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13	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
14	COUNTY OF ALAMEDA	
15	CAYLA J., KAI J., AND ELLORI J., through	Case No.
16	their guardian ad litem ANGELA J., MATTHEW E. AND JORDAN E., through their guardian ad litem CATHERINE E.,	COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF
17	MEGAN O. AND MATILDA O., through their guardian ad litem MARIA O., ALEX R. AND	JURY TRIAL DEMAND
18	BELLA R., through their guardian ad litem KELLY R., TAMARA I., ISAAC I., AND	JUNI IMAL DEMAND
19	JOSHUA I., through their guardian ad litem SUSAN I., NATALIA T. AND BILLY T.,	
20	through their guardian ad litem HILLARY T., DANIEL A. through his guardian ad litem	
21	SARA A., COMMUNITY COALITION, AND THE OAKLAND REACH,	
22	Plaintiffs,	
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24		
25	OF EDUCATION, STATE DEPARTMENT OF EDUCATION, TONY THURMOND, in	
26	his official capacity as State Superintendent of	
27	Public Instruction, and DOES 1-100, Defendants.	
28	Defendants.	

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Plaintiffs Cayla J., Kai J., and Ellori J., through their guardian ad litem Angela J., Matthew E. and Jordan E., through their guardian ad litem Catherine E., Megan O. and Matilda O., through their guardian ad litem Maria O., Alex R. and Bella R., through their guardian ad litem Kelly R., Tamara I., Isaac I., and Joshua I., through their guardian ad litem Susan I., Natalia T. and Billy T., through their guardian ad litem Hillary T., Daniel A. through his guardian ad litem Sara A., The Oakland REACH, and Community Coalition("Plaintiffs"), by and through their undersigned attorneys, bring this action against defendants the State of California, State Board of Education, Department of Education, and Superintendent of Education Tony Thurmond.

Unless explicitly stated to the contrary, all allegations are based on information and belief.

Plaintiffs allege as follows:

INTRODUCTION

- 1. The California Constitution has repeatedly and consistently been interpreted to provide that the State itself has broad responsibility to ensure basic educational equality. This bedrock guarantee has never been fulfilled, particularly as to the most underserved children in California: Black and Latinx students from low-income backgrounds. Long predating the novel coronavirus pandemic, these young persons could not count on the State and its officials to provide the type of free education that is the foundation of civic participation and self-efficacy.
- 2. In March 2020, as schools across California shifted to remote learning due to the pandemic, the physical locus of education was no longer school buildings but students' homes. For many families, a single room is now a multi-grade classroom as well as a workplace for several adults. For students without homes, school is now wherever they can find an internet connection. The change in the delivery of education left many already-underserved students functionally unable to attend school. The State continues to refuse to step up and meet its constitutional obligation to ensure basic educational equality or indeed any education at all. It is incumbent on the State and its officers to get underserved students through the pandemic with an education that does not widen the gap between them and their more privileged counterparts—a gap that they will struggle to overcome for the rest of their lives.

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3. learning, Black and Latinx students from low-income families are being deprived of their fundamental right to a free and equal education guaranteed by the California Constitution. Many of these students do not have access to the devices, connectivity, adaptive technologies, and other digital tools necessary for remote education (the "Digital Divide"). Without these basic inputs, they cannot learn to read or write properly, perform basic math functions, or comprehend state-mandated curricular content. There also are serious bars to realistic remote learning despite the best efforts of dedicated teachers, including difficulty getting devices and software to work, absence of academic or mental health supports, English language barriers, and unmet needs for students experiencing homelessness. In addition, students are being harmed by schools that fail to meet minimum instructional times or provide adequate training and professional development for teachers and parents. These conditions would be unacceptable in wealthier, whiter communities and do not meet the minimum standards set by the California legislature for the 2020-2021 school year, which the State has done nothing to enforce. See Cal. Educ. Code § 43500 et seg.

Due to the State's insufficient attention to the actual circumstances of remote

4. The State has also failed to give teachers the support they need to help students learn under novel and challenging circumstances. Teachers are not immune to the Digital Divide; they also face connectivity issues, including inadequate hardware like monitors and cameras, inconsistent internet connections, and a lack of training on operating classroom software. And they have had to adjust to teaching remotely, without the usual interplay with students that happens in an ordinary classroom. The State's lack of oversight has left teachers in many districts to fend for themselves, without adequate equipment, training, or support.

¹ E.g., Louis Freedberg, California voters, including parents, have deep concerns about distance learning, EDSOURCE (Oct. 8, 2020), https://edsource.org/2020/california-voters-includingparents-have-deep-concerns-about-distance-learning/640685; Lyanne Melendez, Bay Area parents, teachers, students weigh in on distance learning challenges since start of school, ABC 7 EYEWITNESS NEWS (Oct. 12, 2020), https://abc7news.com/education/parents-teachers-weigh-in-on-distance-learningstruggles/6900731/; Sydney Johnson, Up to 1 million California students may still lack connectivity during distance learning, EDSOURCE (Oct. 15, 2020), https://edsource.org/2020/california-still-lacksconnectivity-for-more-than-300000-students-during-distance-learning/641537.

- 5. Because of the State's inadequate response, parents and grandparents have had to become tutors, counselors, childminders, and computer technicians, and they have had to find a way to pay for what are now basic school supplies—laptop/tablets, paper, printing, and internet access. Despite the fact that the home has become the exclusive learning environment for children, the State has offered families no training, support, or opportunity to provide input into plans for remote learning, the eventual return to in-person instruction, or the delivery of compensatory education. No Local Education Authority ("LEA") would have fulfilled its responsibility if it merely provided computers to staff and teachers without also providing support and assistance. Yet that is what the State has done to families. And in far too many instances the State has not even provided devices, much less ensured connectivity or provided training.
- 6. Community organizations have shown that high-quality remote learning is possible for underserved students. Their success stories include providing families with computers and hotspots, offering technical support and trainings, running virtual summer school programs, and offering support for students' social and emotional needs during a time of isolation and anxiety. But they have had to expend considerable resources to do so, and they cannot hope to reach all of the students for whom the State is responsible.
- equalizer that affords all children the opportunity to define their destinies, lift themselves up, and better their circumstances. Student Plaintiffs Cayla J., Kai J., Ellori J., Megan O., Matilda O., Maria O., Alex R., Bella R., Matthew E., Jordan E., Tamara I., Isaac I., Joshua I., Natalia T., Billy T., and Daniel A. are economically disadvantaged people of color. They are full of potential and want to learn. They hold high aspirations; they participate in robotics competitions, Advanced Placement classes, and mentorship programs, and they seek to become doctors, dancers, and veterinarians, among other professions. But the State's system of education is failing them.

 Distance learning as it exists for these students cannot prepare them to participate meaningfully in politics and civic life, to exercise free and robust speech, and to voice the views of their communities. In California's education system, the children of the "haves" receive access to a basic education while the children of the "have nots" are barred access, rendering the state system

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of public education the great unequalizer. This is even more true now than it was before the pandemic.

- 8. There has been no systematic planning by the State to catch up students who have lost precious months of education because of the State's failure to undertake reasonable measures to deliver basic educational equality. The State has not even signaled that it will do what it takes to remediate the consequences of the pandemic as exacerbated by its inaction. This is true even though officers charged constitutionally to do so are aware that these students have received education in name only, if that, for nearly a year.
- 9. The State's abdication of responsibility and insufficient response to the challenges of remote learning have denied Student Plaintiffs the basic educational equality guaranteed to them by the California Constitution. Because the State's pandemic response compels families to use their homes as classrooms, the State's constitutional obligations expand into the home. At all times, but especially in the context of this pandemic, the State cannot fulfill its constitutional obligation absent meaningful participation in educational policy and decision-making by parents and families. Thanks to community organizations, we know what works for underserved students during this challenging time. But a statewide education system must not depend on the heroic and unsupported efforts of students, parents and families, teachers, community groups, service providers, and philanthropists in order to attempt to fulfill its constitutional obligation.
- 10. Plaintiffs thus bring this lawsuit on behalf of California students and their families, as well as community organizations that have diverted resources to educate students during the pandemic, in order to hold the State accountable for its refusal to fulfill its constitutional obligation. Plaintiffs seek to ensure that all of the State's schools be equipped to provide students with the remote tools, connectivity, and programming to provide the basic education that is their fundamental right under the California Constitution.

JURISDICTION AND VENUE

11. The Superior Court for the State of California has personal jurisdiction over Defendants because they are domiciled in the State of California and Defendants' activities, which give rise to this action, occurred in the State of California. Cal. Civ. Proc. Code § 410.10.

12. Venue is proper in this County pursuant to California Code of Civil Procedure sections 395(a) and 395.5. Cal. Civ. Proc. Code §§ 395(a), 395.5.

PARTIES

I. DEFENDANTS

- 13. **Defendant State of California** is the legal and political entity with plenary responsibility for educating all California public school students, including the responsibility to establish and maintain the system of common schools and a free education, under Article IX, section 5 of the California Constitution, and to assure that all California public school students receive their individual and fundamental right to an equal education, under the equal protection clauses of the California Constitution, Article I, section 7(a), and Article IV, section 16(a).
- 14. **Defendant State Board of Education** and its members are responsible for determining the policies governing California's schools and for adopting rules and regulations for the supervision and administration of all local school districts. Pursuant to California Education Code sections 33030-32, the State Board of Education is required to supervise local school districts to ensure that they comply with State and federal law requirements concerning educational services.
- 15. **Defendant State Department of Education** is the department of State government responsible for administering and enforcing the laws related to education. Pursuant to California Education Code sections 33300-16, the State Department of Education is responsible for revising and updating budget manuals, forms, and guidelines; cooperating with federal and state agencies in prescribing rules and regulations, and instructions required by those agencies; and assessing the needs and methods of collecting and disseminating financial information.
- 16. **Defendant Tony Thurmond**, sued here solely in his official capacity, is the State Superintendent of Public Instruction for the State of California, the Secretary and Executive Officer for the State Board of Education, and the Chief Executive Officer of the California Department of Education. As such, he is obligated to take all necessary steps to ensure that school districts comply with the California Constitution and State laws. Pursuant to California

Education Code sections 33301-03, he is the Director of Education in whom all executive and administrative functions of the California Department of Education are vested. Pursuant to California Education Code section 33112(a), he shall superintend the schools of this State. He is responsible for ensuring that children within the State of California receive a free and equal public education.

- 17. Plaintiffs presently do not know the names or capacities of other defendants responsible for the wrongs described in this Complaint, and, pursuant to California Code of Civil Procedure section 474, sue such defendants under the fictitious names Does 1 through 100 inclusive.
- 18. Defendants State of California, State Board of Education, State Department of Education, Tony Thurmond, and Doe defendants are herein referred to collectively as "Defendants."

II. PLAINTIFFS

- 19. **Plaintiffs Cayla J.** and **Kai J.** are eight-year-old twins who attend the third grade at a school run by Oakland Unified School District ("OUSD"). Cayla J. wants to be a doctor when she grows up, while Kai J. wants to be a scientist. Cayla J. and Kai J. are Black and live in Oakland, California with their mother Angela J., their sister Ellori J., and their father Michael J. Their family is low-income: Angela J. is working two part-time jobs and a full-time job to keep the family in their home, and Michael J. has a chronic illness. Cayla J. and Kai J. have had the same teachers as one another since the first grade, and they attend the same school as Ellori J.
- 20. Cayla J. and Kai J. were in second grade when distance learning began, though what they were offered by their school barely resembled learning. Between March 17, 2020 and the end of the 2019-2020 school year, their teacher held class only twice. When Angela J. reached out to the teacher to ask why class wasn't meeting, she responded that because some of the students in the class were not connected to remote learning, classes were cancelled for all students. Cayla J. and Kai J. weren't offered asynchronous instruction or other work to make up for the missed class time—no book reports, no packets, no homework. Angela J. felt like her children had been written off.

- 21. Missing so many months of school has had a lasting effect on Cayla J. and Kai J. Now in the third grade, they are supposed to be doing multiplication and division, but they are still having trouble with subtraction, which they should have learned in second grade.
- 22. In fall 2020, a typical school day for Cayla J. and Kai J. begins with a 45-minute video class session, followed by several hours of learning on their own according to a checklist that their teacher provides. Later in the day, Cayla J. and Kai J. participate in a 30-minute small group session with their classmates. Other than those brief sessions, they are on their own for the rest of the day. They have received no supplies or materials from their teacher or school.
- 23. Angela J. and Michael J. help their kids whenever they can. In the absence of any structure or guidance from the school, Angela J. had to learn on the fly how to access the remote learning platform. This fall, Cayla J. and Kai J.'s class switched to a different remote learning program, which is hard to use. The school did not offer Angela J. any assistance with the new platform. The school sent out a survey about whether parents would allow their children to return to school if in-person learning were offered, but otherwise has provided no communication or opportunities for families to provide input on a return to in-person school.
- 24. Angela J. advocates extensively for her kids, writing to the principal and teachers to ask for lesson plans, structure, teacher assessments, and a plan to hit the milestones that her children are supposed to achieve. The school has not provided anything that Angela J. has requested. Angela J. is a member of the school's Parent Teacher Association ("PTA") but the school has cancelled meetings and is unresponsive to parent feedback even when they do meet. She feels like her kids' school and the district is going through the motions of seeking family input but not listening to what families have to say.
- 25. Community-based organization The Oakland REACH has been a lifeline for Cayla J. and Kai J. The Oakland REACH's team met Angela J.'s family where they are and provided a safe space for learning and community advocacy. The Oakland REACH's teachers built a relationship with Angela J. and her family through the Hub, a virtual summer school program, and their Family Liaisons helped keep Cayla J. and Kai J. from falling further behind. Cayla J.

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liked her teacher from the Hub so much that she asked if she could have her as a third grade teacher.

- 26. **Plaintiff Ellori J.** is seven years old and in the first grade at a school run by OUSD. Ellori J. is Black and lives in Oakland with her mother Angela J., her father Michael J., and her siblings Cayla J. and Kai J. Her family is low-income; Angela J. is working two part-time jobs and a full-time job to keep the family in their home, and Michael J. has a chronic illness. Ellori J. attends the same school as Cayla J. and Kai J.
- When remote learning began in March 2020, Ellori J. was in kindergarten. The final months of the 2019-2020 school year went smoothly for Ellori J., thanks to the efforts of her two kindergarten teachers. Her teachers took appropriate and necessary steps to make sure that students stayed engaged. They mailed lessons to students so that they didn't have to be on the computer all day, and also sent a schedule and provided updates on students' progress. The teachers reached out to Angela J. via text and email, and had a very good communication system. They used FaceTime to help Angela J. learn how to use the remote learning platform.
- 28. Now that Ellori J. is in first grade, she has only one teacher for a class of 33 students. The teacher has not taken the steps that Ellori J.'s kindergarten teachers took to keep the students engaged. For instance, Ellori J. has had trouble getting her teacher's attention over the screen. When Angela J. raised this issue with Ellori J.'s teacher, the teacher said that she can only see six students on the screen at a time, and cannot be responsive to the majority of the class. Angela J. thinks that Ellori J. is learning this year only because she spends all her time with her older siblings, who are two grades ahead of her, and she is still missing out on foundational basics.
- 29. Angela J. is frustrated with the inconsistent remote learning programs offered at her kids' school. For instance, unlike Cayla J. and Kai J.'s third grade teacher, Ellori J.'s first grade teacher provided a bucket of supplies to students, including notebooks, pencils and erasers. Ellori J.'s kindergarten teachers had excellent methods for engaging students, communicating with parents, and providing supplies. But the other teachers who have taught Angela J.'s children have not had this level of professionalism, dedication, and structure. Angela J.'s experience with

The Oakland REACH and with the remote learning offered by her school has shown her that every classroom needs a family liaison to make sure no child gets left behind, as well as invested teachers who get to know students and families, and a parent empowerment group at each school.

- 30. **Plaintiff Matthew E.** is a twelve-year-old student who attends a middle school run by OUSD. Matthew E. is Black and lives with his brother Jordan E. and his mother Catherine E. in Oakland, California. Matthew E.'s family is low-income and Catherine E. is a single mom. Catherine E. had to take a leave of absence from work and exhausted her sick leave in order to help her sons with remote learning. Now, she is receiving only two-thirds of her pay and is living off of her savings.
- 31. When Matthew E.'s school switched to remote learning in March, his family had only one laptop, a Google Chromebook, which Matthew E. had to share with Jordan E. to access school. Catherine E. could not afford to spend \$300 on another Chromebook for her sons, and their schools did not reach out to ask if Matthew E. and Jordan E. had laptops. For three weeks, one of the brothers would participate in remote learning on the Chromebook while the other would read independently. Matthew E. and his family have not been offered a hotspot from Matthew E.'s school, and they are struggling to get consistent internet access.
- 32. Matthew E. eventually got his own Chromebook thanks to a chance comment that Catherine E. made to one of his teachers, as his school never advertised that they had laptops available. Still, Matthew E. is struggling to keep up academically and is experiencing mental health challenges. A couple of Matthew E.'s teachers have been very engaging and energetic in the remote learning environment, and Matthew E. has learned a lot from them. But some of his other teachers would benefit from more training on how to engage students over the screen. Matthew E.'s class has virtual learning sessions from 9:30 a.m. to 1:20 p.m. each weekday except Wednesdays, when they go from 9:30 a.m. to only 12:00 p.m. Matthew E. would benefit from one-on-one tutoring, particularly in math, as well as counseling to help with the mental health challenges of remote learning. Catherine E. has tried to find academic and mental health supports for Matthew E., but his school does not offer them.

- 33. Matthew E.'s school has not been proactive about offering students access to technology, academic, or mental health supports. His school's philosophy is that students should be their own advocates, even though they are minors and the pandemic makes it extremely difficult to contact and connect with the adults at the school. In Catherine E.'s experience, the school's philosophy about student advocacy operates to shut out parent feedback and participation in decision-making, and to absolve the school of responsibility for checking in on students and making sure that their needs are met.
- 34. **Plaintiff Jordan E.** is a nine-year-old fourth grade student at an elementary school run by OUSD. Jordan E. is Black and lives with his brother Matthew E. and his mother Catherine E. in Oakland, California. Jordan E.'s family is low-income and Catherine E. is a single mom. Catherine E. had to take a leave of absence from work and exhausted her sick leave in order to help her sons with remote learning. Now, she is receiving only two-thirds of her pay and is living off of her savings.
- 35. When Jordan E.'s school switched to remote learning in March, his family had only one laptop, a Google Chromebook, which Jordan E. had to share with Matthew E. in order to access school. Catherine E. could not afford to spend \$300 on another Chromebook for her sons, and their schools did not reach out to ask if Matthew E. and Jordan E. had laptops. For three weeks, one of the brothers would participate in remote learning on the Chromebook while the other would read independently. Jordan E. has not been offered a hotspot from his school and his family is still struggling to get consistent internet access.
- 36. Jordan E. is struggling to keep up academically. Jordan E.'s class has virtual learning sessions from 8:30 a.m. to 11 a.m., followed by either a break or music, library, or physical education until 1 p.m. Jordan E.'s teacher moves very fast through lessons, as if she is trying to fit six hours of learning into only two hours. It is hard for Jordan E. to keep up with the quick transitions to different subject matter. Catherine E. thinks that Jordan E.'s teacher is trying hard but needs more support and training.

- 37. Remote learning has been a huge mental strain for Catherine E. and her sons. Jordan E. would benefit from one-on-one tutoring and counseling. Catherine E. has tried to find academic and mental health supports for Jordan E., but his school does not offer them.
- 38. Jordan E.'s school offers Zoom meetings with the principal once every three weeks. At these meetings, parents have asked for the school to hold office hours for families so that they can learn the technology that their children are using for remote learning. Although the school promised to set up these office hours, they have not done so. Catherine E. doesn't feel that Jordan E.'s school listens to parents or provides enough support to families and teachers.
- 39. Throughout the pandemic, Catherine E. has seen children in other Bay Area districts receive instant attention to their learning needs. They received laptops, hotspots, and packets of work at the very beginning of the shutdown. She feels like her kids have been left behind and that no one is making sure that they are getting an adequate education.
- 40. **Plaintiff Megan O.** is five years old and in kindergarten. She wants to be a doctor when she grows up. She is Latina and lives in South Los Angeles with her sister Matilda O., her mother Maria O., as well as other family members. Megan O.'s family is low-income and shares a one-bedroom apartment. Megan O. attends a magnet program at an elementary school run by Los Angeles Unified School District ("LAUSD"). Maria O. chose the magnet program because she always looks for the best school option for her kids. For Maria O. and her family, education comes first because it is a way to get out of poverty.
- 41. When the switch to remote learning began, Megan O.'s school provided her family with computers that did not work, forcing Megan O. to access classes through her parents' phones. Maria O. was able to get a laptop from Community Coalition ("CoCo") for Megan O., but she is still waiting for her school to provide a wireless hotspot for Megan O. Megan O.'s school requires families to provide basic supplies like paper and printed materials for their children. Maria O. has to pay for these supplies out-of-pocket.
- 42. Megan O. needs support to engage with remote learning, and Maria O. finds it difficult to provide this support while working and within the confines of her family's onebedroom apartment. Megan O.'s teacher once kicked Megan O. out of a remote lesson because sf-4360445 11

she thought that Megan O. was sleeping, when she was, in fact, not. Maria O. has to be with Megan O. all the time when she is online. Maria O. feels that Megan O. needs more socialization through school, but her school is not providing any opportunities or outreach that could help meet Megan O.'s social and emotional needs. Megan O. also needs more individual support from a tutor.

- 43. **Plaintiff Matilda O.** is eight years old and in the third grade. She is Latina and lives in South Los Angeles with her sister Megan O., her mother Maria O., as well as other family members. Matilda O.'s family is low-income and shares a one-bedroom apartment. Matilda O. attends a magnet program at an elementary school run by LAUSD. Maria O. chose the magnet program because she always looks for the best school option for her kids. For Maria O. and her family, education comes first because it is a way to get out of poverty.
- 44. When the switch to remote learning began, Matilda O.'s school provided her family with computers that did not work, forcing Matilda O. to access classes through her parents' phones. Maria O. was able to get a laptop and wireless hotspot from CoCo for Matilda O. Matilda O.'s school requires parents to provide basic supplies like paper and printed materials for their children. Maria O. has to pay for these supplies out-of-pocket.
- 45. Matilda O. is a bright, self-directed student who wants to be a veterinarian and a dancer. Still, during the remote learning period, she has missed out on academic opportunities as well as the social and emotional aspects of school. Matilda O. misses school and wants to go back and catch up on all the material she has missed since the pandemic began.
- 46. **Plaintiff Alex R.** is nine years old and in the fourth grade. Before the pandemic, she enjoyed participating in Girl Scouts and dance, and she wants to be a doctor when she grows up. She is Black and lives in Los Angeles with her sister Bella R., her mother Kelly R., and other family members. Alex R. attends a magnet school run by LAUSD. Alex R.'s family is low-income and Kelly R. worries that if she loses her job, the family will not be able to afford their housing.
- 47. When Alex R.'s school switched to remote learning in March, the transition was extremely difficult. The school did not provide a curriculum for Alex R. to follow. Because Alex sf-4360445

R.'s teachers' internet did not work reliably, Alex R. only had 30 to 40 minutes of lessons a couple of times each week. From March until June, Alex R. didn't learn anything at school.

- 48. Despite losing months of learning time, Alex R. was not offered any academic support, such as teacher office hours or summer programs, by her school. Kelly R. has to spend hours a day helping her daughter with school.
- 49. Alex R.'s family has a weak WiFi connection at their home because they live under the flight path that leads to Los Angeles International Airport ("LAX"). LAUSD's internet also experiences regular outages, which require students to wait for up to a couple of hours for classes to begin. When these outages cause students to lose instructional time, the school does not make up the time by adding more instructional time elsewhere in the students' schedule.
- 50. Alex R.'s mental health is suffering because of remote learning but her school has offered no social-emotional resources. Kelly R. tries to offer her children the emotional support and connections that school ordinarily provides, but it is not enough. The school has not stepped in to provide pandemic-safe opportunities for connecting with classmates and teachers, nor are they offering counseling or health and wellness programs.
- 51. School is important to Kelly R. and her family because it is the vehicle they need to be successful. Kelly R. worries that due to structural racism against people of color, her daughters are already at a disadvantage compared to other children and are falling further behind.
- 52. **Plaintiff Bella R.** is seven years old and in the second grade. Before the pandemic, Bella R. loved school and enjoyed spending time with her classmates. She is Black and lives in Los Angeles with her sister Alex R., her mother Kelly R., and other family members. Bella R. attends a magnet school run by LAUSD. Bella R.'s family is low-income and Kelly R. worries that if she loses her job, the family will not be able to afford their housing.
- 53. When Bella R.'s school switched to remote learning in March, the transition was extremely difficult. The school did not provide a curriculum for Bella R. to follow. Because Bella R.'s teachers' internet did not work reliably, Bella R. only had 30 to 40 minutes of lessons a couple of times each week. From March until June, Bella R. didn't learn anything at school. As a result, Bella R. has fallen behind academically and her grades have suffered.

- 54. Despite losing months of learning time, Bella R. was not offered any academic support or summer programs by her school. Bella R.'s school began offering teacher office hours to Bella R. only in November, by which point Bella R. had already fallen far behind. Kelly R. has to spend hours a day helping Bella R. with school.
- 55. Bella R.'s family has a weak WiFi connection at their home because they live under the flight path that leads to LAX. LAUSD's internet also experiences regular outages, which require students to wait for up to a couple of hours for classes to begin. When these outages cause students to lose instructional time, the school does not make up the time by adding more instructional time elsewhere in the students' schedule.
- 56. Bella R.'s mental health is suffering because of remote learning but her school has offered no social-emotional resources. Kelly R. tries to make up for what her kids are missing from school, but she cannot offer them the emotional support and connections that school ordinarily provides. In the absence of these supports and connections, Bella R. is unengaged in school and spends her instructional time staring passively at the screen. No one from the school has stepped in to offer additional mental health programming, resources, or pandemic-safe opportunities for connection among students and teachers.
- 57. During the 2019-2020 school year, Bella R. was supposed to have an intervention to reinforce academic concepts. Due to the pandemic, that intervention never happened. Kelly R. reached out to Bella R.'s school and teachers to ask for Bella R. to be evaluated for an individualized education program ("IEP") and for additional supports for her daughter. Finally, at the end of fall 2020, Bella R.'s school has started an intervention, but in the intervening months, Bella R. lost significant ground academically. Because Bella R.'s school has not offered her the academic support she needs, Bella R. is receiving tutoring through the organization Speak UP.
- 58. School is important to Kelly R. and her family because it is the vehicle they need to be successful. Kelly R. worries that due to structural racism against people of color, her daughters are already at a disadvantage compared to other children and are falling further behind.

- 59. **Plaintiff Tamara I.** is a fifteen-year-old student in a special education program run by LAUSD. Tamara I. and her family are Black and low-income. She lives in South Los Angeles with her mother Susan I., her brother Joshua I., Isaac I., and other family members.
- 60. Tamara I.'s school did not provide her with a hotspot, so she has to share the hotspot that Joshua I. received from his school with other family members. The hotspot has frequent glitches, cutting out as often as every 15 minutes. Tamara I.'s inconsistent internet access makes it very difficult for her to learn remotely.
- 61. Tamara I.'s school offers only 30 minutes of instruction on Monday. For the rest of the week, her remote school schedule runs from 9:00 a.m. to 1:30 p.m., with three breaks during that interval. Tamara I. often has trouble focusing on the screen and gets up out of her seat. Susan I. doesn't think that Tamara I. is being offered a real opportunity to learn.
- 62. Remote learning has been very stressful for Susan I. She has to go back and forth to each of the kids in her house to make sure that they are on their devices and paying attention. The only time Susan I. has to take care of her own needs is when her kids are talking to their therapist. Susan I. knows that Tamara I. is not getting the education to which she is entitled.
- 63. **Plaintiff Isaac I.** is a thirteen-year-old student at a middle school run by LAUSD. He lives in South Los Angeles with his grandmother Susan I., Joshua I., Tamara I., and other family members. Isaac I. and his family are Black and low-income. Every morning, Isaac I. goes to his school to pick up grab and go meals for his family. Isaac I. loves playing basketball.
- 64. Isaac I.'s school has not provided him with a hotspot; he is still on a waitlist. In the meantime, he has to share the hotspot that Joshua I. received from his school with other family members. The hotspot has frequent glitches, cutting out as often as every 15 minutes. Isaac I.'s inconsistent internet access makes it very difficult for him to learn remotely. Time spent on screens during the pandemic has given Isaac I. eye infections and strain. He has to wear glasses to see the screen and was referred to an ophthalmologist.
- 65. Isaac I.'s school offers three remote classes each day plus an advisory period. The classes are supposed to last 70 minutes each, except for advisory, which is 30 minutes. But the school doesn't stick to the schedule, and Isaac I.'s classes often last for only 30 minutes or less.

On a recent day, there was no advisory period, and Isaac I. finished all three of his classes by 11:30 a.m., having started at 9:00 a.m.

- 66. Sometimes, Isaac I. is counted as absent even when he participates in remote lessons because he hasn't finished his homework. This wasn't the case during in-person learning—a student did not need to finish their homework to be reported present. Susan I. worries that Isaac's difficulties with his homework are being held against him.
- 67. Remote learning has been very stressful for Susan I. She has to go back and forth to each of the kids in her house to make sure that they are on their devices and paying attention. The only time Susan I. has to take care of her own needs is when her kids are talking to their therapist. Susan I. knows that Isaac I. is not getting the education to which he is entitled.
- 68. **Plaintiff Joshua I.** is a nine-year-old student at an elementary school run by LAUSD. He lives in South LA with his mother Susan I., sister Tamara I., Isaac I., and other family members. Joshua I. and his family are Black and low-income.
- 69. Joshua I. received a hotspot from his school, but it is the only one in the house, and he has to share it with other members of his household. The hotspot has frequent glitches, cutting out as often as every 15 minutes. Joshua I.'s inconsistent internet access makes it very difficult for him to learn remotely.
- 70. Joshua I. has an IEP and a one-on-one aide who participates remotely in Joshua I.'s classes. But a remote aide can't help redirect Joshua I. back to class when he is not paying attention, or is watching videos instead of class. Sometimes Joshua I. turns off the camera or leaves the class, and the aide will call Susan I. to let her know, but never the aide nor Joshua I's school has offered proactive help or solutions to keep Joshua I. engaged.
- 71. Remote learning has been very stressful for Susan I. She has to go back and forth to each of the kids in her house to make sure that they are on their devices and paying attention. The only time Susan I. has to take care of her own needs is when her kids are talking to their therapist. Susan I. knows that Joshua I. is not getting the education to which he is entitled.
- 72. **Plaintiff Natalia T.** is a twelfth grade student at a high school run by LAUSD. Natalia T. lives with her brother Billy T., her mother Hillary T., and other family members.

Natalia T. is college-bound and her senior year schedule includes many advanced placement ("AP") classes. She participates in student council, a youth program, and several other extracurricular activities. Natalia T. and her family are Black and Latinx, and the family is low-income.

- 73. Natalia T. is an excellent student, but her grades have fallen from As and Bs to Bs and Cs during the pandemic. The pressure of taking AP classes online is very intense. Her social-emotional health has been severely impacted by distance learning, and the absence of relationships with peers and teachers has affected her grades.
- 74. Hillary T. is a parent organizer with CoCo. She feels that her advocacy for Natalia T. and Billy T. has been absolutely necessary to get them the education that they've had so far. She is frustrated that LAUSD is only now beginning to talk about needs assessments for students, and that her whole community is suffering because of a lack of training and involvement for parents. For Natalia T. and Billy T., distance learning has been nothing more than watered-down education. Teachers focus on main ideas of their lessons, but don't go into as much depth as they would have before the pandemic.
- 75. Hillary T. feels that institutional racism has shaped her kids' education and the district's response to the pandemic. She also worries that other parents who do not have her advocacy experience—and their children—are being treated even worse.
- 76. **Plaintiff Billy T.** is an eighth grade student at a middle school run by LAUSD. Billy T. has attention-deficit hyperactivity disorder ("ADHD") and has an IEP. Billy T. lives with his sister Natalia T., his mother Hillary T., and other family members. Billy T. and his family are Black and Latinx, and his family is low-income.
- 77. Billy T. is failing all of his classes. He is having trouble connecting with his teachers, and Hillary T. feels that they are not making themselves available to discuss his individual needs. Billy T. is also having trouble arriving at class on time, and he is being marked absent for being late. This would not have happened when school was in-person.
- 78. Hillary T. has to supervise Billy T.'s learning and redirect him on an hourly basis.

 Billy T. would benefit from one-on-one instruction—Hillary T. is effectively serving as a one-on-sf-4360445

one instructor—but no one at Billy T.'s school has mentioned that as a possibility for him.

Because Hillary T. is on LAUSD's parent advisory committee, she receives administrative emails from the district, including emails about spots for one-on-one instruction being available.

Through these emails, Hillary T. also found out that individualized tutoring is supposedly available for LAUSD students. When Hillary T. asked Billy T.'s school about individualized tutoring, the school did not know that the program even existed and said that it was not available. As a result, Hillary T. has had to pay for private tutoring for Billy T. so that he does not fall further behind.

- 79. Hillary T. is a parent organizer with CoCo. She feels that her advocacy for Natalia T. and Billy T. has been absolutely necessary to get them the education that they've had so far. She is frustrated that LAUSD is only now beginning to talk about needs assessments for students, and that her whole community is suffering because of a lack of training and involvement for parents. She feels that for Natalia T. and Billy T, distance learning has been nothing more than watered-down education. Teachers focus on main ideas of their lessons, but don't go into as much depth as they would have before the pandemic.
- 80. Hillary T. feels that institutional racism has shaped her kids' education and the district's response to the pandemic. She also worries that other parents who do not have her advocacy experience—and their children—are being treated even worse.
- 81. **Plaintiff Daniel A.** attends twelfth grade at an LAUSD school. He is Latino.

 Daniel A. lives with his mother Sara A. and other members of his family including siblings who are also learning remotely. His family is low-income. Sara A. speaks Spanish and does not speak English.
- 82. Daniel A. received a hotspot from his school, but it is too slow and unreliable to use for remote learning. Sara A. had to pay for her own internet service for Daniel A. to use at school because he was being marked absent when his hotspot wouldn't connect. Daniel A. is having trouble academically because of a lack of instruction time and because he struggles to pay attention to lessons transmitted over a screen. Daniel A.'s schedule has him learning from 9:00 a.m. to 2:00 p.m., but a lot of that time is offline or breaks. The class is also frequently let out

early. Daniel A.'s school offers some tutoring, but he needs more to make up for the learning time he has lost.

- 83. Daniel A.'s teachers are often absent without warning, and the substitute teachers do not follow the same lesson plans or procedures as his usual teachers. Substitute teachers also do not take roll, which leads to Daniel A. being marked absent even when he attends school. Daniel A. also struggles to pay attention to lessons transmitted over a screen. He and his siblings do not have a quiet space to learn, and they all have to have their microphones on to participate. Sara A. tries to put them in different rooms, but that makes it difficult for her monitor them to make sure that they are paying attention.
- 84. Sara A. joined a committee of parents to advocate for students. Her school set up a program that families could use to communicate with teachers, but she does not have access to the program. She also cannot speak to all of Daniel A.'s teachers because they do not speak Spanish, and the school has no one who can translate for her.
- 85. **Plaintiff Community Coalition** ("CoCo") is a nonprofit public benefit corporation and membership organization based in South Los Angeles. Its members are students and parents who live in South Los Angeles and who are committed to improving the quality of education in that area. CoCo's members include South Los Angeles residents of all ages, whom the organization serves through programs for children, teenagers, and adults. CoCo's members pay taxes to the State of California in the County of Los Angeles. CoCo works to improve the everyday living conditions of the Black and Latinx, low-income communities it serves.
- 86. In March 2020, CoCo conducted a needs assessment in response to COVID-19 and found that families did not have the technology or support necessary to access remote learning programs offered by their schools. CoCo's organizers have spoken directly with students and parents every day since distance learning began. Through the needs assessment and conversations, CoCo learned that schools and districts were failing to provide parents with the information they needed to ensure that their children had access to remote learning. Families also struggled with accessing basic resources such as food and paying for living expenses such as rent

and utility bills. This prompted CoCo to set up mutual aid funds to help families purchase food, cover living expenses, and purchase hardware to use for distance learning.

- 87. In July and August 2020, CoCo offered a virtual summer school program to target three areas of support: academics, technology, and wellness. The organization also hired five trained and certified credentialed teachers, a team of tutors to provide individualized support for students, and an additional teacher to help students with special needs. CoCo's summer program included individual meetings with students and families to support technology setup and troubleshooting. CoCo's staff showed students how to use Google Classroom and taught parents how to use the platform Schoology to track their children's academic progress.
- 88. Despite this herculean effort, many of CoCo's parent members are still struggling because they have lost their jobs or are juggling work and helping their children with remote learning. In some families, older siblings are tasked with ensuring that young children log in to class even if doing so means that they themselves are late or counted as absent.
- 89. CoCo works with some families who speak Spanish and have limited English proficiency. Schools and districts are not providing information to families in any language other than English. For instance, when schools provided laptops to students, the instructions to set up the laptops were only in English. This has been a particularly challenging time for families who don't speak English, who feel frustrated and hopeless.
- 90. CoCo has also diverted significant organizational resources to counteract the State's failures to deliver an education to students during the COVID-19 pandemic. Staff and organizers purchased a total of 206 laptops, and also opened their offices to conduct in-person student meetings which required paying for additional cleaning, personal protective equipment, staff trainings on social distancing, and Lyft rides. Additionally, CoCo hired teachers and tutors for its summer program.
- 91. The rights and interests of CoCo's members are adversely affected by the State of California's actions and inaction with respect to remote learning. Neither the claims asserted nor the relief requested in this complaint require the participation of CoCo's individual members.

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- 92. Plaintiff The Oakland REACH is a parent-run, parent-led group based in Oakland and committed to empowering families from underserved communities to demand highquality schools and pathways to college for their children. The Oakland REACH's members are a grassroots group of Black and Latinx parents and grandparents from low-income families. The Oakland REACH is a nonprofit public benefit corporation and membership organization. Its members pay state taxes in the County of Alameda. The organization has engaged over 4,500 parents by hosting one-on-one conversations about the school system. They have also had over 250 parents go through their Oakland Family Advocacy Fellowship, which provides the leadership training needed to change a system that has left students behind for far too long.
- 93. In the experience of The Oakland REACH's families, California's education system is not delivering the education that their kids are constitutionally guaranteed. This was the case before the pandemic began, and it remains so under the State's remote learning system. The Oakland REACH sees distance learning as an opportunity to involve families in remaking a school system that has never served them. This work goes beyond surviving the immediate crisis of the pandemic—rather, it aims to innovate and elevate students' learning and families' engagement and advocacy.
- 94. When California began to shut down in March 2020, The Oakland REACH stepped up, diverting significant resources to counteract the State's failure to prepare students for remote learning. On March 24, 2020, the organization launched the REACH Relief Fund, which distributed almost \$200,000 of funds to more than 1,100 families. It distributed laptops and hotspots to students who had not received them from their schools. The organization also began exploring a more radical program to transform remote learning for underserved families.
- 95. In June 2020, The Oakland REACH launched a citywide virtual hub (the "Hub") to help parents strengthen their children's learning and savvy in the distance learning environment. The Hub is a family-focused, vibrant, and collaborative virtual community that integrates high-quality learning and support for the entire family. All participants live in lowincome neighborhoods and their children are enrolled in low-performing schools. Over 92% of the Hub's families qualify for free and reduced lunch. The Oakland REACH's aim is not to move sf-4360445 21

what students were receiving at school before the pandemic to a virtual setting, but to set a higher bar for research-based instructional practice, and to involve families who may have little or no history of observing their children at school, so they become empowered to support that learning and knowledgeable about remote instruction.

- 96. In its first phase, the Hub provided the families of 90 early-elementary students with 200 laptops and 60 hotspots, as well as two sets of services: the Literacy Liberation Center ("LLC") and Family Sustainability Center ("FSC"). The FSC provided the help families need to survive the pandemic intact, housed, and physically and mentally healthy. Participants went through a needs assessment, partnered with a Family Liaison, and received individual guidance, seminars, and connections to needed services. In parallel, as part of the LLC, families and children participated in a regular schedule of classes, taught by skilled teachers, and had access to video lessons anytime. Phase I of the Hub was an unqualified success. Attendance for students in kindergarten through second grade was 83%, compared to only 35% at OUSD during spring distance learning. Students also achieved about two reading levels on average over just five weeks.
- 97. After its successful summer, the Hub returned for a second phase in fall 2020. The Oakland REACH has employed 19 Family Liaisons to work with families through the Hub, more than double the number it hired over the summer, to support over 400 families. This has allowed The Oakland REACH to more than double the number of students served, delivering programming for 525 students every afternoon from Monday to Thursday. Roughly 50% of the Family Liaisons are bilingual, expanding the Hub's reach into non-English speaking families. Family Liaisons provide social, academic, and technical support to families so that they can access and engage with their schools' distance learning offerings. The Oakland Reach is also collecting real-time data from Black and Latinx families about the realities of distance learning on a weekly basis, and offering afterschool synchronous academic and social enrichment programs for students.
- 98. In addition to The Oakland REACH's essential programming and services in response to COVID-19, the organization operates a fellowship that educates parents and sf-4360445

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grandparents about school performance and choice, an outreach team that mobilizes parents to participate in school board meetings, and an enrollment support program that matches parents with advocates who can help them find a high-quality school for their children. Through these programs, The Oakland REACH and its members advocate tirelessly on behalf of low-income Black and Latinx families to ensure that students receive the high quality public education to which they are entitled.

- 99. The rights and interests of The Oakland REACH's members and the organization itself are adversely affected by the State of California's actions and inaction with respect to remote learning. The organization has diverted significant resources to fulfill the promise of distance learning—for instance, the total new costs to launch the Hub were \$420,000 (for June 1 to August 30), a sum that far exceeds The Oakland REACH's budget. To pay for the Hub, The Oakland REACH diverted existing staff time as well as a portion of their overall operating budget, and also spent additional resources on fundraising.
- 100. Neither the claims asserted nor the relief requested in this Complaint require the participation of The Oakland REACH's individual members.

FACTUAL ALLEGATIONS

I. EDUCATION IS A FUNDAMENTAL RIGHT UNDER THE CALIFORNIA CONSTITUTION, FOR WHICH THE STATE IS ULTIMATELY RESPONSIBLE.

Access to education is a "uniquely fundamental personal interest in California" 101. and belongs to each individual student. Butt v. State of California, 4 Cal. 4th 668, 681 (1992). The California Supreme Court has repeatedly recognized that all California students possess a constitutional right to "equal access to a public education system that will teach them the skills they need to succeed as productive members of modern society." O'Connell v. Superior Court, 141 Cal. App. 4th 1452, 1482 (2006); see also Hartzell v. Connell, 35 Cal. 3d 899, 906-09 (1984); Serrano v. Priest, 5 Cal. 3d 584, 608-09 (1971) ("Serrano I"); Piper v. Big Pine Sch. Dist. of Invo City, 193 Cal. 664, 668-70 (1924). Accordingly, schools cannot provide students with a program of education that "falls fundamentally below prevailing statewide standards." Butt, 4 Cal. 4th at 685-87.

- 102. The fundamental right to even the most basic of educations means students must be able to access that education, even when it is delivered remotely. Education is a fundamental right in large part because it is required for participation in democratic citizenship and economic self-sufficiency. "The purpose of education is not [simply] to endow students with diplomas, but to equip [students] with the substantive knowledge and skills they need to succeed in life." *O'Connell*, 141 Cal. App. 4th at 1478.
- 103. The California Supreme Court made clear that the State bears the "ultimate responsibility for public education [that] cannot be delegated to any other entity," including "ensur[ing] basic educational equality under the California Constitution." *Butt*, 4 Cal. 4th at 681 (citing *Hall v. City of Taft*, 47 Cal. 2d 177, 180-81 (1956), and *Piper*, 193 Cal. at 669). The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity." *Butt*, 4 Cal. 4th at 685. Any action that has a real and appreciable impact upon the right to basic educational equality is subject to strict scrutiny. *See, e.g.*, *Serrano v. Priest*, 18 Cal. 3d 728, 761, 767-68 (1976) ("*Serrano II*").
- 104. "[T]he State's responsibility for basic equality in its system of common schools extends beyond the detached role of fair funder or fair legislator." *Butt*, 4 Cal. 4th at 688. Where a school or local district "den[ies] its students basic educational equality" and/or creates discriminatory disparities in the system of common schools, the State is obliged to intervene, "even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents." *Id.* at 681, 692.
- 105. Defendants have abdicated their responsibility to provide remote resources to LEAs—and, consequently, to parents and students—who do not have access to them. The State cannot ensure equal education if a student has no ability to access that education. The facts of this case—for instance, that children are being denied access to education for months at a time—are but the most extreme example, among many, of this untenable position.

II. THE STATE'S PROVISION OF EDUCATION (OR LACK THEREOF) DURING THE PANDEMIC HAS WIDENED DISPARITIES IN AN ALREADY ÚNEQUAL **EDUCATION SYSTEM.**

Α. The State's Public Health Directives

As a result of the State's public health directives and emergency orders, schools 106. throughout the State closed in March, shifting instead to remote learning platforms. On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency.²

107. On July 17, 2020, Governor Newsom announced a pandemic plan for re-opening California schools in the fall ("Plan").³ The Plan references and incorporates the updated California Department of Public Health ("CDPH") Directive on COVID-19 Re-opening In-Person Learning Framework for K-12 Schools in California, 2020-2021 Calendar Year ("Directive"), as well as the CDPH/Cal-OSHA Updated COVID-19 Guidance for Schools ("Guidance").⁵

The Directive provides that "[s]chools and school districts may reopen for in-108. person instruction at any time if they are located in a local health jurisdiction (LHJ) that has not been on the county monitoring list within the prior 14 days. If the LHJ has been on the monitoring list within the last 14 days, the school *must* conduct distance learning only, until the LHJ has been off the monitoring list for at least 14 days." The Directive provides for waivers if requested by the superintendent of elementary schools in consultation with labor, parent, and

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² https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-<u>Coronavirus-SOE-Proclamation.pdf.</u>

³ The Plan was announced and discussed during a live broadcast, but a summary of Governor Newsom's Plan can be found at: Office of Governor Gavin Newsom, Governor Gavin Newsom Lays Out Pandemic Plan for Learning and Safe Schools (July 17, 2020),

https://www.gov.ca.gov/2020/07/17/governor-gavin-newsom-lays-out-pandemic-plan-for-learning-andsafe-schools/.

⁴ CDPH, COVID-19 and Reopening In-Person Learning Framework of K-12 Schools in California, 2020-2021 School Year (July 17, 2020), http://www.egusd.net/wpcontent/uploads/2020/07/CDPH.Schools-Reopening-Recommendations.7.17.20.pdf.

⁵ CDPH, COVID-19 Industry Guidance: Schools and School-Based Programs, https://files.covid19.ca.gov/pdf/guidance-schools.pdf (last updated Aug. 3, 2020).

⁶ Directive at 1 (emphasis added; footnotes omitted).

community organizations.⁷ While California has since moved to the four-tier system for counties, this has not changed the standards for school reopenings.⁸

- 109. As of November 30, 2020, 51 out of California's 58 counties encompassing 99.1% of residents remain on the purple tier of the State's monitoring system, and cannot reopen for in-person instruction unless they receive elementary school waivers or adhere to strict guidance for small groups.⁹ These schools thus will have to stay physically closed.
- 110. Moreover, the Directive "recommend[s]" in-person schools to close and revert to distance learning when either: (1) multiple cohorts¹⁰ have COVID-19 cases; or (2) five percent of students and staff test positive in a 14-day period. An entire district must close and revert to distance learning if 25% of schools in the district have closed due to COVID-19 in a 14-day period.¹¹
- 111. Effectively, schools that must close due to being located in a county on the CDPH monitoring list, or decide to close as a result of confirmed COVID cases, will have to provide distance learning until they meet the criteria to return to in-person learning. And per the Plan, those schools must meet the State's "rigorous" requirements for remote learning. *See* Cal. Educ. Code § 43503(b). Specifically, they must ensure:
 - a. Devices and connectivity so that every child can participate in distance learning;
 - b. Daily live interaction for every child with teachers and other students;
 - c. Class assignments that are challenging and equivalent to in-person instruction; and

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⁷ *Id*.

⁸ CDPH, *Blueprint for a Safer Economy*, https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-

^{19/}COVID19CountyMonitoringOverview.aspx ("Schools may reopen-for in-person instruction based on equivalent criteria to the July 17 School Re-opening Framework (PDF) previously announced. That framework remains in effect except that Tier 1 is substituted for the previous County Data Monitoring List (which has equivalent case rate criteria to Tier 1).") (last updated Nov. 28, 2020).

⁹ Blueprint for a Safer Economy, COVID19.CA.GOV, https://covid19.ca.gov/safer-economy/ (last updated Nov. 28, 2020).

¹⁰ A "cohort" is defined by the CDPH as "a stable group with fixed membership that stays together for all courses and activities (e.g., lunch, recess, etc.) and avoids contact with other persons or cohorts." Directive at 4.

¹¹ *Id.* at 5.

d. Targeted supports and interventions for English learners and special education students. 12

В. The State's Response Has Exacerbated the Already-Unequal Education System.

Even before in-person instruction ceased, the State's most underserved students 112. were not meeting state standards for their grade levels and were dropping out of school at disproportionately high rates.¹³ These students—including low-income Black and Latinx students, students experiencing homelessness, and non-native English speakers—have been further left behind during the COVID-19 pandemic by widely disparate access to educational opportunities and digital resources. Some have struggled with obtaining the technology they need to connect, while others face much more substantial barriers to engaging in remote schooling. As families struggle with increased economic hardship and housing instability, older students have shouldered new responsibilities taking on paid employment and childcare during school hours to support their families.

113. As one November 2020 policy brief stated "[a]mid the COVID-19 pandemic, extended school shutdowns, and renewed protests about racial injustice, schools confront sharp increases in student learning, behavioral, and emotional challenges. Despite this, the matter of how best to address these pervasive concerns—many of which result from long-standing structural and systemic barriers that necessitate structural and systemic solutions—remains unresolved."14

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¹² Office of Governor Gavin Newsom, Governor Gavin Newsom Lays Out Pandemic Plan for Learning and Safe Schools (July 17, 2020), https://www.gov.ca.gov/2020/07/17/governor-gavin-newsomlays-out-pandemic-plan-for-learning-and-safe-schools/.

¹³ Sydney Johnson, Less than a third of California students met or exceeded standards on new science test, EDSOURCE (Feb. 7, 2020), https://edsource.org/2020/less-than-a-third-of-california-students-met-orexceeded-standards-on-new-science-test/623514.

¹⁴ Howard S. Adelman & Linda Taylor, Restructuring California Schools to Address Barriers to Learning and Teaching in the COVID-19 Context and Beyond, PACE (Nov. 2020), https://edpolicyinca.org/publications/restructuring-california-schools-address-barriers-learning-andteaching-covid-19?utm source=PACE+All&utm campaign=61b8aabde4-EMAIL CAMPAIGN 2020 11 17 07 36 COPY 05&utm medium=email&utm term=0 9flaf6b121-61b8aabde4-583885601.

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114. For example, as of January 2020 (pre-pandemic), in OUSD, only 18.6% of Black students and 23.8% of Latinx students were reading at grade level. In the same district, where less than 1 in 5 Black children can read, 72.5%, of White children were meeting or exceeding standards. 15 See Figure 1, below.

ACHIEVEMENT GAP RESULTS: RACIAL/DEMOGRAPHIC BREAKDOWN

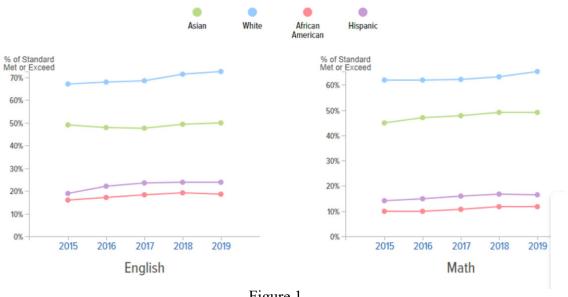


Figure 1

Likewise, before the COVID-19 pandemic, in LAUSD in 2019, only 32.09% of 115. Black students and 38.70% of Latino students met English Language Arts standards, compared to 68.12% of White students and 76.34% of Asian students who met the standards. Only 20.18% of Black students and 27.47% of Latino students met the Math standards, whereas 59.24% of White students and 72.50% Asian students met the standards. 16

Now, "[d]eep into the pandemic, some districts are finding an alarming percentage 116. of students are missing from the virtual classroom — with the worst absentee rates occurring

¹⁵ Dirk Tillotson, Oakland's Literacy Crisis, the New Literacy for All Coalition, and How You Can Help, Great School Voices (Jan. 17, 2020), https://greatschoolvoices.org/2020/01/oaklands-literacy-crisisthe-new-literacy-for-all-coalition-and-how-you-can-help/.

¹⁶ Cal. Assessment of Student Performance & Progress, English Language Arts/Literacy and *Mathematics*, https://caasppelpac.cde.ca.gov/caaspp/DashViewReport?ps=true&lstTestYear=2019&lstTestType=B&lstGroup=1&lstS ubGroup=1&lstSchoolType=A&lstGrade=13&lstCounty=00&lstDistrict=00000&lstSchool=0000000 (last visited Nov. 28, 2020).

among homeless students, foster youth, English learners, Black students and high school seniors."¹⁷ For instance, LAUSD's absentee rate was 25.2% for the 2018-2019, ¹⁸ but from March 16 to May 22, over 40% of middle and high school students were absent. ¹⁹ Peak participation (the highest participation rate achieved during a given week) showed a marked racial and wealth disparity. Weekly participation peaked at 88% for white middle school students and 85% for white high school students, but only at 67% percent for Latinx and Black middle school students, 73% for Latinx high school students, and 71% for Black high school students. ²⁰ Low-income students' peak participation rates were 10 to 20 percentage points behind those of students from more affluent families. ²¹ And for English learners, students with disabilities, and students who are experiencing homelessness or in foster care, peak weekly participation was 57% or lower. ²²

117. A similar pattern has occurred in OUSD. Oakland and West Contra Costa's 2019-2020 absentee rate before COVID-occasioned school was 5% and 6%, respectively. Now, they are about 7% in both districts. And in OUSD, the absentee rates among certain groups are much higher. "Some 21% of homeless students are absent now, compared with 12% this time last year. Foster youth absences are at 15%, compared with 10% last year. It's 13% for newcomer immigrants, compared with 8% in 2019; while Black student absences are at 10%, compared with 7% last year; and 9% of special education students are absent, up from 7%." 23

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

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¹⁷ Theresa Harrington, *How some California school districts deal with students absent form virtual classrooms*, EDSOURCE (Oct. 16, 2020), https://edsource.org/2020/how-some-california-school-districts-deal-with-absent-students/641504.

¹⁸ Student Demographics, LAUSC, https://my.lausd.net/opendata/dashboard (click on "Attendance") (last visited Nov. 28, 2020).

¹⁹ Megan Besecker, Andrew Thomas, & Glenn Daley, Student Engagement Online During School Facilities Closures: An Analysis of L.A. Unified Secondary Students' Schoology Activity from March 16 to May 22, 2020, LAUSD (July 2020) at i,

http://laschoolboard.org/sites/default/files/IAU%20Report%202020%200707%20-%20Student%20Engagement%20Online%20During%20Closures.pdf.

²⁰ *Id.* at 7.

²¹ *Id.* at 8.

²² *Id.* at 9-10.

²³ Theresa Harrington, *How some California school districts deal with students absent form virtual classrooms*, EDSOURCE (Oct. 16, 2020), https://edsource.org/2020/how-some-california-school-districts-deal-with-absent-students/641504.

118. Likewise, the Center on Reinventing Public Education ("CRPE") notes: "[e]xperience tells us that low expectations for instruction bode poorly for the students who faced the greatest challenges: those in low income households, those with disabilities, those who speak a language other than English at home."²⁴

- 119. A Public Policy Institute of California report found that "distance learning has widened gaps for children of color, children in low-income families, and children of less-educated parents."²⁵ The study, which used data from the weekly Census Household Pulse Survey, found that:²⁶
 - 29% of households do not always have internet available for educational purposes, including 43% of low-income households.
 - Children in low-income and African American families have less frequent live contact with teachers than children overall in the State.
- 120. The California Constitution requires the State to ensure that all children have equal access to a public education system that will teach them the skills they need to succeed as members of the modern society. The Constitution thus forbids the State from providing a public education that falls fundamentally below prevailing statewide standards. The State bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity.
- 121. The California Department of Education ("Department") has acknowledged that K-12 students in the State are constitutionally entitled to free and equal education including with respect to remote learning. The Department specifically acknowledged that "the California Constitution prohibits LEAs from requiring students to purchase devices or internet access, to provide their own devices, or otherwise pay a fee as a condition of accessing required course materials under the free schools guarantee. Additionally, California law requires that all students

²⁴ Betheny Gross & Alice Opalka, *Too Many Schools Leave Learning to Chance During the Pandemic*, CRPE (June 10, 2020), https://www.crpe.org/thelens/too-many-schools-leave-learning-chance-during-pandemic.

²⁵ Nio Gao, Julien Lafortune & Laura Hill, *Who Is Losing Ground with Distance Learning in California?*, Public Policy Inst. of Cal. (Oct. 2020) at 3, https://www.ppic.org/wp-content/uploads/who-is-losing-ground-with-distance-learning-in-california-october-2020.pdf.

²⁶ *Id*.

have access to standards-aligned textbooks or instructional materials in the core subjects, for use in class and to take home. This standard is grounded in the principle of equal educational opportunity under the California Constitution."²⁷

- 122. The Department also recognized that "[a]lthough many families have the devices and appropriate connectivity in place, the most at-risk children whom LEAs serve may not." Going further, the Department noted: "[i]n these difficult times, we cannot lose track of the needs of our most disadvantaged students." Unfortunately, "los[ing] track of the most disadvantaged students" is exactly what has happened. In responding to the COVID-19 crisis, the State swapped one crisis for another.
- 123. Though the State was well aware of the pre-pandemic academic opportunity gap, the State has nevertheless diverted all responsibility to the LEAs to ensure that at-risk students have the resources to participate meaningfully in remote education. The State, however, has not implemented its own plan or otherwise taken sufficient steps to provide support to the LEAs to ensure that all students—especially those most vulnerable—have access to the remote resources they need to receive their guaranteed public education. Although the Legislature has passed sections 43500, *et seq.* of the Education Code setting standards for LEAs to follow during the pandemic, the State has exercised no oversight to ensure that LEAs are implementing them.
- 124. The State also has failed to offer parents a say in plans for delivering remote learning, resuming in-person instruction, or offering compensatory education. Although section 43509 of the Education Code requires the governing board of a school district or charter school, as well as the county board of education, to consult with parents and pupils in developing a learning continuity and attendance plan, any such consultation in Plaintiffs' districts has been illusory at best, and non-existent at worst. Cal. Educ. Code. § 43509(b). The State has historically excluded low-income Black and Latinx families from educational decision-making,

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²⁷ Cal. Dep't of Educ., *Distance Learning Considerations* (Mar. 17, 2020), https://www.cde.ca.gov/ci/cr/dl/dlconsiderations.asp.

²⁸ *Id*.

²⁹ *Id*.

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but the pandemic has made this status quo untenable as "blended and distance learning models . . . require consistent parental engagement in order to succeed."³⁰

- 125. Thus, though the State has an obligation to provide LEAs—who in turn run schools—with adequate resources, it has not fulfilled that obligation now that "school" takes place within students' homes with parents and grandparents as the supervisors. Minimally, the State needs to provide a device to connect, connectivity, instructions for operating hardware and software, and a reasonable means by which parents can actually facilitate and assist instruction. The State has failed to meet its constitutional obligations in this regard.
- 126. The State's learning continuity consultation requirements also fail to include community organizations. This is a grave failure because community organizations have spent considerable time and effort troubleshooting remote learning difficulties and filling the educational gaps left by the State's lack of oversight. Community-based organizations have unparalleled access to students and parents, as well as unequaled insight into strategies for improving remote learning, shifting back to in-person instruction, and providing compensatory education. But they cannot serve every student, and their efforts do not supplant the State's constitutional requirements.
- When in-person learning resumes, schools will need to ramp up immediately to 127. help students catch up on the months of education they have lost. The State must step in to ensure that schools and districts make plans for this recovery phase, and to guarantee that those plans are carried out effectively.

III. DESPITE RECOGNIZING STUDENTS' CONSTITUTIONAL RIGHTS, THE STATE HAS FAILED TO TAKE STEPS TO ENSURE A FREE AND EQUAL **EDUCATION**

Lack of State Enforcement and Intervention Mechanism Α.

128. While recognizing the constitutional right of California students to a free education, the State provided little guidance to ensure that the LEAs provide adequate remote learning programs. Instead, the State merely delegated its responsibilities to the LEAs. It advised

³⁰ Benjamin W. Cottingham, Fostering Parent Engagement: Removing Barriers to Data Accessibility, PACE (Sept. 2020) at 8, https://edpolicyinca.org/sites/default/files/2020-09/pb cottingham sep2020.pdf. 32

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each LEA to build on existing frameworks for digital learning and assessments of student access to devices in order to implement distance learning strategies during the physical closure of schools during the pandemic. The State directed LEAs to a page of scattered resources, including a page listing available "affordable" plans from telecom and data companies, which LEAs must themselves navigate.³¹

- 129. For example, after recognizing that the "most at-risk children whom LEAs serve may not" have the necessary devices and connectivity, the Department explained that "because state assessments require students to be familiar with working digitally, many LEAs have already developed a framework for incorporating digital materials into every day instructional practice. LEAs should build on that work, including any pre-existing assessment of access to devices and internet connectivity for their students and in the community, as they plan to implement distance learning strategies during the physical closures of schools in response to COVID-19." As a result of the State leaving the responsibility to individual LEAs, at-risk students are falling further behind than they already were pre-pandemic.
- 130. Although the Legislature, through S.B. 98, has passed sections 43500, *et seq.* of the Education Code setting standards for LEAs to follow during pandemic learning, there is no State enforcement or intervention mechanism in place to ensure that those standards are actually met by the schools and LEAs.³³
 - 131. For example, the Education Code requires California school districts to:
 - Provide daily minimum duration of instruction (*e.g.*, 180 instructional minutes in kindergarten; 230 instructional minutes in grades 1 to 3; and 240 instructional minutes in grades 4 to 12). Cal. Educ. Code § 43501.
 - Confirm that all students have "connectivity and devices adequate to participate in the educational program and complete assigned work." Cal. Educ. Code § 43503(b)(1).

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³¹ Cal. Dep't of Educ., *Getting Internet Access: Available Plans* (July 28, 2020), https://www.cde.ca.gov/ls/he/hn/availableinternetplans.asp.

³² Cal. Dep't of Educ., *Distance Learning Considerations* (Mar. 17, 2020), https://www.cde.ca.gov/ci/cr/dl/dlconsiderations.asp.

³³ Roxana Kopetman, *California Approves Budget and Holds Schools Accountable*, GOVERNING (July 6, 2020), https://www.governing.com/finance/California-Approves-Budget-and-Holds-Schools-Accountable.html.

- Provide remote learning programs that are "aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to inperson instruction." Cal. Educ. Code § 43503(b)(2).
- Provide "[a]cademic and other supports designed to address the needs of pupils who are not performing at grade level, or need support in other areas, such as English learners, pupils with exceptional needs, pupils in foster care or experiencing homelessness, and pupils requiring mental health supports." Cal. Educ. Code § 43503(b)(3).
- Provide "[s]pecial education, related services, and any other services required by a pupil's individualized education program." Cal. Educ. Code § 43503(b)(4).
- Provide "[d]esignated and integrated instruction in English language development . . . , including assessment of English language proficiency, support to access curriculum, the ability to reclassify as fully English proficient, and, as applicable, support for dual language learning. Cal. Educ. Code § 43503(b)(5).
- 132. The Education Code also requires California school districts to adopt a learning continuity and attendance plan that addresses each school within the LEA describing how the school district will provide continuity of learning and address the impact of COVID-19 on pupils, staff, and the community, including (i) the actions the school district, county office of education, or charter school will take to offer classroom-based instruction whenever possible, particularly for pupils who have experienced significant learning loss due to school closures; and (ii) plans for a distance learning program.
- 133. For example, the plans for a distance learning program shall address the following aspects:
 - How the school district, county office of education, or charter school will provide continuity of instruction during the school year to ensure pupils have access to a full curriculum of substantially similar quality regardless of the method of delivery.
 - A plan for ensuring access to devices and connectivity for all pupils to support distance learning whenever it occurs.
 - How the school district, county office of education, or charter school will measure participation and assess pupil progress through live contacts and synchronous instructional minutes, as well as how the time value of pupil work will be measured.
 - What professional development and resources will be provided to staff to support the provision of distance learning, including technological support.
 - To the extent that staff roles and responsibilities change because of COVID-19, what the new roles and responsibilities of affected staff will be.
 - What additional supports for pupils with unique needs will be provided, including for English learners, pupils with exceptional needs served across the full continuum of

placements, pupils in foster care, and pupils who are experiencing homelessness during the period in which distance learning is provided.

Cal. Educ. Code § 43509(f)(1)(B)(i)-(vi).

134. Yet critically, there is no requirement that the State Department of Education read, let alone approve, the Learning Continuity Plans that LEAs will submit.³⁴ Nor are there any provisions empowering the State to support LEAs in their efforts to meet minimum standards or to hold LEAs accountable when they fail to so do. The Department and the superintendents of county offices of education ("COE") merely retain the *option* of providing written recommendations for amendments to the Learning Continuity Plan by October 30, 2020, which the governing boards of school districts and COEs must then "consider" at a public meeting within 15 days—that is, LEAs are not even required to adopt or implement any of those recommendations. ³⁵

135. There *is* a requirement that LEAs consult with parents and pupils in developing their Learning Continuity Plans. Cal. Educ. Code § 43509(b). But the State has exercised no oversight over this requirement, with the result that families who have historically been left out of educational decision-making continue to be unheard. In this unprecedented time, the State's decision to ignore the voices of Black and Latinx families in low-income communities is nothing more than business as usual.

B. The State's Failure to Respond to the Crisis Caused by the Inadequate Remote Learning

136. On September 18, 2020, Plaintiffs' counsel sent a letter to the State Department of Education and State Board of Education, demanding that the State explain how the State intends to address the crisis caused by the inadequate remote learning programs, as well as intervene and ensure that students are no longer deprived of their fundamental constructional right to an education. (Exhibit A.)

³⁴ See July 20, 2020 Tony Thurmond Memorandum to State Board of Education, Senate Bill 98 Education Finance: Overview of the Learning Continuity and Attendance Plan Provisions, https://online.casbo.org/images/My_Images/Newsbreak/2020/SBEinfoMemo.LearningContPlans.07.02.20.pdf.

³⁵ *Id*.

- 137. Specifically, the letter demanded that the State explain (i) how the resources obtained through cross-sector partnerships and Executive Order N-73-20 have been leveraged thus far to address the Digital Divide in the State, including the process by which counties, LEAs, and/or students in need of such resources are being identified and provided for; (ii) whether there is a plan in place to review the Learning Continuity Plans LEAs submit on September 30, 2020; (iii) whether it is obtaining expert help in reviewing the Learning Continuity Plans and what role experts will play; (iv) whether it has a standard by which the Learning Continuity Plans will be deemed adequate, and on what that standard is based; (v) how the Department intends to enforce LEAs' adherence to their Learning Continuity Plans, and whether and how the Department will intervene should they fail to do so; and (vi) what resources are available to the LEAs that continue to struggle to provide adequate learning resources to students in need.
- The letter also suggests that the State (i) consider launching a uniform, statewide program of cooperative purchasing of computer devices and internet hotspots; (ii) reach out to internet providers regarding a potential plan to connect students at no cost to those in need (e.g., discounted rates for services to be purchased by the State to provide community hot spots where students can access instruction online in a safe environment); and (iii) assess needs for software, professional development for teachers, and other supports required for stable and continuous remote learning for students.
- 139. The State's October 13, 2020 response to the letter fails to address these issues. (Exhibit B.) For example, it reiterates that the LEAs "must develop a Learning Continuity and Attendance Plan for the 2020-2021 school year," but still provides no systematic mechanism to ensure that (i) the LEAs' plans conform to any standard; (ii) the LEAs consult parents and community organizations in developing those plans; (iii) the LEAs enforce those plans; and (iv) the LEAs be held accountable for a failure to adequately implement the remote learning programs. The State's response also does not address how the State plans to review the LEAs' plans, whether it is obtaining expert help in reviewing the plans, or whether it has a standard by which the LEAs' plans will be deemed adequate. In short, the response confirms that the State has failed to take steps to address the adverse impacts caused by the inadequate distance learning. sf-4360445

140. Although the State points to CDPH's July 17, 2020 K-12 School Reopening Framework and August 25, 2020 Cohort Guidance allowing limited in-person instruction under limited circumstances, the Framework and Guidance still do not address crisis caused by the inadequate remote learning programs. The effort taken by the Closing the Digital Divide Taskforce has also been unable to keep up with the staggering need for devices and hotspots to access the remote learning programs. The Department's June 2020 Guidebook for the Safe Reopening of California's Public Schools again does not address the State's own plan, *i.e.*, how it is going to ensure that the schools comply with the Guidebook.

IV. THE STATE'S FAILURE TO IMPLEMENT ITS OWN STATUTORY STANDARDS HAS TURNED LONGSTANDING INEQUITIES INTO AN EDUCATIONAL CRISIS.

- 141. The State recognizes its constitutional mandate to provide a free and equal education to all California students. Because of its response to the pandemic, the State is further than ever from fulfilling that mandate. Low-income Black and Latinx students have already lost significant ground versus their peers. And it is clear that they are not receiving an education that meets the minimum standards established by law in California Education Code section 43500 *et seq*.
- 142. Despite acknowledging that the most historically disadvantaged populations did not have adequate access to remote learning tools, the State has failed to ensure that LEAs implement a plan so that the most underserved students had the resources to meaningfully participate in remote education. As a result of the State's failure to implement its own enforcement or intervention plan, Plaintiffs are being deprived of their fundamental right to a free and equal education caused by (i) the lack of access to the devices, connectivity, and other digital tools for remote education; (ii) the lack of parent and teacher training to support instruction equivalent to in-person schooling; (iii) inadequate academic and mental health supports, such as tutoring, counseling, wellness programs, and pandemic-safe opportunities to connect with classmates and teachers; and (iv) reduced instructional time.

A. Lack of Access to Remote Learning Programs

143. As shown by various surveys and news sources (and acknowledged by the Governor himself in issuing E.O. N-73-20), a severe Digital Divide disproportionately impacts low-income and minority students:

- According to California State Superintendent of Public Instruction Tony Thurmond, up to 1 million students could be lacking either computers or internet access needed to participate in distance learning.³⁶
- "[W]hile most California households (97%) have access to broadband at speeds high enough for some video calls, according to a brief from the Legislative Analyst's Office, it's often still not enough when multiple kids and adults are all using the network. And many low-income families in urban areas and many rural regions still are completely unconnected. At least 263,000 households without internet access are located in urban areas and 227,000 unconnected households are in rural areas." 37
- In a survey of 800 parents of children in California public schools from October 1-7, 2020, lack of reliable internet access was continuing to be cited as "a top concern among families this fall, with almost half (44%) of parents concerned about whether their family will be able to afford internet access. This issue is particularly common for low-income families (58%), Latinx parents (52%) and those in Los Angeles (54%). Similar to March (67%), two-thirds of parents (66%) say providing free internet access to families during this fall semester would be very helpful for families like theirs, yet only 35% of parents report that their child's school has made this available for students. Additionally, only 9% report that they receive internet support from their school."
- The same survey shows that "Parents of color are much more likely to report that their child is distance learning full-time (82%) compared to white parents (74%), as are low-income parents (83%) relative to higher-income parents (77%)." Indeed, "low-income parents and parents of color are less likely to even have the option of full-time in-person learning: 6% of low-income parents report that their child's school is offering in-person full-time lessons, while higher income parents report triple the access at 19%. Parents of color have a similar lack of opportunity: only 13% of their schools offer in-person full-time lesson whereas for white families it is 18%." 39
- "[A] substantial number of children still don't have what they need to fully participate in distance learning. Just over 1 in 10 (11%) say that unreliable internet access is a major challenge, while 31% percent say that it is a minor challenge. Similarly, 11% say inadequate devices is a 'major challenge,' compared to 19% who say it is a minor challenge."

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³⁶ Johnson, *Up to 1 million California students still lack connectivity, supra* note 1.

 $^{^{37}}$ *Id*.

³⁸ The Education Trust West, *California Parent Poll: Fall 2020*, https://west.edtrust.org/california-parent-poll-october-2020/ (last visited Nov. 28, 2020).

³⁹ *Id*.

⁴⁰ Freedberg, California voters have deep concerns about distance learning, supra note 1.

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- "Concerns about adequate devices and unreliable internet access are greatest among low and middle income parents. Over half (54%) of parents with incomes under \$60,000 cite internet access as a problem, compared with 37% of families with earnings over \$150,000."⁴¹
- "A startling one-quarter of California students lack adequate access to the internet, according to a 2020 report by education nonprofit Common Sense. A majority of them are Black, Latinx or Native American."
- A Los Angeles Times survey of 45 Southern California school districts found profound differences in distance learning among children attending school districts in high poverty communities, like Maria's in Coachella Valley, and those in more affluent ones, like Cooper's in Las Virgenes, which serves Calabasas and nearby areas.⁴³
- "Districts in the Bay Area have reported sobering numbers: the Oakland Public Education Fund estimates half of Oakland's 50,000 students lack either a computer or internet access and, according to a spokeswoman for San Jose mayor Sam Liccardo, 14,000 of San Jose's 36,000 students lack access to digital resources as well." 44
- 144. This "Digital Divide" is even more troubling when data and anecdotal evidence show that remote learning encourages decreased teacher interaction with students, whether through in-person or real-time learning. In a survey of 834 registered voters, conducted between August 29 and September 7, 2020 by the FM3 Research polling firm, shows that lack of instructional time with teachers is one of parents' leading concerns, with 74% of respondents identifying it as the biggest challenge.⁴⁵ Some districts have been criticized for not spending more time and resources training teachers on how to better navigate instruction online.⁴⁶
- 145. Several Student Plaintiffs lack the devices, connectivity, and/or support needed to access remote learning platforms. When the switch to remote learning began, Megan O.'s and Matilda O.'s school provided their family with computers that did not work, forcing Megan O.

⁴¹ *Id*.

⁴² Daniel Wu, *Coronavirus shutdowns expose low-income Bay Area students' struggle to get online*, TIMES-HERALD (Aug. 3, 2020), https://www.timesheraldonline.com/2020/08/03/coronavirus-shutdowns-expose-low-income-students-struggle-to-get-online/.

⁴³ Paloma Esquivel, et al., *A generation left behind? Online learning cheats poor students, Times survey finds*, Los Angeles Times (Aug. 13, 2020), https://www.latimes.com/california/story/2020-08-13/online-learning-fails-low-income-students-covid-19-left-behind-project.

⁴⁴ Daniel Wu, *Coronavirus shutdowns expose low-income Bay Area students' struggle to get online*, TIMES-HERALD (Aug. 3, 2020), https://www.timesheraldonline.com/2020/08/03/coronavirus-shutdowns-expose-low-income-students-struggle-to-get-online/.

⁴⁵ Freedberg, California voters have deep concerns about distance learning, supra note 1.

⁴⁶ Lyanne Melendez, Bay Area parents, teachers, students weigh in on distance learning, supra note 1.

and Matilda O. to access classes through their parents' phones. Megan O. is still waiting for her school to provide a wireless hotspot for her. Alex R. and Bella R.'s family has a weak WiFi connection at their home because they live under the flight path that leads to LAX, and they also miss class time due to outages of LAUSD's internet. Cayla J. and Kai J.'s school uses a remote learning program that is difficult to use, and their family has been offered no training on it. Matthew E. and Jordan E. had to share a single Chromebook for three weeks, and both of them struggle to access the internet because their schools have not provided them with a hotspot. Tamara I. and Isaac I. share a hotspot that was provided by Joshua I.'s school because their schools did not offer them hotspots, and even the hotspot that they have is unreliable. Daniel A. received a hotspot from his school, but it is too slow and unreliable to use for remote learning. His mother Sara A. had to pay for her own internet service for Daniel A. to use at school because he was being marked absent when his hotspot wouldn't connect.

- 146. Remote learning has also forced some families to pay for basic, non-digital school supplies out of pocket. Megan O. and Matilda O.'s school requires families to provide basic supplies like paper and printed materials for their children. Maria O. has to pay for these supplies out-of-pocket. While Ellori J.'s teachers have provided some school supplies to students, Cayla J. and Kai J. have received no supplies or materials from their teachers, even though they attend the same school as Ellori J.
- 147. Community organizations have stepped in where districts have failed to provide students with devices and hotspots. CoCo distributed 206 laptops to South Los Angeles students between March and November 2020. The organization also distributed spare hotspots to families before its supply ran out, and maintains a waiting list of families in need of a hotspot. CoCo also offered trainings for parents in need of technical support to set up their children's devices and access remote-learning platforms like Schoology and Google Classroom. Additional parent workshops also discussed homeschool management, social media monitoring, stress management, and coping with grief and loss. To help students familiarize themselves with remote learning tools, CoCo spent around \$230,000 on summer programming. This included \$1,000 on training and Zoom accounts for the teachers they hired for the program. This spending does not include

money spent on transportation for distributing technology hardware or in person meetings with families.

148. The Oakland REACH also distributed laptops and hotspots and hired family liaisons to help students and parents access virtual classrooms and troubleshoot connectivity issues. When The Oakland REACH created their virtual Hub last spring, they secured thousands of dollars in donations to help purchase 200 laptops and 60 hotspots to ensure that families had basic access to the connectivity needed for remote learning.

B. Lack of Accountability and Training Necessary to Make Distance Learning Effective and Substantially Equivalent to In-Person Instruction

149. Availability of devices and connectivity only scratches the surface. Even students who *are* provided with tablets and WiFi hotspots still struggle to learn under the conditions they face during the pandemic. Students and parents have difficulty accessing virtual learning platforms and the State has done nothing to ensure that they have the training and technical support that they need to log on. Although "surveys conducted in June of California parents revealed that more than 90 percent reported that they had received information from their child's school on how to access online learning," "nearly a third of families were unable to understand the instructions." In such cases, even the most diligent of teachers cannot provide the extra attention necessary for a struggling student as they might in person. Clearly, minimum standards are not being met.

150. "On the surface, [remote learning] seems to treat rich and poor alike, every public school student seemingly subject to the same pluses and minuses from remote learning. Except that the wealthy can do something about it when their children's WiFi fails, while the poor often cannot. The wealthy are often able to stay home with their children during the pandemic, while a far higher proportion of the poor work in menial jobs now considered essential, from farmworkers to street cleaners."

⁴⁷ Magaly Lavandenz & Elvira Armas, *Schools must work harder to connect culturally with English learners during the pandemic*, EDSOURCE (Oct. 9, 2020), https://edsource.org/2020/schools-must-work-harder-to-connect-culturally-with-english-learners-during-the-pandemic/641070.

⁴⁸ Thomas D. Elias, Virus becomes a major force for inequality, NAPA VALLEY REGISTER (Aug. 6,

- 151. The State has an obligation to provide remote learning programs that are "aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction." Cal. Educ. Code § 43503(b)(2). But evidence points to disparities in learning for students of color and those from low-income families during school closures. A preliminary report based on surveys of hundreds of districts across the country by American Institutes for Research found that students in high-poverty districts were expected to spend less time per day on instructional activities, more likely to use paper packets, and more likely to focus on reviewing content than students in low-poverty districts.⁴⁹
- 152. Now more than ever, increased student interaction with their teachers and trainings for teachers to be remote learning-ready is crucial. The State, however, has not instituted any statewide teacher or parent training programs to ensure adequate and efficient remote teaching, leaving LEAs to offer voluntary teaching programs at most.⁵⁰ More training, as well as more accountability, is needed to ensure that the instruction offered to low-income Black and Latinx students is effective and substantially equivalent to in-person instruction.
- 153. Several Student Plaintiffs have been harmed by ineffective remote instruction and lack of training for teachers and families. When Alex R. and Bella R.'s school switched to remote learning in March, the school did not provide a curriculum for Alex R. and Bella R. to follow. Because Alex R.'s and Bella R.'s teachers' internet did not work reliably, Alex R. and Bella R. only had 30 to 40 minutes of lessons a couple of times each week. From March until June, Alex R. and Bella R. didn't learn anything at school. Despite losing months of learning time, Alex R. and Bella R. were not offered any academic support, such as teacher office hours or summer programs.

^{2020), &}lt;a href="https://napavalleyregister.com/opinion/columnists/thomas-d-elias-virus-becomes-a-major-force-for-inequality/article_378ecf60-9e1a-5aec-bc58-186ca2392834.html">https://napavalleyregister.com/opinion/columnists/thomas-d-elias-virus-becomes-a-major-force-for-inequality/article_378ecf60-9e1a-5aec-bc58-186ca2392834.html; see also Lyanne Melendez, Bay Area parents, teachers, students weigh in on distance learning, supra note 1 ("There needs to be an adult or someone responsible with the children in the home or whenever they are going to be studying and for working parents, especially for a single parent, that's rough.").

⁴⁹ Esquivel, A generation left behind, supra note 43.

⁵⁰ Jennifer Olney, *San Jose State offers free webinars for teachers to improve K-12 distance learning*, ABC 7 EYEWITNESS NEWS (Aug. 6, 2020), https://abc7news.com/distance-learning-remote-teaching-online-education/6358108/.

- 154. From March 17, 2020 to the end of the school year, Cayla J. and Kai J. had only two online classes and weren't offered asynchronous instruction or other work to make up for the missed class time—no book reports, no packets, no homework. Missing so many months of school has had a lasting effect on Cayla J. and Kai J. Now in the third grade, they are supposed to be doing multiplication and division, but they are still having trouble with subtraction, which they should have learned in second grade.
- Ellori J. has trouble getting her teacher's attention during remote lessons. When 155. Angela J. raised this issue with Ellori J.'s teacher, the teacher said that she can only see six out of 33 first grade students on the screen at a time, and cannot be responsive to the majority of the class. Angela J. thinks that Ellori J. is learning this year only because she spends all her time with her older siblings, who are two grades ahead of her, and she is still missing out on foundational basics.
- 156. Matthew E. is struggling to keep up academically and some of his other teachers would benefit from more training on how to engage students over the screen. Jordan E. is also struggling to keep up academically because his teacher moves very fast through lessons, as if she is trying to fit six hours of learning into only two hours. It is hard for Jordan E. to keep up with the quick transitions to different subject matter. Catherine E. thinks that Jordan E.'s teacher is trying hard but needs more support and training.
- Natalia T.'s grades have fallen from As and Bs to Bs and Cs during the pandemic. The pressure of taking AP classes online is very intense, and lessons are watered down compared to what they were before the pandemic.
- 158. Daniel A.'s teachers are often absent without warning, and the substitute teachers do not follow the same lesson plans or procedures as his usual teachers. Substitute teachers also do not take roll, which leads to Daniel A. being marked absent even when he attends school. Daniel A. also struggles to pay attention to lessons transmitted over a screen.
- 159. Community organizations have shown that it is possible to provide high-quality, individualized instruction in a virtual environment. CoCo hired teachers and tutors to staff their virtual learning programs during the summer and school year. The Oakland REACH created a sf-4360445

virtual learning Hub, through which they provided students with five weeks of high-quality live instruction and support. The Oakland REACH saw remarkable progress among students who participated in the Hub, with students achieving an average of two reading levels over the five weeks.

C. Lack of Academic and Mental Health Supports to Assist Struggling Students

160. Individualized attention is a key part of adapting to the remote environment. Educators must determine whether individual students' needs are being met, and to modify instruction and provide supports as necessary to accommodate changing circumstances. California law requires LEAs to provide "[a]cademic and other supports designed to address the needs of pupils who are not performing at grade level, or need support in other areas, such as English learners, pupils with exceptional needs, pupils in foster care or experiencing homelessness, and pupils requiring mental health supports." Cal. Educ. Code § 43503(b)(3). But because the State has neither enforced this requirement nor helped LEAs to implement it, students in need of help with academic or social-emotional needs are going without support.

- educated and affluent parents and the districts that serve them are providing services that far exceed what is available in low-income districts that serve Black and Latinx students. Children from low-income families and those whose parents lack the skills or time to help them with schoolwork have virtually no way to obtain individualized assistance in a remote-learning environment. Without individualized attention, children are more likely to struggle to access online class sessions or to be unable to sign on at all. Even if they can get online, they have no one to go to if they are struggling with academic content.⁵¹ As the home has effectively become the school, the State must ensure that families have adequate resources to assist their children.
- 162. Black and Latinx students from low-income families are even more in need of support because of compounding racial and wealth inequities in education and in the pandemic response. These students are more likely to have parents who have lost jobs or income, or who

⁵¹ Elias, *Virus becomes a major force for inequality, supra* note 48.

have to risk their lives daily as "essential workers" but are treated as if they are disposable. And even before the pandemic, these students were more likely to be behind in school and in need of social-emotional support due to longstanding neglect and racism. The State has not stepped up to correct these inequities.

- 163. Students rely on relationships and connection, as well as predictability and consistency in the learning environment, in order to thrive in school. All of these are in short supply under remote learning in many schools. Educators and service providers need to find new ways to offer academic and mental health supports. The State has not stepped in to make sure that these supports are being provided.
- 164. Several Student Plaintiffs have been harmed by a lack of individual academic and mental health supports during the pandemic. Billy T. is struggling academically and is failing all of his classes. He is having trouble connecting with his teachers, and Hillary T. feels that they are not making themselves available to discuss his individual needs. Billy T. is also having trouble arriving at class on time, and he is being marked absent for being late. This would not have happened when school was in-person. Hillary T. has to supervise Billy T.'s learning and redirect him on an hourly basis. Billy T. would benefit from one-on-one instruction—Hillary T. is effectively serving as a one-on-one instructor—but no one at Billy T.'s school has mentioned that as a possibility for him.
- 165. Megan O. needs support to engage with remote learning, and Maria O. finds it difficult to provide this support while working and within the confines of her family's one-bedroom apartment. Megan O.'s teacher once kicked Megan O. out of a remote lesson because she thought that Megan O. was sleeping. Maria O. has to be with Megan O. all the time when she is online. Maria O. feels that Megan O. needs more socialization through school, but her school is not providing any opportunities or outreach that could help meet Megan O.'s social and emotional needs. Megan O. also needs more individual support from a tutor.
- 166. Matilda O. is a bright, self-directed student who wants to be a veterinarian and a dancer. Still, during the remote learning period, she has missed out on academic opportunities as

well as the social and emotional aspects of school. Matilda O. misses school and wants to go back and catch up on all the material she has missed since the pandemic began.

- 167. Despite losing months of learning time, Alex R. and Bella R. were not offered any academic support, such as teacher office hours or summer programs. Kelly R. has to spend hours a day helping her daughters with school. Alex R. and Bella R.'s mental health is suffering because of remote learning but their school has offered no social-emotional resources. The school has not stepped in to provide pandemic-safe opportunities for connecting with classmates and teachers, nor are they offering counseling or health and wellness programs. Bella R. was also supposed to have an academic intervention during the 2019-2020 that did not take place until the end of fall 2020, by which time she had lost significant ground academically. In the absence of these supports and connections, Bella R. is unengaged in school and spends her instructional time staring passively at the screen.
- 168. Cayla J. and Kai J. have not been offered academic support from their school to make up for the learning loss associated with having almost no instruction from March to June 2020. Missing so many months of school has had a lasting effect on Cayla J. and Kai J. Now in the third grade, they are supposed to be doing multiplication and division, but they are still having trouble with subtraction, which they should have learned in second grade.
- 169. Matthew E. is struggling to keep up academically and is experiencing mental health challenges. Matthew E. would benefit from one-on-one tutoring, particularly in math, but his school does not offer it. Catherine E. has tried to find academic and mental health supports for Matthew E., but his school does not offer them. Jordan E. would also benefit from one-on-one tutoring and counseling, but his school does not offer them.
- 170. Joshua I. has an IEP and a one-on-one aide who participates remotely in Joshua I.'s classes. But a remote aide can't help redirect Joshua I. back to class when he is not paying attention, or is watching videos instead of class. Sometimes Joshua I. turns off the camera or leaves the class, and the aide will call Susan I. to let her know, but never the aide nor Joshua I's school has offered proactive help or solutions to keep Joshua I. engaged.

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prerecorded multimedia.⁵³

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⁵³ *Id*.

wide-range-of-live-teacher-instruction/641588.

⁵⁴ Sydney Johnson, *Length of live teaching varies in California even in the same grade level and same district*, EDSOURCE (Oct. 22, 2020), https://edsource.org/2020/students-in-same-grade-in-california-get-

Community organizations have shown that it is possible to provide academic and

Although California Education Code section 43501 sets daily minimum duration

As a result, the duration of live teaching varies wildly among schools, even those

mental health supports to students who are struggling during the pandemic. CoCo has college

representatives that provide support to high school seniors once a week—support they are not

receiving at school. Their team also created weekly wellness programming and daily one-on-one

wellness support to help students work through stress and other mental health challenges. The

Oakland REACH's virtual learning hub includes a Family Sustainability Center that provides

parents with holistic supports such as socio-economic and academic workshops and resources.

requirements for instructional time, the CDE has taken the position that such minimums are

inclusive of "synchronous and/or asynchronous instruction." So "Asynchronous instruction" is

defined as learning that "occurs without direct, simultaneous interaction of participants such as

videos featuring direct instruction of new content that students watch on their own time," i.e.

in the same district. Among the 20 largest California school districts reviewed, "eight require

between 2 and 2.5 hours of live instruction in the elementary grades. Five don't set any minimum

amount across the district, and the remaining districts' minimum and maximum amounts cover a

wide range," from 1 to 4 hours per day.⁵⁴ "There is also variation among middle and high

schools, both across the [S]tate and within districts, largely depending on the variance among

school schedules. For example, several districts require 30 minutes of live instruction with a

⁵² Cal. Dep't of Educ., *Distance Learning Instruction Planning Guidance*, https://www.cde.ca.gov/ls/he/hn/guidanceplanning.asp (last updated Aug. 18, 2020).

Failure to Meet Minimum Instructional Times

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teacher for each class period of the day, others require teachers to be on-camera the entire period, and several don't specify." ⁵⁵

- Despite the best efforts of many talented teachers, this is vastly inadequate, particularly where the State has offered no compulsory training to teachers to ensure adequate and efficient remote teaching, leaving LEAs to offer voluntary teaching programs. As explained above, lack of instructional time with teachers is one of parents' leading concerns, with 74% of respondents identifying it as the biggest challenge. The following teaching the sense want more real-time instruction for their child—especially as less than a third of parents (31%) report that their child receives four or more hours of real-time instruction during the school day.
- 175. The decrease in live teaching, coupled with districts' failure to spend more time and resources training teachers on how to better navigate instruction online, continues to cause significant learning losses on students during the pandemic.⁵⁹
- 176. Several Student Plaintiffs have not had minimum instructional times met in their remote classes. Between March 17, 2020 and the end of the 2019-2020 school year, Cayla J. and Kai J.'s teacher held class only twice. When Angela J. reached out to the teacher to ask why class wasn't meeting, she responded that because some of the students in the class were not connected to remote learning, classes were cancelled for all students. In fall 2020, a typical school day for Cayla J. and Kai J. begins with a 45-minute video class session, followed by several hours of learning on their own according to a checklist that their teacher provides. Later in the day, Cayla J. and Kai J. participate in a 30-minute small group session with their classmates. Other than those brief sessions, they are on their own for the rest of the day.

⁵⁵ *Id*.

⁵⁶ Jennifer Olney, San Jose State offers free webinars for teachers to improve K-12 distance learning, ABC 7 EYEWITNESS NEWS (Aug. 6, 2020), https://abc7news.com/distance-learning-remote-teaching-online-education/6358108/.

⁵⁷ Freedberg, *California voters have deep concerns about distance learning, supra* note 1.

⁵⁸ The Education Trust West, *California Parent Poll*, *supra* note 38.

⁵⁹ Lyanne Melendez, Bay Area parents, teachers, students weigh in on distance learning, supra note 1.

177. Isaac I.'s school offers three remote classes each day plus an advisory period. The classes are supposed to last 70 minutes each, except for advisory, which is 30 minutes. But the school doesn't stick to the schedule, and Isaac I.'s classes often last for only 30 minutes or less. On a recent day, there was no advisory period, and Isaac I. finished all three of his classes by 11:30 a.m., having started at 9:00 a.m.

178. Tamara I.'s school offers only 30 minutes of instruction on Monday. For the rest of the week, her remote school schedule runs from 9:00 a.m. to 1:30 p.m., with three breaks during that interval. Similarly, Matthew E.'s class has virtual learning sessions from 9:30 a.m. to 1:20 p.m. each weekday except Wednesdays, when they go from 9:30 a.m. to only 12:00 p.m. Daniel A.'s schedule has him learning from 9:00 a.m. to 2:00 p.m., but a lot of that time is offline or breaks. The class is also frequently let out early. Daniel A.'s school offers some tutoring, but he needs more to make up for the learning time he has lost.

179. To make up for the loss of instructional time students experienced last spring, community organizations offered summer school programs. CoCo's summer program provided support for students with reading, math, and extracurriculars. The Oakland REACH's City-Wide Virtual Hub stepped up to fill this gap for 200 students over the summer with hours of academic programming each week. For the students who were able to participate in them, these summer programs helped to make up for months of learning loss due to the State's inadequate response to the pandemic.

180. Community organizations also offer school-year educational opportunities that enrich and extend students' instructional time beyond the State's insufficient school day. CoCo offers after-school programming, including extracurriculars and academic tutoring. The Oakland REACH currently offers Phase 2 of the Hub every Monday to Thursday afternoon to make up for what students miss in their regular school day.

V. THE LACK OF ACCESS TO REMOTE EDUCATION HAS DIRE AND FAR-REACHING EFFECTS.

181. <u>Educational Opportunity</u>: In the current pandemic learning environment, resources such as connectivity and individualized academic and mental health supports are crucial

to obtaining even the most basic level of education. Yet, months after remote learning became our reality, thousands of the most vulnerable children in the state continue to go without basic necessities. And without access to basic levels of education, students cannot read, write, or comprehend state-mandated material at state-mandated levels. Learning is cumulative, and without serious and sustained intervention by the State, students cannot hope to catch up on the basics they have missed.

- 182. **Participation in Democratic Citizenship:** Among other things, participation in democratic citizenship includes the ability to exercise free speech rights, vote, serve in the military, serve on juries, and access the justice system.
- 183. Education allows citizens to exercise their right to engage in political speech and public discourse regarding the important civil and political issues of the day. Without basic skills, citizens cannot engage in knowledgeable and informed voting for the candidates of their choice, much less read and comprehend the complicated ballot initiatives on California ballots.
- 184. Joining the armed services requires applicants to pass a multiple-choice test administered on a wide range of subjects, including word knowledge and paragraph comprehension. Without basic education, an individual is effectively precluded from serving our country in the military.
- 185. Likewise, lack of education precludes meaningful participation in the judicial process, including serving as a member of a jury. Without basic education skills, citizens who are serving on juries cannot comprehend documentary evidence presented to them.⁶¹
- 186. <u>Economic Self-Sufficiency</u>: People who have been denied access to education often experience significant barriers to securing economic self-sufficiency. They may be

⁶⁰ Johnson, *Up to 1 million California students still lack connectivity, supra* note 1; Elias, *Virus becomes a major force for inequality, supra* note 48; Lyanne Melendez, *Bay Area parents, teachers, students weigh in on distance learning, supra* note 1; Esquivel, *A generation left behind, supra* note 43; Freedberg, *California voters have deep concerns about distance learning, supra* note 1; The Education Trust West, *California Parent Poll, supra* note 38.

⁶¹ See Goodwin Liu, Education, Equality, and National Citizenship, 116 Yale L.J. 330, 345 (2006) ("Citizenship requires a threshold level of knowledge and competence for public duties such as voting, serving on a jury, and participating in community affairs, and for the meaningful exercise of civil liberties like freedom of speech.").

1	unqualified for jobs or unable to read and fill out job applications. Individuals who cannot			
2	financially support themselves due to lack of education often cannot complete the written			
3	application forms necessary to obtain government entitlements such as Medi-Cal, Covered			
4	California, Social Security Disability Insurance, or General Assistance/General Relief benefits.			
5	187. Long-Term Impact: The learning losses of underserved students during the			
6	pandemic will have long-term effects on the labor force and California's economic well-being,			
7	according to experts. Covid-related learning loss of just one-third of a school year is estimated to			
8	cause a 3.0% decrease in lifetime individual income, while losing a full school year is associated			
9	with a 9.1% decrease in lifetime income. ⁶² These individual numbers correspond to a 1.5% lower			
10	GDP for the rest of the century for a one-third year learning loss, and 4.3% lower GDP for a one-			
11	year learning loss. ⁶³ These estimates "should be thought of as the lower bound of the impact of			
12	learning losses" and would be greater for students from low-income or otherwise disadvantaged			
13	households. ⁶⁴			
14	CAUSES OF ACTION			
15	FIRST CAUSE OF ACTION: RACIAL DISCRIMINATION IN VIOLATION OF THE			
16	EQUAL PROTECTION CLAUSES OF THE CALIFORNIA CONSTITUTION (Student Plaintiffs Against All Defendants)			
17				
	188 Plaintiffs incorporate by reference the allegations set forth above as if fully stated			
18	188. Plaintiffs incorporate by reference the allegations set forth above as if fully stated			
18 19	herein.			
	herein. 189. The California Constitution's equal protection clause prohibits the State from			
19	herein. 189. The California Constitution's equal protection clause prohibits the State from adopting policies or taking other actions that disproportionately impact minority students with			
19 20	herein. 189. The California Constitution's equal protection clause prohibits the State from adopting policies or taking other actions that disproportionately impact minority students with respect to educational opportunities. <i>See</i> Cal. Const., art. I, § 7; <i>id.</i> art. IV, § 16; <i>Butt</i> , 4 Cal. 4th			
19 20 21	herein. 189. The California Constitution's equal protection clause prohibits the State from adopting policies or taking other actions that disproportionately impact minority students with			
19 20 21 22	herein. 189. The California Constitution's equal protection clause prohibits the State from adopting policies or taking other actions that disproportionately impact minority students with respect to educational opportunities. <i>See</i> Cal. Const., art. I, § 7; <i>id.</i> art. IV, § 16; <i>Butt</i> , 4 Cal. 4th			
19 20 21 22 23	herein. 189. The California Constitution's equal protection clause prohibits the State from adopting policies or taking other actions that disproportionately impact minority students with respect to educational opportunities. <i>See</i> Cal. Const., art. I, § 7; <i>id.</i> art. IV, § 16; <i>Butt</i> , 4 Cal. 4th at 685.			
19 20 21 22 23 24	herein. 189. The California Constitution's equal protection clause prohibits the State from adopting policies or taking other actions that disproportionately impact minority students with respect to educational opportunities. <i>See</i> Cal. Const., art. I, § 7; <i>id.</i> art. IV, § 16; <i>Butt</i> , 4 Cal. 4th			

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⁶⁴ *Id.* at 8.

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- 190. A racial disparate impact "claim is stated when [1] a policy adopted in California has a substantial disparate impact on the minority children of its schools, causing de facto segregation of the schools and [2] an appreciable impact to a district's educational quality, and [3] no action is taken to correct that policy when its impacts are identified." *Collins v. Thurmond*, 4 Cal. App. 5th 879, 896-97 (2019).
- 191. This *de facto* segregation causes "an appreciable impact to a district's educational quality," because minority students are without sufficient access to the resources or instruction necessary to take part in distance learning. *See id*.
- 192. Here, Student Plaintiffs, all of whom are minority students, are directly and disproportionately impacted by the State's COVID-19 response to education, and are receiving an inadequate education, compared to their peers. Indeed, Student Plaintiffs lack access to computers and the internet connections necessary to access their online classes and assignments leading to a "substantial disparate impact" on them. *Id.* at 896. In addition to the Digital Divide, Student Plaintiffs are also disproportionately affected by decreased instructional time, ineffective remote instruction due to lack of training and accountability, and a lack of academic and mental health supports.
- 193. This disparate impact causes appreciable damage to Student Plaintiffs. The "Digital Divide" that afflicts minority students makes remote learning even worse. Student Plaintiffs struggle to login to, and participate with, the school district's remote learning program.
- 194. Plaintiffs are not able to remedy these problems independently, because they do not have the financial means to pay for outside instruction or counseling, pay for adequate technology, or transfer to an out-of-district school to escape the Digital Divide.
- 195. Therefore, the State's COVID-19 response to education has a disparate impact on minority students, including Student Plaintiffs, negatively affecting their schooling disproportionately to other students, resulting in *de facto* segregation, in violation of the California Constitution.

196. California cannot justify its discriminatory conduct by satisfying strict scrutiny, including because its COVID-19 response to education is not narrowly tailored given that it fails to provide all pre-pandemic benefits to students that can safely be provided during the pandemic.

SECOND CAUSE OF ACTION: WEALTH DISCRIMINATION IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE CALIFORNIA CONSTITUTION (Student Plaintiffs Against All Defendants)

- 197. Plaintiffs incorporate by reference the allegations set forth above as if fully stated herein.
- 198. The California Constitution's equal protection clause prohibits California, and its subordinate school districts, from discriminating on the basis of wealth in a manner that deprives students of a "basically equivalent" quality of education. *See* Cal. Const., art. I, § 7; *id.* art. IV, § 16; *Butt*, 4 Cal. 4th at 685.
- 199. A government actor discriminates on the basis of wealth if it does so explicitly, or if, "regardless of how [it is] implemented," it "inevitably cause[s]" students "to be provided with an education that is not 'basically equivalent to' their . . . peers" in other parts of the State. *See Vergara v. State*, 246 Cal. App. 4th 619, 649 (2016).
- 200. A child's education is not "basically equivalent" in quality when "the actual quality of the [school's] program, viewed as a whole, falls fundamentally below prevailing statewide standards." *Collins*, 41 Cal. App. 5th at 898 (quoting *Butt*, 4 Cal. 4th at 686-87).
- 201. The State's inadequate response to the COVID-19 pandemic affects minority, low-income students more severely than affluent, White students, thus depriving the former of their fundamental right to an education.
- 202. The State's response to the pandemic will "inevitably cause" Student Plaintiffs "to be provided with an education that is not 'basically equivalent to' their more affluent . . . peers." *Vergara*, 26 Cal. App. 4th at 649. Specifically, families that are more affluent are able to provide their children with adequate technology and connectivity, to remedy missed instructional time with parent-provided or hired tutoring and enrichment, to have teachers who are trained to

provide effective remote instruction and schools that are held accountable when instruction is ineffective, to have access to extra academic and mental health supports paid for out-of-pocket.

203. By failing to provide Student Plaintiffs with sufficient access to remote instruction, while more affluent families to seek additional instruction elsewhere, "the actual quality" of the education of Student Plaintiffs and those similarly situated "viewed as a whole, [will] fall[] fundamentally below prevailing statewide standards." *Collins*, 41 Cal. App. 5th at 898 (quoting *Butt*, 4 Cal. 4th at 686-87).

THIRD CAUSE OF ACTION: VIOLATION OF ARTICLE 1, SECTION 7 OF THE CALIFORNIA CONSTITUTION (Student Plaintiffs Against All Defendants)

- 204. Plaintiffs incorporate by reference the allegations set forth above as if fully stated herein.
- 205. Article I section 7(b) of the California Constitution states that "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens." Cal. Const., art. I § 7(b).
- 206. The State of California has established the content standards and other commitments of care and services to elementary and high school students, defining the education to which students are entitled. Elementary and high school students are entitled to receive "basic educational equality." *See Butt*, 4 Cal. 4th at 679 & n.9. This commitment is among the privileges and immunities that may not be granted to some citizens, but not provided on the same terms to all citizens.
- 207. Defendants have violated the rights of Student Plaintiffs to receive privileges and immunities on the same terms as all other citizens by failing to ensure that basic educational equality and opportunity was provided to Student Plaintiffs.

FOURTH CAUSE OF ACTION: VIOLATION OF ARTICLE IX, SECTIONS 1 AND 5 OF THE CALIFORNIA CONSTITUTION (Student Plaintiffs Against All Defendants)

208. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

209. Defendants have violated the rights of Plaintiffs, pursuant to Article IX, sections 1 and 5 of the California Constitution, to learn in a "system of common schools by which a *free school* shall be kept up and supported" such that students may learn and receive the "diffusion of knowledge and intelligence . . . essential to the preservation of the[ir] rights and liberties." Cal. Const., art. IX, §§ 1, 5 (emphasis added).

- 210. This system of common schools requires that there be a "public education system open on equal terms to all." *Butt*, 4 Cal. 4th at 680. These constitutional provisions also impose on Defendants the duty to provide Student Plaintiffs an education that will teach them the skills they need to succeed as productive members of modern society, and to cover all expenses for resources and activities constituting an "integral fundamental part of the elementary and secondary education" or which amount to "necessary elements of any school's activity." *Hartzell*, 35 Cal. 3d at 905 (citation omitted).
- 211. Defendants have failed to provide an equal system open to Student Plaintiffs on equal terms to higher-income students and non-minority students. Defendants also have failed to provide an education that will teach Student Plaintiffs the skills they need to succeed as productive members of society by providing them with limited instructional time and limited access to their teachers.

FIFTH CAUSE OF ACTION: VIOLATION OF SECTION 51865 OF THE CALIFORNIA EDUCATION CODE (Student Plaintiffs Against All Defendants)

- 212. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.
- 213. Section 51865 of the California Education Code regarding distance learning provides that all students in California's public schools should have equal access to educational opportunities regardless of place of residence or size of school attended.
- 214. Defendants have failed to provide Student Plaintiffs equal access to educational opportunities, including connectivity and remote access, effective instruction, and academic and mental health supports necessary for learning, regardless of residence or size of school attended.

1	215. H	By failing to provide Student Plaintiffs with sufficient access to effective remote	
2	instruction and individualized academic and mental health supports, while allowing more affluen		
3	families to seek additional instruction elsewhere, "the actual quality" of the education of Student		
4	Plaintiffs and those similarly situated "viewed as a whole, [will] fall[] fundamentally below		
5	prevailing statewide standards." Collins, 41 Cal. App. 5th at 898 (quoting Butt, 4 Cal. 4th at 686		
6	87).		
7	SIXTH CAUSE OF ACTION: VIOLATION OF THE WILLIAMS ACT		
8	(Student Plaintiffs Against All Defendants)		
9	216. F	Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as	
10	though fully set forth herein.		
11	217. Т	The Williams Act sets new standards and accountability mechanisms to ensure that	
12	all California public school students have textbooks and instructional materials and that their		
13	schools are clean, safe, and functional. It also ensures that all students have qualified		
14	teachers. School districts are legally responsible for ensuring their students have the devices and		
15	connectivity they need to participate in class.		
16	218. S	Specifically, section CA 60119 of the California Education Code provides that	
17		1)(A) The governing board of a school district shall hold a public	
18	r	pearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community	
19	Towards, and shall make a determination, an ought a resolution, as to		
20	to	whether each pupil in each school in the district has sufficient extbooks or instructional materials, or both, that are aligned to the	
21	content standards adopted [pursuant to section 60605] in each of the following subjects, as appropriate, that are consistent with the		
22		content and cycles of the curriculum framework adopted by the tate board:	
23	i. Mathematics.		
24	i	i. Science.	
25	i	ii. History-social science.	
26		v. English/language arts, including the English language	
27	C	levelopment component of an adopted program.	
28		••	

(2)(A) If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall provide information to classroom teachers and to the public setting forth, in the resolution, for each school in which an insufficiency exists, the percentage of pupils who lack sufficient standards-aligned textbooks or instructional materials in each subject area and the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil has sufficient textbooks or instructional materials, or both, within two months of the beginning of the school year in which the determination is made.

- 219. Defendants have failed to provide Student Plaintiffs adequate access to instructional materials for the remote learning programs (*e.g.*, connectivity, remote devices, paper, printed materials, school supplies, etc.).
- 220. Defendants have also failed to provide parents the resources necessary to support them as their homes have become the de facto schools and classrooms. The State's failure to provide the bare minimum necessities in order for Student Plaintiffs to receive a public education thus violates the Williams Act.

SEVENTH CAUSE OF ACTION: VIOLATION OF SECTION 11135 OF CALIFORNIA GOVERNMENT CODE

(Student Plaintiffs Against All Defendants)

- 221. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.
 - 222. California Government Code section 11135(a) provides:

No person in the State of California shall, on the basis of . . . race, color, . . . ancestry, national origin, ethnic group identification, . . . mental disability, physical disability, [or] medical condition, . . . be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

223. As a result of the State's failed COVID-19 response to education, Student Plaintiffs were and continue to be subjected to discrimination on the basis of nationality, race, and/or ethnicity, depriving them of the right of equal access to the educational benefits and opportunities they are entitled to.

- Provide remote learning programs that are "aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction." Cal. Educ. Code § 43503(b)(2).
- Provide "[a]cademic and other supports designed to address the needs of pupils who are not performing at grade level, or need support in other areas, such as English learners, pupils with exceptional needs, pupils in foster care or experiencing homelessness, and pupils requiring mental health supports." Cal. Educ. Code § 43503(b)(3).
- Consult with parents and pupils in developing a learning continuity and attendance plan. Cal. Educ. Code. § 43509(b).

There is no plain, speedy, and adequate alternative remedy that will ensure Defendants fulfill their statutory and constitutional duties to educate California children. Plaintiffs have a beneficial interest in seeing these provisions of the education code enforced via a writ of mandamus. Student Plaintiffs benefit by having their constitutional right to an education realized; Community Coalition and The Oakland REACH benefit by no longer having to divert resources to satisfying educational requirements for which the State is responsible.

NINTH CAUSE OF ACTION: DECLARATORY RELIEF (All Plaintiffs Against All Defendants)

- 230. An actual and existing controversy exists between the Plaintiffs and Defendants because Plaintiffs contend, and Defendants dispute, that Defendants' actions and inactions as described above have violated Article I, section 7(a) and Article IV, section 16(a) of the California Constitution; Article I, section 7(b) of the California Constitution; Article IX, sections 1 and 5 of the California Constitution; Williams Act (California Education Code section 60119); California Government Code section 51865; and California Government Code section 11135.
- 231. Plaintiffs seek a judicial declaration that Defendants have violated these constitutional and statutory provisions.
- 232. Plaintiffs are harmed by Defendants' failure to comply with all applicable provisions of law and their legal duties, as set forth herein.

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TENTH CAUSE OF ACTION: TAXPAYER CLAIM

(Community Coalition and The Oakland REACH Against All Defendants)

- 233. Plaintiffs Community Coalition and The Oakland REACH and their members have been assessed and found liable to pay taxes such as property, income, payroll, and other taxes in the counties in which they reside and to the State of California and the United States of America in the last year.
- 234. Defendants' expenditure of federal, state, county, and/or municipal funds to administer and implement a system of public education that engages in unconstitutional discrimination, as challenged herein, is unlawful. Plaintiffs Community Coalition and The Oakland REACH, as state taxpayers, have an interest in enjoining the unlawful expenditure of tax funds. Pursuant to California Civil Procedure Code section 526a and this Court's equitable power, Plaintiffs Community Coalition and The Oakland REACH seek declaratory and injunctive relief to prevent continued harm and to protect Community Coalition, The Oakland REACH, and the public from Defendants' unlawful policies, practices, and deliberate indifference, as alleged herein.
- 235. There is an actual controversy between Plaintiffs Community Coalition, The Oakland REACH, and Defendants concerning their respective rights and duties, in that Plaintiffs Community Coalition and The Oakland REACH contend that the Defendants have unlawfully administered and implemented the State's system of public education, and have failed to satisfy their duty to act to correct deficiencies, as alleged herein, whereas Defendants contend in all respects to the contrary. Defendants' unlawful administration and implementation of the State's system of public education has caused Community Coalition and The Oakland REACH to diverted significant resources towards correcting the system's deficiencies. Plaintiffs Community Coalition and The Oakland REACH seek a judicial declaration of the rights and duties of the respective parties with respect to the instant matter.
- Unless and until Defendants' unlawful policies and practices, as alleged herein, are 236. enjoined by order of this Court, they will continue to cause great and irreparable injury to Plaintiffs Community Coalition and The Oakland REACH, and other taxpayers.

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for all students; and

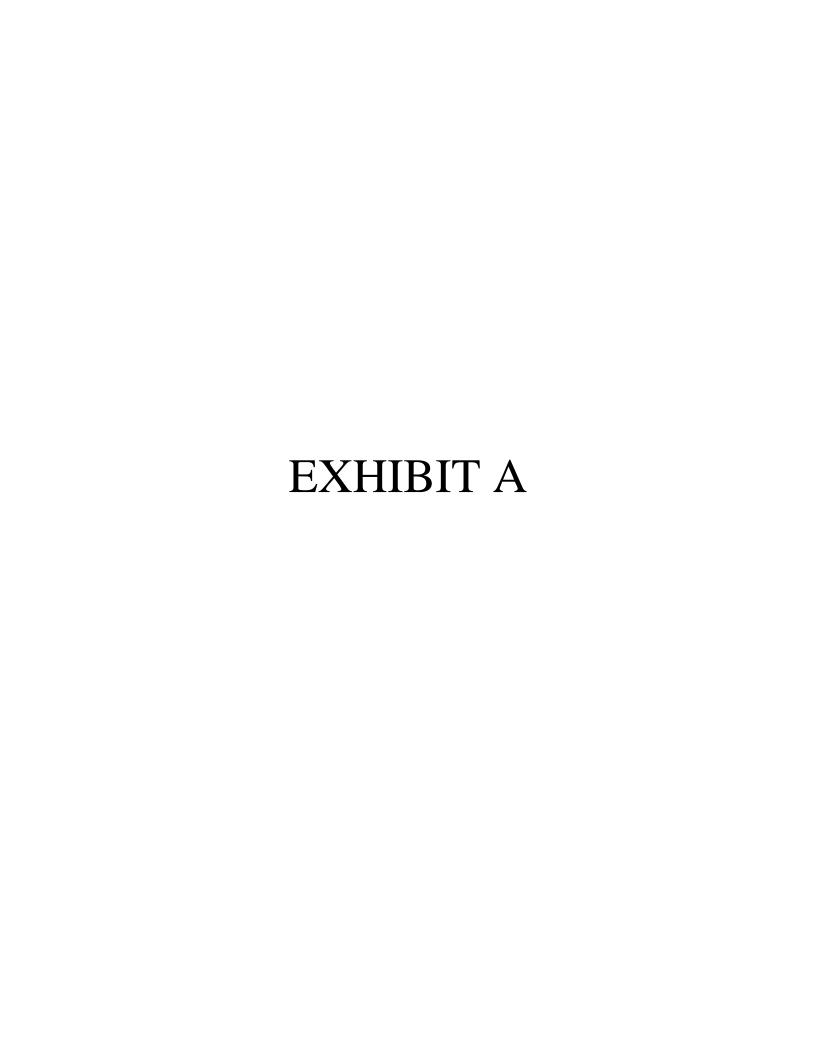
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remediating learning loss due to the pandemic, and ensuring equal access to education

- parents are consulted, empowered and meaningfully included in decision-making about delivery of remote education, shifting back to in-person learning, remediating learning loss due to the pandemic, and ensuring equal access to education for all students.
- 240. Appropriate access to remote learning tools and connectivity, effective remote instruction that is substantially equivalent to in-person instruction and meet minimum instructional times, and individualized academic and mental health supports, delivered with meaningful participation from low-income, Black and Latinx families, and community organizations that serve low-income, Black and Latinx communities, including The Oakland REACH and Community Coalition;
- State- and LEA-level planning about the shift back to in-person instruction when the pandemic conditions allow, developed with meaningful participation from low-income, Black and Latinx families, and community organizations that serve low-income, Black and Latinx communities, including The Oakland REACH and Community Coalition;
- 242. Compensatory education to remediate the learning losses Student Plaintiffs have sustained as a result of inadequate remote learning, implemented with meaningful participation from low-income, Black and Latinx families, and community organizations that serve lowincome, Black and Latinx communities, including The Oakland REACH and Community Coalition:
- 243. Equal access to educational opportunities for all California students, implemented with meaningful participation from low-income, Black and Latinx families, and community organizations that serve low-income, Black and Latinx communities, including The Oakland REACH and Community Coalition;
- For the payment of reasonable attorneys' fees and costs of suit incurred herein, including pre- and post-judgment interest at the legal rate; and
 - 245. For such other and further relief as the Court may deem appropriate.

1	Dated: November 30, 2020	PUBLIC COUNSEL
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3		
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5		Attorney for Plaintiffs
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7		By: <u>/s/ Jesselyn Friley</u> JESSELYN FRILEY
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9		
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12		By: <u>/s/ Michael A. Jacobs</u> MICHAEL A. JACOBS
13		Attorney for Plaintiffs
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15		SHAELYN K. DAWSON
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September 18, 2020

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Via United Parcel Service

Tony Thurmond State Superintendent of Public Instruction California Department of Education 1430 N Street Sacramento, CA 95814-5901

Linda Darling-Hammond State Board President State Board of Education 1430 N Street, Room 5111 Sacramento, CA 95814

Dear State Superintendent Thurmond and State Board of Education President Darling-Hammond:

We, together with Public Counsel, previously represented plaintiffs in *Ella T., et al v. State of California, et al.*, Los Angeles Superior Court Case No. BC685730. We are pleased we were able to settle that dispute and look forward to its implementation.

As a result of remote learning programs mandated due to the COVID-19 pandemic, however, students throughout California are being deprived of their fundamental right to an education. Many students, particularly those from low-income and minority families, do not have access to the devices and internet connectivity necessary to access the distance learning curricula. And even assuming all students' basic technology needs were met (which is far from the truth), serious bars to realistic learning continue to persist, including inability to get the devices to work for their intended purpose, lack of adult supervision over online classes, English language barriers, and unmet needs for special education and homeless students.

While we are aware that the Legislature passed the 2020 Budget Act and Senate Bill (S.B.) 98 to address some of the concerns over K-12 education during the pandemic in addition to implementing Executive Order N-73-20, we remain deeply concerned that this is insufficient. We note in particular that there is no State enforcement or intervention mechanism to ensure

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that local education agencies (LEA) actually provide free and equal education to all students in the state. Recent data and studies show that numerous students continue to suffer serious educational losses during this time. We thus write to demand that the State explain how it intends to address these problems, as well as intervene and ensure that these students are no longer deprived of their fundamental constitutional right to an education.

I. Children In California Have A Fundamental Constitutional Right to A Free And Equal Education.

In California, "education remains a fundamental interest 'which [lies] at the core of our free and representative form of government[.]" Consistent with that spirit, the California Constitution requires the State to "provide for a system of common schools by which a free school shall be kept up and supported in each district[.]" The free school guarantee extends not only to programs that are essential to a school board's prescribed curriculum, but also to "all activities which constitute an 'integral fundamental part of the elementary and secondary education' or which amount to 'necessary elements of any school's activity.""

Moreover, and "[w]hatever the requirements of the free school guaranty, the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State." The clause's protection applies whether the disparity is between districts or within a single one, and whether the discriminatory effect is de jure or de facto. At any time laws "discriminate explicitly between groups of people," or, "though evenhanded on their face, in operation have a disproportionate impact on certain groups," the equal protection clause is triggered.

The California Department of Education has itself acknowledged these rights. In March 2020, it stated that K-12 students in the state are constitutionally entitled to a free education, as well as to equal educational opportunities in the state. While recognizing that many atrisk children served by LEAs do not have access to devices and connectivity, and that "the California Constitution prohibits LEAs from requiring students to purchase devices or internet access, to provide their own devices, or otherwise pay a fee as a condition of accessing required course materials under the free schools guarantee," the Department provided little guidance as to how LEAs should go about ensuring such access. Instead, the

³ Hartzell v. Connell, 35 Cal. 3d 899, 904–05 (1984) (internal citations omitted).

¹ Butt v. State of California, 4 Cal. 4th 668, 683, 842 P.2d 1240 (1992).

² Cal. Const., art. IX, § 5.

⁴ Butt, supra, 4 Cal. 4th at 685.

⁵ Collins v. Thurmond, 41 Cal. App. 5th 879, 899 (2019), review denied (Feb. 26, 2020).

⁶ Vergara v. State of Cal., 246 Cal. App. 4th 619, 644 (2016) (citations omitted).

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Department merely advised each LEA to build on existing frameworks for digital learning and assessments of student access to devices in order to implement distance learning strategies during the physical closure of schools during the pandemic.⁷ The State directed LEAs to a page of scattered resources, including a page listing available "affordable" plans from telecom and data companies, that LEAs must themselves navigate.⁸

II. Children Throughout the State Are Being Denied That Fundamental Right.

As noted, the free school guarantee prohibits charging students for an education, and the equal protection clause of the California constitution precludes the State from maintaining a school system that denies certain subsets of students education basically equivalent to that provided to others within the state.

Yet the data we have assembled indicates that many students, especially those from lower-income and minority families, are still being deprived of an education altogether—let alone receiving an education equivalent to that provided to their peers or other California schools.

We are aware of the State's efforts to date, including (1) the Executive Office's cross-sector partnerships that secured devices as well as funding to bridge the digital divide⁹; (2) the arrangement with Apple and T-Mobile intended to offer discounted iPads with built-in LTE internet for up to 1 million California students, which school districts were to purchase through a state-negotiated contract¹⁰; and (3) the issuance on August 14, 2020 of Executive Order N-73-20 directing state agencies pursue minimum broadband speed goal of 100 megabits per second download speed.¹¹

Yet access to devices and internet connectivity continues to be a problem, and for thousands of students, posing a bar to "attending" school in the first place:

⁷ California Department of Education, *Distance Learning Considerations* (Mar. 18, 2020), https://www.cde.ca.gov/ci/cr/dl/dlconsiderations.asp.

⁸ California Department of Education, *Getting Internet Access: Available* Plans (Jul. 28, 2020), https://www.cde.ca.gov/ls/he/hn/availableinternetplans.asp.

⁹ Office of Governor Gavin Newsom, *Governor Newsom Announces Cross-Sector Partnerships to Support Distance Learning and Bridge the Digital Divide* (Apr. 20, 2020), https://www.gov.ca.gov/2020/04/20/governor-newsom-announces-cross-sector-partnerships-to-support-distance-learning-and-bridge-the-digital-divide/

¹⁰ Sydney Johnson, *Pressure is on to close the digital divide under California governor's executive order*, EDSOURCE (Aug. 14, 2020), https://edsource.org/2020/pressure-is-on-to-close-the-digital-divide-under-california-governors-executive-order/638318?utm source=EdSource&utm medium=newsletter.

¹¹ Executive Department of the State of California, *Executive Order N-73-20* (Aug. 14, 2020), https://www.gov.ca.gov/wp-content/uploads/2020/08/8.14.20-EO-N-73-20.pdf.

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- "A gap between those who have computers and internet at home and those who do not, known as the digital divide, continues to persist in California even as nearly 97% of students plan to start the school year with distance learning. Districts have been working this summer to provide students with technology from home, but nearly 700,000 students still lack the devices and internet access they need participate in online learning, according estimates from the California Department of Education." ¹²
- As of September 15, "school districts in Los Angeles County report they still need nearly 50,000 computers and Wi-Fi hot spots." ¹³
- "A startling one-quarter of California students lack adequate access to the internet, according to a 2020 report by education nonprofit Common Sense. A majority of them are Black, Latinx or Native American."
- A Los Angeles Times survey of 45 Southern California school districts found profound differences in distance learning among children attending school districts in high poverty communities, like Maria's in Coachella Valley, and those in more affluent ones, like Cooper's in Las Virgenes, which serves Calabasas and nearby areas.¹⁵
- "Districts in the Bay Area have reported sobering numbers: the Oakland Public Education Fund estimates half of Oakland's 50,000 students lack either a computer or internet access and, according to a spokeswoman for San Jose mayor Sam Liccardo, 14,000 of San Jose's 36,000 students lack access to digital resources as well." ¹⁶
- A study conducted by the Los Angeles Unified School District (LAUSD) found that between March 16 and May 22, 2020, "on an average day only about 36% of middle and high school students participated online," while "[a]bout 25% logged on or

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¹² Sydney Johnson, *Pressure is on to close the digital divide under California governor's executive order*, EDSOURCE (Aug. 14, 2020), https://edsource.org/2020/pressure-is-on-to-close-the-digital-divide-under-california-governors-executive-order/638318?utm_source=EdSource&utm_medium=newsletter.

¹³ Paloma Esquivel, et al, *Tens of thousands of L.A. area students still need computers or Wi-Fi 6 months into* pandemic, Los Angeles Times (Sep. 15, 2020), https://www.latimes.com/california/story/2020-09-15/tens-of-thousands-of-la-county-students-still-need-computers-and-hot-spots-six-months-into-school-closures#.

¹⁴ Daniel Wu, *Coronavirus shutdowns expose low-income Bay Area students' struggle to get online*, Times-Herald

⁽Aug. 4, 2020), https://www.timesheraldonline.com/2020/08/03/coronavirus-shutdowns-expose-low-income-students-struggle-to-get-online/

¹⁵ Paloma Esquivel, et al., *A generation left behind? Online learning cheats poor students, Times survey finds*, Los Angeles Times (Aug. 13, 2020), https://www.latimes.com/california/story/2020-08-13/online-learning-fails-low-income-students-covid-19-left-behind-project.

¹⁶ Wu, Coronavirus shutdowns, supra note 14.

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viewed work only" "[a]nd about 40% were absent." The study also found that Black and Latino students showed participation rates between 10 and 20 percentage points lower than white and Asian peers." And "English learners, students with disabilities, homeless students and those in the foster-care system had lower rates of online participation." ¹⁷

- The Center on Reinventing Public Education ("CRPE") notes: "[e]xperience tells us that low expectations for instruction bode poorly for the students who faced the greatest challenges: those in low income households, those with disabilities, those who speak a language other than English at home." ¹⁸
- "Blacks and Latinos are substantially less likely to have a computer at home than are white, non-Latinos," with some estimates showing that "70.4 percent of whites have access to a home computer" while "only 41.3 percent of blacks and 38.8 percent of Latinos have access to a home computer." 19
- "Learning loss will probably be greatest among low-income, black, and Hispanic students. Lower-income students are less likely to have access to high-quality remote learning or to a conducive learning environment, such as a quiet space with minimal distractions, devices they do not need to share, high-speed internet, and parental academic supervision . . . These variations translate directly into greater learning loss. The average loss in our middle epidemiological scenario is seven months. But black students may fall behind by 10.3 months, Hispanic students by 9.2 months, and low-income students by more than a year." 20

Even students who *are* provided with tablets and WiFi hotspots still struggle to learn if they must attend virtual classes from an environment unconducive to learning. Technically-challenged parents, the need to babysit siblings who are also home from school while their parents work, or the need to work themselves to keep the family afloat make learning virtually impossible for these students. A preliminary report based on surveys of hundreds of districts across the country by American Institutes for Research found that students in high-poverty districts were expected to spend less time per day on instructional activities, more

¹⁸ Betheny Gross, et al., Too Many Schools Leave Learning to Chance During the Pandemic, CRPE – THE LENS (June 10, 2020), https://www.crpe.org/thelens/too-many-schoolsleave-learning-chance-during-pandemic.

¹⁷ Report reveals disparities among Black, Latino LAUSD students in online learning amid COVID-19 pandemic, ABC 7 Eyewitness News (July 17, 2020), https://abc7.com/lausd-los-angeles-unified-school-district-race-disparity-racial-divide/6321930/.

¹⁹ Robert W. Fairlie, *Race and the Digital Divide*, UC SANTA CRUZ: DEPARTMENT OF ECONOMICS, UCSC, at 2 (2014), https://escholarship.org/uc/item/48h8h99w.

²⁰ Emma Dorn, et al., *COVID-19* and student learning in the United States: The hurt could last a lifetime, MCKINSEY & COMPANY (Jun. 1, 2020), at 5-6.

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likely to use paper packets and more likely to focus on reviewing content than students in low-poverty districts. While "families with resources are finding ways to get their children back on track [by] forming multi-family learning pods and hiring tutors, []financially struggling families are desperate for child care and more learning assistance for their children. 21

And all of these problems are only magnified for students with special needs:

- Many students in special education receive occupational, speech or physical therapy — services that are far more challenging to provide virtually. And some students, such as those with developmental disabilities or attention deficit disorder, have difficulty following lessons online.²²
- According to Noreen Ringlein, an advocate at Community Alliance for Special Education, a Bay Area nonprofit that helps parents navigate special education laws, numerous issues remain unresolved, including:²³
 - Assessments to determine whether a child should be in special education. Initially many districts believed these should be held in person, but some are looking for ways to conduct these remotely.
 - **Regular IEP meetings and teachers' union contracts.** It's unclear in many districts whether teachers should conduct IEP meetings during their regular work day or after hours. An IEP meeting may last as long as two hours, and teachers may have dozens they need to complete.
 - **Lack of instructors.** Many districts are finding themselves without enough special education teachers, aides and psychologists to accommodate the demand created by distance learning. For example, students may need more 1on-1 time online than they did in a classroom, because they've fallen behind or cannot focus during a Zoom class. Staffing shortages existed before the pandemic, but are more acute now as the need has grown. Without enough staff, it's unclear how some districts are going to meet IEP requirements.

²¹ Esquivel, et al., A generation left behind, supra note 15.

²² Carolyn Jones, As school starts, California districts try to improve virtual special education, EDSOURCE (Aug. 17, 2020), https://edsource.org/2020/as-school-starts-california-districts-try-to-improve-virtual-specialeducation/638325.

23 Id.

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- Indeed, "[t]he education of some 760,000 California children with disabilities has been inconsistent at best since campuses shut down in March. Parents' worries have intensified as they see their children's hard-fought advances diminishing -- and fear that losses will be compounded with more distance learning ahead, said educators, parents and student advocates."²⁴
- Data from the Los Angeles Unified School District, which has 64,000 students who require special education services, show that they were disproportionately absent from online learning platforms last spring. Only about half of L.A. Unified's middle and high school students with disabilities were active once a week on Schoology, one of the district's primary learning platforms, by late May. That is about 15 percentage points lower than the rates for students without disabilities. In a recorded briefing Monday, superintendent Austin Beutner said students with differences and disabilities are among those "most impacted by the absence of schools and the challenges online learning present." 25

All of these learning losses and inequalities are being exacerbated by the State's failure to provide the central resources and enforcement necessary for LEAs to meet the educational needs of all students irrespective of race, wealth, background, location, disability, etc. during the pandemic.

III. The State Has a Constitutional Obligation to Remedy the Problem, and Its Recent Legislation Does Not Go Far Enough

As you are aware, while local districts and boards of education are the State's agents for local operation of the common school system, "the State's ultimate responsibility for public education cannot be delegated to any other entity." ²⁶ "The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity." ²⁷

We understand that the Legislature, through S.B. 98, has passed Sections 43500, *et seq.* of the Education Code setting standards for LEAs to follow during pandemic learning. But we believe this does not go far enough. Specifically, we remain concerned at the lack of a State enforcement or intervention mechanism to ensure that those standards are actually *met* by the schools and LEAs. For instance, section 43503 requires LEAs to "confirm[] or provi[de]...

²⁶ Butt v. State of California, 4 Cal. 4th 668, 681 (1992).

²⁴ Sonali Kohli, *Some special ed students are regressing because of at-home learning*, LOS ANGELES TIMES (Aug. 7, 2020), https://www.disabilityscoop.com/2020/08/25/kids-disabilities-regressing-distance-learning/28818/.

²⁵ Id.

²⁷ *Id.* at 692.

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access for all pupils to connectivity and devices adequate to participate in the educational program and complete assigned work," as well as to provide "accommodations necessary to ensure that individualized education program can be executed in a distance learning environment."

Section 43504 sets documentation requirements and purports to penalize LEAs' failure to document by withholding apportionment. Section 43509 replaces the requirements for a 2020–21 Local Control and Accountability Plan (LCAP) and Annual Update with a Learning Continuity and Attendance Plan (Learning Continuity Plan). That section and the Superintendent's August 1 template requires LEAs to set out, by September 30, 2020, a Learning Continuity Plan that includes, *e.g.*:

- A plan for ensuring access to devices and connectivity for all pupils to support distance learning whenever it occurs;
- What professional development and resources will be provided to staff to support the provision of distance learning, including technological support;
- What additional supports for pupils with unique needs will be provided, including for English learners, pupils with exceptional needs served across the full continuum of placements, pupils in foster care, and pupils who are experiencing homelessness during the period in which distance learning is provided.

Yet critically, there is no requirement that the Department read, let alone approve, the Learning Continuity Plans that LEAs will submit.²⁸ Nor are there any provisions empowering the State to intervene and hold LEAs accountable for meeting minimum standards. The Department and the superintendents of county offices of education (COE) merely retain the *option* of providing written recommendations for amendments to the Learning Continuity Plan by October 30, 2020, which the governing boards of school districts and COEs must then "consider" at a public meeting within 15 days – that is, LEAs are not even required to adopt or implement any of those recommendations.²⁹

At a minimum, we would expect the State to be closely reviewing the Learning Continuity Plans with the help of expert groups to come up with and enforce best practices. We would also expect there to be explicit provisions allowing the State to intervene with resources if such practices are not being adopted.

²⁸ See July 20, 2020 Tony Thurmond Memorandum to State Board of Education, Senate Bill 98 Education Finance: Overview of the Learning Continuity and Attendance Plan Provisions, https://online.casbo.org/images/My_Images/Newsbreak/2020/SBEinfoMemo.LearningContPlans.07.02.20.pdf

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To put it simply, we worry that the newly implemented legislation will merely occasion a paper exercise that does not alleviate any of the critical issues we set out in detail above, and thousands of students will continue to be deprived of their fundamental right to an education indefinitely, with unrecoverable learning losses accruing daily.

We remind the Superintendent and President of the State Board of Education that "the State's responsibility for basic equality in its system of common schools extends beyond the detached role of fair funder or fair legislator." Where a school or local district "den[ies] its students basic educational equality" and/or creates discriminatory disparities in the system of common schools, "the State is obliged to intervene, even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents." As we have noted, such denials and disparities are already occurring.

* * *

Accordingly, we demand that the State, as a preliminary matter, inform us about:

- 1. How the resources obtained through cross-sector partnerships and Executive Order N-73-20 have been leveraged thus far to address the digital divide in the state, including the process by which counties, LEAs, and/or students in need of such resources are being identified and provided for.
- 2. Whether there is a plan in place to review the Learning Continuity Plans LEAs submit on September 30, 2020;
- 3. Whether it is obtaining expert help in reviewing the Learning Continuity Plans and what role they will play;
- 4. Whether it has a standard by which the Learning Continuity Plans will be deemed adequate, and by what such standard are informed;
- 5. How the Department intends to enforce LEAs' adherence to their Learning Continuity Plans, and whether and how the Department will intervene should they fail to do so;
- 6. What resources are available to the LEAs that continue to struggle to provide adequate learning resources to students in need.

We further suggest that the State work to:

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³⁰ Butt, supra, 4 Cal. 4th at 688.

³¹ *Id.* at 681, 692.

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Tony Thurmond Linda Darling-Hammond September 18, 2020 Page Ten

- 1. Consider launching a uniform, statewide program of cooperative purchasing of computer devices and internet hotspots;
- 2. Reach out to internet providers regarding a potential plan to connect students at no cost to those in need (e.g., discounted rates for services to be purchased by the State to provide community hot spots where students can access instruction online in a safe environment); and
- 3. Assess needs for software, professional development for teachers, and other supports required for stable and continuous remote learning for students.

The State should also work to develop and implement a robust system of assessments and interventions to identify and support struggling LEAs and students.

We believe these are the minimum steps the State should take to fulfill the constitutional mandate to provide free and equal education to all students throughout the state. Education of students in the state should not be contingent on circumstances outside their control, such as families' ability to afford devices or internet service, residence in buildings incapable of receiving such service, or location within districts awaiting delivery of devices. Nor can the State relegate the education of these students to districts' creative problem-solving and unenforced Learning Continuity Plans.

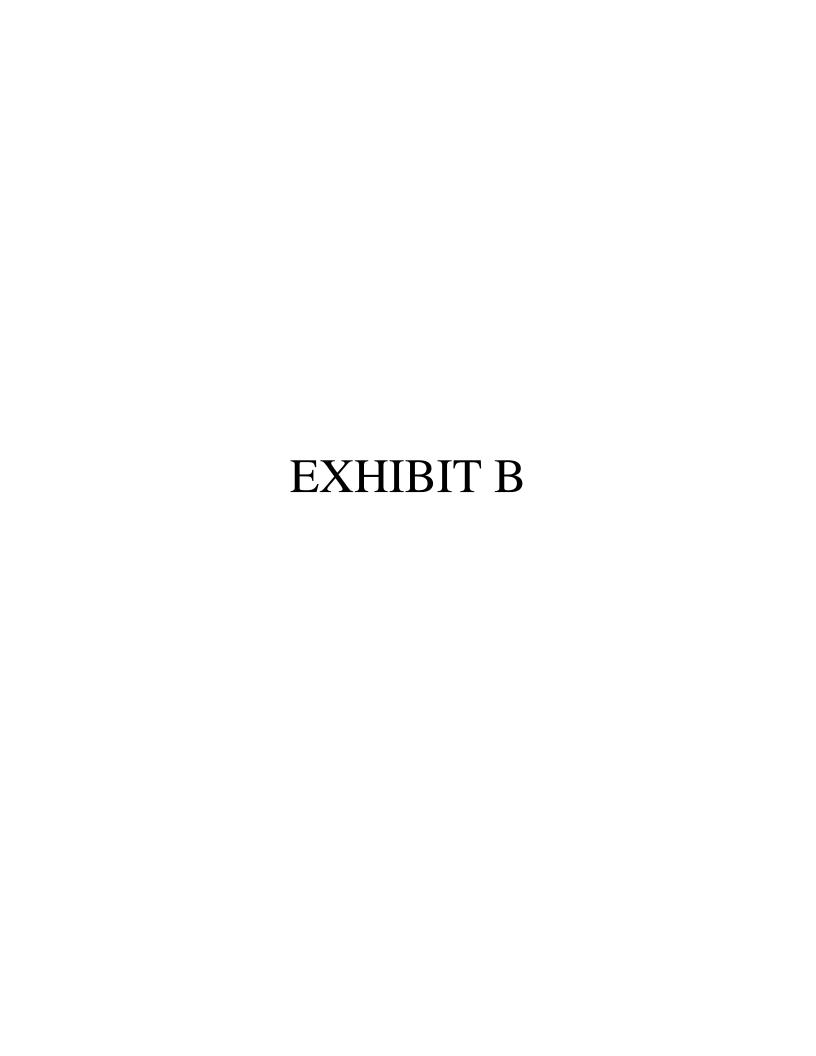
Please respond within ten working days to schedule a meeting or identify what steps you intend to take to address the constitutional deprivations identified in this letter. We are open to discussing the most appropriate remedies. Should the State fail to take action right away, we will step up to ensure affected students are provided the education to which they are entitled under the law. In doing so, we will establish the unconstitutionality of the current system of education, which deprives the most vulnerable groups of individuals of their fundamental right to an education. We sincerely hope litigation is unnecessary and look forward to your response.

Sincerely,

Michael A. Jacobs

Mark Rosenbaum (Public Counsel)

Mark Rosenbaum





CA DEPARTMENT OF EDUCATION TONY THURMOND

State Superintendent of Public Instruction



CA STATE BOARD OF EDUCATION LINDA DARLING-HAMMOND

President

October 13, 2020

Michael Jacobs Mark Rosenbaum Morrison & Foerster/Public Counsel 425 Market Street San Francisco, CA 94105

Dear Michael and Mark,

Your correspondence of September 18, 2020 raises issues that our clients and other state leaders have been well aware of, and working diligently to address, as part of the state's response to the unprecedented global pandemic caused by COVID-19. Below we briefly highlight key elements of the state's efforts to provide continuity of educational services and equal educational opportunity for students, consistent with the California Constitution.

The State has proactively taken significant steps to address adverse impacts that students may experience from the transitions to distance learning necessitated by the COVID-19 pandemic and to address some of the challenges that occurred last spring, when schools, and many other sectors of the state, unexpectedly had to close due to the pandemic's outbreak. These efforts are ongoing, and the State's response to the crisis will continue to evolve as public health officials gain new knowledge about COVID-19, to account for the differences in transmission rates across communities and resulting differences in the ability to reopen schools and other sectors safely, and as additional information about student needs emerges over time. Moreover, as new crises emerge, like the unprecedented wildfires that have impacted multiple communities across our state, the state's response—and that of local educational agencies (LEAs) and the entities charged under state law with supporting them—will continue to evolve.

Investments in the State Budget

First, the State budget for 2020-21 maintains prior K-12 funding levels and includes an additional, one-time investment of more than \$5.3 billion for LEAs to mitigate learning loss related to COVID-19 and to provide student supports to address barriers to learning. Specifically, LEAs are required to use the funds for:

- Providing electronic devices or connectivity for the provision of both inclassroom and distance learning;
- Addressing learning loss or accelerating progress to close learning gaps through the implementation, expansion, or enhancement of learning supports (such as, tutoring, additional small group time, before/after school programs focused on learning loss, etc.) that are implemented before the start of the school year, and through the continuation of intensive instruction and such supports into the school year;
- Extending the instructional school year by making adjustments to the academic calendar, increasing the number of instructional minutes provided during each week or school day, or taking any other action that increases the amount of instructional time or services provided to students based on their learning needs;
- Providing additional academic services to students, such as diagnostic assessments of individual learning needs, intensive instruction to address gaps in core academic skills, and additional instructional materials or supports; and
- Providing additional sources of support to help overcome other barriers to learning, including health, counseling, or mental-health services, professional development opportunities to help teachers and parents support students in distance-learning contexts, access to school breakfast and lunch programs, or programs to address trauma and social-emotional learning.

Compliance with the above requirements is subject to the annual audit process for LEAs, with potential financial penalties for noncompliance. See Educ. Code section 43504(h) & (i). For context, this one-time investment to mitigate learning loss is equal to nearly 7.5% of the Proposition 98 guarantee for K-12 education under the state's adopted 2020-21 budget (\$70.9 billion).

State Policy Response to School Closures and Distance Learning Environment

California has coupled this significant investment with changes in state law specifically designed to strengthen planning and delivery of instruction and other student support services for the 2020-21 school year, regardless of whether school occurs in-person, via distance learning, or through a combination of both. As you noted in your letter, pursuant to Senate Bill 98, Chapter 24, Statutes of 2020, LEAs

must develop a Learning Continuity and Attendance Plan for the 2020-2021 school year, setting forth plans for both in-person and distance learning that meet certain thresholds set by the Legislature. As set forth in the plan template developed by the California Department of Education, each LEA must:

- Describe its in-person instructional offerings, including the actions it will take to address learning loss, particularly for those students who experienced the most significant learning loss;
- Describe its distance learning program, including how it will provide continuity of instruction during the school year to ensure students have access to a full curriculum of substantially similar quality regardless of the method of delivery;
- Describe how it will ensure access to electronic devices and connectivity for all students to participate in distance learning, how it will assess student progress through live contacts and synchronous instruction, and how it will measure student participation;
- Describe the additional supports it will provide during distance learning to assist pupils with specific needs, including English Learners, students with disabilities, and students in foster care and who are experiencing homelessness;
- Describe its strategies to address student learning loss resulting from COVID- 19:
- Describe how the LEA will monitor and support mental health and social and emotional well-being of pupils and staff during the school year, including professional development and resources that will be provided to students and staff to address trauma;
- Describe how it will conduct outreach to students who are absent from distance learning and reengagement strategies;
- Describe how it will meet a new legal requirement to continue to provide school meals for students during both in-person instruction and distance learning; and
- Describe how it will increase services for foster youth, English Learner and low-income students.

Each LEA must adopt the Learning Continuity and Attendance Plan at a public meeting of its governing board. County superintendents of schools must review and may provide recommendations for changes to the plan, and LEAs must consider those recommendations at a public meeting.

The goal of this plan is to provide the school community with timely information about the LEA's immediate plans for instruction in the 2020-21 school year, how the LEA will address student needs, and the proposed use of the learning loss mitigation funds provided by the State. This is a one-time plan that is intended to address only the immediate needs of the 2020-21 school year, and it is

anticipated that LEAs will return to the regular adoption of the three-year Local Control and Accountability Plan (LCAP) and monitoring cycle in the Spring of 2021 for adoption by July 1, 2021.

An LEA's failure to implement actions consistent with the above requirements is subject to state oversight, and potential remedial action, through long-standing administrative procedures that apply to services provided under the Learning Continuity and Attendance Plans. For example, Government Code section 11135 prohibits LEAs from carrying out state-funded programs or activities in a manner that has the purpose or effect of discriminating against individuals in protected categories. Discrimination under Section 11135 is covered by the Uniform Complaint Procedure, which includes a right to appeal to the California Department of Education and, in certain circumstances, authorizes direct intervention by the California Department of Education before a local investigation is complete. In addition, special education due process hearing procedures have been, and remain, available to redress any LEA's alleged denial of a Free Appropriate Public Education that may occur due as a result of distance learning.

Public Health Directives

It is important to note that the operative public health directives currently in effect differ from the directives in place last spring. Although the July 17, 2020 K-12 School Reopening Framework issued by the California Department of Public Health (CDPH) prevents schools in counties with high rates of community transmission from reopening for in-person instruction, county health officers have authority to grant, and have granted, waivers to allow schools serving grades TK-6 to open even if schools in the county otherwise cannot reopen for in-person instruction. Additionally, the Cohort Guidance issued by CDPH on August 25, 2020 allows limited in-person services and instruction for small cohorts of students at those schools that are not otherwise permitted to re-open for in-person education. This additional guidance provides greater flexibility for LEAs to provide in-person instruction and services to high-need students than existed in the spring.

Accordingly, your letter's suggestion that news articles about experiences from this past spring reflect the current experience of students across the state not only ignores the fact that schools have now had time to plan for potential closures during the fall semester (in contrast to last spring's closures) and the steps the state and state officials have taken to support that planning process (including as detailed elsewhere in this letter), but it also ignores the materially different circumstances in which schools operate under current public health directives.

State Agency Responses

As noted above, the pandemic's impact on K-12 education is an issue that was a major focus of attention in the budget process last year, and we certainly expect it will continue to be so. You may therefore wish to engage directly with legislative staff, given the Legislature's important role in the policy response to the pandemic's impact on K-12 education.

That said, state officials, including our clients, have taken additional, significant steps to support implementation of the new state laws and to further support equal educational opportunity for students. For example, California is helping schools ensure that students have access to devices and technology through the Closing the Digital Divide Taskforce. The Taskforce, which is convened by the Superintendent of Public Instruction, has been working to expand access to devices and internet for students across the state. See https://www.cde.ca.gov/nr/ne/yr20/yr20rel46.asp.

Through work related to the Taskforce, state agencies have collaborated to provide further supports for schools managing the transition to distance learning, including efforts by the California Public Utilities Commission to provide a 50% subsidy for smaller and more rural LEAs to secure connectivity. See https://www.cpuc.ca.gov/General.aspx?id=6442464777.

In addition, the California Department of Education has provided guidance to LEAs to help them improve distance learning and minimize the impacts of COVID-19. This includes a June 2020 guidance document entitled, "Stronger Together: A Guidebook for the Safe Reopening of California's Public Schools," which was developed through the statewide reopening schools task force to reflect the perspectives of educators and stakeholders. The Guidebook was also informed by the technical assistance and advice of many health and safety organizations, including the Centers for Disease Control, CDPH, and the California Division of Occupational Safety and Health. The Guidebook has several components, including instructional scheduling models, best practices, and guidance on collaboration and student assessment. The Guidebook also has information regarding distance learning as it relates to social emotional learning, special education, English learners, career technical education, and expanded learning. The California Department of Education has also partnered with stakeholders, including county offices of education, to develop webinars for LEAs on a variety of distance learning topics and the new requirements associated with the learning continuity plan.

Finally, California has, in fact, established a "uniform, statewide program for cooperative purchasing of computer devices and internet hotspots" as you suggest. Information on master-contracts negotiated by the Department of

General Services that LEAs may use to procure devices and other technology and access solutions is available here:

https://www.cde.ca.gov/eo/in/techdevices.asp.

* * *

As the above makes clear, the state has acted swiftly and decisively to respond to the impacts of an unprecedented pandemic on K-12 education and students' educational experiences. Moreover, that response is ongoing. We note that your letter is dated September 18, 2020, and the deadline established in state law for adoption of the Learning Continuity and Attendance Plans plans—September 30, 2020—had not even passed before you sent your letter. As of this writing, the deadline for county superintendent of schools to provide recommendations on their LEAs' plans—October 30, 2020—has not passed either, nor has the deadline for LEAs to hold a public meeting within 15 days of receiving such recommendations to consider modifying their plans. Accordingly, your assertion that the state's response is inadequate is plainly premature, in addition to being incorrect.

In sum, in response to the pandemic, the Legislature and Governor directed significant levels of discretionary funding to K-12 education specifically for the purpose of overcoming challenges attendant to school closures, distance learning, and other disruptions that the pandemic has caused to K-12 education. As noted above, this substantial investment was coupled with changes to state law directly responsive to the challenges that many LEAs experienced last spring in the face of the unexpected need to close schools to protect the health and safety of students, staff and the broader community, including new requirements aimed at ensuring that students have equal access to learning opportunities whether instruction is delivered in-person or remotely.

Our clients have taken additional steps in areas where the Superintendent of Public Instruction, the State Board of Education and/or the California Department of Education have authority to support LEAs. State officials moreover continue to assess how the pandemic is impacting educational opportunity for students and to adapt the response. Accordingly, we respectfully disagree with your assertion—which is notably unsupported by evidence of current circumstances in particular schools or LEAs—that our clients, and the state more generally, have failed to take appropriate steps to ensure basic equality of educational opportunity, as required by the California Constitution.

Our clients nonetheless remain open to feedback, from all stakeholders, on ways to improve the educational experiences of students and address disparities in opportunities and outcomes as California and the nation continue to grapple with the pandemic. We therefore invite you to bring to our attention any specific

situations where LEAs are not following the requirements of state law with respect to Learning Continuity and Attendance Plans or are not providing services to students consistent with those plans, once adopted and finalized, in a way that deprives students of equal educational opportunity.

Sincerely,

Keith Yamanaka, General Counsel California Department of Education Judy Cias, Chief Counsel California State Board of Education