

1 MARK ROSENBAUM (CA SBN 59940)
2 mrosenbaum@publiccounsel.org
3 PUBLIC COUNSEL
4 610 S. Ardmore Avenue
5 Los Angeles, California 90005
6 Telephone: 213.385.2977 | Facsimile: 213.385.9089

7 MICHAEL A. JACOBS (CA SBN 111664)
8 Mjacobs@mofo.com
9 MORRISON & FOERSTER LLP
10 425 Market Street
11 San Francisco, California 94105
12 Telephone: 415.268.7000 | Facsimile: 415.268.7522

13 Attorneys for Plaintiffs
14 *(Additional counsel on next page)*

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF ALAMEDA

17 CAYLA J., KAI J., AND ELLORI J., through their
18 guardian ad litem ANGELA J., MATTHEW E. AND
19 JORDAN E., through their guardian ad litem
20 CATHERINE E., MEGAN O. AND MATILDA O.,
21 through their guardian ad litem MARIA O., ALEX R.
22 AND BELLA R., through their guardian ad litem
23 KELLY R., ISAAC I. AND JOSHUA I., through
24 their guardian ad litem SUSAN I., NATALIA T.
25 AND BILLY T., through their guardian ad litem
26 HILLARY T., DANIEL A. through his guardian ad
27 litem SARA A., COMMUNITY COALITION, AND
28 THE OAKLAND REACH,

Plaintiffs,

v.

STATE OF CALIFORNIA, STATE BOARD OF
EDUCATION, STATE DEPARTMENT OF
EDUCATION, TONY THURMOND, in his official
capacity as State Superintendent of Public
Instruction, and DOES 1-100,

Defendants.

COMPTON UNIFIED SCHOOL DISTRICT,
DUARTE UNIFIED SCHOOL DISTRICT and
CALIFORNIA ASSOCIATION OF BLACK
SCHOOL EDUCATORS,

Intervenors.

Case No. RG20084386

**AMENDED AND SUPPLEMENTAL
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

JURY TRIAL DEMAND

Date Filed: Nov. 30, 2020

1 JESSELYN FRILEY (CA SBN 319198)
jfriley@publiccounsel.org
2 CARA NEWLON (BAR NUMBER PENDING)
cnewlon@publiccounsel.org
3 PUBLIC COUNSEL
610 S. Ardmore Avenue
4 Los Angeles, California 90005
Telephone: 213.385.2977 | Facsimile: 213.385.9089
5

6 SHAELYN K. DAWSON (CA SBN 288278)
ShaelynDawson@mofo.com
MORRISON & FOERSTER LLP
7 425 Market Street
San Francisco, California 94105
8 Telephone: 415.268.7000 | Facsimile: 415.268.7522

9 ERIK J. OLSON (CA SBN 175815)
EJOlson@mofo.com
10 YUE LI (CA SBN 287280)
YLi@mofo.com
11 MORRISON & FOERSTER LLP
755 PAGE MILL ROAD
12 Palo Alto, California 94304
Telephone: 650.813.5600 | Facsimile: 650.494.0792
13

14 PURVI G. PATEL (CA SBN 270702)
PPatel@mofo.com
VIRGINIA M. CHOI (CA SBN 294659)
15 VChoi@mofo.com
MORRISON & FOERSTER LLP
16 707 Wilshire Boulevard, Suite 6000
Los Angeles, California 90017
17 Telephone: 213.892.5200 | Facsimile: 213.892.5454

18 Attorneys for Plaintiffs
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24
25
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1 Plaintiffs Cayla J., Kai J., and Ellori J., through their guardian ad litem Angela J.,
2 Matthew E. and Jordan E., through their guardian ad litem Catherine E., Megan O. and Matilda
3 O., through their guardian ad litem Maria O., Alex R. and Bella R., through their guardian ad
4 litem Kelly R., Isaac I. and Joshua I., through their guardian ad litem Susan I., Natalia T. and
5 Billy T., through their guardian ad litem Hillary T., Daniel A. through his guardian ad litem Sara
6 A., The Oakland REACH, and Community Coalition (“Plaintiffs”), by and through their
7 undersigned attorneys, bring this action against defendants the State of California, State Board of
8 Education, Department of Education, and Superintendent of Education Tony Thurmond.

9 Unless explicitly stated to the contrary, all allegations are based on information and belief.
10 Plaintiffs allege as follows:

11 **INTRODUCTION**

12 1. The California Constitution has repeatedly and consistently been interpreted to
13 provide that the State itself has broad responsibility to ensure basic educational equality. This
14 bedrock guarantee has never been fulfilled, particularly as to the most underserved children in
15 California: Black and Latinx students from low-income backgrounds (communities which
16 substantially overlap, as low-income students are disproportionately students of color). Long
17 predating the novel coronavirus pandemic, these young persons could not count on the State and
18 its officials to provide the type of free education that is the foundation of civic participation and
19 self-efficacy.

20 2. From March 2020 through the 2020-2021 school year, as schools across California
21 shifted to remote learning due to the pandemic, the physical locus of education was no longer
22 school buildings but students’ homes. For many families, a single room was a multi-grade
23 classroom as well as a workplace for several adults. For students without homes, school was
24 wherever they could find an internet connection. The change in the delivery of education left
25 many already-underserved students functionally unable to attend school.

26 3. Although the disparate impacts that remote learning would have on underserved
27 students were immediately apparent, the State continued its policy of inaction. Throughout the
28 pandemic, the State has refused to step up and meet its constitutional obligation to ensure basic

1 educational equality or indeed any education at all. The result is that underserved students lost
2 months of education. In the 2021-2022 school year, they have returned to physical classrooms
3 without the resources and support they need to catch up. The little that the State has provided has
4 been offered without oversight, without review and without direction. It has not ensured that
5 adequate academic, mental and emotional supports exists to account for the learning loss that has
6 occurred and continues to occur. The results are as predictable as they are tragic: Black and
7 Latinx students from low-income backgrounds have fallen and are falling further behind. It is
8 incumbent on the State and its officers to ensure that underserved students have access to an
9 education that does not widen the gap between them and their more privileged counterparts—a
10 gap that they will struggle to overcome for the rest of their lives.

11 4. Due to the State’s insufficient attention to the actual circumstances of remote
12 learning, Black and Latinx students from low-income families experienced unprecedented
13 deprivation of their fundamental right to a free and equal education guaranteed by the California
14 Constitution. Many of these students and their families did not have access to the devices,
15 connectivity, adaptive technologies, and other digital tools necessary for remote education, let
16 alone the training required to use and troubleshoot these devices (the “Digital Divide”). Without
17 these basic inputs, they could not learn to read or write properly, perform basic math functions, or
18 comprehend state-mandated curricular content. Despite the best efforts of dedicated teachers,
19 these students experienced serious bars to remote learning, including difficulty getting devices
20 and software to work, absence of academic and mental health supports, English language barriers,
21 and unmet needs for students experiencing homelessness. In addition, students were harmed by
22 schools that failed to meet minimum instructional times or to provide adequate training and
23 professional development for teachers and parents.¹ These conditions were not prevailing, nor

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25 ¹ E.g., Louis Freedberg, *California voters, including parents, have deep concerns about*
26 *distance learning*, EDSOURCE (Oct. 8, 2020), [https://edsource.org/2020/california-voters-](https://edsource.org/2020/california-voters-including-parents-have-deep-concerns-about-distance-learning/640685)
27 [including-parents-have-deep-concerns-about-distance-learning/640685](https://edsource.org/2020/california-voters-including-parents-have-deep-concerns-about-distance-learning/640685); Lyanne Melendez, *Bay*
28 *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-](https://abc7news.com/education/parents-teachers-weigh-in-on-distance-learning-struggles/6900731/)
[weigh-in-on-distance-learning-struggles/6900731/](https://abc7news.com/education/parents-teachers-weigh-in-on-distance-learning-struggles/6900731/); Sydney Johnson, *Up to 1 million California*
students may still lack connectivity during distance learning, EDSOURCE (Oct. 15, 2020),

1 would they have been accepted, in wealthier, whiter communities. Nor did they meet the
2 minimum standards set by the California legislature for the 2020-2021 school year, which the
3 State—following its own policy—did nothing to enforce. *See* Cal. Educ. Code § 43500 *et seq.*

4 5. The State also failed to give teachers the support they need to help students learn
5 under novel and challenging circumstances, including remote learning and the return to in-person
6 classrooms. Teachers were not immune to the Digital Divide; they also faced connectivity issues,
7 including inadequate hardware like monitors and cameras, inconsistent internet connections, and
8 a lack of training on operating classroom software. And they had to adjust to teaching remotely,
9 without the usual interplay with students that happens in an ordinary classroom. The State’s lack
10 of oversight left teachers in many districts to fend for themselves, without adequate equipment,
11 training, or support. This remains true in the 2021-2022 school year: when it comes to helping
12 students make up for what they have lost during the remote learning period, teachers are on their
13 own, without the resources needed from the State to ensure that they know what to do.

14 6. Because of the State’s policy of inaction and non-enforcement, parents and
15 grandparents had to become tutors, counselors, childminders, and computer technicians, and they
16 had to find a way to pay for what are now basic school supplies—laptop/tablets, paper, printing,
17 and internet access. Despite the fact that the home became the exclusive learning environment
18 for children, the State offered families no training, support, or opportunity to provide input into
19 plans for remote learning, the return to in-person instruction, or the delivery of compensatory
20 education. Indeed, the State has offered families no assurance that their children will have any
21 additional instruction or support to compensate for what they missed during the remote learning
22 period. No Local Education Authority (“LEA”) would have fulfilled its responsibility if it merely
23 provided computers to staff and teachers without also providing support and assistance. In far too
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25 [https://edsources.org/2020/california-still-lacks-connectivity-for-more-than-300000-students-](https://edsources.org/2020/california-still-lacks-connectivity-for-more-than-300000-students-during-distance-learning/641537)
26 [during-distance-learning/641537](https://edsources.org/2020/california-still-lacks-connectivity-for-more-than-300000-students-during-distance-learning/641537); Libby Pier et al., *COVID-19 & the Educational Equity Crisis*,
27 *PACE* (Jan. 25, 2021), [https://www.edpolicyinca.org/newsroom/covid-19-and-educational-](https://www.edpolicyinca.org/newsroom/covid-19-and-educational-equity-crisis)
28 [equity-crisis](https://www.edpolicyinca.org/newsroom/covid-19-and-educational-equity-crisis); Emma Dorn et al., *COVID-19 and education: The lingering effects of unfinished*
learning, MCKINSEY & COMPANY (July 27, 2021),
[https://www.mckinsey.com/industries/education/our-insights/covid-19-and-education-the-](https://www.mckinsey.com/industries/education/our-insights/covid-19-and-education-the-lingering-effects-of-unfinished-learning)
[lingering-effects-of-unfinished-learning](https://www.mckinsey.com/industries/education/our-insights/covid-19-and-education-the-lingering-effects-of-unfinished-learning).

1 many instances the State did not even ensure that students were provided devices, much less
2 ensured connectivity or training.

3 7. Community organizations have shown that high-quality remote learning and
4 enrichment programs are possible for underserved students. Their success stories include
5 providing families with computers and hotspots, offering technical support and trainings, running
6 virtual summer school programs, and offering support for students' social and emotional needs
7 during a time of isolation and anxiety. But they have had to expend considerable resources to do
8 so because of the State's policy of non-enforcement of statewide standards. And they cannot
9 hope to reach all of the students for whom the State is responsible. As students return to
10 classrooms where no effort is being made to provide remedial academic or mental health support,
11 the need for community organizations' support has only increased.

12 8. Public schools in America were conceived as the engine of democracy, the great
13 equalizer that affords all children the opportunity to define their destinies, lift themselves up, and
14 better their circumstances. Student Plaintiffs Cayla J., Kai J., Ellori J., Megan O., Matilda O.,
15 Maria O., Alex R., Bella R., Matthew E., Jordan E., Isaac I., Joshua I., Natalia T., Billy T., and
16 Daniel A. are economically disadvantaged people of color. They are full of potential and want to
17 learn. They hold high aspirations; they participate in robotics competitions, Advanced Placement
18 classes, and mentorship programs, and they seek to become doctors, dancers, and veterinarians,
19 among other professions. But the State's system of education is failing them. Distance learning
20 as it exists for these students cannot prepare them to participate meaningfully in politics and civic
21 life, to exercise free and robust speech, and to voice the views of their communities. In
22 California's education system, the children of the "haves" receive access to a basic education
23 while the children of the "have nots" are barred access, rendering the state system of public
24 education the great unequalizer. This is even more true now than it was before the pandemic.

25 9. There has been no planning by the State to catch up students who lost months of
26 education because of the State's policy of non-enforcement and its failure to undertake reasonable
27 measures to deliver basic educational equality. The State has never signaled that it will do what it
28 takes to remediate the consequences of the pandemic as exacerbated by its policies and inaction.

1 This is true even though officers charged constitutionally to do so are aware that these students
2 received education in name only, if that, for well over a year.

3 10. The State's policies of disengagement and non-enforcement in response to the
4 challenges of remote learning and the accumulating impacts of this inaction have denied Student
5 Plaintiffs the basic educational equality guaranteed to them by the California Constitution.
6 Because the State's pandemic response compelled families to use their homes as classrooms, the
7 State's constitutional obligations expanded into the home. At all times, but especially in the
8 context of this pandemic, the State cannot fulfill its constitutional obligation absent meaningful
9 participation in educational policy and decision-making by parents and families. Thanks to
10 community organizations, we know what works for underserved students and how to support
11 them as they attempt to recover from this challenging period. But a statewide education system
12 must not depend on the heroic and unsupported efforts of students, parents and families, teachers,
13 community groups, service providers, and philanthropists in order to attempt to fulfill its
14 constitutional obligation.

15 11. Plaintiffs thus bring this lawsuit on behalf of California students and their families,
16 as well as community organizations that have diverted resources to educate students, in order to
17 hold the State accountable for its refusal to fulfill its constitutional obligation. Plaintiffs seek to
18 ensure that all of the State's schools be equipped to provide students with the support and
19 standards that are essential to provide the basic education that is their fundamental right under the
20 California Constitution. Nearly two years into the pandemic, and decades into its failure to
21 provide an education for low-income students and students of color, the State must not be allowed
22 to make excuses any longer.

23 **JURISDICTION AND VENUE**

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

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

PARTIES

I. DEFENDANTS

14. **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).

15. **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.

16. **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.

17. **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

1 California Education Code section 33112(a), he shall superintend the schools of this State. He is
2 responsible for ensuring that children within the State of California receive a free and equal
3 public education.

4 18. Plaintiffs presently do not know the names or capacities of other defendants
5 responsible for the wrongs described in this Complaint, and, pursuant to California Code of Civil
6 Procedure section 474, sue such defendants under the fictitious names Does 1 through 100
7 inclusive.

8 19. Defendants State of California, State Board of Education, State Department of
9 Education, Tony Thurmond, and Doe defendants are herein referred to collectively as
10 “Defendants.”

11 **II. PLAINTIFFS**

12 20. **Plaintiffs Cayla J. and Kai J.** are nine-year-old twins who attend the fourth grade
13 at a school run by Oakland Unified School District (“OUSD”). Cayla J. wants to be a doctor
14 when she grows up, while Kai J. wants to be a scientist. Cayla J. and Kai J. are Black and live in
15 Oakland, California with their mother Angela J., their sister Ellori J., and their father Michael J.
16 Their family is low-income: during the pandemic, Angela J. worked two part-time jobs and a full-
17 time job to keep the family in their home, and Michael J. has a chronic illness. Cayla J. and Kai
18 J. had the same teachers as one another from the first grade through the third grade, and they
19 attend the same school as Ellori J.

20 21. Cayla J. and Kai J. were in second grade when distance learning began, though
21 what they were offered by their school barely resembled learning. Between March 17, 2020 and
22 the end of the 2019-2020 school year, their teacher held class only twice. When Angela J.
23 reached out to the teacher to ask why class wasn’t meeting, she responded that because some of
24 the students in the class were not connected to remote learning, classes were cancelled for all
25 students. A month into remote learning, Kai J.’s school-issued computer stopped working, and he
26 did not receive a replacement computer for another month. Cayla J. and Kai J. weren’t offered
27 asynchronous instruction or other work to make up for the missed class time—no book reports,
28 no packets, no homework. Angela J. felt like her children had been written off.

1 22. Missing so many months of school has had a lasting effect on Cayla J. and Kai J.
2 When they were in the third grade, they were supposed to be doing multiplication and division,
3 but they still had trouble with subtraction, which they should have learned in second grade. In
4 fall 2020, a typical school day for Cayla J. and Kai J. began with a 45-minute video class session,
5 followed by several hours of learning on their own according to a checklist that their teacher
6 provides. Later in the day, Cayla J. and Kai J. participated in a 30-minute small group session
7 with their classmates. Other than those brief sessions, they were on their own for the rest of the
8 day. They received no supplies or materials from their teacher or school.

9 23. Although Kai J. had trouble completing his assignments throughout the 2020-2021
10 school year, Angela J. only found out about his difficulties due to a chance conversation with the
11 physical education coach. Kai J.'s third grade teacher did not reach out to Angela J. to inform her
12 of Kai J.'s struggles in the class.

13 24. Angela J. and Michael J. helped their kids whenever they could. In the absence of
14 any structure or guidance from the school, Angela J. had to learn on the fly how to access the
15 remote learning platform. In fall 2020, Cayla J. and Kai J.'s class switched to a different remote
16 learning program, which was hard to use. The school did not offer Angela J. any assistance with
17 the new platform. The school sent out a survey about whether parents would allow their children
18 to return to school if in-person learning were offered, but otherwise provided no communication
19 or opportunities for families to provide input on a return to in-person school.

20 25. Angela J. advocated extensively for her kids, writing to the principal and teachers
21 to ask for lesson plans, structure, teacher assessments, and a plan to hit the milestones that her
22 children are supposed to achieve. The school did not provide anything that Angela J. requested.
23 Angela J. is a member of the school's Parent Teacher Association ("PTA") but the school
24 cancelled meetings and was unresponsive to parent feedback even when they did meet. She felt
25 like her kids' school and the district went through the motions of seeking family input but did not
26 listen to what families have to say. When Angela J. requested additional academic supports for
27 Kai J., for instance, the school suggested that he try to use third-party programs like Kaplan
28 Learning and Khan Academy and offered him no other guidance or assistance.

1 26. Community-based organization The Oakland REACH has been a lifeline for Cayla
2 J. and Kai J. The Oakland REACH’s team met Angela J.’s family where they were and provided
3 a safe space for learning and community advocacy. The Oakland REACH’s teachers built a
4 relationship with Angela J. and her family through the Hub, a virtual summer school program,
5 and their Family Liaisons helped keep Cayla J. and Kai J. from falling further behind. Cayla J.
6 liked her teacher from the Hub so much that she asked if she could have her as a third grade
7 teacher.

8 27. When the school began discussing the return to in-person learning, Angela J. and
9 other parents did not have an opportunity to voice their concerns, ask questions, or offer any
10 feedback about the school’s plans. Even though Cayla J., Kai J., and Ellori J. are back in the
11 classroom for the 2021-2022 school year, they have not caught up on what they missed during
12 remote learning. Angela J. looked into hiring a tutor for her children but was not able to because
13 of the cost. While it was predictable that children would get sick in the midst of a global
14 pandemic, the State has implemented no plan to catch students up if they got sick or had to
15 quarantine in the 2021-2022 school year. In fall 2021, Cayla J., Kai J., and Ellori J. all got sick
16 and had to stay home for two weeks. They did not receive online instruction or any type of
17 academic support from their school during this time, pushing them further behind.

18 28. In the 2020-2021 school year, both Cayla J. and Kai J. experienced feelings of
19 isolation, abandonment, and anxiety due to the limited interaction she received from her teachers.
20 They were also harmed by their school’s lack of technical assistance for parents and students.
21 The harms they experienced as a result of distance learning are ongoing as they are still behind
22 academically.

23 29. **Plaintiff Ellori J.** is seven years old and in the second grade at a school run by
24 OUSD. Ellori J. is Black and lives in Oakland with her mother Angela J., her father Michael J.,
25 and her siblings Cayla J. and Kai J. Her family is low-income; during the pandemic, Angela J.
26 worked two part-time jobs and a full-time job to keep the family in their home, and Michael J. has
27 a chronic illness. Ellori J. attends the same school as Cayla J. and Kai J.

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1 30. When remote learning began in March 2020, Ellori J. was in kindergarten. The
2 final months of the 2019-2020 school year went smoothly for Ellori J., thanks to the efforts of her
3 two kindergarten teachers. Her teachers took appropriate and necessary steps to make sure that
4 students stayed engaged. They mailed lessons to students so that they didn't have to be on the
5 computer all day, and also sent a schedule and provided updates on students' progress. The
6 teachers reached out to Angela J. via text and email, and had a very good communication system.
7 They used FaceTime to help Angela J. learn how to use the remote learning platform.

8 31. However, when Ellori J. entered first grade, she had only one teacher for a class of
9 33 students. The teacher did not take the steps that Ellori J.'s kindergarten teachers took to keep
10 the students engaged. For instance, Ellori J. had trouble getting her teacher's attention over the
11 screen. When Angela J. raised this issue with Ellori J.'s teacher, the teacher said that she could
12 only see six students on the screen at a time, and could not be responsive to the majority of the
13 class. Angela J. thinks that Ellori J. only learned in the 2020-2021 year because she spent all her
14 time with her older siblings, who are two grades ahead of her. She still missed out on many
15 foundational basics.

16 32. Over the 2020-2021 school year, Ellori J. experienced feelings of isolation,
17 abandonment, and anxiety due to the limited interaction she received from her teachers. The
18 harms Ellori J. experienced as a result of distance learning are ongoing as she is still behind
19 academically and in terms of her social skills and social-emotional development.

20 33. Angela J. is frustrated with the inconsistent remote learning programs that were
21 offered at her kids' school. For instance, unlike Cayla J. and Kai J.'s third grade teacher, Ellori
22 J.'s first grade teacher provided a bucket of supplies to students, including notebooks, pencils and
23 erasers. Ellori J.'s kindergarten teachers had excellent methods for engaging students,
24 communicating with parents, and providing supplies. But the other teachers who have taught
25 Angela J.'s children, including Ellori J.'s subsequent teachers, have not had this level of
26 professionalism, dedication, and structure. Angela J.'s experience with The Oakland REACH
27 and with the remote learning offered by her school has shown her that every classroom needs a
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1 family liaison to make sure no child gets left behind, as well as invested teachers who get to know
2 students and families, and a parent empowerment group at each school.

3 34. Even though Cayla J., Kai J., and Ellori J. are back in the classroom for the 2021-
4 2022 school year, they have not caught up on what they did not learn during remote learning.
5 Angela J. could not afford a tutor for Ellori J. or her other children.

6 35. While it was predictable that children would get sick in the midst of a global
7 pandemic, the State has implemented no plan to catch students up if they got sick or had to
8 quarantine during the 2021-2022 school year. Indeed, in fall 2021, Cayla J., Kai J., and Ellori J.
9 all got sick and had to stay home for two weeks. They did not receive online instruction or any
10 type of academic support from their school during this time, pushing them farther behind.

11 36. **Plaintiff Matthew E.** is a thirteen-year-old student who attends a middle school
12 run by OUSD. Matthew E. is Black and lives with his brother Jordan E. and his mother Catherine
13 E. in Oakland, California. Matthew E.'s family is low-income and Catherine E. is a single mom.
14 Catherine E. had to take a leave of absence from work and exhausted her sick leave in order to
15 help her sons with remote learning. In 2020, she was receiving only two-thirds of her pay and
16 was living off of her savings.

17 37. When Matthew E.'s school switched to remote learning in March, his family had
18 only one laptop, a Google Chromebook, which Matthew E. had to share with Jordan E. to access
19 school. Catherine E. could not afford to spend \$300 on another Chromebook for her sons, and
20 their schools did not reach out to ask if Matthew E. and Jordan E. had laptops. For three weeks,
21 one of the brothers would participate in remote learning on the Chromebook while the other
22 would read independently. Matthew E. and his family have not been offered a hotspot from
23 Matthew E.'s school, and they struggled to get consistent internet access.

24 38. Matthew E. eventually got his own Chromebook thanks to a chance comment that
25 Catherine E. made to one of his teachers, as his school never advertised that they had laptops
26 available. Still, Matthew E. struggled to keep up academically and experienced mental health
27 challenges. A couple of Matthew E.'s teachers were very engaging and energetic in the remote
28 learning environment, and Matthew E. learned a lot from them. But some of his other teachers

1 would have benefitted from more training on how to engage students over the screen. Matthew
2 E.'s class had virtual learning sessions from 9:30 a.m. to 1:20 p.m. each weekday except
3 Wednesdays, when they went from 9:30 a.m. to only 12:00 p.m. Matthew E. would have
4 benefitted from one-on-one tutoring, particularly in math, as well as counseling to help with the
5 mental health challenges of remote learning. Catherine E. tried to find academic and mental
6 health supports for Matthew E., but his school does not offer them.

7 39. Matthew E.'s school was not a proactive about offering students access to
8 technology, academic, or mental health supports. His school's philosophy is that students should
9 be their own advocates, even though they are minors and the pandemic makes it extremely
10 difficult to contact and connect with the adults at the school. In Catherine E.'s experience, the
11 school's philosophy about student advocacy operates to shut out parent feedback and
12 participation in decision-making, and to absolve the school of responsibility for checking in on
13 students and making sure that their needs are met. Matthew E. has not received additional
14 academic or socioemotional supports to make up for the learning loss during virtual learning.

15 40. **Plaintiff Jordan E.** is a ten-year-old fifth grade student at an elementary school
16 run by OUSD. Jordan E. is Black and lives with his brother Matthew E. and his mother Catherine
17 E. in Oakland, California. Jordan E.'s family is low-income and Catherine E. is a single mom.
18 Catherine E. had to take a leave of absence from work and exhausted her sick leave in order to
19 help her sons with remote learning. At the time of the filing of the original complaint, she was
20 receiving only two-thirds of her pay and was living off of her savings.

21 41. When Jordan E.'s school switched to remote learning in March, his family had
22 only one laptop, a Google Chromebook, which Jordan E. had to share with Matthew E. in order to
23 access school. Catherine E. could not afford to spend \$300 on another Chromebook for her sons,
24 and their schools did not reach out to ask if Matthew E. and Jordan E. had laptops. For three
25 weeks, one of the brothers would participate in remote learning on the Chromebook while the
26 other would read independently. Jordan E. was not been offered a hotspot from his school and his
27 family struggled to get consistent internet access.

28

1 42. Jordan E. struggled to keep up academically. Jordan E.’s class had virtual learning
2 sessions from 8:30 a.m. to 11 a.m., followed by either a break or music, library, or physical
3 education until 1 p.m. Jordan E.’s teacher moved very fast through lessons, as if she was trying
4 to fit six hours of learning into only two hours. It was hard for Jordan E. to keep up with the
5 quick transitions to different subject matter. Catherine E. thinks that Jordan E.’s teacher was
6 trying hard but needed more support and training.

7 43. Remote learning was a huge mental strain for Catherine E. and her sons. Jordan E.
8 would have benefitted from one-on-one tutoring and counseling. Catherine E. has tried to find
9 academic and mental health supports for Jordan E., but his school does not offer them.

10 44. Jordan E.’s school offered Zoom meetings with the principal once every three
11 weeks. At these meetings, parents have asked for the school to hold office hours for families so
12 that they can learn the technology that their children are using for remote learning. Although the
13 school promised to set up these office hours, they never did so. Catherine E. doesn’t feel that
14 Jordan E.’s school listens to parents or provides enough support to families and teachers.

15 45. Since returning to in-person instruction in the 2021-2022 school year, Jordan E.
16 has not had an assessment of his learning or mental health needs and has not had the opportunity
17 to make up for what he missed during remote learning.

18 46. Throughout the pandemic, Catherine E. saw children in other Bay Area districts
19 receive instant attention to their learning needs. They received laptops, hotspots, and packets of
20 work at the very beginning of the shutdown. She feels like her kids were left behind and that no
21 one is making sure that they are getting an adequate education.

22 47. **Plaintiff Megan O.** is six years old and in first grade. She wants to be a doctor
23 when she grows up. She is Latina and lives in South Los Angeles with her sister Matilda O., her
24 mother Maria O., as well as other family members. Megan O.’s family is low-income and shares
25 a one-bedroom apartment. Megan O. attends a magnet program at an elementary school run by
26 Los Angeles Unified School District (“LAUSD”). Maria O. chose the magnet program because
27 she always looks for the best school option for her kids. For Maria O. and her family, education
28 comes first because it is a way to get out of poverty.

1 48. When the switch to remote learning began, Megan O.’s school provided her family
2 with computers that did not work. Maria O. was able to get a laptop from Community Coalition
3 (“CoCo”) for Megan O., but did not receive a wireless hotspot until fall 2020, which Megan O.
4 was forced to share with her sister, Plaintiff Matilda O. That hotspot stopped working, so Megan
5 O. was forced to share a slow, single Wi-Fi connection with three other siblings. Maria O.
6 brought the hotspot into the school for technical support, but the only thing the school could do
7 was reset and restart the device, which failed to fix the problem. Megan O.’s school requires
8 families to provide basic supplies like paper and printed materials for their children. Maria O. has
9 to pay for these supplies out-of-pocket.

10 49. During fall 2020, Megan O.’s teacher sent home a list of supplies that Megan O.
11 needed for her class, including white paper. Around this same time, Megan O.’s father
12 complained to the teacher about how ineffective online instruction was for Megan O. and
13 described some of the challenges she was having with focus and engagement. The teacher did
14 not offer any assistance or support.

15 50. Megan O. needed support to engage with remote learning, and Maria O. found it
16 difficult to provide this support while working and within the confines of her family’s one-
17 bedroom apartment. Megan O.’s teacher once kicked Megan O. out of a remote lesson because
18 she thought that Megan O. was sleeping, when she was, in fact, not. Maria O. had to be with
19 Megan O. all the time when she was online. Maria O. felt that Megan O. needed more
20 socialization through school, but her school did not provide any opportunities or outreach that
21 could help meet Megan O.’s social and emotional needs. Megan O. also needed more individual
22 support from a tutor, but the school only provided a few sessions of English Language group
23 tutoring.

24 51. When Megan O. and Matilda O.’s school was putting together plans for reopening,
25 parents were left out of the process. As a result, Maria O. sent her kids back to school without
26 knowing whether and how they would be supported.

27 52. Megan O. did not receive the academic or socioemotional support she needed
28 during distance learning, and her school was not responsive to her needs. Since returning to in-

1 person instruction, Megan O. has not had an assessment of her learning or mental health needs
2 and has not had the opportunity to make up for what she missed during remote learning. Megan
3 O. has not received additional learning or emotional supports that would make up for the learning
4 loss that she experienced during the 2020-2021 school year.

5 **53. Plaintiff Matilda O.** is nine years old and in the fourth grade. She is Latina and
6 lives in South Los Angeles with her sister Megan O., her mother Maria O., as well as other family
7 members. Matilda O.'s family is low-income and shares a one-bedroom apartment. Matilda O.
8 attends a magnet program at an elementary school run by LAUSD. Maria O. chose the magnet
9 program because she always looks for the best school option for her kids. For Maria O. and her
10 family, education comes first because it is a way to get out of poverty. When the switch to remote
11 learning began, Matilda O.'s school provided her family with computers that did not work,
12 forcing Matilda O. to access classes through her parents' phones. Matilda O. requested a hotspot
13 device from her school several times in March 2020 but was put on a waiting list, and only
14 received a hotspot to share with her sister, Megan O., in fall 2020. The hotspot device Matilda
15 O.'s family received from the school did not work either, so Matilda O. had to share a single Wi-
16 Fi connection with three other siblings. When Maria O. requested technical support, the only
17 thing the school could do was reset and restart the device, which did not fix the problem. Maria
18 O. was able to get a laptop and wireless hotspot from CoCo for Matilda O. Matilda O.'s school
19 requires parents to provide basic supplies like paper and printed materials for their children.
20 Maria O. has to pay for these supplies out-of-pocket.

21 **54.** Matilda O. is a bright, self-directed student who wants to be a veterinarian and a
22 dancer. Still, during the remote learning period, she missed out on academic opportunities as well
23 as the social and emotional aspects of school. She also struggled to concentrate and engage with
24 distance learning because she had to share a one-bedroom apartment with three other siblings
25 during the school day.

26 **55.** Matilda O. did not receive the academic supports she needed during distance
27 learning, and her school was not responsive to her needs. Since returning to in-person instruction,
28 Matilda O. has not had an assessment of her learning or mental health needs and has not had the

1 opportunity to make up for what she missed during remote learning. Matilda O. has not received
2 additional learning or emotional supports that would make up for the learning loss that she
3 experienced during the 2020-2021 school year.

4 **56. Plaintiff Alex R.** is eleven years old and in the fifth grade. Before the pandemic,
5 she enjoyed participating in Girl Scouts and dance, and she wants to be a doctor when she grows
6 up. She is Black and lives in Los Angeles with her sister Bella R., her mother Kelly R., and other
7 family members. Alex R. attends a magnet school run by LAUSD. Alex R.'s family is low-
8 income and Kelly R. worries that if she loses her job, the family will not be able to afford their
9 housing.

10 **57.** When Alex R.'s school switched to remote learning in March, the transition was
11 extremely difficult. The school did not provide a curriculum for Alex R. to follow. Because Alex
12 R.'s teachers' internet did not work reliably, Alex R. only had 30 to 40 minutes of lessons a
13 couple of times each week. From March until June, Alex R. didn't learn anything at school.

14 **58.** Despite losing months of learning time, Alex R. was not offered any academic
15 support, such as teacher office hours or summer programs, by her school. Kelly R. had to spend
16 hours a day helping her daughter with school.

17 **59.** Alex R.'s family has a weak WiFi connection at their home because they live
18 under the flight path that leads to Los Angeles International Airport ("LAX"). LAUSD's internet
19 also experiences regular outages, which require students to wait for up to a couple of hours for
20 classes to begin. When these outages caused students to lose instructional time, the school did
21 not make up the time by adding more instructional time elsewhere in the students' schedule.

22 **60.** Alex R.'s mental health suffered because of remote learning but her school has
23 offered no social-emotional resources. Kelly R. tried to offer her children the emotional support
24 and connections that school ordinarily provides, but it was not enough. The school did not step in
25 to provide pandemic-safe opportunities for connecting with classmates and teachers, nor did they
26 offer counseling or health and wellness programs. Spending a lot of time in front of a computer
27 affected Alex R.'s eyes so much that her mother Kelly R. had to get her computer glasses. It was
28

1 difficult for Plaintiff to focus during distance learning, her attention span decreased, and she was
2 not as engaged in her class as she would have been in-person.

3 61. School is important to Kelly R. and her family because it is the vehicle they need
4 to be successful. Kelly R. worries that due to structural racism against people of color, her
5 daughters are already at a disadvantage compared to other children and are falling further behind.
6 Indeed, Alex R. did not receive the academic or social-emotional supports she needed during
7 distance learning and, as a result, her mental health and academic performance continue to suffer.

8 62. Kelly R.'s mother-in-law passed away due to COVID-19 during spring 2021.
9 Alex R. and Bella R. were devastated when they heard the news and needed support from school
10 to help them process their emotions and continue to learn. However, neither Bella R. nor Alex R.
11 received any mental health resources from their school.

12 63. When schools opened for hybrid instruction in spring of 2021, Kelly R. did not
13 feel that it was safe enough or that she had the necessary information to send her children back.
14 Kelly R. did not get information about how the school would assess her children or what kind of
15 training their teachers would get to deliver instruction through a hybrid model. Kelly R. is also
16 concerned for her children's safety, because the COVID-19 guidelines at the school have not been
17 communicated clearly to parents.

18 64. Although they are back to in person instruction during the 2021-2022 school year,
19 the school has not done enough to address the lost instruction time Alex R. and Bella R. suffered
20 during remote learning.

21 65. **Plaintiff Bella R.** is eight years old and in the third grade. Before the pandemic,
22 Bella R. loved school and enjoyed spending time with her classmates. She is Black and lives in
23 Los Angeles with her sister Alex R., her mother Kelly R., and other family members. Bella R.
24 attends a magnet school run by LAUSD. Bella R.'s family is low-income and Kelly R. worries
25 that if she loses her job, the family will not be able to afford their housing.

26 66. When Bella R.'s school switched to remote learning in March 2020, the transition
27 was extremely difficult. The school did not provide a curriculum for Bella R. to follow. Because
28 Bella R.'s teachers' internet did not work reliably, Bella R. only had 30 to 40 minutes of lessons a

1 couple of times each week. From March until June, Bella R. didn't learn anything at school. As
2 a result, Bella R. fell behind academically and her grades suffered.

3 67. Despite losing months of learning time, Bella R. was not offered any academic
4 support by her school. Bella R.'s school began offering teacher office hours to Bella R. only in
5 November, by which point Bella R. had already fallen far behind. Kelly R. spent hours a day
6 helping Bella R. with school.

7 68. Bella R.'s family has a weak WiFi connection at their home because they live
8 under the flight path that leads to LAX. LAUSD's internet also experienced regular outages,
9 which require students to wait for up to a couple of hours for classes to begin. When these
10 outages caused students to lose instructional time, the school did not make up the time by adding
11 more instructional time elsewhere in the students' schedule.

12 69. Bella R.'s mental health suffered because of remote learning but her school offered
13 no social-emotional resources. Kelly R. tried to make up for what her kids are missed from
14 school, but she could not offer them the emotional support and connections that school ordinarily
15 provides. In the absence of these supports and connections, Bella R. was unengaged in school
16 and spent her instructional time staring passively at the screen. Spending so much time in front of
17 a computer affected Bella R.'s eyes so much that Kelly R. had to get her computer glasses. She
18 did not attend in-person instruction during any days of the 2020-2021 school year. No one from
19 the school stepped in to offer additional mental health programming, resources, or pandemic-safe
20 opportunities for connection among students and teachers.

21 70. During the 2019-2020 school year, Bella R. was supposed to have an intervention
22 to reinforce academic concepts. Due to the pandemic, that intervention never happened. Kelly R.
23 reached out to Bella R.'s school and teachers to ask for Bella R. to be evaluated for an
24 individualized education program ("IEP") and for additional supports for her daughter. Finally, at
25 the end of fall 2020, Bella R.'s school has started an intervention, but in the intervening months,
26 Bella R. lost significant ground academically. Because Bella R.'s school has not offered her the
27 academic support she needs, Bella R. received tutoring through the organization Speak UP.
28

1 71. School is important to Kelly R. and her family because it is the vehicle they need
2 to be successful. Kelly R. worries that due to structural racism against people of color, her
3 daughters are already at a disadvantage compared to other children and are falling further behind.
4 Bella R. did not receive the academic or social-emotional supports she needed during distance
5 learning, and her mental health and academic performance continue to suffer.

6 72. Kelly R.'s mother-in-law passed away due to COVID-19 during spring 2021.
7 Alex R. and Bella R. were devastated when they heard the news and needed support from school
8 to help them process their emotions and continue to learn. However, neither Bella R. nor Alex R.
9 received any mental health resources from their school.

10 73. When schools opened for hybrid instruction in spring of 2021, Kelly R. did not
11 feel that it was safe enough or that she had the necessary information to send her children back.
12 Kelly R. did not get information about how the school would assess her children or what kind of
13 training their teachers would get to deliver instruction through a hybrid model. Kelly R. is also
14 concerned for her children's safety, because the COVID-19 guidelines at the school have not been
15 communicated clearly to parents.

16 74. **Plaintiff Isaac I.** is a fourteen-year-old student attending ninth grade in Los
17 Angeles Unified School District. He lives in South Los Angeles with his grandmother Susan I.,
18 Joshua I., and other family members. Isaac I. and his family are Black and low-income. Every
19 morning during distance learning, Isaac I. went to his school to pick up grab and go meals for his
20 family. Isaac I. loves playing basketball.

21 75. Isaac I.'s school never provided him with a hotspot; he had to share the hotspot
22 that Joshua I. received from his school with other family members. The hotspot had frequent
23 glitches, cutting out as often as every 15 minutes. In September 2020, Isaac I.'s grandmother
24 Susan I. filled out a hotspot request form in the parent portal app of Schoology, but never heard
25 back. She followed up in January of 2021, when the school informed her that they were out of
26 hotspots. Isaac I.'s inconsistent internet access made it very difficult for him to learn remotely.
27 Time spent on screens during the pandemic gave Isaac I. eye infections and strain. He has to
28 wear glasses to see the screen and was referred to an ophthalmologist.

1 76. Isaac I.’s school offered three remote classes each day plus an advisory period.
2 The classes are supposed to last 70 minutes each, except for advisory, which is 30 minutes. But
3 the school didn’t stick to the schedule, and Isaac I.’s classes often last for only 30 minutes or less.
4 There was one day with no advisory period, and Isaac I. finished all three of his classes by 11:30
5 a.m., having started at 9:00 a.m.

6 77. Sometimes, Isaac I. was counted as absent even when he participated in remote
7 lessons because he had not finished his homework. This wasn’t the case during in-person
8 learning—a student did not need to finish their homework to be reported present. Susan I.
9 worryes that Isaac’s difficulties with his homework were held against him. Other teachers did not
10 require student participation: During the 2020-2021 school year, Susan I. called one of Isaac I’s
11 teachers multiple times to raise concerns that the teacher was permitting students, including Isaac
12 I., to not participate in class.

13 78. Remote learning has been very stressful for Susan I. She has to go back and forth
14 to each of the kids in her house to make sure that they are on their devices and paying attention.
15 Due to the stresses of remote learning during the 2020-2021 school year, Susan decided to set up
16 regular visits with a therapist for her grandkids, including Isaac I. Susan I. knew that Isaac I.
17 needed someone to talk to during such a social emotionally challenging time. She set up the
18 therapy appointments on her own because his school was not providing the support he needed.
19 The only time Susan I. has to take care of her own needs is when her kids are talking to their
20 therapist.

21 79. A year and half of inadequate remote learning opportunities will cause long-term
22 harm to Isaac I. absent intervention. Even though Isaac I. is back at school in person, he still
23 spends nearly all day in class on an electronic device. His homework also needs to be completed
24 almost entirely virtually, which is not an effective mode of learning for Isaac I. Isaac I. has not,
25 and is not, not getting the education to which he is entitled.

26 80. **Plaintiff Joshua I.** is a ten-year-old student at an elementary school run by
27 LAUSD. He lives in South LA with his mother Susan I., Isaac I., and other family members.
28 Joshua I. and his family are Black and low-income.

1 81. Joshua I. received a hotspot from his school, but it was the only one in the house,
2 and he had to share it with other members of his household. The hotspot had frequent glitches,
3 cutting out as often as every 15 minutes. Joshua I.'s inconsistent internet access made it very
4 difficult for him to learn remotely.

5 82. Joshua I. has an IEP and a one-on-one aide who participated remotely in Joshua
6 I.'s classes. But a remote aide couldn't help redirect Joshua I. back to class when he is not paying
7 attention, or is watching videos instead of class. Sometimes Joshua I. turned off the camera or
8 left the class, and the aide would call Susan I. to let her know, but neither the aide nor Joshua I's
9 school offered proactive help or solutions to keep Joshua I. engaged. In the 2020-2021 school
10 year, Susan I. made several complaints when the one-on-one aide was absent and Joshua I. was
11 not permitted to attend school as a result, causing him to lose out on valuable instructional time
12 that he should have received.

13 83. Between inconsistent internet access and minimal instruction, Joshua I. was not
14 offered a real opportunity to learn in the past year and a half, which will cause permanent harm
15 absent additional intervention. He continues to struggle even after the return to in-person
16 schooling.

17 84. Remote learning was very stressful for Susan I. She had to go back and forth to
18 each of the kids in her house to make sure that they are on their devices and paying attention.
19 Due to the stresses of remote learning during the 2020-2021 school year, Susan decided to set up
20 regular visits with a therapist for her grandkids, including Joshua I. Susan I. knew that Joshua I.
21 needed someone to talk to during such a social emotionally challenging time. She set up the
22 therapy appointments on her own because his school was not providing the support he needed.
23 The only time Susan I. had to take care of her own needs is when her kids were talking to their
24 therapist. Susan I. knows that Joshua I. did not get the education to which he is entitled, and he
25 has not received additional academic or emotional supports to make up for his learning loss.

26 85. **Plaintiff Natalia T.** was a twelfth grade student at a high school run by LAUSD
27 during the 2020-2021 school year. Natalia T. lives with her brother Billy T., her mother Hillary
28 T., and other family members. Natalia T. is currently in college. Her senior year schedule

1 included many advanced placement (“AP”) classes. She participated in student council, a youth
2 program, and several other extracurricular activities. Natalia T. and her family are Black and
3 Latinx, and the family is low-income.

4 86. Natalia T. is an excellent student, but her grades fell from As and Bs to Bs and Cs
5 during the pandemic. The pressure of taking AP classes online was very intense, and distance
6 learning impacted the quality of instruction in those courses. Her social-emotional health has
7 been severely impacted by distance learning, and the absence of relationships with peers and
8 teachers has affected her grades.

9 87. Hillary T. is a parent organizer with CoCo and a member of the LAUSD Parent
10 Advisory Committee (“PAC”). She feels that her advocacy for Natalia T. and Billy T. has been
11 absolutely necessary to get them the education that they’ve had so far. She is frustrated that
12 LAUSD only began to talk about needs assessments for students at the end of 2020, and that her
13 whole community is suffering because of a lack of training and involvement for parents. In
14 Hillary T.’s experience as a PAC member, authentic parent engagement has been illusory, and
15 LAUSD wants parents to sign off on their preexisting plan without taking the concerns of parents
16 into account. For Natalia T. and Billy T., distance learning was nothing more than a watered-
17 down education. Teachers focused on main ideas of their lessons, but didn’t go into as much
18 depth as they would have before the pandemic.

19 88. Hillary T. feels that institutional racism has shaped her kids’ education and the
20 district’s response to the pandemic. She also worries that other parents who do not have her
21 advocacy experience—and their children—are being treated even worse.

22 89. **Plaintiff Billy T.** is a ninth grade student at a middle school run by LAUSD. Billy
23 T. has attention-deficit hyperactivity disorder (“ADHD”) and has an IEP. Billy T. lives with his
24 sister Natalia T., his mother Hillary T., and other family members. Billy T. and his family are
25 Black and Latinx, and his family is low-income.

26 90. During the period of remote learning, Billy T. was failing all of his classes. He
27 had trouble connecting with his teachers, and Hillary T. felt that they were not making themselves
28 available to discuss his individual needs. Billy T. was also having trouble arriving at class on

1 time, and he was marked absent for being late. This would not have happened when school was
2 in-person.

3 91. Hillary T. had to supervise Billy T.'s learning and redirect him on an hourly basis.
4 Billy T. would have benefitted from one-on-one instruction—Hillary T. effectively served as a
5 one-on-one instructor—but no one at Billy T.'s school has mentioned that as a possibility for him.
6 Because Hillary T. is on LAUSD's parent advisory committee, she received administrative emails
7 from the district, including emails about spots for one-on-one instruction being available.
8 Through these emails, Hillary T. also found out that individualized tutoring is supposedly
9 available for LAUSD students. When Hillary T. asked Billy T.'s school about individualized
10 tutoring, the school did not know that the program even existed and said that it was not available.
11 As a result, Hillary T. had to pay for private tutoring for Billy T. so that he does not fall further
12 behind.

13 92. Hillary T. is a parent organizer with CoCo and a member of the LAUSD PAC.
14 She feels that her advocacy for Natalia T. and Billy T. has been absolutely necessary to get them
15 the education that they've had so far. She is frustrated that LAUSD is only began to talk about
16 needs assessments for students in fall 2020, and that her whole community suffered because of a
17 lack of training and involvement for parents. In Hillary T.'s experience as a PAC member,
18 authentic parent engagement has been illusory, and LAUSD wants parents to sign off on their
19 preexisting plan without taking the concerns of parents into account. She feels that for Natalia T.
20 and Billy T, distance learning has been nothing more than a watered-down education. Teachers
21 focused on main ideas of their lessons, but did not go into as much depth as they would have
22 before the pandemic.

23 93. Hillary T. feels that institutional racism has shaped her kids' education and the
24 district's response to the pandemic. She also worries that other parents who do not have her
25 advocacy experience—and their children—are being treated even worse.

26 94. **Plaintiff Daniel A.** attended twelfth grade at an LAUSD school during the 2020-
27 2021 school year. He is Latino. Daniel A. lives with his mother Sara A. and other members of
28

1 his family including siblings who are also learning remotely. His family is low-income. Sara A.
2 speaks Spanish and does not speak English.

3 95. Daniel A. received a hotspot from his school, but it was too slow and unreliable to
4 use for remote learning. Sara A. had to pay for her own internet service for Daniel A. to use at
5 school because he was being marked absent when his hotspot wouldn't connect. Even so, Daniel
6 A. continued to experience unstable connectivity since there were three additional family
7 members using the broadband connection at the same time. Daniel A. had trouble academically
8 because of a lack of instruction time and because he struggles to pay attention to lessons
9 transmitted over a screen. He struggled to concentrate and engage with distance learning because
10 he did not have a quiet space to learn, since he and his siblings all had to have their microphones
11 on to participate. Daniel A.'s schedule had him learning from 9:00 a.m. to 2:00 p.m., but a lot of
12 that time was offline or breaks. The class was also frequently let out early. Daniel A.'s school
13 offered some tutoring, but he needed more to make up for the learning time he has lost.

14 96. Daniel A.'s teachers were often absent without warning, and the substitute teachers
15 did not follow the same lesson plans or procedures as his usual teachers. Substitute teachers also
16 did not take roll, which leads to Daniel A. being marked absent even when he attends school.
17 Daniel A. also struggled to pay attention to lessons transmitted over a screen. He and his siblings
18 did not have a quiet space to learn, and they all had to have their microphones on to participate.
19 Sara A. tried to put them in different rooms, but that makes it difficult for her monitor them to
20 make sure that they are paying attention.

21 97. Sara A. joined a committee of parents to advocate for students. Her school set up
22 a program that families could use to communicate with teachers, but she did not have access to
23 the program. She also could not speak to all of Daniel A.'s teachers because they do not speak
24 Spanish, and the school had no one who can translate for her.

25 98. **Plaintiff Community Coalition** ("CoCo") is a nonprofit public benefit
26 corporation and membership organization based in South Los Angeles. Its members are students
27 and parents who live in South Los Angeles and who are committed to improving the quality of
28 education in that area. CoCo's members include South Los Angeles residents of all ages, whom

1 the organization serves through programs for children, teenagers, and adults. CoCo's members
2 pay taxes to the State of California in the County of Los Angeles. CoCo works to improve the
3 everyday living conditions of the Black and Latinx, low-income communities it serves.

4 99. In March 2020, CoCo conducted a needs assessment in response to COVID-19 and
5 found that families did not have the technology or support necessary to access remote learning
6 programs offered by their schools. CoCo's organizers have spoken directly with students and
7 parents every day since distance learning began. Through the needs assessment and
8 conversations, CoCo learned that schools and districts were failing to provide parents with the
9 information they needed to ensure that their children had access to remote learning. Families also
10 struggled with accessing basic resources such as food and paying for living expenses such as rent
11 and utility bills. This prompted CoCo to set up mutual aid funds to help families purchase food,
12 cover living expenses, and purchase hardware to use for distance learning.

13 100. In July and August 2020, as well as 2021, CoCo offered a virtual Summer
14 Academic Program (SAP) to target three areas of support: academics, technology, and wellness.
15 CoCo served 101 youth through the SAP program, 50% of whom identify as Black and 50% of
16 whom identify as Latinx. CoCo also served 61 parents through the SAP program. CoCo devoted
17 significant time to services that the State should have ensured were offered by LEAs and schools,
18 including providing mental health programming and technical assistance for students and
19 caregivers to access remote instruction. These trainings included individual meetings with
20 students and families to support technology setup and troubleshooting. CoCo's staff additionally
21 showed students how to use Google Classroom and taught parents how to use the platform
22 Schoology to track their children's academic progress. The organization also hired five trained
23 and certified credentialed teachers, a team of tutors to provide individualized support for students,
24 and an additional teacher to help students with special needs.

25 101. Despite this herculean effort, many of CoCo's parent members still struggled
26 because they have lost their jobs or are juggling work and helping their children with remote
27 learning. In some families, older siblings were tasked with ensuring that young children log in to
28 class even if doing so means that they themselves are late or counted as absent.

1 102. CoCo works with some families who speak Spanish and have limited English
2 proficiency. Schools and districts did not provide information to families in any language other
3 than English. For instance, when schools provided laptops to students, the instructions to set up
4 the laptops were only in English. This has been a particularly challenging time for families who
5 don't speak English, who feel frustrated and hopeless.

6 103. CoCo has diverted significant organizational resources to counteract the State's
7 failures to deliver an education to students during the COVID-19 pandemic, its policy of non-
8 enforcement of state standards, and its failure to provide remedial academic and mental health
9 supports. Staff and organizers distributed a total of 240 laptops and over 50 hotspots to students,
10 and also opened their offices to conduct in-person student meetings which required paying for
11 additional cleaning, personal protective equipment, staff trainings on social distancing, and Lyft
12 rides. Additionally, CoCo hired teachers and tutors for its summer program. For its summer
13 2021 academic programming alone, CoCo spent nearly \$40,000 on laptops and hotspots.

14 104. The rights and interests of CoCo's members are adversely affected by the State of
15 California's actions and inaction with respect to remote learning. Neither the claims asserted nor
16 the relief requested in this complaint require the participation of CoCo's individual members.

17 105. **Plaintiff The Oakland REACH** is a parent-run, parent-led group based in
18 Oakland and committed to empowering families from underserved communities to demand high-
19 quality schools and pathways to college for their children. The Oakland REACH's members are
20 a grassroots group of Black and Latinx parents and grandparents from low-income families. The
21 Oakland REACH is a nonprofit public benefit corporation and membership organization. Its
22 members pay state taxes in the County of Alameda. As of November 2020, the organization had
23 engaged over 4,500 parents by hosting one-on-one conversations about the school system. At
24 that time, they also had over 250 parents go through their Oakland Family Advocacy Fellowship,
25 which provides the leadership training needed to change a system that has left students behind for
26 far too long.

27 106. In the experience of The Oakland REACH's families, California's education
28 system is not delivering the education that their kids are constitutionally guaranteed. This was the

1 case before the pandemic began, and it remained so under the State’s remote learning system.
2 The Oakland REACH saw distance learning as an opportunity to involve families in remaking a
3 school system that has never served them. This work goes beyond surviving the immediate crisis
4 of the pandemic—rather, it aims to innovate and elevate students’ learning and families’
5 engagement and advocacy.

6 107. When California began to shut down in March 2020, The Oakland REACH
7 stepped up, diverting significant resources to counteract the State’s failure to equip students for
8 remote learning and its policy of non-enforcement of statewide standards. On March 24, 2020,
9 the organization launched the REACH Relief Fund, which distributed almost \$200,000 of funds
10 to more than 1,100 families. It distributed laptops and hotspots to students who had not received
11 them from their schools. The organization also began exploring a more radical program to
12 transform remote learning for underserved families.

13 108. In June 2020, The Oakland REACH launched a citywide virtual hub (the “Hub”)
14 to help parents strengthen their children’s learning and savvy in the distance learning
15 environment. The Hub is a family-focused, vibrant, and collaborative virtual community that
16 integrates high-quality learning and support for the entire family. All participants live in low-
17 income neighborhoods and their children are enrolled in low-performing schools. Over 92% of
18 the Hub’s families qualify for free and reduced lunch. The Oakland REACH’s aim is not to move
19 what students were receiving at school before the pandemic to a virtual setting, but to set a higher
20 bar for research-based instructional practice, and to involve families who may have little or no
21 history of observing their children at school, so they become empowered to support that learning
22 and knowledgeable about remote instruction.

23 109. In its first phase, the Hub provided the families of 90 early-elementary students
24 with 200 laptops and 60 hotspots, as well as two sets of services: the Literacy Liberation Center
25 (“LLC”) and Family Sustainability Center (“FSC”). The FSC provided the help families need to
26 survive the pandemic intact, housed, and physically and mentally healthy. Participants went
27 through a needs assessment, partnered with a Family Liaison, and received individual guidance,
28 seminars, and connections to needed services. In parallel, as part of the LLC, families and

1 children participated in a regular schedule of classes, taught by skilled teachers, and had access to
2 video lessons anytime. Phase I of the Hub was an unqualified success. Attendance for students
3 in kindergarten through second grade was 83%, compared to only 35% at OUSD during spring
4 distance learning. Students also achieved about two reading levels on average over just five
5 weeks.

6 110. After its successful summer, the Hub returned for a second phase in fall 2020. The
7 Oakland REACH employed over 19 Family Liaisons to work with families through the Hub,
8 more than double the number it hired over the summer, to support over 400 families. This
9 allowed The Oakland REACH to more than double the number of students served, delivering
10 programming for 525 students every afternoon from Monday to Thursday in fall 2020. Roughly
11 50% of the Family Liaisons are bilingual, expanding the Hub's reach into non-English speaking
12 families. Family Liaisons provide social, academic, and technical support to families so that they
13 can access and engage with their schools' distance learning offerings. The Oakland REACH also
14 collected real-time data from Black and Latinx families about the realities of distance learning on
15 a weekly basis, and offering afterschool synchronous academic and social enrichment programs
16 for students.

17 111. Beginning in spring 2021, once The Oakland REACH had proved that its Hub
18 model was effective, they partnered with the Oakland Unified School District (OUSD) to expand
19 the Hub. In summer of 2021, The Oakland REACH entered an agreement with OUSD that
20 allowed Plaintiff's Family Liaisons to reach out to every K-8 OUSD family with students
21 enrolled in the district's distance learning option. The Oakland REACH contacted almost 320
22 families in one week to learn more about their academic, enrollment, and technology needs so
23 that Plaintiff can help the district understand how best to serve low-income Black and Latinx
24 families. In summer 2021, The Oakland REACH served 406 students through its virtual
25 programming. As of fall 2021, The Oakland REACH served 970 students and 750 parents
26 through the Hub.

27 112. In addition to The Oakland REACH's essential programming and services in
28 response to COVID-19, the organization operates a fellowship that educates parents and

1 grandparents about school performance and choice, an outreach team that mobilizes parents to
2 participate in school board meetings, and an enrollment support program that matches parents
3 with advocates who can help them find a high-quality school for their children. In calendar year
4 2021, 161 caregivers and parents have completed The Oakland REACH’s fellowship programs.
5 Through these programs, The Oakland REACH and its members advocate tirelessly on behalf of
6 low-income Black and Latinx families to ensure that students receive the high quality public
7 education to which they are entitled.

8 113. The rights and interests of The Oakland REACH’s members and the organization
9 itself are adversely affected by the State of California’s actions and inaction with respect to
10 remote learning and its policies of non-enforcement of statewide standards. The organization has
11 diverted significant resources to fulfill the promise of distance learning—for instance, the total
12 new costs to launch the Hub were \$420,000 (for June 1 to August 30), a sum that far exceeds The
13 Oakland REACH’s budget. To pay for the Hub, The Oakland REACH diverted existing staff
14 time as well as a portion of their overall operating budget, and also spent additional resources on
15 fundraising.

16 114. The Oakland REACH had to spend tens of thousands of dollars on providing
17 hotspots and devices to students who did not receive them from their schools and would
18 otherwise have no way of accessing education. The organization’s staff has also had to devote
19 significant time to services that the State should have ensured were offered by LEAs and schools,
20 including providing technical assistance for students and caregivers to access remote instruction.

21 115. Neither the claims asserted nor the relief requested in this Complaint require the
22 participation of The Oakland REACH’s individual members.

23 **FACTUAL ALLEGATIONS**

24 **III. EDUCATION IS A FUNDAMENTAL RIGHT UNDER THE CALIFORNIA** 25 **CONSTITUTION, FOR WHICH THE STATE IS ULTIMATELY RESPONSIBLE.**

26 116. Access to education is a “uniquely fundamental personal interest in California”
27 and belongs to each individual student. *Butt v. State of California*, 4 Cal. 4th 668, 681 (1992).
28 The California Supreme Court has repeatedly recognized that all California students possess a

1 constitutional right to “equal access to a public education system that will teach them the skills
2 they need to succeed as productive members of modern society.” *O’Connell v. Superior Court*,
3 141 Cal. App. 4th 1452, 1482 (2006); *see also Hartzell v. Connell*, 35 Cal. 3d 899, 906-09
4 (1984); *Serrano v. Priest*, 5 Cal. 3d 584, 608-09 (1971) (“*Serrano I*”); *Piper v. Big Pine Sch.*
5 *Dist. of Invo City*, 193 Cal. 664, 668-70 (1924). Accordingly, schools cannot provide students
6 with a program of education that “falls fundamentally below prevailing statewide standards.”
7 *Butt*, 4 Cal. 4th at 685-87.

8 117. The fundamental right to even the most basic of educations means students must
9 be able to access that education, even when it is delivered remotely. Education is a fundamental
10 right in large part because it is required for participation in democratic citizenship and economic
11 self-sufficiency. “The purpose of education is not [simply] to endow students with diplomas, but
12 to equip [students] with the substantive knowledge and skills they need to succeed in life.”
13 *O’Connell*, 141 Cal. App. 4th at 1478.

14 118. The California Supreme Court made clear that the State bears the “ultimate
15 responsibility for public education [that] cannot be delegated to any other entity,” including
16 “ensur[ing] basic educational equality under the California Constitution.” *Butt*, 4 Cal. 4th at 681
17 (citing *Hall v. City of Taft*, 47 Cal. 2d 177, 180-81 (1956), and *Piper*, 193 Cal. at 669). The State
18 itself bears the ultimate authority and responsibility to ensure that its district-based system of
19 common schools provides basic equality of educational opportunity.” *Butt*, 4 Cal. 4th at 685.
20 Any action that has a real and appreciable impact upon the right to basic educational equality is
21 subject to strict scrutiny. *See, e.g., Serrano v. Priest*, 18 Cal. 3d 728, 761, 767-68 (1976)
22 (“*Serrano II*”).

23 119. “[T]he State’s responsibility for basic equality in its system of common schools
24 extends beyond the detached role of fair funder or fair legislator.” *Butt*, 4 Cal. 4th at 688. Where
25 a school or local district “den[ies] its students basic educational equality” and/or creates
26 discriminatory disparities in the system of common schools, the State is obliged to intervene,
27 “even when the discriminatory effect was not produced by the purposeful conduct of the State or
28 its agents.” *Id.* at 681, 692.

1 120. Defendants abdicated their responsibility to provide the resources necessary for
2 effective remote learning to LEAs—and, consequently, to parents and students—who do not have
3 access to them. Consistent with their longstanding policies, Defendants also opted not to ensure
4 that LEAs were meeting statewide standards or providing even basic access to education during
5 the remote learning period. During the 2021-2022 school year, Defendants have continued these
6 policies of non-enforcement, failing to oversee LEAs’ spending of federal relief funds and
7 deciding not to ensure that students have access to remedial academic and mental health
8 programming. The State cannot ensure equal education if a student has no ability to access that
9 education, and if there is no effort to ensure that failures of access are compensated for. The facts
10 of this case—for instance, that children are being denied access to education for months at a
11 time—are but the most extreme example, among many, of this untenable position.

12 **IV. THE STATE’S EDUCATION POLICIES DURING THE PANDEMIC HAVE**
13 **WIDENED DISPARITIES IN AN ALREADY UNEQUAL EDUCATION SYSTEM.**

14 **A. The State’s Public Health Directives and School Closure Policies**

15 121. As a result of the State’s public health directives and emergency orders, schools
16 throughout the State closed in March 2020, shifting instead to remote learning platforms. On
17 March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency.²
18 Before the 2020-2021 school year, Governor Newsom announced a plan for reopening California
19 schools in the fall (“Plan”). The Plan referenced and incorporated the updated California
20 Department of Public Health (“CDPH”) Directive on COVID-19 Re-opening In-Person Learning
21 Framework for K-12 Schools in California, 2020-2021 Calendar Year (“Directive”),³ as well as
22 the CDPH/Cal-OSHA Updated COVID-19 Guidance for Schools (“Guidance”).⁴

23 _____
24 ² Office of Governor Gavin Newsom, *Proclamation of a State of Emergency* (March 4, 2020),
<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

25 ³ CDPH, *COVID-19 and Reopening In-Person Learning Framework of K-12 Schools in*
26 *California, 2020-2021 School Year* (July 17, 2020), [http://www.egusd.net/wp-](http://www.egusd.net/wp-content/uploads/2020/07/CDPH.Schools-Reopening-Recommendations.7.17.20.pdf)
[content/uploads/2020/07/CDPH.Schools-Reopening-Recommendations.7.17.20.pdf](http://www.egusd.net/wp-content/uploads/2020/07/CDPH.Schools-Reopening-Recommendations.7.17.20.pdf).

27 ⁴ CDPH, *COVID-19 Industry Guidance: Schools and School-Based Programs*,
28 <https://files.covid19.ca.gov/pdf/guidance-schools.pdf> (last updated Aug. 3, 2020).

1 122. The Directive provided that “[s]chools and school districts may reopen for in-
2 person instruction at any time if they are located in a local health jurisdiction (LHJ) that has not
3 been on the county monitoring list within the prior 14 days. If the LHJ has been on the
4 monitoring list within the last 14 days, the school *must* conduct distance learning only, until the
5 LHJ has been off the monitoring list for at least 14 days.”⁵ The Directive provided for waivers if
6 requested by the superintendent of elementary schools in consultation with labor, parent, and
7 community organizations.⁶ When California moved to the four-tier system for counties, it did not
8 change the standards for school reopenings.⁷

9 123. As of November 30, 2020, 51 out of California’s 58 counties — encompassing
10 99.1% of residents — could not reopen for in-person instruction unless they received elementary
11 school waivers or adhered to strict guidance for small groups.⁸

12 124. Moreover, the Directive “recommend[ed]” in-person schools to close and revert to
13 distance learning when either: (1) multiple cohorts⁹ have COVID-19 cases; or (2) five percent of
14 students and staff test positive in a 14-day period. An entire district had to close and revert to
15 distance learning if 25% of schools in the district had closed due to COVID-19 in a 14-day
16 period.¹⁰

19 ⁵ Directive at 1 (emphasis added; footnotes omitted).

20 ⁶ *Id.*

21 ⁷ CDPH, *Blueprint for a Safer Economy*,
22 <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx> (“Schools may reopen for in-person instruction
23 based on equivalent criteria to the July 17 School Re-opening Framework (PDF) previously
24 announced. That framework remains in effect except that Tier 1 is substituted for the previous
25 County Data Monitoring List (which has equivalent case rate criteria to Tier 1).”) (last updated
26 Nov. 28, 2020).

27 ⁸ *Blueprint for a Safer Economy*, COVID19.CA.GOV, <https://covid19.ca.gov/safer-economy/>
28 (last updated Nov. 28, 2020).

⁹ 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.

¹⁰ *Id.* at 5.

1 125. Schools that had to close due to being located in a county on the CDPH
2 monitoring list, or decided to close as a result of confirmed COVID cases, had to provide distance
3 learning until they met the criteria to return to in-person learning. Per the Plan, those schools had
4 to meet the State’s “rigorous” requirements for remote learning. *See* Cal. Educ. Code § 43503(b).
5 Specifically, they had to ensure:

- 6 a. Devices and connectivity so that every child can participate in distance learning;
- 7 b. Daily live interaction for every child with teachers and other students;
- 8 c. Class assignments that are challenging and equivalent to in-person instruction; and
- 9 d. Targeted supports and interventions for English learners and special education
10 students.¹¹

11 126. Because of state policy in favor of in-person learning, most students returned to in-
12 person learning in fall 2021. For the 2021-22 school year, the Legislature required school
13 districts to provide remote learning only through independent study programs.¹² Many students
14 enrolled in districts’ independent study programs in order to continue learning remotely.
15 LAUSD’s independent study program started the 2021-2022 school year with 10,000 students,
16 and grew to 16,000 students by December 2021.¹³ The surge in enrollment caused teacher
17 shortages, enrollment delays, and missed instructional time.¹⁴ As one school district

19
20 ¹¹ 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-](https://www.gov.ca.gov/2020/07/17/governor-gavin-newsom-lays-out-pandemic-plan-for-learning-and-safe-schools/)
[newsom-lays-out-pandemic-plan-for-learning-and-safe-schools/](https://www.gov.ca.gov/2020/07/17/governor-gavin-newsom-lays-out-pandemic-plan-for-learning-and-safe-schools/).

21 ¹² Cal. Dep’t of Educ., *Independent Study for 2021-2022* (updated Sept. 16, 2021),
22 <https://www.cde.ca.gov/eo/in/independentstudy202122.asp>.

23 ¹³ Howard Blume, *34,000 L.A. Unified students have not complied with vaccine mandate,*
signaling problems ahead, L.A. TIMES (Dec. 7, 2021),
24 [https://www.latimes.com/california/story/2021-12-07/33-000-l-a-unified-have-not-provided-](https://www.latimes.com/california/story/2021-12-07/33-000-l-a-unified-have-not-provided-proof-of-covid-vaccination)
[proof-of-covid-vaccination](https://www.latimes.com/california/story/2021-12-07/33-000-l-a-unified-have-not-provided-proof-of-covid-vaccination).

25 ¹⁴ Howard Blume & Melissa Gomez, *Surge of families seeking remote learning overwhelms*
L.A. public schools, L.A. TIMES (Sept. 27, 2021), [https://www.latimes.com/california/story/2021-](https://www.latimes.com/california/story/2021-09-27/independent-study-california-laUSD)
26 [09-27/independent-study-california-laUSD](https://www.latimes.com/california/story/2021-09-27/independent-study-california-laUSD); Betty Márquez Rosales, *Independent study frustrates*
California parents who enrolled children, EDSOURCE (Sept. 10, 2021),
27 [https://edsource.org/2021/independent-study-frustrates-california-parents-who-enrolled-](https://edsource.org/2021/independent-study-frustrates-california-parents-who-enrolled-children/661009)
[children/661009](https://edsource.org/2021/independent-study-frustrates-california-parents-who-enrolled-children/661009).

1 superintendent put it, “a lack of direction and clarity from the state” about independent study
2 rules “really has been having an impact on us.”¹⁵

3 127. Along with regulating opening and closure of schools, the State provided some
4 additional funding to LEAs, and/or passed on funding that it received from the federal
5 government. Because the State set very few guidelines for how to spend this funding effectively,
6 it has not gone to programs that would serve Black and Latinx students from low-income
7 backgrounds and other students who are in desperate need of additional educational resources.

8 128. In March 2021, Governor Newsom approved Assembly Bill (“A.B. 86”), which
9 offered funding to LEAs with penalties for those that did not offer hybrid or in-person instruction
10 in spring 2021. Eligible LEAs and schools received grant funding in May 2021 and August 2021.
11 The funds must be spent by August 21, 2022. California also received billions of dollars of
12 federal COVID-19 relief, some of which went to LEAs.

13 129. This AB 86 funding comes without oversight, assistance, or enforcement to ensure
14 that LEAs will use the funding to address the digital divide, learning loss, and mental health
15 support. The State has established no meaningful accountability system. For example, with
16 respect to the learning recovery funding, the State has chosen not to review LEAs’ planned or
17 actual expenditures, providing oversight, or taking steps to ensure that LEAs adequately target
18 and help the underserved students that have borne the brunt of the pandemic. Likewise, with
19 respect to the reopening incentive grants, the legislation does not require the State to oversee or
20 ensure that the LEAs use the funding for its intended purpose. Nor does it require that LEAs
21 offer any of the services and supplies for which the reopening incentive grants may be used, much
22 less that LEAs direct those services toward underserved students.

23 130. As with other areas of education, the State’s monitoring of this funding was thin at
24 best. In October 2021, the California State Auditor criticized the State Department of Education
25

26 ¹⁵ John Fensterwald & Betty Márquez Rosales, *Quarantines and teacher shortages: a double*
27 *whammy for California districts*, EDSOURCE (Aug. 27, 2021),
<https://edsources.org/2021/quarantines-and-teacher-shortages-a-double-whammy-for-california-districts/660337>.

1 for inadequately monitoring federal funding that went to LEAs.¹⁶ The Department “has not taken
2 a strong leadership role” to ensure that districts are “effectively and promptly” using the money,
3 auditing only 15 of the more than 1,600 districts and charter schools, or fewer than 1%.¹⁷ The
4 districts that were audited identified 40% of their spending as “other activities,” obscuring a
5 significant portion of their expenditures.¹⁸ Indeed, very few districts are complying with
6 requirements to file regular spending reports, so the State cannot know whether they are using the
7 funds to “meet the educational and safety needs of their students.”¹⁹

8 **B. The State’s Response Has Exacerbated the Already-Unequal Education**
9 **System.**

10 131. Even before in-person instruction ceased, the State’s most underserved students
11 were not meeting state standards for their grade levels and were dropping out of school at
12 disproportionately high rates.²⁰ These students—including low-income Black and Latinx
13 students, students experiencing homelessness, and non-native English speakers—have been
14 further left behind because of the COVID-19 pandemic and widely disparate access to
15 educational opportunities and digital resources. Some struggled with obtaining the technology
16 they need to connect, while others faced much more substantial barriers to engaging in remote
17 schooling. As families struggle with increased economic hardship and housing instability, older
18 students have shouldered new responsibilities taking on paid employment and childcare during
19 school hours to support their families.

22 ¹⁶ Cal. State Auditor, *California Department of Education: It Needs to Provide Better*
23 *Oversight to Ensure that Local Educational Agencies Promptly and Effectively Use Federal*
COVID-19 Funds (Oct. 19, 2021), <http://auditor.ca.gov/reports/2021-614/index.html#section1>.

24 ¹⁷ *Id.*

25 ¹⁸ *Id.*

26 ¹⁹ *Id.*

27 ²⁰ 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-or-exceeded-standards-on-new-science-test/623514>.

1 132. Racial and economic inequality are interrelated issues in education.²¹ Low-income
2 families in California are disproportionately Black and Latinx.²² Black and Latinx students also
3 experience segregation by class, typically attending schools with almost double the share of low-
4 income students as their White or Asian counterparts.²³ The vast majority of students
5 experiencing homelessness are also Black and Latinx. During the 2018-2019 school year,
6 approximately 269,000 California students experienced homelessness, of which 70% identified as
7 Latinx and 9% identified as Black.²⁴

8 133. As one November 2020 policy brief stated, “[a]mid the COVID-19 pandemic,
9 extended school shutdowns, and renewed protests about racial injustice, schools confront sharp
10 increases in student learning, behavioral, and emotional challenges. Despite this, the matter of
11 how best to address these pervasive concerns—many of which result from long-standing
12 structural and systemic barriers that necessitate structural and systemic solutions—remains
13 unresolved.”²⁵

14 134. In California, a wide variety of academic success measurements, such as
15 graduation rates, math and reading test scores, and college enrollment, show that race and
16

17 ²¹ Joseph P. Bishop & Pedro A. Noguera, *The Ecology of Educational Equity: Implications*
18 *for Policy*, 94 PEABODY J. EDU. 122, 122 (2019).

19 ²² Kerri Ullucci & Tyrone Howard, *Pathologizing the Poor: Implications for Preparing*
20 *Teachers to Work in High-Poverty Schools*, 50 URBAN EDUC. 170, 171 (2015); *Children in*
21 *Poverty, by Race/Ethnicity (Regions of 65,000 Residents or More)*, KIDSDATA.ORG,
22 <https://www.kidsdata.org/topic/234/childpoverty-race250/bar> (last visited Feb. 15, 2021).

23 ²³ Kerri Ullucci & Tyrone Howard, *Pathologizing the Poor: Implications for Preparing*
24 *Teachers to Work in High-Poverty Schools*, 50 URBAN EDUC. 170, 171 (2015) (quoting Gary
25 Orfield et al., *E. Pluribus... Separation: Deepening Double Segregation for More Students*, CIV.
26 RIGHTS PROJECT 9 (Sept. 2012)).

27 ²⁴ Joseph P. Bishop et al., *State of Crisis: Dismantling Student Homelessness in California*,
28 UCLA CTR. FOR THE TRANSFORMATION OF SCHOOLS 5 (2020),
<http://transformschools.ucla.edu/stateofcrisis/>.

²⁵ 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-and-teaching-covid-19?utm_source=PACE+All&utm_campaign=61b8aabde4-EMAIL_CAMPAIGN_2020_11_17_07_36_COPY_05&utm_medium=email&utm_term=0_9f1af6b121-61b8aabde4-583885601.

1 socioeconomic status are strong predictors of academic outcomes.²⁶ In 2016-2017, for example,
2 31% of Black and 37% of Latinx students met or exceeded standards for English Language Arts,
3 compared to 76% of Asian and 64% of white students.²⁷ The gap between low-income students
4 and their wealthier peers has remained wide and unchanged in fourth grade reading since at least
5 the 2002–2003 school year.²⁸ In 2017, the 27-point gap in average fourth-grade reading scores
6 between white and Hispanic students was among the largest in the nation.²⁹ In 2016, Black and
7 Latinx males in Los Angeles County had the lowest third-grade reading proficiency rates of any
8 students in the country at 36% and 37%, respectively.³⁰ Black students were 2.5 times less likely
9 to be enrolled in gifted and talented programs, even if their prior achievements reflected an ability
10 to succeed in those programs.³¹ In 2019, Black students’ average reading scores were 37 points
11 lower than White students, while Latinx students’ reading scores were 27 points lower than White
12 students, and low-income students’ reading scores were 31 points lower than their more affluent
13 peers.³²

14 135. Racial and economic disparities have long shown up in chronic absenteeism rates.
15 During the 2018–2019 school year, 25% of all students experiencing homelessness in California
16 were chronically absent compared to 12% of non-homeless students.³³ In the same year, two out
17 of five Black and American Indian students experiencing homelessness were chronically absent.³⁴

18 ²⁶ Joseph P. Bishop & Pedro A. Noguera, *The Ecology of Educational Equity: Implications*
19 *for Policy*, 94 PEABODY J. EDUC. 122, 134 (2019).

20 ²⁷ *Id.* at 123.

21 ²⁸ *Id.*

22 ²⁹ *Id.*

23 ³⁰ Tyrone C. Howard et al., *The Counter Narrative: Reframing Success for High Achieving*
Black and Latino Males in Los Angeles County, UCLA BLACK MALE INST. 7 (2016),
<https://escholarship.org/uc/item/2sv226tf>.

24 ³¹ *Id.*

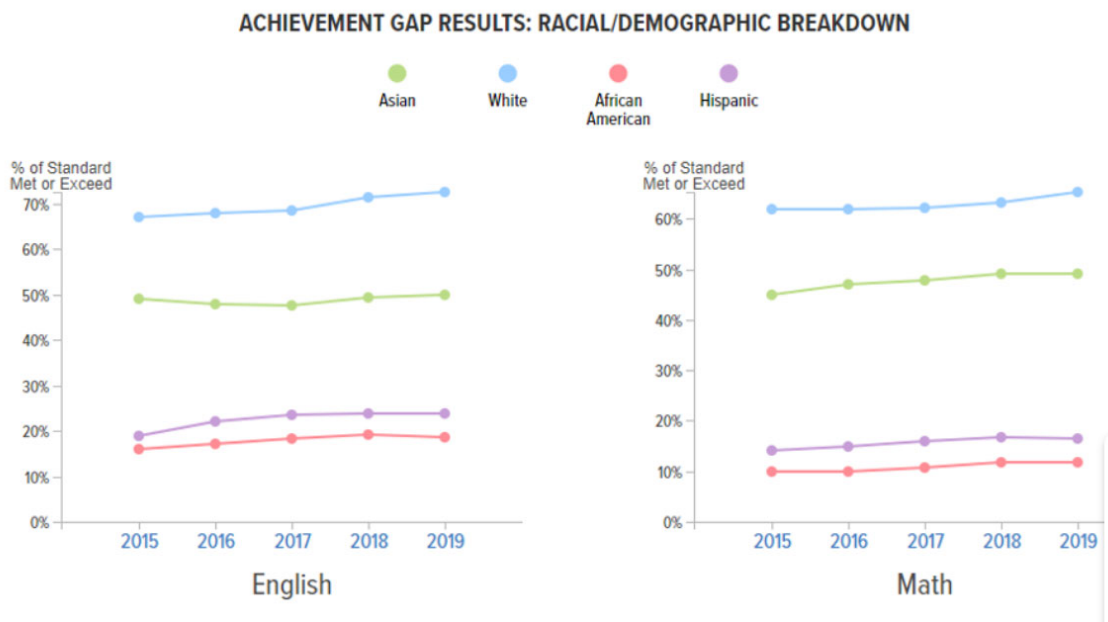
25 ³² *2019 Reading State Snapshot Report*, NAT’L CTR. EDUC. STATS. (2019),
<https://nces.ed.gov/nationsreportcard/subject/publications/stt2019/pdf/2020014CA4.pdf>.

26 ³³ Joseph P. Bishop et al., *State of Crisis: Dismantling Student Homelessness in California*,
UCLA CTR. FOR THE TRANSFORMATION OF SCHOOLS 25 (2020),
<http://transformschools.ucla.edu/stateofcrisis/>.

27 ³⁴ *Id.*

1 Chronic absenteeism negatively impacts test scores for all students, but even more so for English
 2 learners, students with disabilities, low-income students, and students experiencing
 3 homelessness.³⁵ If students miss more than a few weeks of cumulative instruction, their academic
 4 and emotional outcomes are likely to suffer.³⁶

5 136. As of January 2020 (pre-pandemic), in OUSD, only 18.6% of Black students and
 6 23.8% of Latinx students were reading at grade level. In the same district, where less than 1 in 5
 7 Black children can read, 72.5% of White children were meeting or exceeding standards.³⁷ See
 8 Figure 1, below.



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Figure 1

20 137. Likewise, before the COVID-19 pandemic, in LAUSD in 2019, only 32.09% of
 21 Black students and 38.70% of Latino students met English Language Arts standards, compared to

22
 23 ³⁵ Lucrecia Santibanez & Cassandra Guarino, *The Effects of Absenteeism on Academic and*
 24 *Social-Emotional Outcomes: Lessons for COVID-19*, PACE (Oct. 2020),
<https://edpolicyinca.org/publications/effects-absenteeism-academic-and-social-emotional-outcomes>.

25 ³⁶ *Id.*

26 ³⁷ Dirk Tillotson, *Oakland's Literacy Crisis, the New Literacy for All Coalition, and How You*
 27 *Can Help*, GREAT SCHOOL VOICES (Jan. 17, 2020),
<https://greatschoolvoices.org/2020/01/oaklands-literacy-crisis-the-new-literacy-for-all-coalition-and-how-you-can-help/>.

1 68.12% of White students and 76.34% of Asian students who met the standards. Only 20.18% of
2 Black students and 27.47% of Latino students met the Math standards, whereas 59.24% of White
3 students and 72.50% Asian students met the standards.³⁸

4 138. Now, “[d]eep into the pandemic, some districts are finding an alarming percentage
5 of students are missing from the virtual classroom — with the worst absentee rates occurring
6 among homeless students, foster youth, English learners, Black students and high school
7 seniors.”³⁹ For instance, LAUSD’s absentee rate was 25.2% for the 2018-2019,⁴⁰ but from March
8 16 to May 22, 2020, over 40% of middle and high school students were absent.⁴¹ Peak
9 participation (the highest participation rate achieved during a given week) showed a marked racial
10 and wealth disparity. Weekly participation peaked at 88% for white middle school students and
11 85% for white high school students, but only at 67% percent for Latinx and Black middle school
12 students, 73% for Latinx high school students, and 71% for Black high school students.⁴² Low-
13 income students’ peak participation rates were 10 to 20 percentage points behind those of
14 students from more affluent families.⁴³ And for English learners, students with disabilities, and
15 students who are experiencing homelessness or in foster care, peak weekly participation was 57%
16 or lower.⁴⁴

17 ³⁸ Cal. Assessment of Student Performance & Progress, *English Language Arts/Literacy and*
18 *Mathematics*, [https://caaspp-
19 elpac.cde.ca.gov/caaspp/DashViewReport?ps=true&lstTestYear=2019&lstTestType=B&lstGroup
20 =1&lstSubGroup=1&lstSchoolType=A&lstGrade=13&lstCounty=00&lstDistrict=00000&lstScho
21 ol=0000000](https://caaspp-elpac.cde.ca.gov/caaspp/DashViewReport?ps=true&lstTestYear=2019&lstTestType=B&lstGroup=1&lstSubGroup=1&lstSchoolType=A&lstGrade=13&lstCounty=00&lstDistrict=00000&lstSchool=0000000) (last visited Nov. 28, 2020).

22 ³⁹ Theresa Harrington, *How some California school districts deal with students absent form*
23 *virtual classrooms*, EDSOURCE (Oct. 16, 2020), [https://edsource.org/2020/how-some-california-
24 school-districts-deal-with-absent-students/641504](https://edsource.org/2020/how-some-california-school-districts-deal-with-absent-students/641504).

25 ⁴⁰ *Student Demographics*, LAUSC, <https://my.lausd.net/opendata/dashboard> (click on
26 “Attendance”) (last visited Nov. 28, 2020).

27 ⁴¹ Megan Besecker, Andrew Thomas, & Glenn Daley, *Student Engagement Online During*
28 *School Facilities Closures: An Analysis of L.A. Unified Secondary Students’ Schoology Activity*
29 *from March 16 to May 22, 2020*, LAUSD (July 2020) at i,
30 [http://laschoolboard.org/sites/default/files/IAU%20Report%202020%200707%20-
31 %20Student%20Engagement%20Online%20During%20Closures.pdf](http://laschoolboard.org/sites/default/files/IAU%20Report%202020%200707%20-%20Student%20Engagement%20Online%20During%20Closures.pdf).

32 ⁴² *Id.* at 7.

33 ⁴³ *Id.* at 8.

34 ⁴⁴ *Id.* at 9-10.

1 139. A similar pattern has occurred in OUSD. Oakland and West Contra Costa’s 2019-
2 2020 absentee rate before COVID-occasioned school was 5% and 6%, respectively. Now, they
3 are about 7% in both districts. And in OUSD, the absentee rates among certain groups are much
4 higher. “Some 21% of homeless students are absent now, compared with 12% this time last year.
5 Foster youth absences are at 15%, compared with 10% last year. It’s 13% for newcomer
6 immigrants, compared with 8% in 2019; while Black student absences are at 10%, compared with
7 7% last year; and 9% of special education students are absent, up from 7%.”⁴⁵

8 140. Likewise, the Center on Reinventing Public Education (“CRPE”) notes:
9 “[e]xperience tells us that low expectations for instruction bode poorly for the students who faced
10 the greatest challenges: those in low income households, those with disabilities, those who speak
11 a language other than English at home.”⁴⁶

12 141. A Public Policy Institute of California report found that “distance learning has
13 widened gaps for children of color, children in low-income families, and children of less-educated
14 parents.”⁴⁷ The study, which used data from the weekly Census Household Pulse Survey, found
15 that:⁴⁸

- 16 • 29% of households do not always have internet available for educational purposes,
17 including 43% of low-income households.
- 18 • Children in low-income and African American families have less frequent live
19 contact with teachers than children overall in the State.

20 142. A study by Policy Analysis for California Education (PACE) found that low-
21 income students and English language learners experienced significantly more learning loss

22 ⁴⁵ Theresa Harrington, *How some California school districts deal with students absent from*
23 *virtual classrooms*, EDSOURCE (Oct. 16, 2020), <https://edsource.org/2020/how-some-california-school-districts-deal-with-absent-students/641504>.

24 ⁴⁶ Betheny Gross & Alice Opalka, *Too Many Schools Leave Learning to Chance During the*
25 *Pandemic*, CRPE (June 10, 2020), <https://www.crpe.org/thelens/too-many-schools-leave-learning-chance-during-pandemic>.

26 ⁴⁷ Nio Gao, Julien Lafortune & Laura Hill, *Who Is Losing Ground with Distance Learning in*
27 *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>.

28 ⁴⁸ *Id.*

1 between fall 2019 to fall 2020 compared to prior years.⁴⁹ In some instances, low-income students
2 digressed while higher-income students' learning accelerated.⁵⁰

3 143. Another study by McKinsey & Company found that learning gap has persisted:
4 students in majority-Black school districts remain five months behind their historical levels in
5 both mathematics and reading, while students in majority-white lost just two months of learning
6 in math and reading over the pandemic.⁵¹ Learning loss during the pandemic widened preexisting
7 achievement gaps: Students in majority-Black districts are now a full year behind their peers in
8 majority-white school districts.

9 144. Because learning is cumulative, students who miss out on critical lessons will
10 remain behind absent intervention. Students who fail to develop reading and math skills are less
11 likely to understand more advanced concepts or to take more advanced classes, which are
12 essential for college preparation among other aspects of learning and life.⁵²

13 145. Many students will be moved from one grade level to the next without fully
14 understanding and recognizing the core concepts and skills that are often prerequisites for the
15 content they will be expected to learn in their new grades.⁵³ Using summer learning loss as a
16 benchmark, one study estimated that, as of fall 2020, students may have entered a new grade with
17 only approximately 70% of the learning gains expected in reading relative to a typical school
18
19
20

21 ⁴⁹ Libby Pier et al., *COVID-19 and the Educational Equity Crisis: Evidence on Learning Loss*
22 *from the Core Data Collaborative*, PACE (2021), <https://edpolicyinca.org/newsroom/covid-19-and-educational-equity-crisis>.

23 ⁵⁰ *Id.*

24 ⁵¹ Emma Dorn et al., *COVID-19 & Education: An emerging K-shaped recovery*, McKinsey &
25 Co. (Dec. 14, 2021), <https://www.mckinsey.com/industries/education/our-insights/covid-19-and-education-an-emerging-k-shaped-recovery>.

26 ⁵² Tyrone C. Howard, *Why Race And Culture Matter In Schools: Closing The Achievement*
27 *Gap In America's Classrooms* 15 (2d. ed. 2010).

28 ⁵³ Tyrone C. Howard, *Educational Equity in the Time of COVID-19*, HOUGHTON MIFFLIN
HARCOURT (Apr. 30, 2020), <https://www.hmhco.com/blog/educational-equity-in-the-time-of-covid-19>.

1 year; and, in mathematics, students may have retained less than 50% of typical learning gains,
2 with some age groups being nearly a full year behind what would be typically expected.⁵⁴

3 146. Under resourced and frequently overwhelmed, schools in low-income
4 communities need investments in personnel and services to become more effective and
5 responsive to community needs.⁵⁵ But experts agree that simply adding funds with no support,
6 targeting or oversight is not enough to improve the academic or developmental outcomes for
7 underserved students.⁵⁶ The issues facing underserved students and their schools have been
8 decades in the making; a one-time infusion of funding will not undo them. Indeed, it is not
9 enough to even hire new staff or pay for new programming on anything other than a temporary
10 basis.

11 147. The California Constitution requires the State to ensure that all children have equal
12 access to a public education system that will teach them the skills they need to succeed as
13 members of the modern society. The Constitution thus forbids the State from providing a public
14 education that falls fundamentally below prevailing statewide standards. The State bears the
15 ultimate authority and responsibility to ensure that its district-based system of common schools
16 provides basic equality of educational opportunity.

17 148. The California Department of Education (“Department”) has acknowledged that
18 K-12 students in the State are constitutionally entitled to free and equal education including with
19 respect to remote learning. The Department specifically stated that “the California Constitution
20 prohibits LEAs from requiring students to purchase devices or internet access, to provide their
21 own devices, or otherwise pay a fee as a condition of accessing required course materials under
22 the free schools guarantee. Additionally, California law requires that all students have access to
23

24 ⁵⁴ Megan Kuhfield & Beth Tarasawa, *The COVID-19 Slide: What Summer Learning Loss Can*
25 *Tell Us About the Potential Impact of School Closures on Student Academic Achievement* (Apr.
2020), https://www.nwea.org/content/uploads/2020/05/Collaborative-Brief_Covid19-Slide-APR20.pdf.

26 ⁵⁵ Joseph P. Bishop & Pedro A. Noguera, *The Ecology of Educational Equity: Implications for*
27 *Policy*, 94 PEABODY J. EDUC. 122, 132-33 (2019).

28 ⁵⁶ *Id.* at 134.

1 standards-aligned textbooks or instructional materials in the core subjects, for use in class and to
2 take home. This standard is grounded in the principle of equal educational opportunity under the
3 California Constitution.”⁵⁷

4 149. The Department also recognized that “[a]lthough many families have the devices
5 and appropriate connectivity in place, the most at-risk children whom LEAs serve may not.”⁵⁸
6 Going further, the Department noted: “[i]n these difficult times, we cannot lose track of the needs
7 of our most disadvantaged students.”⁵⁹ Unfortunately, “los[ing] track of the most disadvantaged
8 students” is exactly what has happened. In responding to the COVID-19 crisis, the State swapped
9 one crisis for another.

10 150. Though the State was well aware of the pre-pandemic academic opportunity gap,
11 the State has nevertheless diverted all responsibility to the LEAs to ensure that at-risk students
12 had the resources to participate meaningfully in remote education. The State, however, has not
13 implemented its own plan or otherwise taken sufficient steps to provide support to the LEAs to
14 ensure that all students—especially those most vulnerable—have access to the resources they
15 need to receive their guaranteed public education. Although the Legislature has passed sections
16 43500, *et seq.* of the Education Code setting standards for LEAs to follow during the pandemic,
17 the State exercised no oversight to ensure that LEAs are implementing them. And though the
18 State has admitted that low-income students and students of color experienced substandard
19 education at best during the remote learning period of the pandemic, it also admits that it has done
20 very little—certainly not enough to make up for its previous and ongoing failures.

21 151. The State also has failed to offer parents a say in plans for delivering remote
22 learning, resuming in-person instruction, or offering compensatory education. Although section
23 43509 of the Education Code requires the governing board of a school district or charter school,
24 as well as the county board of education, to consult with parents and pupils in developing a

26 ⁵⁷ Cal. Dep’t of Educ., *Distance Learning Considerations* (Mar. 17, 2020),
<https://www.cde.ca.gov/ci/cr/dl/dlconsiderations.asp>.

27 ⁵⁸ *Id.*

28 ⁵⁹ *Id.*

1 learning continuity and attendance plan, any such consultation in Plaintiffs’ districts was illusory
2 at best, and non-existent at worst. Cal. Educ. Code. § 43509(b). The State has historically
3 excluded low-income Black and Latinx families from educational decision-making, but the
4 pandemic has made this status quo untenable as “blended and distance learning models . . .
5 require consistent parental engagement in order to succeed.”⁶⁰

6 152. Thus, though the State has an obligation to provide LEAs—who in turn run
7 schools—with adequate resources, it has not fulfilled that obligation. Minimally, the State
8 needed to provide a device to connect, connectivity, instructions for operating hardware and
9 software, and a reasonable means by which parents can actually facilitate and assist instruction.
10 Given the massive scope of remote learning period in previous school years is known and its
11 devastating consequences are apparent, the State needs to come up with a plan to ensure that
12 students have the opportunity to catch up on what they missed. As the Omicron variant causes
13 case numbers to explode, the State also needs to adequately plan in case schools have to operate
14 remotely again in the 2021-2022 school year, or in a future year. The State has failed to meet its
15 constitutional obligations in this regard.

16 153. The State’s learning continuity consultation requirements also fail to include
17 community organizations. This is a grave failure because community organizations spent
18 considerable time and effort troubleshooting remote learning difficulties and filling the
19 educational gaps left by the State’s lack of oversight. Community-based organizations have
20 unparalleled access to students and parents, as well as unequaled insight into the State’s failures
21 with respect to remote learning, the consequences of those failures, and ways to remediate those
22 consequences. But they cannot serve every student, and their efforts do not supplant the State’s
23 constitutional requirements.

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25
26
27 ⁶⁰ Benjamin W. Cottingham, *Fostering Parent Engagement: Removing Barriers to Data*
28 *Accessibility*, PACE 8 (Sept. 2020), https://edpolicyinca.org/sites/default/files/2020-09/pb_cottingham_sep2020.pdf.

1 **V. DESPITE RECOGNIZING STUDENTS’ CONSTITUTIONAL RIGHTS, THE**
2 **STATE HAS FAILED TO TAKE STEPS TO ENSURE A FREE AND EQUAL**
3 **EDUCATION**

4 **A. Lack of State Enforcement and Intervention Mechanism**

5 154. While recognizing the constitutional right of California students to a free
6 education, the State provided little guidance to ensure that the LEAs offered adequate remote
7 learning programs. Instead, the State merely delegated its responsibilities to the LEAs without
8 providing any oversight.

9 155. For example, after recognizing that the “most at-risk children whom LEAs serve
10 may not” have the necessary devices and connectivity, the Department explained that “because
11 state assessments require students to be familiar with working digitally, many LEAs have already
12 developed a framework for incorporating digital materials into every day instructional practice.
13 LEAs should build on that work, including any pre-existing assessment of access to devices and
14 internet connectivity for their students and in the community, as they plan to implement distance
15 learning strategies during the physical closures of schools in response to COVID-19.”⁶¹ As a
16 result of the State leaving the responsibility to individual LEAs and opting for a policy of non-
17 enforcement, at-risk students are falling further behind than they already were pre-pandemic.

18 156. Although the Legislature, through S.B. 98, passed sections 43500, *et seq.* of the
19 Education Code setting standards for LEAs to follow during pandemic learning, there was no
20 State enforcement or intervention mechanism in place to ensure that those standards are actually
21 met by the schools and LEAs.⁶² Predictably, the consequences of this policy of non-enforcement
22 were that the standards were not followed.

23 157. For example, the Education Code required California school districts to:

- 24 • Provide daily minimum duration of instruction (*e.g.*, 180 instructional minutes in
25 kindergarten; 230 instructional minutes in grades 1 to 3; and 240 instructional minutes
26 in grades 4 to 12). Cal. Educ. Code § 43501.

27 ⁶¹ Cal. Dep’t of Educ., *Distance Learning Considerations* (Mar. 17, 2020),
28 <https://www.cde.ca.gov/ci/cr/dl/dlconsiderations.asp>.

⁶² 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](https://www.governing.com/finance/California-Approves-Budget-and-Holds-Schools-Accountable.html).

- 1 • Confirm that all students have “connectivity and devices adequate to participate in the
2 educational program and complete assigned work.” Cal. Educ. Code § 43503(b)(1).
- 3 • Provide remote learning programs that are “aligned to grade level standards that is
4 provided at a level of quality and intellectual challenge substantially equivalent to in-
5 person instruction.” Cal. Educ. Code § 43503(b)(2).
- 6 • Provide “[a]cademic and other supports designed to address the needs of pupils who
7 are not performing at grade level, or need support in other areas, such as English
8 learners, pupils with exceptional needs, pupils in foster care or experiencing
9 homelessness, and pupils requiring mental health supports.” Cal. Educ. Code
10 § 43503(b)(3).
- 11 • Provide “[s]pecial education, related services, and any other services required by a
12 pupil’s individualized education program.” Cal. Educ. Code § 43503(b)(4).
- 13 • Provide “[d]esignated and integrated instruction in English language development
14 . . . , including assessment of English language proficiency, support to access
15 curriculum, the ability to reclassify as fully English proficient, and, as applicable,
16 support for dual language learning.” Cal. Educ. Code § 43503(b)(5).

17 158. The Education Code also temporarily suspended the requirement for California
18 school districts to submit Local Control and Accountability Plans, replacing them with a
19 requirement to adopt a learning continuity and attendance plan describing how the school district
20 would provide continuity of learning and address the impact of COVID-19 on pupils, staff, and
21 the community, including (i) the actions the school district, county office of education, or charter
22 school would take to offer classroom-based instruction whenever possible, particularly for pupils
23 who have experienced significant learning loss due to school closures; and (ii) plans for a distance
24 learning program.

25 159. For example, the statute provided that plans for a distance learning program shall
26 address the following aspects:

- 27 • How the school district, county office of education, or charter school will provide
28 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).

160. Yet critically, there was no requirement that the State Department of Education read, let alone approve, the learning continuity plans that LEAs submitted.⁶³ The CDE admitted that it did not, in fact, review the learning continuity plans. Nor were 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 retained 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 could then “consider” at a public meeting within 15 days— that is, LEAs were not even required to adopt or implement any of those recommendations.⁶⁴

161. There *was* 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 continued 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

162. 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

⁶³ 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.

⁶⁴ *Id.*

1 ensure that students are no longer deprived of their fundamental constitutional right to an
2 education. (**Exhibit A.**)

3 163. Specifically, the letter demanded that the State explain (i) how the resources
4 obtained through cross-sector partnerships and Executive Order N-73-20 have been leveraged
5 thus far to address the Digital Divide in the State, including the process by which counties, LEAs,
6 and/or students in need of such resources are being identified and provided for; (ii) whether there
7 was a plan in place to review the Learning Continuity Plans LEAs submit on September 30, 2020;
8 (iii) whether it was obtaining expert help in reviewing the Learning Continuity Plans and what
9 role experts will play; (iv) whether it had a standard by which the Learning Continuity Plans will
10 be deemed adequate, and on what that standard is based; (v) how the Department intended to
11 enforce LEAs' adherence to their Learning Continuity Plans, and whether and how the
12 Department would intervene should they fail to do so; and (vi) what resources were available to
13 the LEAs that continue to struggle to provide adequate learning resources to students in need.

14 164. The letter also suggested that the State (i) consider launching a uniform, statewide
15 program of cooperative purchasing of computer devices and internet hotspots; (ii) reach out to
16 internet providers regarding a potential plan to connect students at no cost to those in need (*e.g.*,
17 discounted rates for services to be purchased by the State to provide community hot spots where
18 students can access instruction online in a safe environment); and (iii) assess needs for software,
19 professional development for teachers, and other supports required for stable and continuous
20 remote learning for students.

21 165. The State's October 13, 2020 response to the letter failed to address these issues.
22 (**Exhibit B.**) For example, it reiterated that the LEAs "must develop a Learning Continuity and
23 Attendance Plan for the 2020-2021 school year," but still provided no systematic mechanism to
24 ensure that (i) the LEAs' plans conform to any standard; (ii) the LEAs consult parents and
25 community organizations in developing those plans; (iii) the LEAs enforce those plans; and
26 (iv) the LEAs be held accountable for a failure to adequately implement the remote learning
27 programs. The State's response also did not address how the State planned to review the LEAs'
28 plans, whether it obtained expert help in reviewing the plans, or whether it has a standard by

1 which the LEAs’ plans will be deemed adequate. In short, the response confirmed that the State
2 has failed to take steps to address the adverse impacts caused by the inadequate distance learning.

3 166. Although the State pointed to CDPH’s July 17, 2020 K-12 School Reopening
4 Framework and August 25, 2020 Cohort Guidance allowing limited in-person instruction under
5 limited circumstances, the Framework and Guidance still did not address the crisis caused by the
6 inadequate remote learning programs—a crisis that persists months after schools have reopened
7 to in-person learning. The effort taken by the Closing the Digital Divide Taskforce was also
8 unable to keep up with the staggering need for devices and hotspots to access the remote learning
9 programs. The Department’s June 2020 Guidebook for the Safe Reopening of California’s Public
10 Schools again did not address the State’s own plan, *i.e.*, how it would ensure that the schools
11 comply with the Guidebook.

12 **C. The State’s Failure to Remedy Learning Losses and Associated Mental**
13 **Health Issues**

14 167. Due to the State’s failures to ensure equal education, underserved students like
15 Student Plaintiffs have suffered significant learning loss compared to their peers. The State has
16 failed to remediate students’ learning loss and the mental health issues that all too many
17 underserved students have faced in the past year and a half. The one-time grants that the State
18 has provided LEAs fall far short of remedying the harm inflicted over the pandemic.

19 168. The State has engaged in no systematic planning to catch up students who have
20 lost precious months of education due to its failures. Similarly, the State has engaged in no
21 systematic effort to help students overcome the mental health issues caused in part by remote
22 learning and that continue to keep them from learning. The State has not signaled what, if
23 anything, it intends to do to remediate the harms associated with remote learning, which are
24 exacerbated by the state’s ongoing inaction. This is true even as officers charged constitutionally
25 with Californians’ education are aware are aware that many students have received education in
26 name only, if that, for over a year.

1 **VI. THE STATE’S POLICIES OF INACTION HAS TURNED LONGSTANDING**
2 **INEQUITIES INTO AN EDUCATIONAL CRISIS.**

3 169. The State recognizes its constitutional mandate to provide a free and equal
4 education to all California students. Because of its response to the pandemic, the State is further
5 than ever from fulfilling that mandate. Low-income Black and Latinx students have already lost
6 significant ground versus their peers. And it is clear that they did not receive an education that
7 met the minimum standards established by law in California Education Code section 43500 *et*
8 *seq.* The harms resulting from this failure of accountability are still compounding today.

9 170. Despite acknowledging that the most historically disadvantaged populations did
10 not have adequate access to remote learning tools, the State failed to ensure that LEAs implement
11 a plan so that the most underserved students had the resources to meaningfully participate in
12 remote education. As a result of the State’s failure to implement its own enforcement or
13 intervention plan, Plaintiffs were being deprived of their fundamental right to a free and equal
14 education caused by (i) the lack of access to the devices, connectivity, and other digital tools for
15 remote education; (ii) the lack of parent and teacher training to support instruction equivalent to
16 in-person schooling; (iii) inadequate academic and mental health supports, such as tutoring,
17 counseling, wellness programs, and pandemic-safe opportunities to connect with classmates and
18 teachers; and (iv) reduced instructional time.

19 **B. Lack of Access to Remote Learning Programs**

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

- 23 • According to California State Superintendent of Public Instruction Tony Thurmond,
24 up to 1 million students could be lacking either computers or internet access needed to
25 participate in distance learning.⁶⁵
- 26 • “[W]hile most California households (97%) have access to broadband at speeds high
27 enough for some video calls, according to a brief from the Legislative Analyst’s
28 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

⁶⁵ Johnson, *Up to 1 million California students still lack connectivity*, *supra* note 1.

1 are completely unconnected. At least 263,000 households without internet access are
2 located in urban areas and 227,000 unconnected households are in rural areas.”⁶⁶

- 3 • In a survey of 800 parents of children in California public schools from October 1-7,
4 2020, lack of reliable internet access was continuing to be cited as “a top concern
5 among families this fall, with almost half (44%) of parents concerned about whether
6 their family will be able to afford internet access. This issue is particularly common
7 for low-income families (58%), Latinx parents (52%) and those in Los Angeles (54%).
8 Similar to March (67%), two-thirds of parents (66%) say providing free internet access
9 to families during this fall semester would be very helpful for families like theirs, yet
10 only 35% of parents report that their child’s school has made this available for
11 students. Additionally, only 9% report that they receive internet support from their
12 school.”⁶⁷
- 13 • The same survey shows that “Parents of color are much more likely to report that their
14 child is distance learning full-time (82%) compared to white parents (74%), as are
15 low-income parents (83%) relative to higher-income parents (77%).” Indeed, “low-
16 income parents and parents of color are less likely to even have the option of full-time
17 in-person learning: 6% of low-income parents report that their child’s school is
18 offering in-person full-time lessons, while higher income parents report triple the
19 access at 19%. Parents of color have a similar lack of opportunity: only 13% of their
20 schools offer in-person full-time lesson whereas for white families it is 18%.”⁶⁸
- 21 • “[A] substantial number of children still don’t have what they need to fully participate
22 in distance learning. Just over 1 in 10 (11%) say that unreliable internet access is a
23 major challenge, while 31% percent say that it is a minor challenge. Similarly, 11%
24 say inadequate devices is a ‘major challenge,’ compared to 19% who say it is a minor
25 challenge.”⁶⁹
- 26 • “Concerns about adequate devices and unreliable internet access are greatest among
27 low and middle income parents. Over half (54%) of parents with incomes under
28 \$60,000 cite internet access as a problem, compared with 37% of families with
earnings over \$150,000.”⁷⁰
- “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.”⁷¹
- A Los Angeles Times survey of 45 Southern California school districts found
profound differences in distance learning among children attending school districts in

22 ⁶⁶ *Id.*

23 ⁶⁷ The Education Trust West, *California Parent Poll: Fall 2020*,
24 <https://west.edtrust.org/california-parent-poll-october-2020/> (last visited Nov. 28, 2020).

25 ⁶⁸ *Id.*

26 ⁶⁹ Freedberg, *California voters have deep concerns about distance learning*, *supra* note 1.

27 ⁷⁰ *Id.*

28 ⁷¹ 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/>.

1 high poverty communities, like Maria’s in Coachella Valley, and those in more
2 affluent ones, like Cooper’s in Las Virgenes, which serves Calabasas and nearby
areas.⁷²

- 3 • “Districts in the Bay Area have reported sobering numbers: the Oakland Public
4 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,
5 14,000 of San Jose’s 36,000 students lack access to digital resources as well.”⁷³
- 6 • On August 14, 2020, the Governor’s office claimed that “[t]he digital divide remains a
7 barrier to students accessing quality education. Before the pandemic, approximately
one in five students in California lacked high-speed internet or an appropriate
8 computing device at home.”⁷⁴ Yet by February 2, 2021, Secretary Thurmond claimed
9 that as many as 1 million students—still around one in five—lacked access to devices,
despite an influx of funding from the federal government. The Secretary
acknowledged that low-income students and students of color disproportionately could
not participate in remote learning because they lacked of access to technology.

10 172. This “Digital Divide” is even more troubling when data and anecdotal evidence
11 show that remote learning encouraged decreased teacher interaction with students, whether
12 through in-person or real-time learning. In a survey of 834 registered voters, conducted between
13 August 29 and September 7, 2020 by the FM3 Research polling firm, shows that lack of
14 instructional time with teachers was one of parents’ leading concerns, with 74% of respondents
15 identifying it as the biggest challenge.⁷⁵ Some districts have been criticized for not spending
16 more time and resources training teachers on how to better navigate instruction online.⁷⁶

17 173. The organization Parent Institute for Quality Education (PIQE), which trains
18 immigrant parents to help other immigrant parents navigate schools and available resources,

19 _____
20 ⁷² Paloma Esquivel, et al., *A generation left behind? Online learning cheats poor students,*
Times survey finds, LOS ANGELES TIMES (Aug. 13, 2020),
21 [https://www.latimes.com/california/story/2020-08-13/online-learning-fails-low-income-students-](https://www.latimes.com/california/story/2020-08-13/online-learning-fails-low-income-students-covid-19-left-behind-project)
[covid-19-left-behind-project](https://www.latimes.com/california/story/2020-08-13/online-learning-fails-low-income-students-covid-19-left-behind-project).

22 ⁷³ 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-](https://www.timesheraldonline.com/2020/08/03/coronavirus-shutdowns-expose-low-income-students-struggle-to-get-online/)
23 [shut-downs-expose-low-income-students-struggle-to-get-online/](https://www.timesheraldonline.com/2020/08/03/coronavirus-shutdowns-expose-low-income-students-struggle-to-get-online/).

24 ⁷⁴ Press Release, Office of Gavin Newsom, *Ahead of New School Year, California Schools*
Receive Critical Funds to Support Distance Learning and Governor Newsom Signs Executive
25 *Order Directing State Agencies to Bridge Digital Divide* (Aug. 14, 2020),
<https://www.gov.ca.gov/2020/08/14/38666/>.

26 ⁷⁵ Freedberg, *California voters have deep concerns about distance learning*, *supra* note 1.

27 ⁷⁶ Lyanne Melendez, *Bay Area parents, teachers, students weigh in on distance learning*,
supra note 1.
28

1 conducted two statewide surveys of around 1400 parents to understand their experiences with
2 distance learning.⁷⁷ The parents interviewed had committed to PIQE training, so they were
3 particularly committed to helping their children through school and were also able to attend
4 classes, making them somewhat more “advantaged” than the typical low-income parent. The
5 surveys found that a third of parents did not understand the directions given to them for
6 connecting with the online classroom. One in four parents did not know if their students were
7 turning in their homework. Nearly half of parents of ELs reported that their children were not
8 receiving sufficient assistance with instruction. This all suggests that high percentages of
9 students are only tangentially linked to school, if at all.

10 174. Several Student Plaintiffs lacked the devices, connectivity, and/or support needed
11 to access remote learning platforms throughout the remote learning period. When the switch to
12 remote learning began, Megan O.’s and Matilda O.’s school provided their family with computers
13 that did not work, forcing Megan O. and Matilda O. to access classes through their parents’
14 phones. The hotspot that the school eventually provided to their family in fall 2020 did not work,
15 and the household WiFi was too slow to handle the demands of remote learning. Alex R. and
16 Bella R.’s family has a weak WiFi connection at their home because they live under the flight
17 path that leads to LAX, and they also miss class time due to outages of LAUSD’s internet. Cayla
18 J. and Kai J.’s school used a remote learning program that is difficult to access, and their family
19 has been offered no training on it. Matthew E. and Jordan E. had to share a single Chromebook
20 for three weeks, and both of them struggled to access the internet because their schools did not
21 provide them with a hotspot. Isaac I. shared a hotspot that was provided by Joshua I.’s school
22 with his family members because their schools did not offer them hotspots, and even the hotspot
23 that they have was unreliable. Daniel A. received a hotspot from his school, but it was too slow
24 and unreliable to use for remote learning. His mother Sara A. had to pay for her own internet
25

26
27 ⁷⁷ See Community Needs Assessment 2020, PARENT INST. FOR QUALITY EDUC. (Jan. 2021),
28 https://www.piqe.org/wp-content/uploads/2021/01/PIQE2020_CommunityNeedsAssessment_Fall.pdf.

1 service for Daniel A. to use at school because he was being marked absent when his hotspot
2 wouldn't connect.

3 175. Remote learning also forced some families to pay for basic, non-digital school
4 supplies out of pocket. Megan O. and Matilda O.'s school required families to provide basic
5 supplies like paper and printed materials for their children. Maria O. had to pay for these supplies
6 out-of-pocket. While Ellori J.'s kindergarten teachers provided some school supplies to students,
7 Cayla J. and Kai J. received no supplies or materials from their teachers, even though they attend
8 the same school as Ellori J.

9 176. Community organizations stepped in where districts failed to provide students with
10 devices and hotspots. CoCo has distributed at least 240 HP Chromebook 11 computers and 50
11 hotspots to students since the start of the pandemic. CoCo also offered trainings for parents in
12 need of technical support to set up their children's devices and access remote-learning platforms
13 like Schoology and Google Classroom. Additional parent workshops discussed homeschool
14 management, social media monitoring, stress management, and coping with grief and loss. To
15 help students familiarize themselves with remote learning tools, CoCo spent around \$230,000 on
16 summer programming in 2020. This included \$1,000 on training and Zoom accounts for the
17 teachers they hired for the program. This spending did not include money spent on transportation
18 for distributing technology hardware or in person meetings with families. In 2021, CoCo spent
19 almost \$40,000 on laptops and hotspots alone.

20 177. The Oakland REACH also distributes laptops and hotspots and hired family
21 liaisons to help students and parents access virtual classrooms and troubleshoot connectivity
22 issues. When The Oakland REACH created their virtual Hub in spring of 2020, they secured
23 thousands of dollars in donations to help purchase 200 laptops and 60 hotspots to ensure that
24 families had basic access to the connectivity needed for remote learning.

25 **C. Lack of Accountability and Training Necessary to Make Distance Learning**
26 **Effective and Substantially Equivalent to In-Person Instruction**

27 178. Availability of devices and connectivity only scratches the surface. Even students
28 who *were* provided with tablets and WiFi hotspots still struggled to learn under the conditions

1 they face during the pandemic. Students and parents had difficulty accessing virtual learning
2 platforms and the State did nothing to ensure that they had the training and technical support that
3 they needed to log on. Although “surveys conducted in June of California parents revealed that
4 more than 90 percent reported that they had received information from their child’s school on
5 how to access online learning,” “nearly a third of families were unable to understand the
6 instructions.”⁷⁸ In such cases, even the most diligent of teachers could not provide the extra
7 attention necessary for a struggling student as they might in person. Clearly, minimum standards
8 were not met.

9 179. “On the surface, [remote learning] seems to treat rich and poor alike, every public
10 school student seemingly subject to the same pluses and minuses from remote learning. Except
11 that the wealthy can do something about it when their children’s WiFi fails, while the poor often
12 cannot. The wealthy are often able to stay home with their children during the pandemic, while a
13 far higher proportion of the poor work in menial jobs now considered essential, from farmworkers
14 to street cleaners.”⁷⁹

15 180. The State had an obligation to provide remote learning programs that are “aligned
16 to grade level standards that is provided at a level of quality and intellectual challenge
17 substantially equivalent to in-person instruction.” Cal. Educ. Code § 43503(b)(2). But evidence
18 points to disparities in learning for students of color and those from low-income families during
19 school closures. A preliminary report based on surveys of hundreds of districts across the country
20 by American Institutes for Research found that students in high-poverty districts were expected to
21

22 ⁷⁸ Magaly Lavandenz & Elvira Armas, *Schools must work harder to connect culturally with*
23 *English learners during the pandemic*, EDSOURCE (Oct. 9, 2020),
[https://edsource.org/2020/schools-must-work-harder-to-connect-culturally-with-english-learners-](https://edsource.org/2020/schools-must-work-harder-to-connect-culturally-with-english-learners-during-the-pandemic/641070)
24 [during-the-pandemic/641070](https://edsource.org/2020/schools-must-work-harder-to-connect-culturally-with-english-learners-during-the-pandemic/641070).

25 ⁷⁹ Thomas D. Elias, *Virus becomes a major force for inequality*, NAPA VALLEY REGISTER
26 (Aug. 6, 2020), [https://napavalleyregister.com/opinion/columnists/thomas-d-elias-virus-becomes-](https://napavalleyregister.com/opinion/columnists/thomas-d-elias-virus-becomes-a-major-force-for-inequality/article_378ecf60-9e1a-5aec-bc58-186ca2392834.html)
27 [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*
28 Lyanne Melendez, *Bav 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.”).

1 spend less time per day on instructional activities, more likely to use paper packets, and more
2 likely to focus on reviewing content than students in low-poverty districts.⁸⁰

3 181. Now more than ever, increased student interaction with their teachers and trainings
4 for teachers to be remote learning-ready is crucial. The State, however, has not instituted any
5 statewide teacher or parent training programs to ensure adequate and efficient remote teaching,
6 leaving LEAs to offer voluntary teaching programs at most.⁸¹ More training, as well as more
7 accountability, is needed to ensure that the instruction offered to low-income Black and Latinx
8 students is effective and substantially equivalent to in-person instruction. This remains true even
9 as most schools have returned to in-person learning. Especially as the Omicron variant drives
10 case numbers to record highs, no prudent statewide system of education would assume that
11 students will never return to remote learning again, particularly as the pandemic persists and
12 evolves.

13 182. Several Student Plaintiffs have been harmed by ineffective remote instruction and
14 lack of training for teachers and families. When Alex R. and Bella R.'s school switched to
15 remote learning in March 2020, the school did not provide a curriculum for Alex R. and Bella R.
16 to follow. Because Alex R.'s and Bella R.'s teachers' internet did not work reliably, Alex R. and
17 Bella R. only had 30 to 40 minutes of lessons a couple of times each week. From March 2020
18 until June 2020, Alex R. and Bella R. didn't learn anything at school. Despite losing months of
19 learning time, Alex R. and Bella R. were not offered any academic support, such as teacher office
20 hours or summer programs.

21 183. From March 17, 2020 to the end of the school year, Cayla J. and Kai J. had only
22 two online classes and weren't offered asynchronous instruction or other work to make up for the
23 missed class time—no book reports, no packets, no homework. Missing so many months of
24 school has had a lasting effect on Cayla J. and Kai J. In the third grade, they were supposed to be
25

26 ⁸⁰ Esquivel, *A generation left behind*, *supra* note 72.

27 ⁸¹ Jennifer Olney, *San Jose State offers free webinars for teachers to improve K-12 distance*
28 *learning*, ABC 7 EYEWITNESS NEWS (Aug. 6, 2020), <https://abc7news.com/distance-learning-remote-teaching-online-education/6358108/>.

1 doing multiplication and division, but still had trouble with subtraction, which they should have
2 learned in second grade.

3 184. Ellori J. had trouble getting her teacher's attention during remote lessons. When
4 Angela J. raised this issue with Ellori J.'s teacher, the teacher said that she can only see six out of
5 33 first grade students on the screen at a time, and cannot be responsive to the majority of the
6 class. Angela J. thinks that Ellori J. learned in the 2020-2021 school year only because she spent
7 all her time with her older siblings, who are two grades ahead of her, and she still missed out on
8 foundational basics. In addition, Ellori J. experienced feelings of isolation, abandonment, anxiety
9 due to the limited interaction she received from her teachers during remote learning, and the
10 harms she experienced are still ongoing as she is behind academically and in terms of her social
11 skills and social-emotional development.

12 185. Matthew E. is struggling to keep up academically because some of his teachers
13 needed more training on how to engage students over the screen during remote learning. Jordan
14 E. also struggled to keep up academically because his teacher moved very fast through lessons, as
15 if she was trying to fit six hours of learning into only two hours. It was hard for Jordan E. to keep
16 up with the quick transitions to different subject matter. Jordan E.'s teacher tried hard but needed
17 more support and training.

18 186. Natalia T.'s grades fell from As and Bs to Bs and Cs during the pandemic. The
19 pressure of taking AP classes online was very intense, and lessons were watered down compared
20 to what they were before the pandemic.

21 187. Daniel A.'s teachers were often absent without warning, and the substitute teachers
22 do not follow the same lesson plans or procedures as his usual teachers. Substitute teachers also
23 did not take roll, which led to Daniel A. being marked absent even when he attended school.
24 Daniel A. also struggled to pay attention to lessons transmitted over a screen.

25 188. Community organizations have shown that it is possible to provide high-quality,
26 individualized instruction in a virtual environment. CoCo hired teachers and tutors to staff their
27 virtual learning programs during the summer and school year. The Oakland REACH created a
28 virtual learning Hub, through which they provided students with five weeks of high-quality live

1 instruction and support. The Oakland REACH saw remarkable progress among students who
2 participated in the Hub, with students achieving an average of two reading levels over the five
3 weeks. Their expanded efforts in 2021 supported 970 students and 750 parents.

4 **D. Lack of Academic to Assist Struggling Students**

5 189. Individualized attention is a key part of adapting to the remote environment and of
6 remediating the harms caused by inadequate remote learning programs. Educators must
7 determine whether individual students' needs are being met, and to modify instruction and
8 provide supports as necessary to accommodate changing circumstances. California law required
9 LEAs to provide “[a]cademic and other supports designed to address the needs of pupils who are
10 not performing at grade level, or need support in other areas, such as English learners, pupils with
11 exceptional needs, pupils in foster care or experiencing homelessness, and pupils requiring mental
12 health supports.” Cal. Educ. Code § 43503(b)(3). But because the State neither enforced this
13 requirement nor helped LEAs to implement it, students in need of help with academic or social-
14 emotional needs went without support. The harms caused by this period of inattention and
15 neglect have still not been remedied.

16 190. As in so many other areas of education, the State has not ensured that Black and
17 Latinx students from low-income backgrounds have access to academic supports the State has.
18 Without individualized attention, children are more likely to struggle to access online class
19 sessions or to be unable to sign on at all. Even if they can get online, they have no one to go to if
20 they are struggling with academic content.⁸²

21 191. A survey of teachers in the Los Angeles Unified School District (LAUSD)
22 confirmed that marginalized students were not adequately supported during the pandemic.⁸³ Over
23 500 public school teachers from within the LAUSD district boundaries, including teachers at both
24 charter schools and traditional public schools, completed the survey in November-December
25

26 ⁸² Elias, *Virus becomes a major force for inequality*, *supra* note 79.

27 ⁸³ Jaimee Estrada-Miller et al., *Voices from the Virtual Classroom: Los Angeles* (2020),
28 https://e4e.org/sites/default/files/la-teacher_survey_2020_digital_.pdf.

1 2020.⁸⁴ When responding teachers were asked “how serious of an obstacle do you think students’
2 lack of access to technology tools (e.g., computers) has been to the effective implementation of
3 distance learning this school year[,]” 91% thought lack of access to technological tools was a very
4 or somewhat serious barrier, and 90% of teachers said the same for lack of access to high-speed
5 internet.⁸⁵

6 192. Teachers were also asked, “During distance learning this school year, how often
7 would you say your school [Los Angeles Unified School District] is meeting the needs of each of
8 the following?” Teachers overwhelmingly responded that the needs of the most marginalized
9 student populations were not being met, including non-native English speakers, students of color,
10 students from low-income households, students with disabilities, LGBTQ+ students (15%), and
11 homeless students.⁸⁶

12 193. Numerous other reports produced by experts throughout the pandemic put the
13 State on notice of the need to take action in order to ensure basic access to education for all
14 students. The current president of Defendant State Board of Education helped author a report in
15 August of 2020 that detailed the principles that should be taken into account when planning for
16 how to deliver education in light of the pandemic.⁸⁷ This report highlighted the importance of re-
17 opening and re-designing schools to emphasize social emotional supports and trauma-informed
18 services, high quality personalized tutoring, culturally responsive teaching, physical education
19 and the arts.⁸⁸ These essential supports are already readily available to public school students
20

21 ⁸⁴ *Id.* at 4.

22 ⁸⁵ *Id.* at 36.

23 ⁸⁶ *Id.* at 54.

24 ⁸⁷ Linda Darling-Hammond et al., *Restarting and Reinventing School: Learning in the Time of*
25 *COVID and Beyond*, LEARNING POLICY INST. (Aug. 2020), [https://restart-](https://restart-reinvent.learningpolicyinstitute.org/sites/default/files/product-files/Restart_Reinvent_Schools_COVID_REPORT.pdf)
26 [reinvent.learningpolicyinstitute.org/sites/default/files/product-](https://restart-reinvent.learningpolicyinstitute.org/sites/default/files/product-files/Restart_Reinvent_Schools_COVID_REPORT.pdf)
27 [files/Restart_Reinvent_Schools_COVID_REPORT.pdf](https://restart-reinvent.learningpolicyinstitute.org/sites/default/files/product-files/Restart_Reinvent_Schools_COVID_REPORT.pdf); *see also* Linda Darling-Hammond,
28 *Accelerating Learning As We Build Back Better* (Apr. 5, 2021),
[https://www.forbes.com/sites/lindadarlinghammond/2021/04/05/accelerating-learning-as-we-](https://www.forbes.com/sites/lindadarlinghammond/2021/04/05/accelerating-learning-as-we-build-back-better/?sh=93af7546722a)
[build-back-better/?sh=93af7546722a](https://www.forbes.com/sites/lindadarlinghammond/2021/04/05/accelerating-learning-as-we-build-back-better/?sh=93af7546722a).

⁸⁸ *Id.*

1 from higher socio-economic backgrounds, but the students who need them most have been left
2 without.

3 194. Students of color also report having lower levels of attachment to school, making
4 it essential that schools make stronger bonds with students and families a priority in ensuring that
5 students are motivated to engage with their education.⁸⁹

6 195. Several Student Plaintiffs have been harmed by a lack of individual academic
7 supports during the pandemic. Billy T. struggled academically and was failing all of his classes.
8 He had trouble connecting with his teachers, and Hillary T. felt that they did not make themselves
9 available to discuss his individual needs. Billy T. was also having trouble arriving at class on
10 time, and he was marked absent for being late. This would not have happened when school was
11 in-person. Hillary T. had to supervise Billy T.'s learning and redirected him on an hourly basis.
12 Billy T. would have benefitted from one-on-one instruction—Hillary T. effectively served as a
13 one-on-one instructor—but no one at Billy T.'s school has mentioned that as a possibility for him.

14 196. Megan O. needed support to engage with remote learning, and Maria O. found it
15 difficult to provide this support while working within the confines of her family's one-bedroom
16 apartment. Megan O.'s teacher once kicked Megan O. out of a remote lesson because she thought
17 that Megan O. was sleeping. Maria O. had to be with Megan O. all the time when she was online.
18 Megan O. also needed more individual support from a tutor, but the school only provided a few
19 group sessions of English Language tutoring.

20 197. Matilda O. is a bright, self-directed student who wants to be a veterinarian and a
21 dancer. Still, during the remote learning period, she missed out on academic opportunities as well
22 as the social and emotional aspects of school. She did not receive the academic supports she
23 needed during distance learning, and her school was not responsive to her needs. Since returning
24 to in-person instruction, Matilda O. has not had an assessment of her learning or mental health
25 needs and has not had the opportunity to make up for what she missed during remote learning.

26
27 ⁸⁹ Anthony A. Peguero et al., *Social Bonding to School and Educational Inequality: Race/Ethnicity, Dropping Out, and the Significance of Place*, 59 SOCIO. PERSP. 317, 321, 335
28 (2016).

1 198. Despite losing months of learning time, Alex R. and Bella R. were not offered any
2 academic support, such as teacher office hours or summer programs. Kelly R. spent hours a day
3 helping her daughters with school. Bella R. was supposed to have an academic intervention
4 during the 2019-2020 that did not take place until the end of fall 2020, by which time she had lost
5 significant ground academically. In the absence of these supports and connections, Bella R. was
6 unengaged in school and spent her instructional time staring passively at the screen.

7 199. Cayla J. and Kai J. have not been offered academic support from their school to
8 make up for the learning loss associated with having almost no instruction from March to June
9 2020. Missing so many months of school had a lasting effect on Cayla J. and Kai J. In the third
10 grade, for example, they were supposed to be doing multiplication and division, but they were
11 still having trouble with subtraction, which they should have learned in second grade.

12 200. Matthew E. has struggled to keep up academically since the pandemic began.
13 Matthew E. would have benefitted from one-on-one tutoring, particularly in math, but his school
14 did not offer it. Catherine E. tried to find academic tutoring for Matthew E., but his school does
15 not offer them. Jordan E. would also have benefitted from one-on-one tutoring and counseling,
16 but his school does not offer them.

17 201. Joshua I. has an IEP and a one-on-one aide who participated remotely in Joshua
18 I.'s classes. But a remote aide couldn't help redirect Joshua I. back to class when he was not
19 paying attention, or was watching videos instead of class. Sometimes Joshua I. turned off the
20 camera or left the class, and the aide called Susan I. to let her know, but neither the aide nor
21 Joshua I.'s school offered proactive help or solutions to keep Joshua I. engaged. In the 2020-2021
22 school year, Susan I. made several complaints when the one-on-one aide was absent and Joshua I.
23 was not permitted to attend school as a result, causing him to lose out on valuable instructional
24 time that he should have received.

25 **E. Lack of Mental Health Supports That Are Essential for Learning**

26 202. Students rely on relationships and connection, as well as predictability and
27 consistency in the learning environment, in order to thrive in school. All of these were in short
28 supply under remote learning in many schools. Educators and service providers need to find new

1 ways to offer mental health supports. The State has not stepped in to make sure that these
2 supports are being provided.

3 203. Black and Latinx students from low-income families are even more in need of
4 support because of compounding racial and wealth inequities in education and in the pandemic
5 response. These students are more likely to have parents who have lost jobs or income, or who
6 have to risk their lives daily as “essential workers” but are treated as if they are disposable. And
7 even before the pandemic, these students were more likely to be behind in school and in need of
8 social-emotional support due to longstanding neglect and racism. The State has not stepped up to
9 correct these known inequities.

10 204. Structural racism, also termed institutional or systemic racism, refers to social and
11 structural policies that limit social and economic mobility, hinder access to vital resources, and
12 promote disadvantages in living conditions.⁹⁰ These types of policies adversely impact mental
13 and physical health.⁹¹ For adolescents, institutional discrimination can be direct, in the form of
14 the quality of schools and neighborhoods youths can access.⁹² This type of discrimination does
15 not go unnoticed by students of color. If students perceive institutional racial discrimination and
16 believe that institutions are systematically set up as barriers to knowledge, resources, and
17 opportunities, they may consider these obstacles to their success or upward mobility inevitable
18 and insurmountable.⁹³ These psychological outcomes inhibit learning. For Black youth in
19 particular, racial discrimination is associated with traumatic symptoms such as hyper-vigilance
20 about potential acts of racism, diminished self-esteem, symptoms of depression, impaired
21 academic self-concepts, decreased school engagement, and lower academic performance.⁹⁴ These

22 ⁹⁰ Riana Elvs Anderson, Farzana T. Saleem & James P. Hugulev, *Choosing to See the Racial*
23 *Stress that Afflicts our Black Students*, 101 PHI DELTA KAPPAN 20, 21 (2019).

24 ⁹¹ *Id.*

25 ⁹² *Id.*

26 ⁹³ Farzana Saleem & Sharn F. Lambert, *Differential Effects of Racial Socialization Messages*
27 *for African American Adolescents: Personal Versus Institutional Racial Discrimination*, 25 J.
28 CHILD FAM. STUDS. 1385, 1387 (2016).

⁹⁴ Riana Elvs Anderson, Farzana T. Saleem & James P. Hugulev, *Choosing to See the Racial*
Stress that Afflicts our Black Students, 101 PHI DELTA KAPPAN 20, 22 (2019).

1 symptoms result in not just individual difficulties but also population-level challenges, such as
2 academic achievement gaps and a high (and growing) suicide rate among Black children.⁹⁵

3 205. People of color are at greater risk for having experienced four or more types of
4 Adverse Childhood Experiences.⁹⁶ Nearly one in four children experience a traumatic stressor
5 before adulthood, but the prevalence of such exposure is higher among youth with lower
6 socioeconomic status and youth of color, with African American and Latinx youth reporting the
7 highest exposure.⁹⁷ Given that students who experience two or more ACEs are roughly three
8 times more likely to repeat a grade,⁹⁸ it is critical for schools to focus on mental and social
9 emotional health for all students as a matter of basic access to education. Adding to the
10 imperative for a whole school trauma-informed approach to education is the fact that students
11 who have experienced trauma are vulnerable to negative consequences when school staff are
12 inadequately trained to recognize and respond to signs of trauma.⁹⁹

13 206. When the needs of students who have experienced trauma are not met, disruptive
14 behaviors are frequently met with harsh disciplinary policies that result in suspensions,
15 expulsions, and school pushout. As a result, the school-to-prison pipeline disproportionately
16 affects certain groups of students, including those who experience poverty, those who experience

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20 ⁹⁵ *Id.*

21 ⁹⁶ Ctr. for Disease Control & Prevention, *Preventing Adverse Childhood Experiences* (Apr. 3,
22 2020),
23 https://www.cdc.gov/violenceprevention/aces/fastfact.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Facestudy%2Ffastfact.html.

24 ⁹⁷ Farzana T. Saleem, Riana E. Anderson & Monnica Williams, *Addressing the “Myth” of Racial Trauma: Developmental & Ecological Considerations for Youth of Color*, 23 *Clin. Child Fam. Psych. Rev.* 1 (2020).

25 ⁹⁸ *The Burke Found.*, *Adverse Childhood Experiences (ACEs)*,
26 <https://burkefoundation.org/what-drives-us/adversechildhood-experiences-aces/> (last visited Mar. 18, 2021).

27 ⁹⁹ Stacy Dutil, *Dismantling the School-to-Prison Pipeline: Trauma-Informed, Critical Race*
28 *Perspective on School Discipline*, 42 *CHILD. & SCH.* 171, 171 (2020).

1 trauma, and students of color.¹⁰⁰ Black students are 3.5 times more likely to be suspended or
2 expelled than their peers.¹⁰¹

3 207. School is the primary source of mental health services for young people in this
4 country. Studies have found that nearly 60% of all adolescents who used any mental health
5 services received some school-based mental health services.¹⁰² Reliance on school systems for
6 mental health services is particularly common for children who are from a low-income
7 household, and children who are from a racial or ethnic minority group.¹⁰³

8 208. California's provision of mental health support and mental health personnel in the
9 state's school system was woefully inadequate prior to the pandemic. In 2018–2019, California
10 schools employed 10,426 school counselors, 6,329 school psychologists, 885 school social
11 workers, and 2,720 school nurses.¹⁰⁴ On average, California's public schools had one counselor
12 for every 626 students, one school psychologist for every 1,041 students, and one school social
13 worker for every 7,308 students.¹⁰⁵ The recommended ratio of school-based mental health
14 professionals to students is one for every 250-500 students.¹⁰⁶ As a result, few California students
15 were able to access the mental health supports they needed prior to the pandemic, let alone
16 afterwards when schools went remote and mental health needs across the community increased
17 dramatically.

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20 ¹⁰⁰ Christopher A. Mallett, *The School-to-Prison Pipeline: Disproportionate Impact on*
Vulnerable Children and Adolescents, 49 EDUC. & URB. SOC'Y 563, 571 (2017).

21 ¹⁰¹ *Id.* at 573.

22 ¹⁰² Ezra Goldberstein, Hefei Wen & Benjamin F. Miller, *Corona Virus Disease 2019*
(COVID-19) and Mental Health for Children and Adolescents, 174 JAMA PEDIATRICS 819, 819
23 (2020).

24 ¹⁰³ Mir M. Ali et al., *Utilization of Mental Health Services in Educational Setting by*
Adolescents in the United States, 89 J. OF SCH. HEALTH 393, 399 (2019).

25 ¹⁰⁴ Mental Health Servs. Oversight & Accountability Comm'n, *Every Young Heart And Mind:*
Schools As Centers Of Wellness 36 (Oct. 7, 2020),
26 https://www.mhsoac.ca.gov/sites/default/files/schools_as_centers_of_wellness_final.pdf.

27 ¹⁰⁵ *Id.*

28 ¹⁰⁶ *Id.*

1 209. When the pandemic closed schools, the young people and families who relied on
2 schools to provide essential mental health services were in many cases left without any support.
3 Lack of access to mental health care affects students' brain development, physical wellbeing, and
4 academic achievement, making access to these services an essential component of access to
5 education.¹⁰⁷

6 210. Studies and reports from teachers, families, and doctors show that COVID-19 and
7 the resulting changes to the provision of education have had a significant impact on the mental
8 health and well-being of students and families. Alarming, the rates of emergency room visits
9 for self-injury, suicidal thinking, and anxiety have all gone up significantly during the COVID-19
10 pandemic.¹⁰⁸ From mid-March 2020 to October 2020, the proportion of mental health-related
11 emergency department visits increased 24% among children 5-11 years old and 31% among
12 adolescents 12-17 years old as compared to the same period in 2019.¹⁰⁹ Youth seeking care in
13 emergency departments during the pandemic also presented an increased risk of suicide as
14 compared to the previous year.¹¹⁰ Parents of Black and Latinx students consistently report higher
15 levels of concern for their children's mental health during the pandemic.¹¹¹ Learning loss during
16 the pandemic widened preexisting achievement gaps: Students in majority-Black districts are now
17 a full year behind their peers in majority-white school districts.

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21 ¹⁰⁷ Nadine Burke Harris, *Children will pay long-term stress-related costs of COVID-19 unless*
we follow the science, STAT (Aug. 4, 2020), [https://www.statnews.com/2020/08/04/children-](https://www.statnews.com/2020/08/04/children-long-term-stress-related-costs-covid-19/)
[long-term-stress-related-costs-covid-19/](https://www.statnews.com/2020/08/04/children-long-term-stress-related-costs-covid-19/).

22 ¹⁰⁸ David Leonhardt, *No Way to Grow Up*, N.Y. TIMES (Jan. 4, 2022),
23 <https://www.nytimes.com/2022/01/04/briefing/american-children-crisis-pandemic.html>.

24 ¹⁰⁹ Rebecca T. Leeb et al., *Mental Health-Related Emergency Department Visits Among*
Children Aged <18 Years During the COVID-19 Pandemic – United States, January 1-October
17, 2020, 69 MORBIDITY & MORTALITY WKLY. REP. 1675, 1679 (2020).

25 ¹¹⁰ Ryan M. Hill et al., *Suicide Ideation and Attempts in a Pediatric Emergency Department*
Before and During COVID-19, 147 PEDIATRICS 1, 5 (2021).

26 ¹¹¹ Emma Dorn et al., *COVID-19 & Education: An emerging K-shaped recovery*, McKinsey
27 & Co. (Dec. 14, 2021), [https://www.mckinsey.com/industries/education/our-insights/covid-19-](https://www.mckinsey.com/industries/education/our-insights/covid-19-and-education-an-emerging-k-shaped-recovery)
[and-education-an-emerging-k-shaped-recovery](https://www.mckinsey.com/industries/education/our-insights/covid-19-and-education-an-emerging-k-shaped-recovery).

1 211. Mental health is intergenerational, and the stressors that impact families have an
2 effect of their children and vice versa.¹¹² As a result, the mental health risks for students who have
3 a family member that suffers from depression, lost a job due to COVID-19, or has had COVID-19
4 themselves can be extremely serious.¹¹³ California Surgeon General Nadine Burke Harris
5 admitted as much when she wrote that “[d]ecades of studies tell us that the kind of trauma and
6 stress many children are experiencing during the COVID-19 emergency has the potential to
7 embed itself in children’s DNA, dramatically affecting their brains and other critical body
8 systems[.]”¹¹⁴

9 212. Research has also demonstrated that that low-income students of color from
10 marginalized communities are far more likely to come from families that have most acutely felt
11 the economic and health impacts of COVID-19, putting the ability of these children to access
12 education on an equal playing field with their peers at risk. According to Surgeon General Burke
13 Harris, failure to adequately address mental health challenges will cause far more educational
14 harm for students who were living in poverty before the pandemic and for students of color, who
15 are facing “the twin public health crises of COVID-19 and racism.”¹¹⁵ She predicted that failures
16 to address COVID-19 related stress will lead to millions more children experiencing negative
17 mental and physical health outcomes, such as developmental delays and mental illness, as well as
18 sustained decreases in academic achievement.¹¹⁶

19 213. Several Student Plaintiffs have been harmed by a lack of mental health supports
20 during the pandemic, which impaired their ability to access the meager education they were
21 offered during that period.

23 ¹¹² Mathew G. Biel, et al., *Pediatric Mental Health Care Must Be Family Mental Health*
24 *Care*, 174 JAMA PEDIATRICS 519, 519 (2020).

25 ¹¹³ Nadine Burke Harris, *Children will pay long-term stress-related costs of COVID-19 unless*
26 *we follow the science*, STAT (Aug. 4, 2020), <https://www.statnews.com/2020/08/04/children-long-term-stress-related-costs-covid-19/>.

27 ¹¹⁴ *Id.*

28 ¹¹⁵ *Id.*

¹¹⁶ *Id.*

1 214. Megan O. needed more socialization through school, but her school did not
2 provide any opportunities or outreach that could help meet Megan O.’s social and emotional
3 needs.

4 215. Alex R. and Bella R.’s mental health suffered because of remote learning but their
5 school offered no social-emotional resources. The school did not stepped in to provide pandemic-
6 safe opportunities for connecting with classmates and teachers, nor did they offer counseling or
7 health and wellness programs.

8 216. Matthew E. has experienced mental health challenges throughout the pandemic.
9 Catherine E. tried to find mental health supports for Matthew E., but his school does not offer
10 them. Jordan E. would also have benefitted from counseling, but his school does not offer it.

11 217. Community organizations have shown that it is possible to provide academic and
12 mental health supports to students who are struggling during the pandemic. CoCo has college
13 representatives that provide support to high school seniors once a week—support they are not
14 receiving at school. Their team also created weekly wellness programming and daily one-on-one
15 wellness support to help students work through stress and other mental health challenges. The
16 Oakland REACH’s virtual learning hub includes a Family Sustainability Center that provides
17 parents with holistic supports such as socio-economic and academic workshops and resources.

18 **F. Failure to Meet Minimum Instructional Times**

19 218. Although California Education Code section 43501 set daily minimum duration
20 requirements for instructional time, the CDE has taken the position that such minimums were
21 inclusive of “synchronous and/or asynchronous instruction.”¹¹⁷ “Asynchronous instruction” is
22 defined as learning that “occurs without direct, simultaneous interaction of participants such as
23 videos featuring direct instruction of new content that students watch on their own time,” *i.e.*
24 prerecorded multimedia.¹¹⁸

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27 ¹¹⁷ 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).

28 ¹¹⁸ *Id.*

1 219. As a result, the duration of live teaching varied wildly among schools, even those
2 in the same district. Among the 20 largest California school districts reviewed, “eight require
3 between 2 and 2.5 hours of live instruction in the elementary grades. Five don’t set any minimum
4 amount across the district, and the remaining districts’ minimum and maximum amounts cover a
5 wide range,” from 1 to 4 hours per day.¹¹⁹ “There is also variation among middle and high
6 schools, both across the [S]tate and within districts, largely depending on the variance among
7 school schedules. For example, several districts require 30 minutes of live instruction with a
8 teacher for each class period of the day, others require teachers to be on-camera the entire period,
9 and several don’t specify.”¹²⁰

10 220. Despite the best efforts of many talented teachers, this is vastly inadequate,
11 particularly because the State offered no compulsory training to teachers to ensure adequate and
12 efficient remote teaching, leaving LEAs to offer voluntary teaching programs at most.¹²¹ As
13 explained above, lack of instructional time with teachers was one of parents’ leading concerns,
14 with 74% of respondents identifying it as the biggest challenge.¹²² “55% of parents want more
15 real-time instruction for their child — especially as less than a third of parents (31%) report that
16 their child receives four or more hours of real-time instruction during the school day.”¹²³

17 221. The amount of live instruction offered to students learning remotely varied by
18 income level. One study found that only 32% of low-income districts emphasized live remote
19 instruction, compared to 53% of higher-income districts.¹²⁴ As a result, the amount of live

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21 ¹¹⁹ Sydney Johnson, *Length of live teaching varies in California even in the same grade level*
22 *and same district*, EDSOURCE (Oct. 22, 2020), <https://edsource.org/2020/students-in-same-grade-in-california-get-wide-range-of-live-teacher-instruction/641588>.

23 ¹²⁰ *Id.*

24 ¹²¹ Jennifer Olney, *San Jose State offers free webinars for teachers to improve K-12 distance*
25 *learning*, ABC 7 EYEWITNESS NEWS (Aug. 6, 2020), <https://abc7news.com/distance-learning-remote-teaching-online-education/6358108/>.

26 ¹²² Freedberg, *California voters have deep concerns about distance learning*, *supra* note 1.

27 ¹²³ The Education Trust West, *California Parent Poll*, *supra* note 67.

28 ¹²⁴ Niu Gaoet et al., *Who Is Losing Ground With Distance Learning In California?* (2020),
<https://www.ppic.org/wp-content/uploads/who-is-losing-ground-with-distance-learning-in-california-october-2020.pdf>

1 instruction time that students have varied significantly among students of different races and
2 income levels. Children from high-income families received one more hour of live instruction
3 per week than children in low-income families.¹²⁵ Almost 40% of Black students received no live
4 instruction at all.¹²⁶

5 222. Attendance suffered during remote learning. An analysis of 30 Californian school
6 districts representing more than 330,000 students found that rates of chronic absenteeism have
7 more than doubled since the pandemic started.¹²⁷ Reports of chronic absenteeism more than
8 doubled during the pandemic by a factor of 2.7, with low-income students being 1.6 times more
9 likely to be missing multiple days of schools than their high-income peers.¹²⁸ In another survey
10 of over 5,500 school teachers, the majority of teachers said less than half of their students were
11 attending remote classes, while 34% of teachers reported that only 1 in 4 were attending remote
12 classes.¹²⁹ As a result of inadequate internet access and ineffective teaching, many students were
13 effectively shut out and disengaged from virtual learning.

14 223. The decrease in live teaching, coupled with districts' failure to spend more time
15 and resources training teachers on how to better navigate instruction online, caused significant
16 learning losses on students during the pandemic.¹³⁰ These losses still have not been remedied.

17 224. Several Student Plaintiffs have not had minimum instructional times met in their
18 remote classes. Between March 17, 2020 and the end of the 2019-2020 school year, Cayla J. and
19 Kai J.'s teacher held class only twice. When Angela J. reached out to the teacher to ask why class
20 wasn't meeting, she responded that because some of the students in the class were not connected

21 ¹²⁵ *Id.*

22 ¹²⁶ *Id.*

23 ¹²⁷ Emma Dorn et al., *COVID-19 & Education: An emerging K-shaped recovery*, McKinsey
24 & Co. (Dec. 14, 2021), [https://www.mckinsey.com/industries/education/our-insights/covid-19-
and-education-an-emerging-k-shaped-recovery](https://www.mckinsey.com/industries/education/our-insights/covid-19-and-education-an-emerging-k-shaped-recovery).

25 ¹²⁸ *Id.*

26 ¹²⁹ Covid-19 Survey: Teachers Say Less than Half of Students Attending their Remote
27 Classes, FISHBOWL (April 13, 2020), [https://www.fishbowlapp.com/insights/2020/04/13/covide-
19-survey-teachers-say-less-than-half-of-students-attending-their-remote-classes/](https://www.fishbowlapp.com/insights/2020/04/13/covide-19-survey-teachers-say-less-than-half-of-students-attending-their-remote-classes/).

28 ¹³⁰ Lyanne Melendez, *Bay Area parents, teachers, students weigh in on distance learning*,
supra note 1.

1 to remote learning, classes were cancelled for all students. In fall 2020, a typical school day for
2 Cayla J. and Kai J. began with a 45-minute video class session, followed by several hours of
3 learning on their own according to a checklist that their teacher provides. Later in the day, Cayla
4 J. and Kai J. participated in a 30-minute small group session with their classmates. Other than
5 those brief sessions, they were on their own for the rest of the day.

6 225. Isaac I.'s school offered three remote classes each day plus an advisory period.
7 The classes were supposed to last 70 minutes each, except for advisory, which is 30 minutes. But
8 the school didn't stick to the schedule, and Isaac I.'s classes often lasted for only 30 minutes or
9 less. One day, there was no advisory period, and Isaac I. finished all three of his classes by 11:30
10 a.m., having started at 9:00 a.m.

11 226. Matthew E.'s class had virtual learning sessions from 9:30 a.m. to 1:20 p.m. each
12 weekday except Wednesdays, when they went from 9:30 a.m. to only 12:00 p.m. Daniel A.'s
13 schedule had him learning from 9:00 a.m. to 2:00 p.m., but a lot of that time was offline or
14 breaks. The class was also frequently let out early. Daniel A.'s school offered some tutoring, but
15 he needed more to make up for the learning time he has lost.

16 227. To make up for the loss of instructional time students experienced last spring,
17 community organizations offered summer school programs. CoCo's summer program provided
18 support for students with reading, math, and extracurriculars. The Oakland REACH's City-Wide
19 Virtual Hub stepped up to fill this gap for 200 students over summer of 2020 with hours of
20 academic programming each week. For the students who were able to participate in them, these
21 summer programs helped to make up for months of learning loss due to the State's inadequate
22 response to the pandemic. In summer of 2021, The Oakland REACH expanded their
23 programming to serve 970 students and 750 parents in OUSD.

24 228. Community organizations also stepped up during the pandemic to offer school-
25 year educational opportunities that enrich and extend students' instructional time beyond the
26 State's insufficient school day. CoCo offers after-school programming, including extracurriculars
27 and academic tutoring. In 2020, he Oakland REACH operated Phase 2 of the Hub every Monday
28 to Thursday afternoon to make up for what students miss in their regular school day. In 2021,

1 their Hub programming supported 970 students and 750 parents, and continues to help make up
2 for learning loss during the pandemic.

3 **VII. THE LACK OF ACCESS TO EQUAL EDUCATION HAS DIRE AND FAR-
4 REACHING EFFECTS.**

5 229. **Educational Opportunity:** In the current pandemic learning environment, and
6 particularly given what underserved students have lost since March 2020, resources such as
7 connectivity and individualized academic and mental health supports are crucial to obtaining even
8 the most basic level of education. Yet, months after remote learning became our reality,
9 thousands of the most vulnerable children in the state continue to go without basic necessities or
10 without the remedial support that they need to make up for what they have lost.¹³¹ And without
11 access to basic levels of education, students cannot read, write, or comprehend state-mandated
12 material at state-mandated levels. Learning is cumulative, and without serious and sustained
13 intervention by the State, students cannot hope to catch up on the basics they have missed.

14 230. **Participation in Democratic Citizenship:** Among other things, participation in
15 democratic citizenship includes the ability to exercise free speech rights, vote, serve in the
16 military, serve on juries, and access the justice system.

17 231. Education allows citizens to exercise their right to engage in political speech and
18 public discourse regarding the important civil and political issues of the day. Without basic skills,
19 citizens cannot engage in knowledgeable and informed voting for the candidates of their choice,
20 much less read and comprehend the complicated ballot initiatives on California ballots.

21 232. Joining the armed services requires applicants to pass a multiple-choice test
22 administered on a wide range of subjects, including word knowledge and paragraph
23 comprehension. Without basic education, an individual is effectively precluded from serving our
24 country in the military.

25 ¹³¹ Johnson, *Up to 1 million California students still lack connectivity*, *supra* note 1; Elias,
26 *Virus becomes a major force for inequality*, *supra* note 79; Lyanne Melendez, *Bay Area parents,*
27 *teachers, students weigh in on distance learning*, *supra* note 1; Esquivel, *A generation left behind*,
28 *supra* note 72; Freedberg, *California voters have deep concerns about distance learning*, *supra*
note 1; The Education Trust West, *California Parent Poll*, *supra* note 67.

1 233. Likewise, lack of education precludes meaningful participation in the judicial
2 process, including serving as a member of a jury. Without basic education skills, citizens who are
3 serving on juries cannot comprehend documentary evidence presented to them.¹³²

4 234. **Economic Self-Sufficiency**: People who have been denied access to education
5 often experience significant barriers to securing economic self-sufficiency. They may be
6 unqualified for jobs or unable to read and fill out job applications. Individuals who cannot
7 financially support themselves due to lack of education often cannot complete the written
8 application forms necessary to obtain government entitlements such as Medi-Cal, Covered
9 California, Social Security Disability Insurance, or General Assistance/General Relief benefits.

10 235. **Long-Term Impact**: The learning losses of underserved students during the
11 pandemic will have long-term effects on the labor force and California’s economic well-being,
12 according to experts. Covid-related learning loss of just one-third of a school year is estimated to
13 cause a 3.0% decrease in lifetime individual income, while losing a full school year is associated
14 with a 9.1% decrease in lifetime income.¹³³ These individual numbers correspond to a 1.5%
15 lower GDP for the rest of the century for a one-third year learning loss, and 4.3% lower GDP for
16 a one-year learning loss.¹³⁴ These estimates “should be thought of as the lower bound of the
17 impact of learning losses” and would be greater for students from low-income or otherwise
18 disadvantaged households.¹³⁵

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24 ¹³² See Goodwin Liu, *Education, Equality, and National Citizenship*, 116 Yale L.J. 330, 345
25 (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.”).

26 ¹³³ Eric A. Hanushek & Ludger Woessman, *The Economic Impacts of Learning Losses*,
27 OECD 9 (Sept. 2020), <https://www.oecd.org/education/The-economic-impacts-of-coronavirus-covid-19-learning-losses.pdf>.

28 ¹³⁴ *Id.* at 9-10.

¹³⁵ *Id.* at 8.

1 CAUSES OF ACTION

2 FIRST CAUSE OF ACTION: RACIAL DISCRIMINATION IN VIOLATION OF THE
3 EQUAL PROTECTION CLAUSES OF THE CALIFORNIA CONSTITUTION
4 (Student Plaintiffs Against All Defendants)

5 236. Plaintiffs incorporate by reference the allegations set forth above as if fully stated
6 herein.

7 237. The California Constitution’s equal protection clause prohibits the State from
8 adopting policies or taking other actions that disproportionately impact minority students with
9 respect to educational opportunities. *See* Cal. Const., art. I, § 7; *id.* art. IV, § 16; *Butt*, 4 Cal. 4th
10 at 685.

11 238. A racial disparate impact “claim is stated when [1] a policy adopted in California
12 has a substantial disparate impact on the minority children of its schools, causing de facto
13 segregation of the schools and [2] an appreciable impact to a district’s educational quality, and
14 [3] no action is taken to correct that policy when its impacts are identified.” *Collins v. Thurmond*,
15 4 Cal. App. 5th 879, 896-97 (2019).

16 239. This *de facto* segregation causes “an appreciable impact to a district’s educational
17 quality,” because minority students are without sufficient access to the resources or instruction
18 necessary to take part in distance learning. *See id.*

19 240. Here, Student Plaintiffs, all of whom are minority students, are directly and
20 disproportionately impacted by the State’s COVID-19 response to education, and are receiving an
21 inadequate education, compared to their peers. Indeed, Student Plaintiffs lacked access to
22 computers and the internet connections necessary to access their online classes and assignments,
23 leading to a “substantial disparate impact” on them. *Id.* at 896. In addition to the Digital Divide,
24 Student Plaintiffs were also disproportionately affected by decreased instructional time,
25 ineffective remote instruction due to lack of training and accountability, and a lack of academic
26 and mental health supports.

27 241. This disparate impact causes appreciable damage to Student Plaintiffs. The
28 “Digital Divide” that afflicts Black and Latinx students made remote learning even less effective

1 as Student Plaintiffs struggled to login to, and participate with, the school district’s remote
2 learning program.

3 242. Plaintiffs were not able to remedy these problems independently, because they did
4 not have the financial means to pay for outside instruction, assessments, or counseling, pay for
5 adequate technology, or transfer to an out-of-district school to escape the Digital Divide. Now
6 that schools have returned to in-person learning, the State has still failed to ensure that Plaintiffs
7 have access to the assessments, supports, and other resources that the need to catch up from the
8 remote learning period. Because education is cumulative, these harms will compound until the
9 State intervenes.

10 243. Therefore, the State’s COVID-19 response to education has a disparate impact on
11 minority students, including Student Plaintiffs, negatively affecting their schooling
12 disproportionately to other students, resulting in *de facto* segregation, in violation of the
13 California Constitution.

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

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

19 245. Plaintiffs incorporate by reference the allegations set forth above as if fully stated
20 herein.

21 246. The California Constitution’s equal protection clause prohibits California, and its
22 subordinate school districts, from discriminating on the basis of wealth in a manner that deprives
23 students of a “basically equivalent” quality of education. *See* Cal. Const., art. I, § 7; *id.* art. IV, §
24 16; *Butt*, 4 Cal. 4th at 685.

25 247. A government actor discriminates on the basis of wealth if it does so explicitly, or
26 if, “regardless of how [it is] implemented,” it “inevitably cause[s]” students “to be provided with
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1 an education that is not ‘basically equivalent to’ their . . . peers” in other parts of the State. *See*
2 *Vergara v. State*, 246 Cal. App. 4th 619, 649 (2016).

3 248. A child’s education is not “basically equivalent” in quality when “the actual
4 quality of the [school’s] program, viewed as a whole, falls fundamentally below prevailing
5 statewide standards.” *Collins*, 41 Cal. App. 5th at 898 (quoting *Butt*, 4 Cal. 4th at 686-87).

6 249. The State’s inadequate response to the COVID-19 pandemic affects Black and
7 Latinx students from low-income backgrounds more severely than more affluent, White students,
8 thus depriving the former of their fundamental right to an education.

9 250. The State’s response to the pandemic will “inevitably cause” Student Plaintiffs “to
10 be provided with an education that is not ‘basically equivalent to’ their more affluent . . . peers.”
11 *Vergara*, 26 Cal. App. 4th at 649. Specifically, low-income students were less likely to attend
12 schools that offered adequate technology and connectivity, that remedied missed instructional
13 time with tutoring and enrichment, that provided academic or mental health supports during
14 remote learning, that trained teachers to provide effective remote instruction, and that were held
15 accountable whenever they failed to provide these basic elements of education.

16 251. Now that schools have returned to in-person learning, the State has still failed to
17 ensure that Plaintiffs have access to the assessments, supports, and other resources that the need
18 to catch up from the remote learning period. Because education is cumulative, these harms will
19 compound until the State intervenes.

20 252. By failing to provide Student Plaintiffs with sufficient access to remote instruction,
21 “the actual quality” of the education of Student Plaintiffs and those similarly situated “viewed as
22 a whole, [will] fall[] fundamentally below prevailing statewide standards.” *Collins*, 41 Cal. App.
23 5th at 898 (quoting *Butt*, 4 Cal. 4th at 686-87).

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

27 253. Plaintiffs incorporate by reference the allegations set forth above as if fully stated
28 herein.

1 254. Article I section 7(b) of the California Constitution states that “[a] citizen or class
2 of citizens may not be granted privileges or immunities not granted on the same terms to all
3 citizens.” Cal. Const., art. I § 7(b).

4 255. The State of California has established the content standards and other
5 commitments of care and services to elementary and high school students, defining the education
6 to which students are entitled. Elementary and high school students are entitled to receive “basic
7 educational equality.” See *Butt*, 4 Cal. 4th at 679 & n.9. This commitment is among the
8 privileges and immunities that may not be granted to some citizens, but not provided on the same
9 terms to all citizens.

10 256. Now that schools have returned to in-person learning, the State has still failed to
11 ensure that Plaintiffs have access to the assessments, supports, and other resources that the need
12 to catch up from the remote learning period. Because education is cumulative, these harms will
13 compound until the State intervenes.

14 257. Defendants have violated the rights of Student Plaintiffs to receive privileges and
15 immunities on the same terms as all other citizens by failing to ensure that basic educational
16 equality and opportunity was provided to Student Plaintiffs.

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

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

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

27 260. This system of common schools requires that there be a “public education system
28 open on equal terms to all.” *Butt*, 4 Cal. 4th at 680. These constitutional provisions also impose

1 on Defendants the duty to provide Student Plaintiffs an education that will teach them the skills
2 they need to succeed as productive members of modern society, and to cover all expenses for
3 resources and activities constituting an “integral fundamental part of the elementary and
4 secondary education” or which amount to “necessary elements of any school’s activity.”
5 *Hartzell*, 35 Cal. 3d at 905 (citation omitted).

6 261. The statewide system of education over which the State presided during the remote
7 learning period was not open to all. It did not provide Black and Latinx students from low-
8 income families with the devices and connectivity that they needed to access school as it was
9 being offered at that time. It did not provide these students with the academic and mental health
10 supports that they needed in order to learn.

11 262. Now that schools have returned to in-person learning, the State has still failed to
12 ensure that Plaintiffs have access to the assessments, supports, and other resources that the need
13 to participate in school. Because education is cumulative, these harms will compound until the
14 State intervenes.

15 263. Defendants have failed to provide an equal system open to Student Plaintiffs on
16 equal terms to higher-income students and non-minority students. Defendants also have failed to
17 provide an education that will teach Student Plaintiffs the skills they need to succeed as
18 productive members of society by providing them with limited instructional time and limited
19 access to their teachers. The State has failed to remedy these issues now that schools are largely
20 open for in-person learning.

21 **FIFTH CAUSE OF ACTION: VIOLATION OF EDUCATION CODE 43500**

22 **(All Plaintiffs Against All Defendants)**

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

25 265. While the statute was in effect, Defendants had a duty to ensure that California
26 students receive an education that conforms to the minimal standards set forth in California
27 Education Code section 43500 *et seq.* Specifically, Defendants were required to ensure that
28 LEAs:

- 1 • Provide daily minimum duration of instruction (*e.g.*, 180 instructional minutes in
2 kindergarten; 230 instructional minutes in grades 1 to 3; and 240 instructional
3 minutes in grades 4 to 12). Cal. Educ. Code § 43501.
- 4 • Confirm that all students have “connectivity and devices adequate to participate in
5 the educational program and complete assigned work.” Cal. Educ. Code §
6 43503(b)(1).
- 7 • Provide remote learning programs that are “aligned to grade level standards that is
8 provided at a level of quality and intellectual challenge substantially equivalent to
9 in-person instruction.” Cal. Educ. Code § 43503(b)(2).
- 10 • Provide “[a]cademic and other supports designed to address the needs of pupils
11 who are not performing at grade level, or need support in other areas, such as
12 English learners, pupils with exceptional needs, pupils in foster care or
13 experiencing homelessness, and pupils requiring mental health supports.” Cal.
14 Educ. Code § 43503(b)(3).
- 15 • Consult with parents and pupils in developing a learning continuity and attendance
16 plan. Cal. Educ. Code. § 43509(b).

17 Defendants’ failure to enforce these provisions of the Education Code caused Plaintiffs
18 significant harms that have not been remedied. Plaintiffs seek injunctive relief that would
19 compensate them for the State’s failure to enforce the statute’s basic standards for remote
20 education.

21 **SIXTH CAUSE OF ACTION: DECLARATORY RELIEF**

22 **(All Plaintiffs Against All Defendants)**

23 266. An actual and existing controversy exists between the Plaintiffs and Defendants
24 because Plaintiffs contend, and Defendants dispute, that Defendants’ actions and inactions as
25 described above have violated Article I, section 7(a) and Article IV, section 16(a) of the
26 California Constitution; Article I, section 7(b) of the California Constitution; Article IX, sections
27 1 and 5 of the California Constitution; and California Education Code section 43500 *et. seq.*
28

1 267. Plaintiffs seek a judicial declaration that Defendants have violated these
2 constitutional and statutory provisions.

3 268. Plaintiffs are harmed by Defendants’ failure to comply with all applicable
4 provisions of law and their legal duties, as set forth herein.

5 **SEVENTH CAUSE OF ACTION: TAXPAYER CLAIM**

6 **(Community Coalition and The Oakland REACH Against All Defendants)**

7 269. Plaintiffs Community Coalition and The Oakland REACH and their members have
8 been assessed and found liable to pay taxes such as property, income, payroll, and other taxes in
9 the counties in which they reside and to the State of California and the United States of America
10 in the last year.

11 270. Defendants’ expenditure of federal, state, county, and/or municipal funds to
12 administer and implement a system of public education that engages in unconstitutional
13 discrimination, as challenged herein, is unlawful. Plaintiffs Community Coalition and The
14 Oakland REACH, as state taxpayers, have an interest in enjoining the unlawful expenditure of tax
15 funds. Pursuant to California Civil Procedure Code section 526a and this Court’s equitable
16 power, Plaintiffs Community Coalition and The Oakland REACH seek declaratory and injunctive
17 relief to prevent continued harm and to protect Community Coalition, The Oakland REACH, and
18 the public from Defendants’ unlawful policies, practices, and deliberate indifference, as alleged
19 herein. The taxpayer claim is based on the State’s illegal expenditure of funds to administer an
20 education system that engages in both racial and wealth discrimination, and that fails to provide
21 equal access to a basic education in violation of the state constitution.

22 271. There is an actual controversy between Plaintiffs Community Coalition, The
23 Oakland REACH, and Defendants concerning their respective rights and duties, in that Plaintiffs
24 Community Coalition and The Oakland REACH contend that the Defendants have unlawfully
25 administered and implemented the State’s system of public education, and have failed to satisfy
26 their duty to act to correct deficiencies, as alleged herein, whereas Defendants contend in all
27 respects to the contrary. Defendants’ unlawful administration and implementation of the State’s
28 system of public education, including their policies of non-enforcement of statewide standards,

1 has caused Community Coalition and The Oakland REACH to diverted significant resources
2 towards correcting the system’s deficiencies. Plaintiffs Community Coalition and The Oakland
3 REACH seek a judicial declaration of the rights and duties of the respective parties with respect
4 to the instant matter.

5 272. Unless and until Defendants’ unlawful policies and practices, as alleged herein, are
6 enjoined by order of this Court, they will continue to cause great and irreparable injury to
7 Plaintiffs Community Coalition and The Oakland REACH, and other taxpayers.

8 273. Plaintiffs Community Coalition and The Oakland REACH argue that Defendants’
9 actions and inactions as described above violate the Article I, section 7(a); Article IV, section
10 16(a) of the California Constitution; Article I, section 7(b) of the California Constitution; Article
11 IX, sections 1 and 5 of the California Constitution; and California Education Code sections 43500
12 *et. seq.*

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs hereby demand a jury trial in this action to the extent the claims are so triable.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray this Court to enter judgment against all Defendants:

17 274. Enjoining Defendants from further depriving Plaintiffs of their constitutional rights
18 as set forth herein and further violating their right under the Government Code;

19 275. Declaratory relief that Defendants have violated Article I, section 7(a); Article IV,
20 section 16(a) of the California Constitution; Article I, section 7(b) of the California Constitution;
21 Article IX, sections 1 and 5 of the California Constitution; and California Education Code section
22 43500 *et. seq.*, by failing to ensure that:

- 23 • students had the devices, connectivity, and adaptive technologies necessary for remote
24 learning;
- 25 • schools met minimum instructional times during the remote learning period;
- 26 • academic and mental health supports are available to students, including supports and
27 services for students experiencing homelessness and supports and services designed to
28 remediate the harms caused by inadequate distance learning programs;

- 1 • parents and teachers receive the training they need to help students recover
- 2 academically from harms caused by inadequate distance learning programs;
- 3 • community organizations’ reach is expanded and expertise is consulted in decision-
- 4 making about remediating learning loss and other harms caused by the State’s failure
- 5 to ensure access to a basic education during the remote learning period, and ensuring
- 6 equal access to education for all students; and
- 7 • parents are consulted, empowered and meaningfully included in decision-making
- 8 about remediating learning loss and other harms caused by the State’s failure to ensure
- 9 access to a basic education during the remote learning period, and ensuring equal
- 10 access to education for all students.

11 276. Individualized assessments, academic and mental health supports, delivered with
12 meaningful participation from low-income, Black and Latinx families, and community
13 organizations that serve low-income, Black and Latinx communities, including The Oakland
14 REACH and Community Coalition;

15 277. State- and LEA-level planning about remediating learning loss and other harms
16 caused by the State’s failure to ensure access to a basic education during the remote learning
17 period, and ensuring equal access to education for all students, developed with meaningful
18 participation from low-income, Black and Latinx families, and community organizations that
19 serve low-income, Black and Latinx communities, including The Oakland REACH and
20 Community Coalition;

21 278. Compensatory education to remediate the learning losses Student Plaintiffs have
22 sustained as a result of inadequate remote learning, implemented with meaningful participation
23 from low-income, Black and Latinx families, and community organizations that serve low-
24 income, Black and Latinx communities, including The Oakland REACH and Community
25 Coalition;

26 279. Equal access to educational opportunities for all California students, implemented
27 with meaningful participation from low-income, Black and Latinx families, and community
28

1 organizations that serve low-income, Black and Latinx communities, including The Oakland
2 REACH and Community Coalition;

3 280. For the payment of reasonable attorneys' fees and costs of suit incurred herein,
4 including pre- and post-judgment interest at the legal rate; and

5 281. For such other and further relief as the Court may deem appropriate.

6 Dated: February 9, 2022

PUBLIC COUNSEL

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8
9 By: /s/ Mark Rosenbaum
10 MARK ROSENBAUM
11 Attorney for Plaintiffs

12 By: /s/ Jesselyn Friley
13 JESSELYN FRILEY
14 Attorney for Plaintiffs

15 MORRISON & FOERSTER LLP

16
17 By: /s/ Michael A. Jacobs
18 MICHAEL A. JACOBS
19 Attorney for Plaintiffs

20 By: /s/ Shaelyn K. Dawson
21 SHAELYN K. DAWSON
22 Attorney for Plaintiffs
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PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 755 Page Mill Road, Palo Alto, CA 94304. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on February 9, 2022, I served a copy of:

AMENDED AND SUPPLEMENTAL COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

BY ONE LEGAL SERVICES: I caused the above document(s) to be electronically served on the interested parties identified by using One Legal Services, and electronically served the listed document(s) upon the attorney(s) of record for each party in this case at the email address(es) registered for such service through One Legal Services.

| | |
|---|----------------------------------|
| Jennifer Bunshoft Samona Taylor Emmanuelle Soichet Kirin Gill Office of the Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Jennifer.Bunshoft@doj.ca.gov Samona.Taylor@doj.ca.gov Emmanuelle.Soichet@doj.ca.gov Kirin.Gill@doj.ca.gov | <i>Attorneys for Defendants</i> |
| David M. Huff Marley S. Fox ORBACH HUFF & HENDERSON LLP 1901 Avenue of the Stars, Suite 575 Los Angeles, California 90067-6007 Telephone: (310) 788-9200 Facsimile: (310) 788-9210 dhuff@ohhlegal.com mfox@ohhlegal.com | <i>Attorneys for Intervenors</i> |

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

Executed at Hayward, California, this 9th day of February, 2022.

Frances Sagapolu

(type)



(signature)