High School department chair. I served as the  
18 department chair during the 2021-22 and 2022-23 academic years. As the department chair, my  
19 responsibility was to manage teachers' caseloads, look at staffing ratios, determine how many  
20 aides and other staff members each special education teacher needed, and resolve any caseload  
21 and IEP issues. It is through that role that the family had reported to me that student had a lot of  
22 anxiety partly because of the incidents that had happened at school that prevented him from  
23 coming to school. I also had knowledge that the school did not have enough staff to provide the  
24 student with the one-to-one aide to which he was entitled when he returned to school.

25 5. I also have the knowledge and experience necessary to testify to why the student  
26 engaged in his destructive behavior. As the student's former special education teacher, I became  
27 deeply familiar with his disability-profile and had reviewed his IEP. I was responsible for  
28 providing behavior interventions to him every day to prevent him from escalating. As a result, I



1 knew that without a one-to-one aide to provide proactive behavioral interventions, this student's  
2 behaviors easily escalated, and he would become physically aggressive. His IEP stated that he  
3 needed a one-to-one aide specifically to prevent this escalation. I observed on multiple occasions  
4 that his behavior did not escalate, nor did he become physically aggressive when a one-to-one  
5 aide provided the required interventions.

6         6.         In paragraph 11 of my initial declaration, I stated "[O]ne student with significant  
7 behaviors had a one-to-one aide who went on medical leave. The District staffed that position  
8 with another aide who was known at the District as having a history of putting his hands on  
9 students instead of providing proactive behavioral interventions. As a result, he choked the  
10 student for almost an entire minute, causing the student to experience trauma and miss at least  
11 two months of school. The District never assigned a new aide to the student to enable him to  
12 return to school."

13         7.         I know these facts because I witnessed them. On February 28, 2023, the aide  
14 reacted to Plaintiff Shawn T.'s escalated behavior from the classroom by cornering Shawn and  
15 choking him for one minute. Shawn was not a danger to himself or to other students and the aide  
16 should not have restrained him, let alone choked him. Even after this incident, the aide remained  
17 at the District. I also worked with this aide every year from Fall 2017 to February 2023. Each  
18 year, I observed the aide put his hands on students in an aggressive manner. Each year I reported  
19 these incidents to the District, but the aide remained employed with the District.

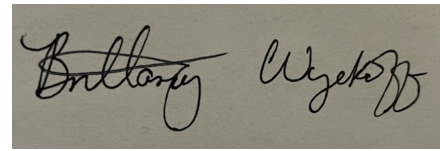
20         8.         In paragraph 11 of my initial declaration, I stated: "There are several District  
21 aides who have a history of putting their hands on students, but who the District has not provided  
22 proper training or replaced with other staff."

23         9.         I know about these facts because I have observed multiple aides putting their  
24 hands on other students. One specific aide used to work in my classroom during the 2022-23  
25 academic year. I have personally witnessed her put her hands on students forcefully. I have  
26 talked to her multiple times and have reported it to the District.

1           10.     In paragraph 13 of my initial declaration, I stated that with respect to students  
2 who are going to filter into the District’s transition program, “The District is considering sending  
3 these students to Humboldt county, but that is four hours away roundtrip.”

4           11.     I know this information because as the former department chair of the District, I  
5 know that the transition program is full and does not have enough staff members to handle  
6 additional students. The transition program teacher has told me that she sat in on meetings with  
7 the District’s special education director, Craig Kimbell, in which Mr. Kimbell stated that he is  
8 considering sending these students to Humboldt county.

9           I declare the above to be true and correct under penalty of perjury of the laws of the State  
10 of California and the United States of America, executed in Crescent City, California, on January  
11 28, 2024.

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Brittany Wyckoff

1 **DECLARATION OF JENNIFER FREER**

2 I, JENNIFER FREER, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called as a  
4 witness, I could and would testify to the following matters.

5 2. I was a special education teacher for the Del Norte County Unified School  
6 District (the "District") from 2012 through 2023. During the 2021-22 and 2022-23 academic  
7 years, I served as the District's only special education teacher who provided instruction to  
8 students in a Home and Hospital placement. A Home and Hospital placement is an educational  
9 program option available to students with disabilities who cannot be educated in a public school  
10 setting. Typically, students in this placement have significant health needs or significant  
11 behavioral challenges and have struggled to attend school in a public school behavioral class,  
12 non-public school or mental health setting. This placement is made available by California  
13 Education Code section 48206.3.

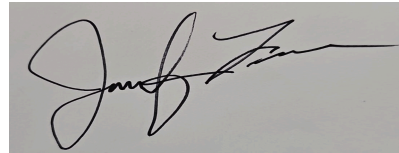
14 3. During the 2021-22 and 2022-23 academic years, my caseload included six  
15 students who were in a home and hospital placement. Two of these students are Plaintiff Monica  
16 C., a Plaintiff in this lawsuit, and Derek Burke. Both of these students' stories are outlined in the  
17 Declaration of Lisa Fintel in support of Plaintiffs' Motion for Preliminary Injunction.

18 4. During these two academic years, District staff repeatedly told me that beginning  
19 in the 2023-24 academic year, the District would eliminate the Home and Hospital placement.  
20 Specifically, in August 2022, acting District Human Resources Director, Kerri Vue, called me  
21 and told me that she was in the process of determining the District's staffing needs and the status  
22 of the Home and Hospital program, and that she needed to know whether I was willing to work  
23 in a different position the next academic year because the District was getting rid of the Home  
24 and Hospital program. I explained to her that the District could not get rid of this program  
25 because several students' medical paperwork required them to receive Home and Hospital  
26 instruction through the next academic year and California law required the program to exist. Ms.  
27 Vue told me that the District was still getting rid of the program. We had this conversation again  
28

1 in May 2023. Ms. Vue told me that I needed to make a decision about whether I would take  
2 another position at the school district.

3 5. In May 2023, I went on medical leave because I was stressed out about my  
4 position at the District, which left the District without any Home and Hospital special education  
5 teachers for the rest of the academic year and continuing on through the 2023-24 academic year.

6 I declare the above to be true and correct under penalty of perjury of the laws of the State  
7 of California and the United States of America, executed in Crescent City, California, on January  
8 29, 2024.

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12 Jennifer Freer  
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**PROOF OF SERVICE**

*Olivia R. et al. v. State of California, et al.*  
Del Norte County Superior Case No. CV231304

I, the undersigned declare: I am a citizen of the United States, over 18 years of age and not a party to the within action. I am employed in the County of Alameda, State of California; my business address is 3075 Adeline Street, Suite 210, Berkeley, California 94703.

On the date specified below, I served:

- **PLAINTIFFS’ DECLARATIONS IN SUPPORT OF PLAINTIFFS’ REPLY BRIEF AND PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

by electronic mail on February 5, 2024 to the addresses listed below:

**California Department of Education**

1430 N St #5901  
Sacramento, CA 95814  
[Joshua.Sondheimer@doj.ca.gov](mailto:Joshua.Sondheimer@doj.ca.gov)  
[Jennifer.Perkless@jod.ca.gov](mailto:Jennifer.Perkless@jod.ca.gov)

**Superintendent Tony Thurmond**

1430 N St #5901  
Sacramento, CA 95814  
[Joshua.Sondheimer@doj.ca.gov](mailto:Joshua.Sondheimer@doj.ca.gov)  
[Jennifer.Perkless@jod.ca.gov](mailto:Jennifer.Perkless@jod.ca.gov)

**California State Board of Education**

1430 N St #5111  
Sacramento, CA 95814  
[Joshua.Sondheimer@doj.ca.gov](mailto:Joshua.Sondheimer@doj.ca.gov)  
[Jennifer.Perkless@jod.ca.gov](mailto:Jennifer.Perkless@jod.ca.gov)

**State of California**

Rob Bonta, Attorney General  
455 Golden Gate Avenue, Suite 11000,  
San Francisco, CA 94102-7004  
[Joshua.Sondheimer@doj.ca.gov](mailto:Joshua.Sondheimer@doj.ca.gov)  
[Jennifer.Perkless@jod.ca.gov](mailto:Jennifer.Perkless@jod.ca.gov)

**(BY MAIL)** I caused each envelope, with postage thereon fully prepaid, to be placed in the United States mail at Berkeley, CA. I am readily familiar with the practice for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

**(BY FACSIMILE)** The above-referenced document is transmitted by facsimile transmission and the transmission was reported as complete and without error to the numbers listed above.


1  **(BY EMAIL TRANSMISSION)** The above-referenced document is transmitted via  
2 electronic transmission to the persons at the electronic-email addresses indicated on the  
attached Service List.

3  **(BY PERSONAL SERVICE)** I delivered to an authorized courier or driver authorized  
4 by First Legal to receive documents to be delivered on the same date. A proof of  
service signed by the authorized courier will be filed forthwith.

5  **(BY OVERNIGHT COURIER)** I am readily familiar with the practice for collection  
6 and processing of correspondence for overnight delivery and know that the document(s)  
7 described herein will be deposited in a box or other facility regularly maintained by  
\_\_\_\_\_ for overnight delivery.

8  
9 I declare under penalty of perjury under the laws of the State of California that the above  
is true and correct.

10 Executed on February 5, 2024, within Alameda County, Berkley, California.

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14 Malhar Shah (SBN 318588)  
15 Erin Neff (SBN 326579)  
16 Claudia Center (SBN 158255)  
17 DISABILITY RIGHTS EDUCATION AND  
18 DEFENSE FUND  
19 3075 Adeline St, Ste 210,  
20 Berkeley, CA 94703-2578  
21 Tel: (415) 644-2555  
22 mshah@dredf.org  
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