

JUL 30 2015

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8
9 KERN COUNTY SUPERIOR COURT
CIVIL DIVISION

10 ARLENE SANDERS, RUBY WATSON,
PATRICIA CRAWFORD, KESCHEL
11 COLLINGS, KATINA FRANKS, LINDA REED,
MARIO RAMIREZ, JUAN MORAN, VIRGINIA
12 MELCHOR, CATHERINE ROBLES,
13 MARBELLA OJEDA, MARIA GALLARDO,
ISIDRO LARRALDE, ROBERT ROBLES,
14 GABRIEL ELDER, CARMEN RAMIREZ,
TYSON REED, LORI DE LEON, DOLORES
15 HUERTA FOUNDATION, THE NATIONAL
BROTHERHOOD ASSOCIATION, and FAITH
16 IN ACTION KERN COUNTY,

Case No. S-1500-CV-283224-NFT

**SECOND AMENDED AND
SUPPLEMENTAL COMPLAINT AND
PETITION FOR WRIT OF MANDATE**

Date Action Filed: 10/9/2014
Trial Date: TBD

17 Petitioners/Plaintiffs,

vs.

18 KERN HIGH SCHOOL DISTRICT, BOARD OF
TRUSTEES OF KHSD, CHAD VEGAS, MIKE
19 WILLIAMS, BRYAN BATEY, JEFF FLORES
and PHILIP PETERS, in their official capacity as
20 members of KERN HIGH SCHOOL DISTRICT
BOARD OF TRUSTEES, BRYON SCHAEFER,
21 in his capacity as Superintendent of the KERN
HIGH SCHOOL DISTRICT, KERN COUNTY
22 OFFICE OF EDUCATION, CHRISTINE
LIZARDI FRAZIER, in her capacity as Kern
23 County Superintendent of Schools, the STATE OF
CALIFORNIA, TOM TORLAKSON, in his
24 capacity as STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION and the CALIFORNIA
25 DEPARTMENT OF EDUCATION,

26
27 _____ /
28 Respondents/Defendants.

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32 Brotherhood Association, and Faith in Action Kern County

1 disparities are in part the result of intentional discrimination, implicit bias, implicit associations,
2 stereotype threat, racial anxiety, the effects of in-group preferences, and the use of negative
3 stereotypes.

4
5 3. After KHSD was subjected to public scrutiny and criticism regarding the
6 discriminatory impact of its policies and practices, KHSD failed to report expulsion and
7 suspension information for 2011-12 in a manner that was disaggregated by race/ethnicity and
8 nature of offense, although required to do so by California law. Educ. Code §§ 48900.8,
9 48916.1. KHSD then reported a dramatic reduction in the number of expulsions, reporting 256
10 expulsions in 2012-13 and 80 expulsions in 2013-14. These reductions did not appear to reflect
11 any change in the disparate effect of KHSD's expulsion policies, and in 2012-13, the last year for
12 which disaggregated data is available, 56.6 % of Latino students were expelled (compared to
13 60.5% in 2009-10), 21.9% of African-American students were expelled (compared to 14.5% in
14 2009-10), and 17.9% of the White student population was expelled (compared to 22.7% in 2009-
15 2010). Moreover, the number of African-American and Latino students disproportionately
16 enrolled in alternative schools saw no significant decrease. 10.4% of African-American and 4%
17 of Latino students enrolled in the District were assigned to KHSD operated alternative schools in
18 2013-14. This does not include the number or percentages of KHSD students who were
19 involuntarily assigned to alternative schools operated by the Kern County Office of Education
20 ("KERN COE") because that data is not publicly reported. Plaintiffs/Petitioners are informed
21 and believe it also does not include students who are characterized as "voluntary transfers" who
22 had no option but to accept a voluntary transfer or assignment to independent study if they
23 wanted to be enrolled in school. Nonetheless, available data shows that African-American and
24 Latino students in KHSD are still more likely to be pushed out of their schools and into inferior
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1 educational environments that reduce the likelihood of their academic success and subsequent
2 post-graduation opportunities.

3 4. The discipline and involuntary transfer policies of KHSD have resulted in a
4 pattern that has been nationally studied and described as the “School-to-Prison Pipeline” –
5 characterized as the use of educational policies and practices that have the effect of pushing
6 students, especially students of color and students with disabilities, out of schools and into the
7 juvenile and criminal justice system. Education research has shown that punitive school
8 discipline policies are more harmful towards vulnerable student populations than they are
9 effective in correcting student misbehavior. The disproportionate discipline of African-
10 American and Latino students has contributed to a racially hostile educational environment for
11 these students. Students who receive harsh discipline and are transferred out of a general school
12 setting are also more likely to dropout, less likely to graduate on time –if at all – and are less
13 likely to attend or complete college or post-high school vocational training. This affects their
14 overall ability to succeed in life and is more accurately described as the “School-to-Nowhere”
15 pipeline, because while most students from alternative schools do not end up in jail, they end up
16 unemployed, underemployed, and in the lowest paying jobs. Student Plaintiffs/Petitioners in this
17 action are African-American or Latino students who have similarly suffered long-term negative
18 effects of discipline and/or involuntary transfers. Plaintiffs/Petitioners are informed and believe
19 that other African-American and Latino students in KHSD including students and students
20 whose parents are members of the Dolores Huerta Foundation, Faith in Action, Kern County and
21 the National Brotherhood Association, have suffered and continue to suffer similarly. The
22 KHSD Defendants have a pattern and practice of systematically discriminating against
23 Plaintiffs/Petitioners in the administration of the discipline, suspension, expulsion, truancy, and
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1 involuntary transfer and alternative school assignment of students, and these violations continue
2 to the present day.

3 5. KHSD Defendants have created and maintained a racially hostile educational
4 environment. This racially hostile educational environment at KHSD schools adversely affects
5 Latino and African-American students and their parents. Students and parents report that
6 administrators, teachers, and staff use racial slurs or negative language regarding race, ethnicity,
7 or national origin towards African-American and Latino students.
8

9 6. KHSD staff uses unnecessarily punitive measures when dealing with behavior
10 issues, and impose suspensions, expulsions and involuntary transfers rather than alternatives
11 such as Positive Behavioral Interventions and Supports (“PBIS”), restorative justice, or effective
12 classroom management skills. Plaintiffs/Petitioners are informed and believe that punitive
13 behavior measures are disproportionately imposed on Latino and African-American students
14 when compared to White students. KHSD teachers and staff rely on school security and police
15 officers to respond to non-threatening student behavior rather than address these behaviors in the
16 classroom. Moreover, many schools that the District claims have implemented PBIS or
17 restorative justice programs have failed to institute these programs school-wide in a manner
18 consistent with effective research-based methods of implementation. Rather, training for such
19 programs is administered in a cursory fashion, without proper or adequate implementation or
20 monitoring measures. This lack of effective training in alternative discipline has allowed the
21 racially hostile environment against African-American and Latino students to continue.
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24 7. KHSD Defendants maintain a racially hostile educational environment by failing
25 to properly identify, assess, and accommodate students with disabilities. Defendants also fail to
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1 identify and counsel students who experience emotional difficulties as a result of trauma in their
2 families or neighborhoods.

3 8. KHSD and KERN COE Defendants/Respondents disproportionately fail to
4 identify the Latino and African-American children with these problems and fail to provide them
5 with the appropriate counseling or therapy when compared to services and supports provided to
6 White students. Defendants discipline these students instead. KHSD has had notice of the
7 racially hostile educational environment at their schools and have failed to correct the problem.
8

9 9. The racially hostile educational environment at KHSD schools has caused Tyson
10 Reed, Antonio Moran (son of MELCHOR and MORAN), other plaintiffs and other students and
11 their parents to experience emotional problems, such as anxiety, depression, feelings of
12 powerlessness, school avoidance, anger, and withdrawal.
13

14 10. Contemporary social science indicates that the cognitive abilities of many Latino and
15 African-American students who attend school in a racially hostile educational environment are
16 impaired, resulting in unequal educational opportunities.
17

18 11. The State of California and KERN COE each bear responsibility under state and
19 federal law to ensure that KHSD acts in accordance with various state and federal obligations
20 regarding the education of students enrolled in KHSD, but have failed to take any effective
21 action to require that KHSD develop and implement discipline and involuntary school
22 assignment plans that ameliorate the rampant racial and ethnic disparities in the District.
23

24 12. The California Constitution has recognized education as a fundamental right and
25 mandates that all children in California have equal access to a public education system. The
26 State of California, through its education policy, has recognized that education is essential to
27 preserving an individual's opportunity to compete successfully in the marketplace, despite a
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1 disadvantaged background. Equal access to an education will ensure that students are taught the
2 skills needed to be successful and productive members of society. Expulsion and involuntary
3 assignment out of a general school setting and into alternative schools is a denial of equal access
4 to education because alternative schools are not designed to provide the rigorous educational
5 programs necessary to graduate, much less enroll in college.
6

7 13. Plaintiffs/Petitioners are African-American and Latino students and parents of
8 students, as well as community members and community organizations, who have suffered the
9 impacts of these detrimental suspension, expulsion, and involuntary school assignment policies,
10 along with racially hostile educational environment, and fought to bring equity to the KHSD
11 system, without success. They seek judicial intervention from the court to ensure that KHSD
12 and the other Defendants/Respondents take all steps necessary to eliminate the racially and
13 ethnically discriminatory policies and practices that are depriving students of color an equal
14 educational opportunity in Kern County.
15

16 PARTIES

17 PLAINTIFFS/PETITIONERS

18 14. Plaintiffs/Petitioners ARLENE SANDERS, RUBY WATSON, PATRICIA
19 CRAWFORD, KESCHEL COLLINS, KATINA FRANKS, and LINDA REED are African-
20 American parents who reside within the boundaries of KHSD. They are the parents of current or
21 former KHSD students who were subjected to suspension, expulsion or involuntary transfer out
22 of their general attendance area schools and assigned to continuation schools, community
23 schools and/or independent study by KHSD, and who experienced the racially hostile
24 educational environment of KHSD schools to which they were involuntarily assigned. Their
25 reassignments were based on the application of KHSD policies that have driven disproportionate
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1 suspensions, expulsions and/or involuntary transfers of African-American and Latino students to
2 alternative schools, when compared to White students. The KHSD and KERN COE alternative
3 schools they attended had and continue to have substandard education, including fewer courses
4 necessary to enroll in college, fewer courses necessary to graduate without being enrolled an
5 additional semester or year, inferior extracurricular activities, and inferior building facilities and
6 educational materials, among other deficiencies.
7

8 15. Plaintiff/Petitioner TYSON REED is an African-American who is a current
9 student of KHSD. He was subjected to suspensions, and potential expulsion, by KHSD. He also
10 experienced a racially hostile environment at KHSD, which negatively affected his emotional
11 state.
12

13 16. Plaintiffs/Petitioners MARIO RAMIREZ, JUAN MORAN, VIRGINIA
14 MELCHOR, CATHERINE ROBLES, MARBELLA OJEDA, and MARIA GALLARDO are
15 Latino parents who reside within the boundaries of KHSD. They are the parents of current or
16 former KHSD students, who were subjected to suspensions, expulsion or involuntary transfer out
17 of their general attendance area school and assigned to continuation schools, community schools
18 and/or independent study by KHSD, and who experienced the racially hostile educational
19 environment of KHSD. Their reassignments were based on the application of KHSD policies
20 that have driven disproportionate suspension, expulsion and/or involuntary transfers of Latino
21 and African-American students to alternative schools, when compared to white students. KERN
22 COE and KHSD students in alternative schools sometimes receive only one day of instruction
23 per week. These alternative schools provide substandard education, including fewer courses
24 necessary to enroll in college, fewer courses necessary to graduate without being enrolled an
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1 additional semester or year, inferior extracurricular activities, and inferior building facilities and
2 educational materials, among other deficiencies.

3 17. Plaintiffs/Petitioners ISIDRO LARRALDE, GABRIEL ELDER, ROBERT
4 ROBLES, and CARMEN RAMIREZ are Latinos who are current or former students of KHSD
5 who were each subjected to suspensions, expulsion or involuntary transfer out of their general
6 attendance area school and assigned to continuation schools, community schools and/or
7 independent study by KHSD. Their reassignments were based on the application of KHSD
8 policies that have driven disproportionate suspension, expulsion and/or involuntary transfers of
9 African-American and Latino students to alternative schools. Carmen Ramirez was subjected to
10 racial hostility when she and other Latino students were reprimanded for speaking Spanish.
11 Carmen's teacher at Nueva Continuation School, operated by Defendant KHSD, observed her
12 speaking Spanish with her classmates and said: "This is America. We don't speak Spanish
13 here."
14 here."

15
16 18. Plaintiff/Petitioner LORI DE LEON is a resident and taxpayer of Kern County, in
17 the State of California. Within the last year, Ms. de Leon has been assessed for, and is liable to
18 pay taxes in the county in which she resides, and is also liable to pay income taxes to the State of
19 California and the United States of America. Within a year before the commencement of this
20 action, De Leon was assessed for, and paid taxes in the county in which she resides, and to the
21 State of California and the United States. De Leon also has filed a state and federal tax return
22 during the past year demonstrating payment of those taxes.
23

24 19. Plaintiff/Petitioner DOLORES HUERTA FOUNDATION ("DHF") is a non-
25 profit membership organization whose mission includes pursuing social justice through systemic
26 and structural transformation and advocating for systemic change to ensure academic success for
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1 all students. Some of its members are parents of students or students who reside in KHSD who
2 have been subjected to or may in the future be subjected to disciplinary action, involuntary
3 transfer to KHSD or KERN COE alternative schools, a racially hostile educational environment,
4 and the other racially and ethnically biased practices alleged herein.
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6 20. One of DHF's current primary focuses is to address the high incidence of
7 suspensions, expulsions, involuntary transfers and high dropout rates of African-American and
8 Latino students in KHSD, to create equity in access to education in KHSD, and to reform
9 disciplinary practices in KHSD to reduce the discriminatory impact against Latino and African-
10 American students. DHF has expended funds and resources in furtherance of this work and has
11 participated in multiple meetings with the District to specifically address their concerns about the
12 high incidence of suspensions, expulsions and dropout of Latino and African-American students
13 in KHSD, but their concerns have largely been ignored by Defendants/Respondents.
14

15 21. Since early 2014, DHF has partnered with the Kern Education Justice
16 Collaborative ("KEJC") to engage KHSD on its discipline issues in a number of ways. DHF has
17 attended KHSD Board of Trustee meetings, met with Board members, held several meetings
18 with the Superintendent of KHSD and other staff members, visited local high school sites and
19 attended a meeting with CHRISTINE LIZARDI FRAZIER, Kern County Superintendent of
20 Schools. DHF has suggested changes to KHSD's Local Control and Accountability Plan
21 ("LCAP") regarding its discipline policies and offered numerous suggestions about possible
22 programs that would improve school discipline, increase parent engagement, and better serve
23 English Learner students, low-income students, and foster students. DHF is committed to
24 remedying the racially hostile educational environment at KHSD that results in the over
25 punishment and educational deprivation of African-American and Latino students. Despite its
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1 best efforts to initiate concrete steps to reduce student suspensions, expulsions, and involuntary
2 transfers of students, KHSD and the other Defendants/Respondents have largely ignored its
3 requests.

4 22. DHF brings this action in its interest and in the interests of its affected
5 members. The Defendants'/Respondents' inadequate and inequitable system of discipline,
6 involuntary transfers, and the other racially and ethnically biased practices alleged herein
7 adversely affect DHF and its members' interests. DHF can also bring this suit on its members'
8 behalf because DHF members would otherwise be entitled to bring this suit in their own right,
9 the interests that DHF seeks to protect in this litigation are germane to its purpose, and neither
10 the claims asserted nor the relief sought here are unique to DHF members and therefore do not
11 require the participation of each DHF member.
12

13 23. Plaintiff/Petitioner THE NATIONAL BROTHERHOOD ASSOCIATION
14 ("NBA") is a community based non-profit organization that works with parents and students who
15 reside in Kern County and/or attend schools within KHSD. A major component of NBA's
16 mission is to focus on youth violence prevention and gang intervention and to provide support
17 for African-American youth in the community in an effort to keep them in school and out of the
18 prison system. The NBA runs several youth development programs for students within the
19 KHSD, including afterschool programs, recreational football leagues, Cease Fire/Bakersfield
20 Safe Street Partners and restorative justice programs. As a result of this work, the NBA has
21 responded to calls from KHSD schools to help deescalate youth conflict and potential violence
22 on the part of students. The NBA also helps train former and current KHSD students to serve as
23 "street workers" to help assist in carrying out NBA's mission of providing constructive spaces
24 for African-American youth to have dialogue, express themselves, and come together so that
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1 they can maintain positive support structures and encourage school retention and personal
2 development. Many of the African-American residents of Bakersfield served by the NBA are
3 illiterate despite having attended school at KHSD or KERN COE. NBA is committed to
4 remedying the racially hostile educational environment at KHSD that results in the over
5 punishment and educational deprivation of African-American students.
6

7 24. The NBA's members are very concerned about the large disparities in discipline
8 carried out against students of color, as well as the educational and achievement opportunities
9 and school climate afforded low income students, English learners and/or students in foster care
10 who are enrolled or reside in the KHSD. They know that over and disparate disciplining can
11 cause the youth they work with to feel defeated, unappreciated, and less inclined to stay in
12 school, which can lead them to be involved in counter-productive activities when forced out of
13 school. The NBA has participated in multiple meetings with the District to specifically address
14 their concerns about the high incidence of suspensions, expulsions, and dropout of African-
15 American and Latino students in KHSD, but their concerns have largely been ignored by
16 Defendants/Respondents.
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18 25. NBA brings this action in its interest and in the interest of its affected
19 members. The Defendants'/Respondents' inadequate and inequitable system of discipline
20 adversely affects NBA and its members' interests in remaining in school and out of the criminal
21 justice system and/or gangs. NBA members would otherwise be entitled to bring this suit in
22 their own right, the interests that NBA seeks to protect in this litigation are germane to its
23 purpose, and neither the claims asserted nor the relief sought here are unique to NBA members
24 and therefore do not require the participation of each NBA member.
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1 26. Plaintiff/Petitioner FAITH IN ACTION KERN COUNTY (“FIAKC”) is a multi-
2 faith, non-partisan, non-profit organization that works with faith communities, pastors, and
3 parishioners. FIAKC is a network of faith communities in Kern County committed to improving
4 the quality of life for families in the county. FIAKC’s work in South Kern County, and in areas
5 in East and South Bakersfield, led it to work with Kern County parents and youth and faith
6 leaders who are greatly concerned about the educational climate and educational opportunities
7 available to them. FIAKC membership consists of parents, students, and organizers who help
8 facilitate local action and parental involvement in the reformation of KHSD school policies and
9 procedures that impact their students. Many of these members are students, or parents of
10 students, who presently attend KHSD schools and have been subjected to or may in the future be
11 subjected to disciplinary action, involuntary transfer to KHSD or KERN COE alternative
12 schools, a racially hostile educational environment, and the other racially and ethnically biased
13 practices alleged herein. Other FIAKC members previously attended KHSD schools, but were
14 pushed out through its discipline policies. Parents and youth have expressed great alarm over
15 both the punitive nature of discipline at their high school, and the large disparities in such
16 discipline among youth of color. Several FIAKC members are Bakersfield clergy whose church
17 members are students in KHSD who have been suspended and expelled or are facing potential
18 suspension and expulsion. Some members are former KHSD students who were recently
19 expelled and forced to attend other school districts. Still other members are personnel,
20 counselors, and teachers who work within KHSD and are also concerned about the disparate
21 discipline of students of color.

22 27. The Defendants’/Respondents’ inadequate and inequitable system of discipline,
23 involuntary transfer, and the other racially and ethnically biased practices alleged herein
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1 adversely affect FIAKC and its members' interests. In addition, parents have expressed concern
2 over the educational and achievement opportunities and school climate afforded low income
3 students, English learners and students in foster care who are enrolled in KHSD. Since early
4 2014, FIAKC has partnered with the Kern Education Justice Collaborative ("KEJC") to engage
5 KHSD on its discipline issues in a number of ways. FIAKC has attended KHSD Board of
6 Trustee meetings, met with Board members, held several meetings with the Superintendent of
7 KHSD and other staff members, visited local high school sites and attended a meeting with
8 CHRISTINE LIZARDI FRAZIER, Kern County Superintendent of Schools. FIAKC has
9 suggested changes to KHSD's Local Control and Accountability Plan ("LCAP") regarding its
10 discipline policies and offered numerous suggestions about possible programs that would
11 improve school discipline, increase parent engagement, and better serve English Learner
12 students, low-income students, and foster students. FIAKC is committed to remedying the
13 racially hostile educational environment at KHSD that results in the over punishment and
14 educational deprivation of African-American and Latino students. Despite its best efforts to
15 initiate concrete steps to reduce student suspensions, expulsions, and involuntary transfers of
16 students, KHSD and the other Defendants/Respondents have largely ignored its requests.
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20 28. FIAKC brings this action in its interests and in the interests of its affected
21 members. The Defendants'/Respondents' inadequate and inequitable system of discipline
22 adversely affects FIAKC and its members' interests. FIAKC members would otherwise be
23 entitled to bring this suit in their own right, the interests that FIAKC seeks to protect in this
24 litigation are germane to its purpose, and neither the claims asserted nor the relief sought here are
25 unique to FIAKC members and therefore do not require the participation of each FIAKC
26 member.
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1 **DEFENDANTS/RESPONDENTS**

2 29. Defendant/Respondent KERN HIGH SCHOOL DISTRICT (KHSD) is and at all
3 times mentioned herein was, a local education agency and a school district duly organized and
4 existing under the laws of the State of California. The District is charged with providing a public
5 education and education related services to all high school aged children within its district
6 boundaries. KHSD is, and at all times mentioned herein was, a local agency as that term is
7 defined in 22 California Code of Regulations § 98010 and receives state financial assistance
8 from the State of California and is funded directly by the State of California to provide
9 educational services to children who reside and/or are enrolled in public schools within its
10 boundaries. Additionally, KHSD receives, and at all times mentioned herein has received,
11 federal financial assistance and/or sub-grants of federal financial assistance from the State of
12 California to provide educational services to children who reside and/or are enrolled in public
13 schools within its boundaries. The United States Department of Education’s Office of Civil
14 Rights (OCR) has developed rules and regulations that apply to the school districts, including
15 KHSD, that receive federal funding and provide clear guidance for how to identify and correct a
16 racially hostile educational environment (see, Racial Incidents and Harassment Against Students
17 at Educational Institutions 59 Fed. Reg. 11448 (March 10, 1994)); and provided express
18 guidelines to KHSD on methods to eliminate disproportionate suspensions and expulsion of
19 students of color in the October 21, 2014 “Dear Colleague” letter.
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23 30. Defendants/Respondents BOARD OF TRUSTEES OF KHSD (“BOARD OF
24 TRUSTEES”) and CHAD VEGAS, MIKE WILLIAMS, BRYAN BATEY, JEFF FLORES and
25 PHILLIP PETERS sued as persons acting in their official capacity as current or former members
26 of the BOARD OF TRUSTEES, constitute the governing body of KHSD and are charged with
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1 the oversight of KHSD and its compliance with state and federal laws regarding the education of
2 its students.

3 31. Defendant/Respondent BRYON SCHAEFER is the Superintendent of KHSD and
4 is sued in his official capacity. As Superintendent of the District he is charged with the oversight
5 of KHSD and its compliance with state and federal laws regarding the education of its students.
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7 32. Defendant/Respondent KERN COUNTY OFFICE OF EDUCATION (“KERN
8 COE”) is, and at all times mentioned herein was, a local education agency and a school district
9 duly organized and existing under the laws of the State of California and is charged with
10 providing a public education and education related services to children within Kern County.
11 KERN COE is, and at all times mentioned herein was, a local agency as that term is defined in
12 22 California Code of Regulations § 98010 and receives state financial assistance from the State
13 of California and is funded directly by the State of California to provide educational services to
14 children who reside and/or are enrolled in public schools within its boundaries. Additionally,
15 Defendant/Respondent KERN COE receives, and at all times mentioned herein has received,
16 federal financial assistance and/or sub-grants of federal financial assistance from the State of
17 California to provide educational services to children who reside and/or are enrolled in public
18 schools within its boundaries. The OCR has developed rules and regulations that apply to the
19 school districts, including KERN COE, that receive federal funding and provide clear guidance
20 for how to identify and correct a racially hostile educational environment (see, Racial Incidents
21 and Harassment Against Students at Educational Institutions 59 Fed. Reg. 11448 (March 10,
22 1994)); and provided express guidelines to KERN COE on methods to eliminate disproportionate
23 suspensions and expulsion of students of color in the October 21, 2014 “Dear Colleague” letter.
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1 33. Pursuant to Educ. Code § 48926 KERN COE, in conjunction with KHSD and
2 other districts, is required to develop a plan for providing educational services to all expelled
3 students that identifies gaps in services to expelled students and strategies for filling those gaps.
4 KERN COE, in conjunction with KHSD and other districts, is also required to update that plan
5 triennially, taking into consideration outcome data.
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7 34. Defendant/Respondent CHRISTINE LIZARDI FRAZIER is the Kern County
8 Superintendent of Schools, the head of the KERN COE, and is sued in her official capacity. As
9 County Superintendent, she is charged with the oversight of KHSD and other school districts in
10 Kern County and their compliance with state and federal laws regarding the education of their
11 students.
12

13 35. Defendant/Respondent STATE OF CALIFORNIA (“State”) is a state government
14 and the legal entity with the ultimate authority and responsibility to guarantee an equal public
15 education under the California Constitution. Cal. Const. art. I § 7; art. 4 § 16(a); art. 9 § 1, the
16 Equal Protection Clause of the 14th Amendment to the United State Constitution, and the Equal
17 Educational Opportunities Act (“EEOA”), 20 U.S.C. § 1703. The State is a “grantee” within the
18 meaning of 34 C.F.R. § 80.3. The State receives federal grants from the U.S. Department of
19 Education to provide education services to California children and youth, including those
20 enrolled in KHSD and KERN COE schools, consistent with the provisions of federal law and the
21 express conditions of grant agreements.
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23 36. Defendant/Respondent TOM TORLAKSON is the State Superintendent of Public
24 Instruction (“SPI”) for the State and is a Constitutional Officer of the State charged with the
25 supervision of all California schools and school districts. Cal. Educ. Code § 33112. He is sued
26 in his official capacity. In such capacity, he is obligated to take all necessary steps to ensure that
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1 school districts comply with state and federal legal requirements concerning educational
2 programs and services. He is also the Director of Education, in whom all executive and
3 administrative functions of the California Department of Education are vested, and is the
4 Executive Officer for the State Board of Education. Cal. Educ. Code §§ 33111 and 33301-03.

5
6 37. Defendant/Respondent CALIFORNIA DEPARTMENT OF EDUCATION
7 (“CDE”) is the department of state government responsible for administering and enforcing laws
8 related to education. Calif. Educ. Code § 33308. CDE is charged with cooperating with federal
9 and state agencies in prescribing rules and regulations and instructions required by those
10 agencies and monitoring legal compliance by local education agencies. Cal. Educ. Code §
11 33316(b). The CDE has not adequately funded or allocated the resources necessary to fulfill its
12 legal obligations to supervise KHSD and KERN COE compliance with California and federal
13 laws. This has resulted in educational inequality.

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15 38. Defendants/Respondents KHSD, KERN COE, STATE of CALIFORNIA and the
16 CALIFORNIA DEPARTMENT OF EDUCATION are educational agencies within the meaning
17 of the EEOA, 20 U.S.C. §§ 1703 and 1720(a), and have the obligation to ensure compliance with
18 the state and federal laws that address equal access to and non-discrimination in education. 20
19 U.S.C. § 1703.

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21 39. All Defendants/Respondents receive financial assistance from or are responsible
22 for programs that receive financial assistance from the U.S. Department of Education and must
23 ensure that no person, including Student Plaintiffs/Petitioners and other African-American and
24 Latino students in KHSD, is subjected to discrimination under any program or activity receiving
25 such assistance, and for otherwise complying with the provisions of 42 U.S.C. § 2000d and 34
26 C.F.R. § 100.1, et seq.

1 expulsion and referral for expulsion that are highly discretionary, and impose zero-tolerance
2 standards that both violate express provisions of the California Education Code and result in the
3 disproportionate suspension, expulsion and involuntary transfer of African-American and Latino
4 students out of a general education setting and into alternative schools.

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6 44. Plaintiffs/Petitioners are informed and believe that at some school sites, practices
7 are in effect whereby students are identified for tracking as potential discipline problems and
8 student files are tagged in a manner that signals to new teachers and administrative staff that the
9 student is “on the list” for more rigorous scrutiny of their behavior. Plaintiffs/Petitioners are
10 further informed and believe that this tracking disproportionately impacts African-American and
11 Latino students.

12
13 45. Plaintiffs/Petitioners are informed and believe that KHSD is a racially hostile
14 educational environment for African-American and Latino students. Plaintiffs/Petitioners are
15 informed and believe that at least one instructor in Arvin High School’s special education
16 program routinely called Latino students “gangsters,” “homies,” “cholos,” and “druggies,” and
17 told them they would grow up to be nothing but “farmworkers.” They are informed and believe
18 that at Liberty High School, Latino students are told to disperse if they gather in large groups and
19 that this standard is not applied to white students. They are informed and believe that on one
20 occasion, Dean Bill Richardson told a group of Latino students to disperse, and told them that
21 they “look like a herd of cattle” when they gather in large groups.

22
23 46. KHSD has published a Discipline Code that identifies conduct that is “not
24 permitted” ranging from minor, highly subjective behavior such as “insubordination or defiance
25 toward school employees,” “being late to class,” and “continual or habitual use of profanity or
26 vulgarity,” to seriously threatening behavior such as “assault and battery,” “extortion and
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1 robbery,” and “hate violence.” With the exception of violations related to dress, there is no
2 differentiation in the KHSD Discipline Code with respect to how such behavior is to be
3 addressed. The KHSD code merely provides that: “Students who fail to comply with these rules
4 and regulations will be counseled, reprimanded, suspended or expelled and/or arrested as the
5 laws are applied.” While the KHSD Discipline Code provides that “Suspension shall be imposed
6 only when other means of correction fail to bring about proper conduct,” it fails to articulate any
7 specific types of alternative measures of correction. Instead that section goes on to clarify that “a
8 pupil may be suspended for any of the reasons enumerated in Educ. Code. §§ 48900 (a-o)...
9 48901.5 ... upon a first offense...” The reasons enumerated include disruption of school
10 activities (Educ. Code § 48900(k)), willful defiance (Educ. Code § 48900(k)), habitual profanity
11 (Educ. Code § 48900(i)), and possession of a pager (Educ. Code § 48901.5); however, state law
12 provides that suspension shall be imposed for these type of offenses only when other means of
13 correction have failed to bring about proper conduct and prohibits the suspension of pupils upon
14 such first offense unless the student causes a danger to persons. Educ. Code 48900.5. KHSD’s
15 Discipline Code conflicts with this statutory requirement. Additionally, the KHSD Discipline
16 Code provides that “involvement in fighting” is grounds for discipline, irrespective of whether
17 that involvement was in self-defense, in direct violation of Educ. Code § 48900(a)(2).
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21 47. In 2010, KHSD gained statewide notoriety for its number of expulsions and
22 suspensions reported to the U.S. Department of Education, Office of Civil Rights. In the 2009
23 survey year, the District reported 2,205 expulsions, the highest number of expulsions of any
24 district in the state of California, including school districts with much larger enrollment. For that
25 year, the average expulsion rate in the United States was 1.50 per 1,000 students, the average in
26 California was 3.49 per 1,000 students and the average in Kern County was 14.87 per 1,000
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1 students. Meanwhile, the average in KHSD was 54.47 per 1000 students. Racial and ethnic
2 disparities were apparent in these numbers. KHSD average expulsion rate for White students
3 was 18.70 per 1,000 students; the average for Latino students was 65.85 expulsions per 1,000
4 students (20.84% higher than the KHSD average and 352% higher than the expulsion rate for
5 White students in KHSD); and the average for African-American students was 110.21 expulsions
6 per 1,000 students (102% higher than the KHSD average and 589% higher than the expulsion
7 rate for White students in KHSD).
8

9 48. In 2010-2011, reported expulsions for KHSD dropped to 2,040. KHSD reported
10 no data on expulsions for the 2011-2012 school year, although required to do so by state law. In
11 2013, the number of reported expulsions dropped to 256. However, Plaintiffs/Petitioners are
12 informed and believe that this drop in expulsions was a function of a significant change in
13 reporting practices and a change in the District's approach to discipline that resulted in students
14 being transferred out of a general education setting and into an alternative school through the use
15 of involuntary transfers, rather than through formal expulsion. Additionally, KHSD has
16 implemented a "waiver" system, under which students and parents are convinced through
17 intimidation, coerced or tricked into waiving the due process protections accompanying formal
18 discipline and accepting immediate placement in alternative schools. These waivers, which
19 begin as formal discipline and have the same result as expulsions, are not reported as expulsions
20 for the purpose of KHSD's reporting to state and federal agencies.
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23 49. Despite a reduction in the reported number of expulsions, racial and ethnic
24 disparities are still pervasive, particularly among African-American students. While expulsions
25 for all student groups have decreased since 2011, both African-American students and Latino
26 students continue to suffer expulsions at higher rates than other student groups. In 2012-13,
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1 African-American students were far more likely than White students to be expelled. Twenty-
2 four African-American students per thousand, seven Latino students per thousand, and only five
3 White students per thousand enrolled were expelled during that school year. When the nature of
4 the offense is considered, the disparities are even more apparent. While 58% of the White
5 students expelled were expelled for the more serious offenses of possession of drugs or weapons
6 or inflicting injury on another, 51% of the Latinos and just 33% of African-Americans were
7 expelled for these reasons. Put another way, 67% of expelled African-American students were
8 expelled for offenses that did not include physical injury or possession of drugs or weapons,
9 while only 42% of expelled Whites were expelled for these less serious offenses.

11 50. Suspensions in 2009-2010 were also dramatically above the national and
12 statewide averages. This trend has continued and there are significant disparities between the
13 suspension rates of African-American and Latino students and those of White students, when the
14 nature of the offense is considered. In 2013, 6,536 students were suspended at least once during
15 the school year by KHSD. This translates to a suspension rate of 16.3%, or three times the state
16 average. 24.81 per one hundred Latino students were suspended. 38.61 per one hundred
17 African-American students were suspended. In contrast, only 18.7 per one hundred White
18 students were suspended. In 2013, only 7.69 per one hundred White students were suspended for
19 willful defiance (Educ. Code § 48900(k)). However, 27.69 per one hundred African-American
20 students and 13.08 per one hundred Latino students were suspended for willful defiance.

23 51. The KHSD was historically an intentionally segregated school district. It
24 continues to be a highly segregated school district. Although 2013-14 enrollment in KHSD was
25 predominately non-White (25% White, 62% Latino, 6% African-American, and 7% other races),
26 seven (7) schools have an enrollment of over 50% White students; ten (10) schools have an
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1 enrollment of over 80% Latino and three (3) schools have an enrollment of over 15% African-
2 American students. That is, eighty percent of the schools in the District are racially or ethnically
3 over-represented to a statistically significant degree. The incidence of suspensions by school
4 increases dramatically as enrollment of African-American students increases. The three schools
5 with over 15% African-American enrollment had suspension rates of 20.5%, 25.6%, and 36.9%
6 respectively, well over the district-wide rate of 16.3%.

8 52. In 2013-14, KHSD enrolled 1,248 students in alternative school settings it
9 administers, including four (4) continuation high schools and an alternative charter school.
10 District enrollment for that year was 63% Latino, 6% African-American and 25% White.
11 However enrollment in the alternative schools within the District was 79.65% Latino, and 7.29%
12 African-American, which is greater than their respective enrollment in the District, while Whites
13 had only 16.83% enrollment in alternative schools, which is significantly lower than their
14 representation in the District population. The pattern of segregation in KHSD is also reflected in
15 its alternative schools, as nearly 50% of White enrollment in alternative schools operated by the
16 District is concentrated in one school.

18 53. Plaintiffs/Petitioners are informed and believe that the enrollment in alternative
19 schools, and the racial and ethnic disparities in enrollment, are caused by KHSD policies and
20 practices that result in the involuntary transfer of students to alternative schools, just as when
21 assignments were the result of formal expulsion.

23 54. Alternative schools, by design, are not intended to provide the full educational
24 opportunity of a general education setting. They do not offer the full opportunity to complete all
25 courses necessary to enroll in college. It is frequently impossible for students assigned to such
26 schools to complete the courses necessary to graduate without being enrolled an additional
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1 semester or year. They do not offer athletics or extracurricular activities. Community schools in
2 particular are not designed to provide a comprehensive course of study, but are intended to be a
3 temporary placement where students can be provided the opportunity to address behavior
4 problems, credit deficiencies and other circumstances. Students, including many of the
5 Plaintiffs/Petitioners, their children, or their members or members' children, spend full semesters
6 and even full school years in such a setting, and therefore do not and cannot earn the credits
7 necessary to keep them on the normal path to graduation.
8

9 55. KHSD operates and involuntarily assigns students to various alternative schools
10 within the District and to alternative schools operated by the KERN COE. However, KHSD has
11 failed to provide adequate course offerings, counseling support and other services necessary to
12 accomplish the purpose and design of these schools and has assigned students, including
13 Plaintiffs/Petitioners, their children, their members or their members' children, to alternative
14 schools for extended periods, in some cases for a longer duration than would have been allowed
15 if the student had been formally expelled.
16

17 56. KHSD enrolls approximately 480 students in the independent study settings it
18 administers. KERN COE enrolls approximately 574 students in the independent study settings it
19 administers through its community schools. Plaintiffs/Petitioners are informed and believe that
20 KHSD and KERN COE routinely assign African-American and Latino students to independent
21 study, involuntarily and as a disciplinary measure. As a result, students receive no classroom
22 instruction and only minimal interaction with school personnel and other students. They are not
23 assigned sufficient work to complete the credits needed to graduate on time, and are generally
24 not provided any counseling support or services. They are prohibited from participating in extra-
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1 curricular activities. This practice violates the provisions of Educ. Code § 51747 which requires
2 that independent study be voluntary.

3 57. KHSD refers students for enrollment in alternative school settings administered
4 by the KERN COE, including community schools.

5
6 58. The combined enrollment of students at KHSD-operated continuation schools or
7 alternative schools, KERN COE operated community schools, and independent study has
8 remained relatively stable since 2010, reflecting the slight decrease in district enrollment.

9 59. Plaintiffs/Petitioners are informed and believe that the relatively stable enrollment
10 in alternative schools, with disproportionately greater percentages of Latinos and African-
11 Americans, is due to the fact that KHSD is implementing the same policies and practices with
12 respect to the involuntary transfer of students to these alternative schools as it did when
13 assignments were the result of formal expulsion.

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15 60. Disproportionately high suspension and expulsion rates and assignment to
16 alternative school settings of students of color have been directly correlated to educational
17 practices that reflect intentional discrimination, implicit bias, implicit association, stereotype
18 threat, racial anxiety, and the effects of in-group preference arising from a lack of regard for the
19 racial and ethnic and cultural differences between White communities and communities of color.
20 This disproportionate discipline also creates a racially hostile educational environment for
21 African-American and Latino students.

22
23 61. On information and belief, the existence of race-based stereotypes (and
24 stereotypes based on color, ethnicity, ancestry, and national origin) in addition to implicit and/or
25 unconscious biases concerning the behavior, deviance, criminality, intellectual capacity,
26 competence, and relative worth of African-Americans and Latinos are well documented in Kern
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1 County as well as in California and the United States as a whole, are causes of the disparities and
2 discrimination described above.

3 62. In particular, and on information and belief, stereotypes concerning the
4 intelligence, competence, criminality, aggressiveness, trustworthiness, legal status and
5 entitlement to benefits, relative worth, and honesty of Latinos and African-Americans, in
6 addition to other invidious stereotypes and biases, are a cause – among other race, ethnic and
7 national origin bias-based causes – of the disparities and discrimination alleged in this
8 Complaint. The prevalence of actions and decisions by KHSD based on such stereotypes creates
9 a racially hostile educational environment.
10

11 63. On information and belief, the punitive and disparate discipline policies
12 implemented by KHSD demonstrates that its actions have not only been intentional, but also
13 influenced by implicit and/or unconscious biases concerning African-Americans and Latinos and
14 reflect pervasive racial, color, ethnicity, ancestry, and national origin stereotypes that exist in the
15 United States, California, and Kern County today. Defendants/Respondents' biases and
16 stereotypes affect the administration of student discipline and result in relatively harsher
17 treatment of African-American and Latino students.
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19 64. Defendants/Respondents' suspension, expulsion, and school assignment processes
20 are highly discretionary. On information and belief, Defendants/Respondents' intentionally
21 discriminatory practices in concert with their implicit and/or unconscious biases and stereotypes
22 have negatively impacted, and interfered with, the provision of equal educational opportunities
23 for African-American and Latino students in KHSD, including Plaintiffs/Petitioners, their
24 children, their members or their members' children, as alleged in this Complaint.
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1 65. In light of the substantial discretion afforded to Defendants/Respondents in
2 suspension, expulsion, and school assignment, and the above-identified stereotypes and implicit
3 and/or unconscious race-based biases, the only reasonable explanation, the only explanation
4 more probable than not, and the overriding and but-for cause of the existence of the above-
5 described unjustified racial disparities is invidious racial discrimination.
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7 66. As a consequence of the above-described stereotypes and biases, as well as for
8 other race based reasons, Plaintiffs/Petitioners ISIDRO LARRALDE, GABRIEL ELDER,
9 CARMEN RAMIREZ, ROBERT ROBLES, and TYSON REED, in addition to other African-
10 American and Latino students, have been denied equal access to education; have experienced a
11 racially hostile educational environment; educational opportunities have been afforded to
12 students in KHSD in a racially discriminatory manner; and the laws governing the suspension,
13 expulsion, and assignment of students to alternative school settings have been administered in a
14 racially discriminatory manner.
15

16 67. On information and belief, the existence of race-based and other color, ethnicity,
17 ancestry, and national origin-based stereotypes, and implicit and/or unconscious biases
18 concerning Latinos and African-Americans, which have been documented to exist in Kern
19 County as well as in California and the United States as a whole, are a cause of the disparities
20 and discrimination alleged in this complaint.
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22 68. Numerous studies have demonstrated that students who are suspended, expelled,
23 or assigned to alternative school settings have lower rates of academic success, are more likely to
24 dropout, less likely to graduate, less likely to attend college, more likely to have contact with the
25 juvenile justice system, more likely to be incarcerated and in general found to have lower
26 indicators of life success in employment, family and social life.
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1 69. Numerous studies have demonstrated that implementation of racially and
2 culturally appropriate policies, practices, and training, including implicit bias training and
3 Positive Behavioral Interventions and Supports (“PBIS”) programs, can significantly reduce
4 suspensions, expulsions and assignments to alternative schools generally, and specifically
5 ameliorate the disparate impacts suffered by children of color that result from explicit and
6 implicit bias. KHSD has not broadly adopted these policies, practices, and training, despite
7 being on notice of the stark racial disparities resulting from its discipline practices.
8

9 70. Defendants/Respondents State of California, SPI and CDE have exempted
10 alternative schools from many reporting requirements, including those related to graduation and
11 dropout rates. While a unique system was developed for the purpose of monitoring and
12 evaluating alternative schools – Alternative Schools Accountability Model (ASAM) – that
13 system was never fully implemented or funded and at this time is not being funded or
14 implemented in a manner that allows effective oversight of alternative schools, or the policies
15 and practices that result in a student’s assignment to those schools. As a result, the educational
16 services provided to Plaintiffs/Petitioners, their children, their members or their members’
17 children and others enrolled in KHSD and KERN COE alternative schools have been funded by
18 the State and allowed to continue despite the fact that they do not provide an equal educational
19 opportunity.
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22 71. Plaintiffs/Petitioners, their children, their members or their members’ children
23 have been the victims of the subjective and discriminatory practices in effect in KHSD and
24 KERN COE.
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1 72. Plaintiffs/Petitioners have been subjected to harsh discipline at KHSD schools
2 when less punitive measures could have been employed, such as PBIS, restorative justice, or
3 effective classroom management.

4 73. KHSD Defendants/Respondents dealt with Plaintiffs/Petitioners' behavioral
5 issues with school security or police, rather than more effective alternatives, which resulted in
6 harsher treatment than that given to their White counterparts.

7 74. Plaintiffs/Petitioners and other students have suffered trauma that KHSD neither
8 recognizes nor addresses. KHSD uses harsh discipline rather than techniques aimed at helping
9 these students learn and recover.

10 75. Defendants/Respondents KHSD and KERN COE, through their staff, have
11 implemented policies and practices that incorporate negative stereotypes about African-
12 Americans and Latinos, including such acts as presuming that certain students are in gangs based
13 solely on the fact that they are Latino or African-American; assuming that certain students are
14 engaging, or are more likely to engage in aggressive acts when confronted about minor
15 behavioral issues; assuming a lower level of academic ability or interest. Some Latino students
16 are not encouraged to excel in school and are told that they will grow up to be farmworkers like
17 their parents.

18 76. Students who are transferred to alternative schools receive a substandard and
19 unequal education, including fewer courses necessary to enroll in college, fewer courses
20 necessary to graduate without being enrolled an additional semester or year, inferior
21 extracurricular activities, and inferior building facilities and educational materials, among other
22 deficiencies.

1 77. Plaintiff/Petitioner ARLENE SANDERS is African-American and the parent of
2 Kenton M., who is also African-American and a former student at South High School in KHSD.
3 Sanders has three other African-American children who are currently enrolled in an elementary
4 school that feeds into KHSD. Sanders and her children reside in the attendance district for South
5 High School in KHSD. Kenton was subjected to repeated discipline while attending South High
6 School. During the 2013-2014 school year, Kenton was suspended, both in school and out of
7 school, ten times for alleged disruption and/or willful defiance (Educ. Code §48900(k)).
8 Ultimately, Kenton was involuntarily transferred from South High School in May 2014 for
9 alleged attempted theft (Educ. Code §48900(g)) after Sanders was pressured into signing a
10 waiver of Kenton's right to expulsion proceedings. He is currently enrolled at a community
11 school operated by Defendant KERN COE. As a result of his assignment to a county community
12 school, Kenton has no access to extracurricular activities, such as football and basketball, and
13 limited access to the courses necessary for graduation and post-secondary education.
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16 78. Plaintiff/Petitioner RUBY WATSON is African-American and the parent of
17 Avery S., who is also African-American. Watson has one other African-American child who is
18 currently enrolled in an elementary school that feeds into KHSD. Watson and her children reside
19 in the attendance district for West High School in KHSD. Avery was expelled in November
20 2013, when he was in eighth grade, and enrolled in the Bakersfield City School District
21 ("BCSD"). The original expulsion term was one year, but the BCSD Board exercised its
22 discretion under Educ. Code § 48916(a) to reduce the term of the expulsion to end on May 29,
23 2014, which would have allowed Avery to enroll and attend high school as scheduled in Fall
24 2014. Avery completed all the requirements of the rehabilitation plan given him by BCSD, but
25 KHSD nonetheless denied Avery enrollment and admission to the District for the 2014-15 school
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1 year. KHSD exceeded its legal authority by denying Avery admission to the District upon
2 completion of his expulsion term as modified by BCSD. Instead, KHSD attempted to
3 involuntarily assign Avery to a continuation high school. KHSD further conditioned his
4 enrollment upon agreement to sign a "Probation Agreement" that would allow KHSD to expel
5 Avery automatically, without due process, for even minor violations of school rules. Because he
6 does not want to forfeit his due process protections, Avery has refused to sign the Probation
7 Agreement and KHSD has refused and continues to refuse Avery admission to the District,
8 effectively denying him an educational program. At this time, Avery has missed more than one
9 month of high school instruction with no access to extracurricular or school enrichment
10 activities. Due to KHSD's actions, Avery is falling quickly behind his peers and, as an avid
11 football athlete, has likely missed the opportunity to join school sports including the football
12 team for his ninth grade year.
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15 79. Plaintiff/Petitioner PATRICIA CRAWFORD is African-American and the parent
16 of Jade Crawford, who is also African-American and a former student of Highland High School
17 in KHSD. They reside in the attendance district for Highland High School in KHSD. In
18 December 2010, Jade was suspended and recommended for expulsion from Highland High
19 School for allegedly causing or attempting to cause physical injury to another (Educ. Code §
20 48900(a)(1)) and disruption and/or willful defiance of school personnel (Educ. Code §
21 48900(k)). In February 2011, an expulsion hearing was held and the BOARD OF TRUSTEES
22 denied the recommendation to expel Jade, cleared Jade's record, and granted a request that Jade
23 be granted an intra-district transfer. During the time that Jade was awaiting her expulsion
24 hearing, Patricia repeatedly contacted the school to receive make-up homework assignments. In
25 some instances, the teachers informed Patricia that Jade could not do the assignment outside of
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1 the classroom. Despite Jade's exoneration, she was placed on probation when she transferred
2 back to Highland High School in August 2012. This probation prevented her from participating
3 in extracurricular activities and sports, including volleyball. Jade ultimately graduated from high
4 school with a 3.0 GPA through the independent study program after transferring to three
5 different schools within KHSD, including Highland High, East Bakersfield High, and
6 Bakersfield High. Plaintiffs/Petitioners are informed and believe that, irrespective of the fact
7 that she was exonerated, Jade was identified in her school records as a problem student and this
8 record followed her from school to school and impacted school administrators' and teachers'
9 treatment of her.
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11 80. Plaintiff/Petitioner ISIDRO LARRALDE is Latino and a former student of KHSD
12 who lives in the attendance area for Shafter High School. Larralde has a history of discipline
13 with multiple suspensions and expulsions from Shafter High School. He was
14 expelled/involuntarily transferred and assigned to Central Valley High School ("CVHS").
15 CVHS is a continuation school operated by Defendant/Respondent KHSD. Many of Larralde's
16 disciplinary referrals both at Shafter and CVHS resulted from being bullied and harassed because
17 of his perceived sexual orientation. When Larralde acted in self-defense against the bullies, he
18 was punished due to Defendants/Respondents' zero-tolerance policy toward fighting even when
19 a student acts in self-defense. CVHS was made aware of the bullying Larralde was subjected to,
20 but did nothing to stop it. To the contrary, Larralde was repeatedly subjected to harsher
21 discipline than his bullies. Larralde was expelled from CVHS in May 2014 for allegedly
22 causing, attempting to cause, or threatening to cause physical injury to another person (Educ.
23 Code § 48900(a)(1)). This allegation was the result of an altercation in which Larralde was
24 provoked by prolonged bullying that went unaddressed by CVHS. As a result of this expulsion,
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1 he was assigned to Sillect Community School operated by Defendant/Respondent KERN COE.
2 As a result of his assignment to the community school and the administration's treatment of him,
3 he made the decision to drop out of high school.

4 81. Plaintiff/Petitioner CARMEN RAMIREZ is a Latina student who resides in the
5 attendance district for Arvin High School in the KHSD. In November 2012, Carmen was
6 suspended for three days for disruption and/or willful defiance of school personnel (Educ. Code
7 § 48900(k)) for not picking up trash. In December 2012, an armed Arvin High School police
8 officer searched Carmen's backpack and discovered a small amount of marijuana. District
9 officials referred Carmen to the local police department; however the department did not
10 investigate or charge her with an offense. Carmen was involuntarily transferred to Community
11 Learning Center in Bakersfield, a community school operated by Defendant/Respondent KERN
12 COE, for possession of marijuana. (Educ. Code § 48900(c)). Carmen's family has limited
13 access to transportation and subsequently could not take her to Community Learning Center in
14 Bakersfield. The public bus route to Community Learning Center from her home is a 4-hour
15 round trip. Without other options, Carmen's family sent her to live with relatives and attend
16 school in Mexico for the remainder of the 2012-2013 school year. When Carmen returned home
17 in summer 2013, she immediately went to Arvin High School and asked to be enrolled for the
18 2012-2013 school year. School officials refused to admit Carmen. They informed Carmen that
19 she had to attend the Community Learning Center. Faced with the same transportation problem,
20 Carmen remained home for several weeks during the 2012-2013 school year. It was not until
21 Carmen obtained legal counsel that KHSD's governing board immediately reinstated Carmen to
22 Arvin High School. However, Carmen is still credit deficient as a result of KHSD's delay in
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1 readmitting her to the District and its refusal to provide her even partial credit for the work
2 completed during her expulsion term.

3 82. Carmen was transferred to Nueva High School—a continuation school operated
4 by Defendant/Respondent KHSD— for the 2014-2015 school year to recover credits at an
5 accelerated rate. Carmen currently attends Nueva High School. On or around March 2015,
6 Carmen and a friend were speaking Spanish during class at Nueva High School. Carmen’s
7 teacher demanded that Carmen and her friend only speak in English and said: “This is America.
8 We don’t speak Spanish here.” Carmen plans to go to college and wants to ensure she is on track
9 with her credits, but it has been a difficult task to make up the courses and credits she lost due to
10 her prior involuntary transfer.
11

12 83. Plaintiff/Petitioner MARIO RAMIREZ is Latino and the parent of the
13 Plaintiff/Petitioner, Carmen Ramirez. Mario Ramirez speaks limited English; Spanish is his
14 primary language and the dominant language of his household. School personnel were aware of
15 Ramirez’ limited English proficiency at all times during Carmen’s tenure at Arvin High School.
16 When Carmen was suspended in November 2012 for three days for disruption and/or willful
17 defiance of school personnel (Educ. Code § 48900(k)), the suspension notice sent home to Mario
18 Ramirez was entirely in English. In December 2012 Carmen was involuntarily transferred to
19 Community Learning Center in Bakersfield operated by Defendant/Respondent. Records reflect,
20 in English only, that this assignment was characterized as a “voluntary assignment” but neither
21 Mario Ramirez nor Plaintiff/Petitioner Carmen Ramirez understood that they could reject the
22 assignment.
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25 84. Prior to transferring Carmen, school officials met with Mario Ramirez to discuss
26 disciplinary options. Mario Ramirez was presented with an English document for his signature.
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1 School officials informed Mario Ramirez that the paperwork stated that Carmen would be
2 suspended for little over a week and then be allowed to return to school. Shortly after he signed
3 the document, school officials began explaining that Carmen would be attending the Community
4 Learning Center in Bakersfield approximately 30 miles away from the family's home. Mario
5 Ramirez protested immediately that his daughter could not attend school in Bakersfield as the
6 family had no transportation to take her to school. He stated that he would not be able to work
7 and provide for his family if forced to transport Carmen daily. He informed school officials that
8 he would not have signed the document had he known that his daughter would be transferred to a
9 school in Bakersfield. He asked school officials to arrange for transportation for his daughter.
10 School officials responded by saying, "these are not our problems, and these are the
11 consequences of what your daughter did." Bewildered, Mario Ramirez sent his daughter to
12 Mexico for schooling for the remainder of the 2011-2012 school year.

15 85. Plaintiff/Petitioner GABRIEL ELDER is a Latino student who resides in the
16 attendance district for Kern Valley High School in KHSD. Gabriel and his family immigrated to
17 Lake Isabella, CA from Chile. Gabriel spoke limited English upon his entry to Kern Valley High
18 School. He was neither classified as an English Language Learner nor provided with any
19 language access services throughout his tenure at Kern Valley High School.

21 86. During the 2012-2013 school year, Gabriel's grades dropped drastically because
22 of domestic violence in the home and mental health issues. In 2012, Gabriel was diagnosed with
23 major depression. Gabriel's mother immediately informed the school of the diagnosis. The
24 school therapist attempted repeatedly to set up a meeting with the acting Dean of Students of
25 Kern Valley High School, David Baker. The Dean refused to meet with the family and the
26 therapist. Nevertheless, Gabriel's mother repeatedly visited the school and asked for school
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1 officials to provide counseling or other services to Gabriel. Gabriel's mother also asked for an
2 assessment for special education services. KHSD employees refused.

3 87. Throughout the fall 2012 semester, Gabriel was suspended intermittently for a
4 total of 10 days for disruption and/or willful defiance of school personnel and engaging in
5 profanity (Educ. Code § 48900(k); (i)). Several of these suspensions were for "being a
6 distraction in class," "talking back," and "engaging in profanity." In October 2012, Gabriel was
7 suspended for 3 days for profanity. He asked permission to go to the office to call his mother.
8 After being forced to wait in the office for three hours, he remarked, "This is f****d up," and
9 was suspended. In November 2012, Gabriel was suspended for three days for interrupting class
10 by "falling out of his desk to make noise" and for being "rude and argumentative." During the
11 2011-2012 school year, Gabriel was suspended 8 times, served 4 in school suspension days, and
12 was placed on step 4 of the KHSD Truancy Reduction program. Throughout this time period,
13 Gabriel's mother repeatedly asked the school to provide her son with counseling services, but
14 none were provided

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17 88. On December 19, 2012, Gabriel was suspended for five days pending involuntary
18 transfer to community school for causing physical injury to another person and engaging in
19 habitual profanity. (Educ. Code § 48900(a)(1);(i)). Gabriel was walking to the bus when he saw
20 a student with whom he had a conflict. After a verbal encounter, Gabriel walked away and the
21 student attacked Gabriel and punched him from behind. Gabriel attempted to ignore this student;
22 however, the student continued to harass and attack Gabriel. Gabriel fought back in self-defense,
23 and was suspended based on KHSD's zero tolerance policy, pending involuntary transfer.
24 Gabriel was out of school for over a month while the school was attempting to determine
25 placement. Gabriel was not given any instruction or homework during this suspension.
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1 89. While Gabriel's involuntary transfer was pending, Gabriel's mother finally
2 secured a meeting with the then-acting Dean of Students, David Baker. She handed Dean Baker
3 Gabriel's therapist's business card and asked for the therapist to be present at Gabriel's
4 upcoming involuntary transfer hearing. This therapist is unaffiliated with the school. Dean
5 Baker became enraged and told Gabriel's mother to shut up. He tore up the therapist's business
6 card and threw it at Gabriel's mother's face. He informed her that Gabriel would not be
7 readmitted to school until after the hearing unless she signed the agreement to his involuntary
8 transfer.
9

10 90. KHSD moved forward with its involuntary transfer of Gabriel, in spite of
11 Gabriel's mother's repeated requests to the district to help her son and evidence that Gabriel was
12 acting in self-defense. Gabriel's mother also attempted to speak with the school on a number of
13 occasions prior to his transfer. She and Gabriel asked school officials to allow Gabriel to remain
14 at Kern Valley High School. She again requested services and a special education assessment,
15 but school officials refused to provide Gabriel with assistance. The KHSD incident report in
16 Gabriel's school records identifies Gabriel as the victim of Battery on School Grounds for the
17 December 2012 fight. Gabriel's attacker is listed as the suspect and aggressor on the police
18 report. Despite this fact, the referral for "expulsion and involuntary transfer" issued by the
19 District stated that: (1) other means of correction have repeatedly failed to bring about proper
20 conduct; (2) the presence of the pupil on school grounds causes a continuing danger to the
21 physical safety of the pupil or others; (3) other means of correction are not feasible.
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24 91. KHSD did not identify the school to which it intended to transfer Gabriel in the
25 involuntary transfer notice it sent Gabriel and his mother. The notice stated that KHSD was
26 pursuing an involuntary transfer under Education Code § 48432.5, the statute that governs
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1 involuntary transfers to continuation schools. In the hearing materials sent to Gabriel and his
2 California Rural Legal Assistance, Inc. ("CRLA") attorney, however, Dean Baker, and Principal
3 Meyers, of the Kern Valley High School recommended that Gabriel be involuntarily transferred
4 to "community school" for the fall 2012 and spring 2013 semesters. Additionally, Dean Baker
5 informed Gabriel and his mother that Gabriel would not be permitted to attend Summit
6 Continuation School, a KHSD continuation school located near where they live in Lake Isabella.
7

8 92. Under Education Code § 48662, a student may be involuntarily transferred to a
9 community day school only if the student is expelled, probation-referred, or referred by a school
10 attendance review board or other district-level review process. Nevertheless, the District failed
11 to comply with the requirements of 48662 and instead, conducted its hearing pursuant to
12 Education Code § 48432.5 and involuntarily transferred Gabriel to Lake Isabella Community
13 School, a community day school operated by Defendant/Respondent KERN COE. Gabriel was
14 never expelled, nor referred by probation or a school attendance review board to Lake Isabella
15 Community School, as required under Education Code § 48662.
16

17 93. KHSD involuntarily transferred Gabriel to Lake Isabella Community School
18 operated by Defendant/Respondent KERN COE for the spring 2013 semester. At Lake Isabella
19 Community School, Gabriel was not provided any specific services to address his truancy or
20 other behavior issues or to ensure that he completed the credits necessary to re-enroll in Kern
21 Valley High School. Gabriel was scheduled to return to Kern Valley High School in the fall of
22 2013. The high school refused to readmit Gabriel on the grounds that he failed to obtain the
23 number of necessary credits to return. Gabriel therefore remained in community school for the
24 2013-2014 school year.

25 94. Gabriel is currently still attempting to finish his schooling to obtain the credits
26 necessary to graduate. Throughout his tenure at Lake Isabella Community School, Gabriel has
27 been in an independent study program with approximately one day of instruction per week. On
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1 the remaining days of the week Gabriel completes homework to obtain credits necessary to
2 graduate. Gabriel had ambitions to join the Air Force and obtain a university education but now
3 questions whether these options are still feasible. Now, he plans to finish school and attend trade
4 school.

5 95. Plaintiff/Petitioner TYSON REED (Tyson) is a seventeen-year-old African-
6 American male student with a disability. Tyson lives in Bakersfield, California. From
7 September 2011 to June 2013, Tyson attended and resided in the attendance district for
8 Independence High School in the KHSD. Tyson currently attends and resides in the attendance
9 district for Bakersfield High School in the KHSD.

10 96. During the 2011-2012, 2012-2013, and 2013-2014 school years, Tyson was
11 suspended on eight occasions for a total of eleven school days, of which six suspensions (totaling
12 nine school days) were for non-violent offenses such as “disruption,” “defiance,” “other,” and
13 electronics violations. On at least twenty-eight other occasions during the same time period,
14 Tyson was subjected to other forms of discipline, including warnings, detentions, period
15 suspensions, and “in-school suspensions” for similar non-violent minor offenses, such as
16 “disruption,” “defiance,” and tardiness.

17 97. On February 23, 2015, LINDA REED (REED), Tyson Reed’s mother, went to
18 Bakersfield High School and met with Tyson’s trauma and academic counselor, Ms. Price, to
19 inform her that Tyson had been to the doctor and prescribed Xanax twice a day for his anxiety.
20 Since no formal meeting was scheduled and Tyson did not have existing accommodations for his
21 anxiety, REED told Tyson he should take time to himself if he felt overwhelmed at school. On
22 March 5, 2015, REED spoke to Tyson’s United States History teacher, Mr. Bonetti, to inform
23 him that Tyson might need to occasionally be late to class if he felt anxious and needed a few
24 extra minutes to calm down before coming to class. REED also shared that Tyson had been seen
25 by his doctor for anxiety and that the doctor had prescribed him anxiety medicine.

1 98. On March 6, 2015, Tyson was called to the Dean's office right after sixth period
2 ended. After speaking with the Dean, the Dean instructed Tyson to return to class. The Dean
3 gave Tyson a note to give to Mr. Bonetti to excuse his lateness.

4 99. Upon leaving the Dean's office, Tyson felt extremely anxious and worried that he
5 would possibly get in trouble for something he had not done. Recalling what his mother had told
6 him to do when he felt anxious, Tyson found a quiet place under the bleachers and sat there until
7 he felt calmer. Tyson did not want to get in trouble because that would mean he would be
8 prevented from attending football practice.

9 100. After Tyson felt calmer, he headed to his seventh period class. Tyson walked into
10 his class, handed Mr. Bonetti, his seventh period teacher, the note from the Dean, and sat down
11 in his seat. Tyson remained seated for roughly five to ten minutes before Mr. Bonetti called
12 Tyson to his desk. Mr. Bonetti told Tyson that he needed to go to the Dean's office because he
13 had arrived too late to class. Mr. Bonetti wrote this on the back of the note Tyson had handed
14 him.

15 101. Tyson informed Mr. Bonetti that he would return to the Dean's office, but wanted
16 to be marked "present" before he departed the classroom. Tyson is in the STEP truancy
17 reduction program, and a requirement of the STEP program is that Tyson not have any
18 unexcused absences or miss any classes.

19 102. Mr. Bonetti refused to mark Tyson present and called school security.

20 103. Officer Bridgette, ("SSO Bridgette") arrived about three to four minutes later.
21 She told Tyson to come with her out of the classroom. Tyson told SSO Bridgette that he would
22 leave but asked that he be marked present first. SSO Bridgette then called Officer Luis Peña, the
23 police officer assigned to Bakersfield High School.

24 104. Officer Peña responded along with another Officer, "Officer Joe," who arrived a
25 few minutes later and told everyone in the classroom to leave. Officer Peña told Tyson to come
26 with him. Tyson told Officer Peña that he did not want to leave before being marked present.
27 Officer Peña then walked up to Tyson's desk and aggressively pushed it away from Tyson while
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1 he was sitting behind it. Officer Peña then grabbed Tyson by his right arm, causing him to spin
2 in his chair. Officer Joe then grabbed Tyson's left arm. Officer Peña then yelled, "Do you want
3 to get tased?" Before Tyson could communicate that he did not want to get tasered, Officer Peña
4 tasered him. Someone then threw Tyson onto the ground. Tyson assumed it was Officer Peña,
5 since Officer Joe had released his grip on him. Officer Peña then put handcuffs on Tyson.
6 Tyson did not resist being handcuffed, but Officer Peña tasered Tyson again while holding
7 Tyson down on the ground. Officer Peña then escorted Tyson out of the classroom. He was then
8 removed from the school site by Officer Peña.

9 105. After the incident, the principal of Bakersfield High School, Principal Reese met
10 with REED and informed her that Tyson was suspended immediately for assault on District staff,
11 and could face possible expulsion pending the result of an investigation and determination of
12 whether Tyson's anxiety issues played a role in the tasing incident.

13 106. Despite being alerted to Tyson's physical and emotional condition, the first time
14 school staff convened a meeting pursuant to Section 504 of the Rehabilitation Act of 1973 ("504
15 meeting") regarding Tyson's anxiety was on the Monday after Officer Peña's assaulted and
16 arrested Tyson.

17 107. Upon concluding the investigation, Principal Reese informed REED that Officer
18 Peña was placed on administrative leave with pay and that Tyson's suspension would be waived.

19 108. Tyson feels that the environment at Bakersfield High School is hostile towards
20 him. He has become angry and withdrawn. Tyson is now not motivated to participate in school
21 and has experienced a decline in academic achievement. Tyson has stayed home from school to
22 avoid any likelihood of being targeted again by the KHSD officers at school. Tyson currently
23 faces criminal charges based on Officer Peña's allegations that Tyson resisted arrest. This has
24 infuriated Tyson and, as a result, Tyson has become completely uninterested in doing anything at
25 school other than playing football. Tyson fears going to school because he believes that no one
26 will protect him from the discrimination and harassment he experiences at Bakersfield High
27 School.

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1 109. Plaintiff/Petitioner ROBERT ROBLES (Robert) is a sixteen-year-old Latino
2 student who resides in the attendance district for Shafter High School in the KHSD. Robert is a
3 special education student diagnosed with Bipolar Disorder and ADHD. Despite his long history
4 of mental health issues, KHSD has never evaluated Robert for mental health services. In
5 addition, although Robert is a senior in high school, he is unable to read and KHSD has never
6 provided him with any appropriate reading interventions.
7

8 110. During the 2012-2013, 2013-2014, and 2014-2015 school years, Robert was
9 suspended on eight occasions for a total of seventeen school days, of which seven suspensions—
10 totaling fourteen school days—were for non-violent offenses such as “disruption,” “defiance,”
11 “obscenity,” and electronics violations. On multiple occasions during the same time period,
12 Robert was also subjected to other discipline, including warnings, detentions, and “in-school
13 suspensions” for similar minor offenses such as “disruption,” “defiance,” and tardiness.
14 Robert’s alleged “defiant” behavior is related to his disabilities, including bipolar disorder.
15

16 111. During the 2014-2015 school year, Robert was assigned to attend class at Shafter
17 High School for one period each day and to attend Ruggenberg Career Center (“RCC”), a career
18 program for special education students, the rest of the day. On Friday, March 6, 2015, Robert
19 and other RCC students were boarding a bus to return to Shafter High School in the afternoon.
20 RCC program coordinator John Eldridge attempted to assign Robert to a particular seat on the
21 bus, which Robert repeatedly refused to sit in. He did exchange words with Eldridge, including
22 some profanity, and refused to move to the assigned seat and initially refused to get off of the
23 bus when asked to do so. However, Robert did not act in a threatening manner and never
24 touched Eldridge or any other KHSD staff.
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1 112. Robert was subsequently suspended for three days for threatening to cause
2 physical injury (Educ. Code § 48900(a)(1)) and engaging in profanity (Educ. Code § 48900(i)).
3 On March 10, 2015, an IEP meeting was held to determine whether Robert's behavior was a
4 manifestation of his disability. The IEP team determined that Robert's behavior was not a
5 manifestation of his disability and recommended that Robert be referred for regular disciplinary
6 action. Robert's mother, Plaintiff/Petitioner CATHERINE ROBLES, was present at the
7 manifestation meeting. The notes of the manifestation meeting reflect that ROBLES agreed that
8 Robert's behavior was not a manifestation of his disability. This is not true. ROBLES believed
9 that Robert's behavior actually was related to his bipolar disorder and ADHD, but she was
10 confused by what happened at the meeting and the proceedings were not adequately explained to
11 her. That same day, the Dean of Students at Shafter High School, Socorro Guerrero, requested
12 that Robert be expelled from Shafter High School.
13
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15 113. After the manifestation IEP meeting, Catherine was told that Robert would be
16 expelled from the RCC program and Shafter High School for all of 2015 if she did not sign a
17 form requesting an involuntary transfer. Feeling as if she had no other choice, Catherine signed
18 the form titled "Request for Involuntary Transfer." Dean Guerrero of Shafter High School told
19 Catherine that signing the involuntary transfer form was mandatory. Catherine did not
20 understand the form, and it was not explained to her. She was not given time to read the form.
21 Thereafter, Robert was referred to Community Learning Center, a community day school
22 operated by Defendant/Respondent KERN COE.
23

24 114. Community Learning Center is located more than 19 miles from the Robles'
25 home and does not offer the special education programs Robert needs. The public bus route to
26 Community Learning Center from the Robles's home is more than three hours round trip.
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1 Because the family only has one car, which Robert's father uses to get to work each day, Robert
2 is unable to attend Community Learning Center. Catherine later spoke to an employee at
3 Community Learning Center, who stated that Community Learning Center does not accept
4 students with disabilities similar to Robert's disabilities. Catherine has attempted to enroll
5 Robert in independent study courses, but has been told by KHSD employees that Robert is not
6 eligible for independent study because he is no longer enrolled in the KHSD. As a result of the
7 distance to Community Learning Center, Robert did not receive any instruction after March 6,
8 2015 and has missed more than two months of school.

10 115. Neither KERN COE nor KHSD has offered an appropriate alternative placement
11 that is accessible to Robert despite their obligation to do so.

13 116. Plaintiff/Petitioner KESCHEL COLLINS (COLLINS) is African-American and
14 lives in the attendance district for Foothill High School in the KHSD. Her son, Jerry Reagor
15 (Jerry), is African-American and lives in the attendance district for Foothill High School in the
16 KHSD. Jerry currently attends Tierra del Sol High School, a continuation school operated by
17 Defendant/Respondent KHSD. COLLINS has a daughter who is currently a student at Foothill
18 High School in the KHSD.

20 117. During the fall 2014 semester, Jerry was repeatedly physically assaulted, injured,
21 harassed, and threatened by gang members on his walk to and from school. Jerry had to seek
22 medical attention on numerous occasions due to the assaults and harassment. These gang
23 members threatened to kill Jerry on his way to or from school multiple times. On one occasion,
24 a gang member chased Jerry with a large blade. COLLINS repeatedly raised this issue with the
25 police officer assigned to Foothill, Dean Walters, Dean of Foothill High School, and other
26 administrators at Foothill High School. In response Dean Walters told Ms. COLLINS that she
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1 "had better take her son out of school or else he'd end up dead on the street." COLLINS also
2 spoke with the KHSD School Community Liaison, Octavio Patiño, about these issues, but KHSD
3 did not take any action. Jerry was never referred to any school counselors or mental health
4 providers to deal with the emotional trauma he experienced as a result of these attacks.
5 Plaintiffs/Petitioners are informed and believe that because of the pervasive racial stereotyping in
6 the District, KHSD staff incorrectly assumed that Jerry was somehow involved in gang activity
7 and that this assumption drove their decision not to intervene. When COLLINS, through her
8 attorneys requested intervention, KHSD, without any evidence to support its position, responded
9 that Jerry was the aggressor in these off-campus altercations and that the safety of students going
10 to or coming from school was not the District's responsibility.
11

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13 118. KHSD's actions and inactions have left Jerry feeling estranged, unwelcomed, and
14 at times targeted by district staff. On one occasion during the fall 2014 semester, Dean Walters
15 immediately closed the gate to the school when she saw Jerry approaching, thus forcing him to
16 walk around Foothill's campus to access another entrance.

17
18 119. On another occasion Jerry was singled out by office staff who refused to permit
19 Jerry to retrieve his hat while permitting other students to collect their belongings afterschool.
20 Jerry was suspended for 3 days when he objected to this unfair treatment.

21
22 120. On March 26, 2015, Jerry wore a hat to school due to cold weather. When
23 directed that morning by Dean Walters to either put the hat in his bag or turn it in for pick-up
24 after school, Jerry voluntarily provided it to her. At the end of the school day, Jerry went to the
25 office and asked a staff person for his hat. Office staff informed him that he would again have to
26 wait until Dean Walters was finished with her meeting. Jerry explained that he needed to
27 retrieve his hat before the office closed and he did not want to be late for eighth period, his after
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1 school credit recovery class. Office staff member Mary Celedon knocked on Dean Walters's
2 door and informed her that Jerry was asking for his hat. He was told he would have to wait for
3 his hat. During this time, several other students came to the office and picked up their
4 belongings.

5
6 121. Having seen other students retrieve their items, Jerry walked toward the Dean's
7 office to knock on her door, however Celedon placed herself between him and the door. Jerry
8 reached over her shoulder and knocked on the door. At this point, Celedon called in school
9 police. The Dean came out of her office shortly afterwards and returned Jerry's hat. During
10 eighth period, Dean Walters called him back into the office and informed him that he was going
11 to be suspended and possibly involuntarily transferred. Jerry was suspended for five full days
12 after this incident, the maximum allowed under Education Code §48911(a).

13
14 122. On April 6, 2015, Jerry and COLLINS attended a suspension conference
15 pursuant to Education Code § 48910. At this conference, Dean Walters and Assistant Principal
16 Mindy Carter insisted that Jerry and COLLINS sign a waiver allowing Jerry to be voluntarily
17 transferred to Tierra del Sol High School, a continuation school operated by
18 Defendant/Respondent KHSD. They refused to sign the voluntary transfer request and requested
19 a hearing pursuant to Education Code § 48432.5. Principal Mindy Carter informed them that
20 involuntary transfer hearings routinely take up to thirty days to be scheduled, and that Jerry could
21 be prohibited from attending school during that time.

22
23 123. During the involuntary transfer hearing, KHSD based its decision, in part, on
24 the belief that Jerry was an ongoing danger due to his "gang affiliations." There was no evidence
25 of gang activity or report of any physical fights with teachers or students at Foothill High School,
26 or any other teachers or students at other high schools he attended. Jerry and COLLINS both
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1 believe that the association of Jerry with gang affiliations was the result of negative stereotypes
2 associated with African-Americans.

3 124. When asked what alternative means of correction were used prior to Jerry's
4 involuntary transfer, Dean Walters stated that she directed Jerry's basketball coach to speak with
5 him on a number of occasions. Jerry's basketball coach was not trained in alternative discipline
6 or any other counseling methods.

8 125. Jerry was ultimately involuntarily transferred to Tierra del Sol High School.
9 Jerry was informed shortly after the transfer that any entry onto the Foothill campus would
10 constitute a violation of the California Penal Code.

11 126. Plaintiff/Petitioner MARBELLA OJEDA is Latina and the parent of Acilegna
12 D., Jose D., and Francisco D., who are also Latino and currently enrolled as students in the
13 KHSD. They reside in the attendance district for Golden Valley High School in the KHSD.

14 127. Starting in 2014, Jose was enrolled in the Workforce Program at South High
15 School in the KHSD to catch up on his credits. On March 23, 2015, Jose was suspended for
16 threatening to cause physical injury. (Educ. Code §48900(a)(1)). Jose was accused of
17 intimidation toward a campus security guard when, in fact, the security guard had actually
18 engaged in hostile and aggressive behavior toward Jose. School administrators recommended
19 that Jose be expelled and OJEDA requested a hearing.

20 128. KHSD failed to timely provide a copy of the cumulative file to OJEDA and, as a
21 result, the hearing was postponed. At the expulsion hearing documents were included in the
22 expulsion packet that were not provided to OJEDA despite her written request for all records in
23 advance of the hearing.

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1 129. On May 6, 2015, OJEDA agreed to an involuntary transfer with the stipulation
2 that Jose would enroll in a KHSD continuation school for the remainder of spring 2015, but
3 return to Golden Valley High School in fall 2015. OJEDA accepted this agreement because she
4 was concerned that Jose had already missed twenty-seven school days, that he would face a
5 difficult path in making up his credits, and that he would no longer be on track to graduate.
6 Despite this agreement, KHSD delayed its preparation of the required transfer forms prohibiting
7 Jose from attending any school for the remainder of the school year.
8

9 130. Francisco D., OJEDA's other son, is enrolled at Golden Valley High School. In
10 or about 2013, while Francisco was in tenth grade, he came out of a classroom and encountered
11 hundreds of students fighting, but did not engage in the fight. A Golden Valley campus security
12 guard tried to intimidate Francisco into signing a statement of admission that he engaged in the
13 fight. Francisco refused to sign the statement and, as a result, was arrested and taken to Juvenile
14 Hall for an act that he did not commit. No charges were ever filed against Francisco.
15

16 131. Plaintiff/Petitioner MARIA GALLARDO is Latina and the parent of Carlos C.,
17 who is also Latino and a former student at Arvin High School in the KHSD. GALLARDO has
18 two other Latino children, and the family resides in the attendance district for Arvin High
19 School. GALLARDO has limited English proficiency and extremely limited resources. The
20 family lacks reliable transportation.
21

22 132. On March 12, 2015, Arvin High School notified GALLARDO that it was
23 recommending Carlos for expulsion due to alleged violation of Educ. Code 48900(a)(2) using
24 force or violence against another person, except in self-defense. GALLARDO refused to sign
25 any paperwork and stated that she wanted an expulsion hearing. She also verbally requested
26 documents that would be used against Carlos at the hearing. The school intended to send Carlos
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1 to Community Learning Center, a community school operated by Defendant/Respondent KERN
2 COE, located in Bakersfield which is nearly a two-hour bus ride from the family's home.

3 133. KHSD failed to provide Carlos' educational records within the legally required
4 time period. As a result, GALLARDO was forced to request a postponement of the expulsion
5 hearing in order to adequately prepare, which resulted in a thirty-day delay until the next hearing
6 date. By the date of the hearing, Carlos had been suspended from school for fifty-seven days,
7 missing thirty-seven school days. The recommendation for expulsion was not presented to the
8 BOARD OF TRUSTEES OF KHSD until Monday, June 1, 2015, eighty-three days after Carlos
9 was first suspended.
10

11 134. Despite the continuance for the hearing, Defendant/Respondent KHSD failed to
12 provide GALLARDO and her counsel with an opportunity to review all evidence used against
13 Carlos at the expulsion hearing. KHSD included and relied upon information in the expulsion
14 packet that had not been supplied to GALLARDO and her counsel although requested by them
15 in advance of the hearing. During the hearing, KHSD relied on a video and police report
16 regarding the incident that resulted in Carlos's suspension that had not been previously produced.
17 Upon objection KHSD staff disclosed that it is KHSD practice to present the expulsion packet
18 for the first time at the hearing and provide five to ten minutes to give parents and parents'
19 counsel an opportunity to read through the packet, and took the position that this fulfilled its
20 responsibility under the Education Code. Many of the documents included in the expulsion
21 packet and relied upon at the hearing, such as the police report, were not translated into Spanish
22 for GALLARDO who was forced to confront this evidence for the first time at the hearing.
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25 135. The location of KHSD's expulsion hearings, which are held at the KHSD office
26 located on Sundale Avenue in Bakersfield, is not easily accessible to many students and parents,
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1 such as GALLARDO, who wish to exercise their due process rights. Due to her family's
2 transportation issues and limited resources, GALLARDO, through her counsel, requested that
3 KHSD conduct the hearing at Arvin High School or a more accessible location to
4 GALLARDO's home. KHSD refused to accommodate GALLARDO's request and did not offer
5 to provide GALLARDO and Carlos transportation to the hearing. However, KHSD did provide
6 transportation to the hearing for its student witness against Carlos.
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8 136. Plaintiff/Petitioner KATINA FRANKS is African-American and the parent of
9 Darrell F., who is also African-American and a student in the KHSD. FRANKS has one other
10 African-American child who graduated from KHSD in May 2015. They reside in the attendance
11 district for Centennial High School in the KHSD.
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13 137. Darrell F. is a special education student currently enrolled in twelfth grade at
14 Ridgeview High School in KHSD. In 2013, while Darrell was enrolled in ninth grade at
15 Centennial High School, he was denied special education eligibility.
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17 138. At a due process hearing, the KHSD was ordered to give Darrell an Independent
18 Educational Evaluation. During this time, FRANKS chose to place Darrell on home instruction
19 due to multiple suspensions and her concerns that these issues were escalating. FRANKS
20 believed these suspensions were manifestations of Darrell's disability. It was determined by the
21 Independent Educational Evaluator that Darrell did qualify for special education based on
22 ADHD, a hearing disability, and emotional disturbance.
23

24 139. Darrell started tenth grade at South High School in the KHSD during the 2013-14
25 school year. Darrell was suspended that school year and recommended for expulsion from the
26 KHSD for alleged violation of Educ. Code §48900(a)(1). Despite evidence to the contrary and
27 FRANKS' objection, the alleged violation of the Education Code was determined not to be a
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1 manifestation of Darrell's disability. Ultimately, KHSD withdrew the expulsion
2 recommendation when FRANKS agreed to place Darrell on independent study for the remainder
3 of the school year.

4 140. Darrell started the 2014-15 school year at Ridgeview High School. On August
5 22, 2014, a KHSD school dean directed Darrell to sign a Probation Agreement, which Darrell did
6 sign. Although an IEP meeting for Darrell had been held the day prior, the Probation Agreement
7 was never mentioned at that meeting. FRANKS was extremely upset that her son, who is a
8 special education student, was asked to sign a document without notifying her first, but was
9 informed that it was standard procedure. Despite her objection FRANKS was not given the
10 opportunity to withdraw or challenge the Probation Agreement. Darrell was placed on probation
11 through December 2014.

12 141. Plaintiffs/Petitioners VIRGINIA MELCHOR and JUAN MORAN are the parents
13 of Antonio M., a Latino student at Arvin High School. MELCHOR and MORAN have two
14 other Latino children, one who is currently enrolled in an Elementary school that feeds into the
15 KHSD and another who also attends Arvin High School. MELCHOR, MORAN, and their
16 children reside in the attendance district for Arvin High School in the KHSD.

17 142. In or about January 2013, Arvin High School expelled Antonio M. for allegedly
18 being involved in a fight. Arvin High School personnel told MORAN that Antonio had been
19 involved in a fight, and that as a result, Antonio would be suspended for five days. Arvin High
20 School personnel placed paperwork in front of MORAN and falsely represented that the
21 paperwork would give Antonio a five-day suspension. In reality, the paperwork was a "waiver
22 of hearing for expulsion" from the KHSD. The paperwork was entirely in English. MELCHOR
23 and MORAN are monolingual Spanish speakers and do not speak or read English, and this fact
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1 was known to District personnel. MORAN signed the paper believing, as he was told, that their
2 son would receive a five-day suspension. Arvin High School staff actively deceived MELCHOR
3 and MORAN into signing a document that “waived” their right to contest their son’s expulsion
4 from the district for the spring and fall semesters of 2013.

5
6 143. MELCHOR and MORAN believed that their son had received a five-day
7 suspension. After Antonio had served the five-day suspension, MELCHOR took him back to
8 school. At that time, Arvin High School personnel refused to accept Antonio, and informed
9 MELCHOR that Antonio would be attending the Community Learning Center in Bakersfield, a
10 community school operated by Defendant/Respondent KERN COE, for two semesters.
11 MELCHOR protested to the Arvin High School personnel that this school was too far,
12 approximately 30 miles away from the family’s home, and they did not have the transportation to
13 get Antonio there. The school personnel suggested that Antonio take the bus, which requires
14 three transfers, or in the alternative, ride a bicycle.

15
16 144. During his one year expulsion from the Kern High School District, Antonio was
17 unable to attend Community Learning Center because of the great distance and lack of
18 transportation. MELCHOR and MORAN, moreover, perceived Community Learning Center as
19 an inferior school that provided lower quality teachers, lower level curriculum content, limited
20 extracurricular activities, and limited access to courses needed to enroll in college.

21
22 145. In January 2014, after Antonio had completed his one-year expulsion,
23 MELCHOR and MORAN tried to re-enroll Antonio at Arvin High School. Arvin High School,
24 however, again refused to accept Antonio, arguing that he had insufficient credits. After
25 extensive engagement with the District, including legal proceedings, Arvin High School
26 accepted Antonio back to school. Antonio’s educational path has been delayed, and continues to
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1 be undermined. Upon re-enrollment, Arvin High School placed Antonio in predominantly
2 athletic classes rather than in the substantive courses he needed to bridge the academic gap
3 caused by Arvin High School's stringent discipline policies. Antonio, feeling demoralized about
4 the treatment that KHSD subjected him to and the delays in courses, stopped attending high
5 school altogether.
6

7 146. Plaintiffs/Petitioners are informed and believe that the foregoing practices of
8 pressuring parents and students into signing voluntary transfer or involuntary transfer
9 agreements; failing to assign students to an accessible school site following involuntary transfers;
10 failing to comply with Education Code provisions regarding notices, production of students'
11 discipline files, and the maximum number of days between suspension and holding the expulsion
12 hearing; are not isolated incidents, but are part of a pattern and practice of effecting involuntary
13 transfers rather than providing students, and in particular Latino and African-American students,
14 with the due process protections afforded students subjected to formal expulsion proceedings.
15

16 147. Defendants/Respondents KHSD and KERN COE have the affirmative obligation
17 to take steps to address policies and practices that discriminatorily impact Latinos and African-
18 Americans under California law and because they receive federal funding. 42 U.S.C.2000d; 34
19 C.F.R. § 100.1, Govt. Code §§ 11135, *et seq.*
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21 148. Instead of taking actions to remedy the discriminatory effect of its policies and
22 practices, on information and belief, KHSD changed the method by which it reports suspensions
23 and expulsions in an effort to conceal the disparate impacts of its policies and practices, and
24 refused to report information to the State of California in a manner that would disclose the
25 subjective and discriminatory nature of its discipline and school assignment policies.
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1 149. Additionally, on information and belief, KHSD implemented changes in its
2 discipline and school assignment policies and practices that resulted in students being
3 involuntarily assigned to alternative school settings administered by KHSD or KERN COE
4 through intimidation, misrepresentation and other coercive actions that led Student and Parent
5 Plaintiffs/Petitioners and other African-American and Latino students and their parents to believe
6 they had no choice but to accept reassignment to an alternative school or independent study
7 setting, despite the fact that these assignments were then characterized by KHSD as “voluntary”
8 in school records and mandatory reporting.
9

10 150. Additionally, KHSD personnel encouraged and/or coerced Plaintiffs/Petitioners
11 and other limited English proficient (“LEP”) parents and students to sign documents waiving
12 their due process rights associated with formal expulsion proceedings, even though such
13 documents were presented to LEP parents and students in English only.
14

15 151. KHSD forced these assignments to alternative school settings knowing that many
16 African-American and Latino students would be unable to attend the alternative school to which
17 they were assigned due to lack of transportation. As a result of KHSD’s actions, these students
18 suffered an involuntary placement in an independent study setting, despite the fact that
19 independent study was not an appropriate educational setting for them.
20

21 152. KERN COE, in addition to administering various alternative schools that KHSD
22 students were assigned to, has various responsibilities, such as reviewing referrals to alternative
23 placements for truancy and habitual insubordination referrals to alternative school placements,
24 and acting as the ultimate administrative review body for expulsions that take place in KHSD
25 and other Kern County school districts.
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1 153. Defendants/Respondents KHSD and KERN COE have been on actual notice of
2 the disproportionate impacts that their policies and practices have had on African-American and
3 Latino children since at least 2010 and have had the opportunity to review, revise and implement
4 new discipline and school assignment policies and practices that would ameliorate the disparities
5 in educational access that resulted from Latinos and African-American children being pushed out
6 of the general education setting. KHSD and KERN COE have failed to implement any changes
7 designed to address those issues.
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9 154. All Defendants/Respondents have been on actual notice of the disproportionate
10 impacts that subjective and highly discretionary suspension, expulsion, and involuntary transfer
11 policies have on African-American and Latino students. In particular, punishing or effecting the
12 transfer of students for subjective and highly discretionary offenses such as disruption, willful
13 defiance, or habitual profanity or vulgarity, in KHSD, and on information and belief in other
14 districts in Kern County and throughout the state, results in disproportionately higher numbers of
15 African-American and Latino students being suspended, expelled or involuntarily transferred.
16 Further, in KHSD, and on information and belief in other schools and districts in Kern County
17 and throughout the state, teachers and administrators are inconsistent in the application of
18 discipline or involuntary transfer decisions based on behaviors such as disruption, willful
19 defiance, or habitual profanity or vulgarity because the terms are vague, ambiguous and subject
20 to different interpretations by different staff and when applied to different students. Yet
21 Defendant/Respondent KHSD continues to discipline and/or transfer students based on such
22 behavior.
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25 155. Although establishing goals for improving school climate is required by the
26 California Education Code and its regulations, KERN COE has made no attempt, through its
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1 review of the KHSD Local Control and Accountability Plan (“LCAP”) or implementation of the
2 County Discipline Plan, to address this disproportionality, or require that the KHSD do so.

3 156. Plaintiffs/Petitioners are informed and believe that, within the last two years,
4 KHSD had the opportunity to apply for special grant funding that could have been used to
5 develop alternative approaches to discipline and involuntary transfers and to address racial and
6 ethnic disparities, as well as high transfer rates. There are evidence-based alternatives to
7 discipline practices that do not lead to racially disparate rates of discipline, including restorative
8 justice, PBIS, and social and emotional learning. KHSD refused to even apply for such funding.

9
10 157. Plaintiffs/Petitioners, NBA, DHF and FIAKC, on behalf of their members, have
11 for the last three and one-half years provided the District with community input and offers of
12 technical support to address the School-to-Nowhere pipeline at KHSD. Those efforts have been
13 largely rebuffed. KHSD had an additional opportunity to meaningfully address the disparities in
14 discipline and involuntary transfers as a result of the enactment of the Local Control Funding
15 Formula (“LCFF”), which resulted in an allocation of \$17.6 million in supplemental and
16 concentration grant funding to KHSD. State law requires that this \$17.6 million be spent on
17 improving or increasing services to low income students, English learners and foster youth.
18 This, along with an increase in KHSD’s base funding, was an opportunity for KHSD to
19 meaningfully address disproportionate discipline issues through the state-mandated
20 establishment of annual goals for all pupils and for each numerically-significant subgroup of
21 pupils and to improve school climate, as measured by suspension and expulsion rates. Educ.
22 Code §§ 52060(c) and 52060(d)(6). KHSD failed to take advantage of this opportunity or even
23 to comply with the mandates of the LCFF. Specifically, both African-Americans and Latinos
24 constitute numerically-significant subgroups under the LCFF definition (thirty or more pupils,
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1 Educ. Code § 52052). Latino students are numerically significant both district-wide and at each
2 school site within the KHSD. African-American students are a numerically significant subgroup
3 district-wide and at all but three school sites. Nonetheless, the LCAP submitted by KHSD and
4 approved by the KERN COE lacks any goals regarding suspensions or expulsions for these
5 subgroups. The LCAP submitted by KHSD and approved by KERN COE allocates \$2.4 million
6 to pay for police on KHSD campuses, including \$900,000 in supplemental and concentration
7 grant funding. This dwarfs the amount of funds allocated to provide educational supports and
8 behavior interventions, and is allocated in the absence of any data or specific goals for improving
9 outcomes for Latino or African-American students. This is evidence of the negative stereotypes
10 that drive decision making by the District. More resources are allocated based on the perception
11 that the affected students are criminals rather than students who need educational support in
12 order to thrive and excel.
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15 157. Plaintiffs/Petitioners DHF, NBA, FIAKC and RUBY WATSON asked that
16 Defendants/Respondents KERN COE and the CDE intervene and direct KHSD to revise the
17 LCAP to specifically address these deficiencies in a manner that could help ameliorate the racial
18 and ethnic disparities in KHSD's discipline and involuntary transfer policies. Both KERN COE
19 and the CDE had the power and authority to intervene and require changes to the LCAP as a
20 condition of approving funding for KHSD, but refused to do so.
21

22 158. KERN COE SUPERINTENDENT FRAZIER and KHSD SUPERINTENDENT
23 SCHAEFER, along with other district superintendents, are responsible for the development of a
24 plan to provide services to all expelled students in Kern County, that identifies gaps in services
25 to expelled students and strategies for fulfilling those service gaps and submitting that plan to
26 Defendant/Respondent TORLAKSON. Plaintiffs/Petitioners are informed and believe that
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1 Defendants/Respondents knew that service gaps were created by the disproportionate expulsion
2 of African-American and Latino students, but failed to develop and submit a plan that addressed
3 those service gaps, as required by Education Code § 48926.

4 159. Officials and employees of Defendants/Respondents STATE OF CALIFORNIA,
5 CDE, and SUPERINTENDENT TORLAKSON had actual notice of the disparities in
6 educational opportunity that resulted from the disproportionately high suspension, expulsion and
7 assignment to alternative schools of Latinos and African-Americans in KHSD and KERN COE
8 schools, but took no action to compel KHSD or KERN COE to address or rectify these
9 disparities and, specifically, failed to even enforce the mandate that KHSD submit data regarding
10 discipline disaggregated by race, ethnicity and offense.

11 160. The State of California, in Education Code § 48900, has statutorily recognized
12 disruption, willful defiance, and habitual profanity or obscenity as grounds for suspension or
13 expulsion, but the State, SUPERINTENDENT TORLAKSON, and the CDE have failed to
14 provide any explicit guidelines, definitions, or limitations on the use of these categories and they
15 continue to be applied in a manner that provides no notice to students, or their parents, about
16 what kind of behavior constitutes a ground for suspension, expulsion, or transfer, and what
17 behavior does not.

18 161. As a direct result of Defendants/Respondents' actions and deliberate inaction,
19 Plaintiffs/Petitioners, Plaintiffs/Petitioners' children, their members or their members' children
20 and thousands of African-American and Latino students have suffered and will continue to suffer
21 a loss of educational opportunity, limited access to higher education, lack of lucrative job
22 opportunities, and other harms, some of which are irreparable.

23 CAUSES AND CLAIMS

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE EQUAL PROTECTION CLAUSES OF THE CALIFORNIA**
3 **CONSTITUTION, ARTICLE I, SECTION 7(A) & ARTICLE IV, SECTION 16(A)**
4 **(All Plaintiffs/Petitioners against All Defendants/Respondents)**

5 162. Plaintiffs/Petitioners incorporate by reference all preceding paragraphs as though
6 fully set forth here.

7 163. The California Constitution guarantees all students in California basic educational
8 equality. A constitutional violation of basic educational equality occurs where a public
9 educational program “falls fundamentally below prevailing statewide standards” that effects
10 disparate treatment upon a group of students. This right is fundamental, so any action such that
11 it has a real and appreciable impact upon such right is subject to strict scrutiny.

12 164. The State bears the non-delegable responsibility and the ultimate authority to
13 ensure that public schools are providing basic educational equality to all students, as guaranteed
14 by the Constitution. Cal. Const. Art. IX, § 5; Cal. Const. Art. I, § 7. Public education is an
15 obligation, which the State assumed by the adoption of the Constitution. The Constitution
16 prohibits the State from maintaining and operating the common public school system in a way
17 that denies educational equality to students, and requires that educational agencies and the State
18 act when a local district’s policies or practices deny basic educational equality, unless there is a
19 compelling reason for failing to do so. KHSD, KERN COE, and CDE, as agencies of the State,
20 also have a duty to provide basic educational equality to all children enrolled in their schools.
21 SUPERINTENDENTS TORLAKSON, FRAZIER, and SCHAEFER, in their official capacities,
22 also have a duty to provide basic educational equality to all children enrolled in their schools.

23 165. Defendants/Respondents have violated the rights of Plaintiffs/Petitioners, their
24 children or their members’ children, and other African-American and Latino students to receive
25 equal protection of the laws, pursuant to article I, section 7(a) and article IV, section 16(a) of the
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1 California Constitution, by failing to provide them with basic educational opportunities equal to
2 those of White students in KHSD and Kern County. Parent Plaintiffs/Petitioners and members
3 of Plaintiffs/Petitioners DHF, NBA and FIAKC who have children that were, are or will be
4 enrolled in the KHSD have a personal interest in the educational rights of their children and the
5 obligation under state law to ensure that their children attend school. Parent Plaintiffs/Petitioners
6 and members of Plaintiffs/Petitioners DHF, NBA, and FIAKC who have children who were, are,
7 or will be enrolled in the KHSD are hampered in the performance of that obligation by their
8 reluctance to send their children to a school where they will be subjected to an inferior education
9 and discriminatory practices.
10

11 166. Unless enjoined, Defendants/Respondents will continue to violate the rights of the
12 Students Plaintiffs/Petitioners, the rights of the children of the members of the DHF, FIAKC and
13 NBA and the rights of the other children of the Parent Plaintiffs/Petitioners to receive equal
14 protection of the laws under the California Constitution, and Student Plaintiffs/Petitioners and
15 other African-American and Latino students will continue to suffer irreparable harm.
16

17 167. Declaratory relief is proper here because all Plaintiffs/Petitioners are informed
18 and believe that Defendants/Respondents will deny that they have violated and continue to
19 violate the right of KHSD students and their parents to equal protection of the laws under the
20 California Constitution.
21

22 **SECOND CAUSE OF ACTION**

23 **VIOLATION OF ARTICLE IX, SECTIONS 1 AND 5 OF THE CALIFORNIA**
24 **CONSTITUTION**
25 **(All Plaintiffs/Petitioners against All Defendants/Respondents)**

26 168. Plaintiffs/Petitioners incorporate by reference all preceding paragraphs as though
27 fully set forth here.
28

1 169. Defendants/Respondents have violated the rights of Plaintiffs/Petitioners, and
2 other African-American and Latino students pursuant to article IX, sections 1 and 5 of the
3 California Constitution, to learn in a “system of common schools” that are “kept up and
4 supported” such that students may learn and receive the “diffusion of knowledge and intelligence
5 essential to the preservation of the[ir] rights and liberties.” “[A]ll educational activities -
6 curricular or ‘extracurricular’ - offered to students by school districts fall within the free school
7 guarantee of article IX, section 5” of the California Constitution. *Hartzell v. Connell* (1984) 35
8 Cal. 3d 899, 911.

10 170. These constitutional provisions impose on Defendants/Respondents the duty to
11 provide Student Plaintiffs/Petitioners with an education that will teach them the skills they need
12 to succeed as productive members of modern society. By expelling and involuntarily assigning
13 African American and Latino students to alternative education programs that fail to provide basic
14 educational opportunity, Defendants/Respondents violate article IX, sections 1 and 5 of the
15 California Constitution.

17 171. The quality of education offered by the District and KERN COE at their
18 alternative schools to which students, including Student Plaintiffs/Petitioners, are involuntarily
19 assigned is substantially inferior to the quality of education provided by comprehensive high
20 schools in KHSD. The alternative schools operated by the District and KERN COE provide
21 students far fewer academic, athletic, and extracurricular activities, fewer qualified or highly
22 qualified teachers; and limited access to the courses necessary to enroll in California universities.
23 They also fail to address the individualized educational needs of each student, particularly the
24 needs of English Learners and special education students. White students who attend alternative
25 schools are disproportionately sent to Vista West High School, which has more space and
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1 resources, including teachers, per student; a better-maintained physical plant; more diverse
2 course offerings; and fewer and less visible security guards than the other continuation schools
3 operated by KHSD..

4 172. Defendants/Respondents KHSD and KERN COE involuntarily assign students to
5 alternative schools without regard for whether each assigned alternative school is geographically
6 accessible and appropriate to meet the educational needs of each of the students assigned to that
7 school. Students, including Student Plaintiffs/Petitioners, have been assigned to alternative
8 schools located in excess of 30 miles from their homes and without access to transportation,
9 resulting in a denial of access to public education and basic educational opportunity.

10 173. Unless enjoined, Defendants/Respondents will continue to violate the right to
11 receive equal protection of the laws under the California Constitution. Student
12 Plaintiffs/Petitioners, the other children of Parent Plaintiffs/Petitioners and the general public
13 will suffer irreparable harm.

14 174. Declaratory relief is proper here because all Plaintiffs/Petitioners are informed
15 and believe that Defendants/Respondents will deny that they have violated and continue to
16 violate the right of KHSD and KERN COE students to receive equal protection of the laws under
17 the California Constitution.

18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF GOVERNMENT CODE § 11135** 20 **(All Plaintiffs/Petitioners Against All Defendants/Respondents)**

21 175. Plaintiffs/Petitioners incorporate by reference all preceding paragraphs as though
22 fully set forth here.

23 176. Government Code §§ 11135, et seq. provides that no person within the state shall
24 “on the basis of ethnic group identification [or] color, be unlawfully denied the benefits of, or be
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1 unlawfully subjected to discrimination under, any program or activity that is funded directly by
2 the state or receives any financial assistance from the state.”

3 177. This prohibition against discrimination applies to the State of California, its
4 departments and agencies, school districts and recipients of direct funding or state financial
5 assistance, including KHSD and KERN COE.
6

7 178. Government Code §§ 11135, et seq. also authorizes regulations “to establish
8 standards for determining which persons are protected by [the statute] and guidelines for
9 determining what practices are discriminatory.”

10 179. Plaintiffs/Petitioners and their members are persons protected by the anti-
11 discrimination provisions and the regulations based on their racial and ethnic group identification
12 and color, which is defined by the regulations as “the possession of the racial, cultural or
13 linguistic characteristics common to a racial, cultural or ethnic group or the country or ethnic
14 group from which a person or his or her forebears originated.” 22 C.C.R. § 98210(b).
15

16 180. Government Code §§ 11135, et seq. require that Defendants/Respondents ensure
17 that Plaintiffs/Petitioners, and other African-American and Latino students and their parents, not
18 be “unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any
19 program or activity” because of their race or ethnicity.
20

21 181. It is illegal discrimination for the District “in carrying out any program or activity
22 directly . . . on the basis of ethnic group identification . . . [or] color:

23 a. to deny a person the opportunity to participate in, or benefit from an aid, benefit
24 or service;

25 b. to afford a person the opportunity to participate in or benefit from an aid,
26 benefit or service that is not equal to that afforded others;

27 c. to provide a person with an aid, benefit or service that is not as effective in
28 affording an equal opportunity to obtain the same result, to gain the same benefit,

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or to reach the same level of achievement as that provided to others. In some situations, identical treatment may be discriminatory;

d. to provide aid, benefits or services at a different time, unless such action is clearly necessary to provide such persons with an equal opportunity to receive as truly effective aid, benefits or services as those provided to others;

- i) to utilize criteria or methods of administration that:
 - (1) have the purpose or effect of subjecting a person to discrimination on the basis of ethnic group identification, [or] color . . . ;
 - (2) have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient's program with respect to a person of a particular ethnic group identification [or] color

22 C.C.R. §98101.

182. Defendants/Respondents have violated the provisions of Government Code §§ 11135, et seq. and their implementing regulations by failing to afford Plaintiffs/Petitioners, their children, their members or their members' children and other African-American and Latino students and parents a full and equal educational opportunity and implementing and applying suspension, expulsion and involuntary transfer policies and practices that disparately affect the rights of African-American and Latino students to attend school in a general education setting.

183. Defendant/Respondent KERN COE receives funds from the State of California, in part to pay for personnel and resources necessary to fulfill its duty to identify and eliminate gaps in countywide educational services and ensure the provision of adequate, individually-tailored educational programs and services to pupils enrolled within county community schools. Educ. Code §§ 48926, 1983. By operation of Govt. Code §§ 11135, et seq, it must do so in a manner that also ensures that those programs and services are not provided in a discriminatory manner. KERN COE was aware of the disproportionate suspension, expulsion and involuntary transfer of KHSD students and had the opportunity to require that KHSD address those disparities when it

1 reviewing and approving the KHSD budget, when developing the county wide discipline plan
2 and when reviewing and approving the KHSD LCAP. KERN COE, failed to take or require
3 KHSD to take any action to address the disparities, and, in failing to do so, perpetuated and
4 exacerbated the discriminatory exclusion of Plaintiffs/Petitioners, their children, their members
5 or their members' children, and other Latino and African American students from a general
6 educational setting.
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8 184. Defendants/Respondents KERN COE is independently responsible for the
9 operation of alternative educational settings of various types that are alternative educational
10 settings. Students are assigned to those settings as a result of referrals by the other local
11 educational agencies located in Kern County and under certain circumstances, through court
12 referral. KERN COE draws its students from other districts within Kern County and, but for
13 other factors, would likely have a school population that is the demographic equivalent of the
14 Kern County enrollment at large. However, in 2014-2015 KERN COE enrollment was
15 comprised of 12% African-American students, which represents more than twice the 5.5%
16 enrollment of African-Americans in the county as a whole. Plaintiffs/Petitioners are informed
17 and believe that KERN COE is and has been aware of this disparity and has been or should have
18 been aware of the fact that African American students have been disproportionately assigned to
19 its schools based on their race, but took no action to determine the underlying basis for this
20 disproportionality.
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23 185. Defendants/Respondents CDE, TORLAKSON, and the State of California, are
24 funded by the State of California to establish curricula, state standards, and teacher credentialing
25 criteria and to administer grants from the federal government under the federal Elementary and
26 Secondary Act ("ESEA") in a manner that ensures equal educational access and addresses the
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1 achievement gap between African-Americans, Latinos and the general school population. Part of
2 this funding is appropriated by the State of California and allocated for the purpose of
3 establishing monitoring and oversight of school district compliance with state and federal laws,
4 including those applicable to equal educational opportunity including but not limited to Educ.
5 Code §§ 200, 1983, 8 Cal. Code Regs. § 4902, 42 U.S.C. § 2000d, 20, U.S.C. §§ 1701, et seq.,
6 20 U.S.C. §§6301, et seq. Plaintiffs/Petitioners are informed and believe that CDE,
7 TORLAKSON and other agencies and officials of the State of California are and have been
8 aware of the racial and ethnic disparities in suspension, expulsion, involuntary transfer and
9 educational opportunity as alleged in this complaint, but took no action to ensure that KHSD
10 and/or KERN COE were in compliance with the state and federal anti-discrimination provisions,
11 thereby contributing to or allowing the exacerbation of the discrimination.
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14 186. As a direct and proximate cause of Defendants/ Respondents' failures to comply
15 with their obligations, Student Plaintiffs/Petitioners, their members or their members' children
16 and other African-American and Latino students have been expelled or involuntarily transferred
17 to an alternative school and/or independent study and thereby denied equal access to educational
18 opportunities, programs and activities and have been irreparably harmed. Parent
19 Plaintiffs/Petitioners and members of the DHF, FIAKC and NBA have a personal interest in the
20 educational rights of their children, and their members or their members' children, and the
21 obligation under state law to ensure that children attend school. They are hampered in the
22 performance of that obligation by their reluctance to send their children to a school where they
23 will be subjected to an inferior education and discriminatory practices.
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26 **FOURTH CAUSE OF ACTION**
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1 **DISCRIMINATION ON THE BASIS OF RACE AND ETHNICITY IN VIOLATION OF**
2 **THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO**
3 **THE UNITED STATES CONSTITUTION**
4 **VIOLATION OF 42 U.S.C. § 1983**
5 **(Student and Parent Plaintiffs/Petitioners against VEGAS, WILLIAMS, BATEY, FLORES**
6 **and PETERS, SUPERINTENDENTS FRAZIER, SCHAEFER, AND TORLAKSON and**
7 **KERN COE)**

8 187. Plaintiffs/Petitioners incorporate by reference all preceding paragraphs as though
9 fully set forth here.

10 188. The Fourteenth Amendment to the U.S. Constitution provides that "No State shall
11 . . . deny to any person within its jurisdiction the equal protection of the laws."

12 189. Defendants/Respondents, VEGAS, WILLIAMS, BATEY, FLORES and PETERS
13 , SUPERINTENDENTS SCHAEFER, TORLAKSON, and FRAZIER, and KERN COE, acting
14 under color of state law, knowingly and intentionally perpetuated widespread and persistent
15 policies and practices in the administration of the discipline, suspension, expulsion, truancy, and
16 involuntary transfer and alternative school assignment of students, in a manner that
17 impermissibly and invidiously targets African-American and Latino students on account of their
18 race, color, ethnicity, ancestry, and/or national origin, and creates a racially hostile educational
19 environment. Defendants/Respondents' policies and practices impermissibly deprived African-
20 American and Latino students of their right to full and equal access to education, which is
21 unconstitutional discrimination on the basis of race, color, ethnicity, ancestry, and/or national
22 origin, in violation of the Equal Protection Clause of the United States Constitution.

23 190. In addition and in the alternative, Defendants/Respondents' widespread and
24 persistent policies and practices in the administration of the discipline, suspension, expulsion,
25 truancy and involuntary transfer and alternative school assignment of students, including the
26 enforcement of provisions that allow suspension, expulsion and involuntary transfer based on
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1 subjective criteria such as willful disruption and obscenity, violate the Equal Protection Clause of
2 the United States Constitution because they resulted in a racially hostile educational environment
3 and caused harmful and invidious racially-disproportionate impact on African-American and
4 Latino students, which is unconstitutional discrimination on the basis of race, color, ethnicity,
5 ancestry and/or national origin at KHSD and, on information and belief in other districts around
6 the state.
7

8 191. Defendants/Respondents were on notice that African-American and Latino
9 students were disproportionately disciplined or assigned to alternative schools when compared to
10 the general school population and subject to a racially hostile educational environment, yet failed
11 to take remedial action. Defendants/Respondents VEGAS, WILLIAMS, BATEY, FLORES and
12 PETERS and SCHAEFER, instead covered up KHSD's actions by changing its reporting
13 practices to categorize "expulsions" as "involuntary transfers" and altogether withholding 2011-
14 2012 data regarding expulsion and suspension that is disaggregated by race/ethnicity and nature
15 of offense, although required to do so by California law. This further demonstrates
16 Defendants/Respondents' malicious intent to continue discrimination against African-American
17 and Latino students on account of their race, color, ethnicity, ancestry, and/or national origin.
18

19 192. In addition and in the alternative, KHSD's practices and policies have no
20 non-pretextual, race-neutral explanation and therefore must be subjected to strict scrutiny.
21 Defendants/Respondents cannot identify a compelling governmental interest furthered by their
22 conduct or the existence of such disparities and discrimination of which they are a cause, nor can
23 Defendants/Respondents demonstrate that they are furthering any such interest (if it were to
24 exist) by a narrowly tailored means. Accordingly, Defendants/Respondents' conduct violates the
25 Equal Protection Clause of the United States Constitution.
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1 193. In addition and in the alternative, Defendants/Respondents cannot identify a
2 rational basis for their policies, practices, and conduct, or the disparities, and the racially hostile
3 educational environment that result from their policies, practices, and conduct. Nor can
4 Defendants/Respondents identify a rational basis for creating and sustaining discrimination
5 against African-American and Latino students that deprives those students of state-created
6 entitlements and interest, which they may not be deprived of arbitrarily or irrationally.
7 Accordingly, Defendants/Respondents' conduct violates the Equal Protection Clause of the
8 United States Constitution.
9

10 194. In addition and in the alternative, Defendants/Respondents' policies, practices,
11 and conduct in causing and/or allowing to continue to exist the gross race-based disparities in the
12 provision of public education and the racially hostile educational environment that have been
13 identified above demonstrates their intent to discriminate against Plaintiffs/Petitioners and other
14 African-American and Latino students on account of their race, color, ethnicity, ancestry, and/or
15 national origin. Accordingly, Defendants/Respondents' conduct violates the Equal Protection
16 Clause of the United States Constitution.
17

18 195. In addition and in the alternative, Defendants/Respondents' policies, practices,
19 and conduct in causing and/or allowing to continue to exist the gross race-based disparities in the
20 provision of public education and the racially hostile educational environment that have been
21 identified above demonstrates their deliberate indifference to state actors' discriminatory conduct
22 against Plaintiffs/Petitioners and other African-American and Latino students on account of their
23 race, color, ethnicity, ancestry, and/or national origin. Accordingly, Defendants/Respondents'
24 policies, practices, and conduct violate the Equal Protection Clause of the United States
25 Constitution.
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**Violation of Title VI
(42 U.S.C. § 2000d *et seq.*)
(All Plaintiffs/Petitioners Against Defendant/Respondent KHSD)**

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2
3 198. Plaintiffs/Petitioners incorporate by reference all preceding paragraphs as though
4 fully set forth here.

5 199. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides a private
6 right of action for individuals to sue federally funded institutions for intentional discrimination
7 based on race, color, or national origin.

8
9 200. Defendant/Respondent KHSD receives federal funding for operation of its
10 schools.

11 201. Defendant/Respondent KHSD has violated, and continues to violate,
12 Plaintiffs'/Petitioners' rights under Title VI by intentionally discriminating against them through
13 the creation of a racially hostile educational environment by its widespread and persistent
14 policies and practices in the administration of the discipline, suspensions, expulsions, truancy,
15 and involuntary transfers and alternative school assignments of students, in a manner that
16 impermissibly and invidiously targets African-American and Latino students on account of their
17 race, color, ethnicity, ancestry, and/or national origin and that creates a racially hostile
18 educational environment. Defendants/Respondents' policies and practices impermissibly deprive
19 African-American and Latino students of their right to full and equal access to education, which
20 is unconstitutional discrimination on the basis of race, color, ethnicity, ancestry, and/or national
21 origin, in violation of Title VI.

22
23
24 202. Defendant/Respondent KHSD was on notice that African-American and Latino
25 students were disproportionately disciplined or assigned to alternative schools when compared to
26 the general school population and subject to a racially hostile educational environment, yet failed
27 to take remedial action. Defendants/Respondents, KHSD and its BOARD OF TRUSTEES,
28

1 instead covered up its actions by changing its reporting practices to categorize “expulsions” as
2 “involuntary transfers” and altogether withholding 2011-2012 data regarding expulsion and
3 suspension that is disaggregated by race/ethnicity and nature of offense, although required to do
4 so by California law. KHSD acted with malicious intent to continue discriminatory policies and
5 practices against African-American and Latino students on account of their race, color, ethnicity,
6 ancestry, and/or national origin.
7

8 203. The racially hostile educational environment in the KHSD manifests itself in the
9 policies and practices of the KHSD staff.

10 204. African-American and Latino students in the KHSD are disproportionately
11 suspended, expelled and involuntarily transferred and disproportionately to alternative schools
12 where the education offered is substantially inferior to the quality of education provided by
13 comprehensive high schools in KHSD.
14

15 205. KHSD fails to use less punitive measures such as PBIS, restorative justice, social
16 and emotional learning, and effective classroom management skills, but rather uses formal
17 discipline, and intervention by security and campus police to handle situations that could be
18 addressed without formal discipline or the involvement of security and campus police. This
19 approach is used disproportionately with African-American and Latino students.
20

21 206. KHSD does not identify students with emotional problems or students who may
22 be suffering from trauma and instead disciplines these children rather than devising interventions
23 that will keep these children in the classroom.

24 207. KHSD fails to take appropriate action to address demeaning and biased actions of
25 KHSD staff that are based on stereotypes and are used in dealing with Latino and African-
26 American students.
27
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1 208. African-American and Latino children attending KHSD schools have been
2 disproportionately presumed to be in gangs, consistent with a stereotype that African-American
3 and Latino people are inclined towards criminality and aggression.

4 209. When a group of Latino students were gathered together, KHSD administrator
5 told the children they “look[ed] like a herd of cattle.”
6

7 210. Latino students at Arvin High School, a comprehensive school operated by
8 KHSD, have been locked out of their classrooms.

9 211. Latino students have been told by at least one KHSD teacher that they will grow
10 up to be farmworkers, “druggies,” and “homies.”

11 212. African-American students who were disciplined were used to wash the vans
12 owned by the KHSD.
13

14 213. KHSD disproportionately expels, involuntarily transfers or otherwise assigns
15 Latino and African-American students to its continuation high schools in a manner that results in
16 concentration of students based on their race or ethnicity.

17 214. Vista High School, a continuation high school operated by KHSD, had 16.7%
18 African-American students during the 2014-2015 school year, which was nearly three times the
19 percentage of African-American students in KHSD generally during the same time period. At
20 Vista High School with its disproportionate representation of African-American students, there
21 are more campus security who are more visible than at majority-White Vista West High School.
22

23 215. Vista West High School, a continuation high school operated by KHSD, had 52%
24 White students during the 2014-2015 school year, more than double the percentage of White
25 students in KHSD generally during the same time period. Vista West High School has
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1 substantially better facilities and resources than the other KHSD continuation high schools all of
2 which have a significantly lower enrollment of White students.

3 216. Defendant KHSD and the BOARD OF TRUSTEES have had notice of the
4 existence of a racially hostile educational environment and have failed to correct it.
5

6 217. In addition and in the alternative, KHSD's practices and policies have no non-
7 pretextual, race-neutral explanation and therefore must be subjected to strict scrutiny.

8 218. Defendant/Respondent KHSD cannot identify a compelling governmental
9 interest furthered by its conduct or the existence of such disparities and discrimination of which
10 they are a cause, nor can Defendant/Respondent demonstrate that it is furthering any such
11 interest (if it were to exist) by a narrowly tailored means. Accordingly,
12 Defendant's/Respondent's conduct violates Title VI.
13

14 219. In addition and in the alternative, Defendant/Respondent cannot identify a rational
15 basis for its policies, practices, and conduct, or the disparities and racially hostile educational
16 environment that result from its policies, practices, and conduct. Nor can Defendant/Respondent
17 identify a rational basis for creating and sustaining discrimination against African-American and
18 Latino students that deprives those students of state-created entitlements and interest, which they
19 may not be deprived of arbitrarily or irrationally. Accordingly, Defendant's/Respondent's
20 conduct violates Title VI.
21

22 220. As a direct and proximate result of Defendant's/Respondent's intentional
23 discrimination, Plaintiffs/Petitioners ISIDRO LARRALDE, GABRIEL ELDER, ROBERT
24 ROBLES, TYSON REED, and CARMEN RAMIREZ, as well as the children of
25 Plaintiffs/Petitioners ARLENE SANDERS, RUBY WATSON, PATRICIA CRAWFORD,
26 MARIO RAMIREZ, CATHERINE ROBLES, LINDA REED, VIRGINIA MELCHOR, JUAN
27
28

1 MORAN, KATINA FRANKS, KESCHEL COLLINS, MARBELLA OJEDA, and MARIA
2 GALLARDO and Plaintiffs/Petitioners DHF, NBA and FIAKC members or their members'
3 children have personally suffered the loss of educational opportunity, the lack of access to a full
4 curriculum, limited access to extracurricular activities, limited access to courses necessary to
5 graduate, limited access to courses necessary to enroll in higher education, and academic deficits
6 that have resulted in their inability to perform well in a regular classroom and/or to pass
7 mandatory achievement tests that are a pre-condition for graduation from high school. The
8 Parent Plaintiffs/Petitioners or their parent members have a personal interest in the educational
9 rights of their children and the obligation under state law to ensure that their children attend
10 school, and are hampered in the performance of that obligation by their reluctance to send their
11 children to a school where they will be subjected to an inferior education and discriminatory
12 practices.
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15 **SIXTH CAUSE OF ACTION**

16 **DENIAL OF DUE PROCESS (VOID FOR VAGUENESS – FACIAL CHALLENGE),**
17 **14TH AMENDMENT TO THE U.S. CONSTITUTION**
18 **(All Student and Parent Plaintiffs/Petitioners against Defendant/Respondent the State of**
19 **California)**

20 221. Plaintiffs/Petitioners incorporate all preceding paragraphs by reference as though
21 fully set forth here.

22 222. Defendants/Respondents are acting under color of state law and have and are
23 subjecting and/or causing Plaintiffs/Petitioners or their children to be subjected to a deprivation
24 of rights, privileges, and immunities secured by the Constitution.

25 223. By operation of Article IX Sections 1 and 5 of the California Constitution, the
26 State of California through its legislature is obligated to ensure that all California children are
27 provided equal access to a common schools system designed to promote a general diffusion of
28 knowledge and intellectual, scientific, moral, and agricultural improvement.

1 224. Education is a fundamental right established under the California Constitution and
2 Student Plaintiffs/Petitioners are expressly entitled to receive the benefit of a free public school
3 education. Student Plaintiffs/Petitioners have a property and liberty interest in that education
4 that may not be withdrawn or infringed without due process.

5
6 225. Parent Plaintiffs/Petitioners have a personal interest in the educational rights of
7 their children and the obligation under state law to ensure that their children attend school and
8 are hampered in the performance of that obligation by their reluctance to send their children to a
9 school where they will be subjected to an inferior education and discriminatory practices.

10 226. Defendant/Respondent State of California has established and sanctioned
11 discipline policies, pursuant to Education Code §§ 48900(i) and 48900(k), that are vague,
12 ambiguous and overbroad by allowing students to be removed from a general education setting
13 for actions characterized as an “obscene act,” for having “engaged in habitual profanity or
14 vulgarity,” for having “[d]isrupted school activities or otherwise willfully defied the valid
15 authority of supervisors, teachers, administrators, school officials, or other school personnel.”
16 Defendant/Respondent State of California, has failed and continues to fail to define these terms
17 or provide consistent guidelines to schools and school districts regarding what type of behavior is
18 encompassed in these terms through direct legislation or regulatory action generally applicable to
19 all local education agencies.

20
21
22 227. Defendant/Respondent, State of California, has delegated the responsibility for
23 complying with due process protections associated with the right to education to local
24 educational agencies, including KHSD and KERN COE, but has failed to monitor, oversee and
25 ensure that those due process obligations are being complied with.
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1 231. Education is a fundamental right established under the California Constitution and
2 Student Plaintiffs/Petitioners are expressly entitled to receive the benefit of a free public school
3 education. Student Plaintiffs/Petitioners have a property and liberty interest in that education
4 that may not be withdraw or infringed without due process.
5

6 232. The State of California has established various procedural protections which are
7 designed to provide notice, an opportunity to be heard and an impartial decision maker to
8 students who are threatened with suspension or expulsion.

9 233. Defendants/Respondents VEGAS, WILLIAMS, BATEY, FLORES and PETERS
10 and SCHAEFER, through express policies and practices have implemented a system whereby
11 students, including Student Plaintiffs/Petitioners, are not afforded adequate procedural
12 protections including but not limited to adequate notice, timely hearing, the opportunity to
13 inspect documents, the right to call witnesses and decision by an impartial body prior to being
14 transferred out of their general education setting and into an alternative school that fails to
15 provide full and equal access to the educational opportunities provided in KHSD comprehensive
16 high schools. As a result, Student Plaintiffs/Petitioners have been deprived of their rights to
17 education, without due process.
18

19 234. KHSD schools following the policies and practices established or implemented by
20 Defendants/Respondents VEGAS, WILLIAMS, BATEY, FLORES and PETERS and
21 SCHAEFER have failed and routinely fails to provide students and parents with adequate notice
22 of adverse disciplinary action that includes a statement of the alleged charges and specific facts
23 as well as the right to a hearing before a student is removed from his/her regular high school and
24 involuntarily assigned to an alternative school. As a result KHSD schools, following these
25 policies and practices have failed to translate disciplinary notices and other relevant documents
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1 for non- or limited English speaking students and their parents, including some of the Student
2 and Parent Plaintiffs/Petitioners, subjecting such students to discipline without proper notice or
3 opportunity to be heard.

4 235. Defendants/ Respondents VEGAS, WILLIAMS, BATEY, FLORES and PETERS
5 and SCHAEFER have established and are implementing a policy and/or practice of denying
6 students access to their educational records as well as the documents used in disciplinary
7 proceedings in violation of statutory procedural protections and their constitutional right to due
8 process. As a result, despite students' requests for records well in advance of their suspension,
9 expulsion, and/or involuntary transfer hearings, KHSD schools, following the policy and practice
10 established or implemented by Defendants/Respondents VEGAS, WILLIAMS, BATEY,
11 FLORES and PETERS and SCHAEFER, routinely deny or unjustifiably delay providing access
12 so that students, including some Plaintiffs/Petitioners, have little or no time to review the records
13 in preparation for his/her hearings.

14 237. Defendants/Respondents VEGAS, WILLIAMS, BATEY, FLORES and PETERS
15 and SCHAEFER has established or implemented policies and practices under which KHSD
16 schools schedule expulsion and involuntary transfer hearings in a manner that jeopardizes due
17 process by, among other actions, convening hearings in locations that are geographically
18 inaccessible to students and parents, including some Plaintiffs/Petitioners, limiting the duration
19 of hearings to as little as fifteen minutes; and commencing hearings at times that are extremely
20 challenging for Parent Plaintiffs/Petitioners and other working parents.

21 238. In addition, Defendants/ Respondents VEGAS, WILLIAMS, BATEY, FLORES
22 and PETERS and SCHAEFER have established or implemented policies and practices under
23 which a districtwide practice of prohibiting students from attending school pending resolution of
24

1 their expulsion and/or involuntary transfer proceedings. As a result, students, including
2 Plaintiffs/Petitioners, are or have been deprived of educational services, sometimes for months at
3 a time, resulting in a complete denial of access to public education without due process in
4 violation of state and federal law.

5
6 239. The quality of education offered by the district and county operated alternative
7 schools to which students, including Student Plaintiffs/Petitioners, are ultimately assigned is
8 substantially inferior to the quality of education provided by comprehensive high schools in
9 KHSD. The District and KERN COE operated alternative schools provide students far fewer
10 academic, athletic, and extracurricular activities, fewer qualified or highly qualified teachers, and
11 limited access to the courses necessary to enroll in California universities. They are also
12 unequipped to address the individualized educational needs of each student, particularly the
13 unique needs of English Learners and special education students.
14

15 240. Defendants/ Respondents VEGAS, WILLIAMS, BATEY, FLORES and PETERS
16 and SCHAEFER have established or implemented policies and practices under which students
17 including, Student Plaintiffs/Petitioners, were and are assigned to alternative schools without
18 regard for whether or not the school is geographically accessible and appropriate to meet the
19 educational needs of the student. Several students, including some Plaintiffs/Petitioners have
20 been assigned to alternative schools located in excess of 30 miles from their homes and without
21 access to transportation, resulting in a complete denial of access to public education.
22

23 241. Defendants/Respondents' failure to afford Student Plaintiffs/Petitioners adequate
24 process prior to suspending, expelling, and involuntarily transferring them to alternative schools
25 violates their right to due process pursuant to the Fourteenth Amendment of the United States
26 Constitution.
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1 alleged herein, Defendants/Respondents have unlawfully diverted money intended for
2 monitoring and oversight to other uses in violation of state and federal law.

3 247. Defendants/Respondents have either permitted or authorized the reimbursement
4 of public money for, or actually expended public time and money on the wrongful and unlawful
5 practices, policies and procedures as alleged herein.
6

7 248. The KHSD Defendants/Respondents and the KERN COE
8 Defendants/Respondents receive public funds from various sources, both state and federal, that
9 are collected by or granted to the State of California and appropriated and allocated by the State
10 of California to local education agencies, including KHSD and KERN COE, for the purpose of
11 providing specific and general education services to students enrolled in California schools. The
12 sources of those funds include but are not limited to the state lottery money, general funds
13 allocated pursuant to the LCFF, and grants made to the state of California pursuant to the ESEA.
14 Funds are provided to KHSD and KERN COE to fulfill their obligations, as local education
15 agencies, to provide a free public education to all students and to provide it in a manner that
16 provides equal access to educational services to all children. Additionally, certain funds are
17 appropriated and allocated to provide supplemental services designed to increase educational
18 opportunity for socially and economically disadvantaged children, English Learners and students
19 designated as eligible for special education services.
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22 249. Defendant/Respondent State of California, directly and through its various
23 agencies, and Defendants/Respondents CDE and TORLAKSON receive public funds from
24 various sources, both state and federal, that are collected by or granted to the State of California
25 and appropriated and allocated by the State of California to pay for various personnel and
26 services provided by the State of California, the CDE and TORLAKSON. The sources of those
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1 funds include but are not limited to the state lottery money, general funds allocated pursuant to
2 the LCFF, and grants made to the state of California pursuant to the ESEA. Funds are provided
3 to the State of California, CDE and TORLAKSON to fulfill their obligations to provide a free
4 public education to all students and to provide it in a manner that provides equal access to
5 educational services to all children. Additionally, certain funds are appropriated and allocated to
6 provide supplemental services designed to increase educational opportunity for socially and
7 economically disadvantaged children, English Learners and students designated as eligible for
8 special education services. Included in those allocations are funds to be used to pay for the
9 personnel and services necessary to monitor and oversee the performance of local school districts
10 and county offices of education with respect to their obligations under state and federal
11 constitutions, and statutes to provide equal educational opportunity and access, in an
12 educationally-sound system, free of discrimination.
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15 250. The KHSD Defendants/Respondents and KERN COE Defendants/ Respondents,
16 as alleged herein, have expended those public funds in a manner that has directly resulted in the
17 suspension, expulsion, and involuntary assignment of students to alternative education programs
18 in a manner that unlawfully discriminates against African-American and Latino students and
19 subjects them to inferior educational opportunities without due process of law. All KHSD
20 Defendants/Respondents have expended public time and money for the illegal purpose of
21 suspending, expelling, and involuntarily transferring students to alternative education settings on
22 the basis of their race, ethnicity, color, and national origin. KHSD and KERN COE
23 Defendants/Respondents' systematic practice of suspending, expelling, and involuntarily
24 transferring African American and Latino students to alternative education programs due to their
25 race, ethnicity, color and national origin is discriminatory and unlawful.
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1 251. On information and belief, Defendant/Respondent KHSD received an estimated
2 \$17.6 million in LCFF supplemental and concentration grant funding for the 2014-2015 school
3 year based on its determination that 62.88% of all students fell into the unduplicated student
4 count (i.e., students who are low-income, English Learner, and/or foster youth).

5 Defendant/Respondent KHSD has expended and continues to expend supplemental and
6 concentration grant funding without reference to a district LCAP that complies with LCFF
7 mandates such as the requirement to establish goals for numerically significant pupil subgroups,
8 including African-American and Latino students, addressing suspensions as required by Educ.
9 Code 62060(c)(1). Defendants/Respondents KHSD, KERN COE, CDE, and Superintendents
10 SCHAEFER, FRAZIER, and TORLAKSON have each failed to ensure the development and
11 implementation of a legally compliant LCAP for KHSD thereby permitting, authorizing, and
12 actually expending public money in violation of applicable statutes and regulations. See Educ.
13 Code §§ 42238.02 and 52060 et seq.; 5 C.C.R. §§ 15494 et seq. Unless enjoined by this court to
14 comply with their duties to ensure the development and implementation of a LCAP for KHSD
15 that complies with LCFF mandates, Defendants/Respondents will continue to evade these
16 responsibilities
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20 252. The personnel and administrative costs expended by KHSD and KERN COE
21 Defendants/Respondents that are associated with discriminatory discipline including the time and
22 money spent suspending, expelling and processing discriminatory suspensions, expulsions and
23 school assignments are illegal and should be enjoined.

24 253. The personnel and administrative costs expended by KHSD and KERN COE
25 Defendants/Respondents that are associated with the provision of classroom instruction,
26 facilities, teachers and educational and extracurricular opportunities at alternative schools that
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1 258. Defendants/Respondents each have a clear and present ministerial duty to provide
2 for equal access to educational opportunity for all children enrolled in the schools and school
3 districts they administer and/or oversee; to take appropriate action to identify and eliminate
4 policies that interfere with the equal participation by their students in their instructional
5 programs; and to monitor and ensure that the schools and/or school districts are in compliance
6 with state and federal statutory and regulatory requirements and the underlying purposes and
7 specific provisions of the California Constitution, the EEOA, and state laws applicable to the
8 provision of equal education to African-American and Latino children.

9
10 Defendants/Respondents, as alleged herein, have failed and are failing to comply with those
11 duties and obligations.

12 259. Defendants/Respondents KHSD and SUPERINTENDENT SCHAEFER have a
13 clear and present ministerial duty to provide data and student information to
14 Defendant/Respondent CDE regarding suspensions and expulsions by race, ethnicity, national
15 origin and sex. Defendants/Respondents CDE and SUPERINTENDENT TORLAKSON have
16 the clear and present ministerial duty to collect and report that data and ensure compliance with
17 the data reporting requirements imposed on school districts. Defendants/Respondents KHSD,
18 CDE, and SUPERINTENDENTS SCHAEFER and TORLAKSON, as alleged herein, have
19 failed and are continuing to fail to comply with these duties in that KHSD and
20 SUPERINTENDENT SCHAEFER have not submitted that data and information for the 2011-
21 2012 school year and CDE and SUPERINTENDENT TORLAKSON have taken no action to
22 procure that data.

23 260. Defendants/Respondents KHSD and SUPERINTENDENT SCHAEFER have a
24 clear and present ministerial duty to develop a LCAP that establishes goals for numerically
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1 significant subgroups including Latinos and African-Americans, addressing suspensions and
2 expulsions as required by Educ. Code 52060(c)(1). Defendants/Respondents KERN COE, CDE,
3 and SUPERINTENDENTS FRAZIER and TORLAKSON have the clear and present ministerial
4 duty to review LCAPs submitted by districts, including KHSD, and to ensure compliance with
5 requirements of the LCFF in accordance with Educ. Code § 52060 et seq. and applicable
6 regulations. Defendants/Respondents KHSD, KERN COE, CDE and SUPERINTENDENTS
7 SCHAEFER, FRAZIER, and TORLAKSON, as alleged herein, have failed and are failing to
8 comply with these duties in that KHSD and SUPERINTENDENT SCHAEFER have not
9 submitted a LCAP that identifies goals for numerically significant subgroups in violation of
10 Educ. Code §52060(c)(1) and KERN COE, CDE and SUPERINTENDENTS FRAZIER and
11 TORLAKSON, although asked by Plaintiffs/Petitioners to intervene pursuant to the Uniform
12 Complaint Procedures as set forth in Educ. Code §52075, have taken no action to ensure that
13 KHSD develops and implements a LCAP that complies with LCFF mandates.

16 261. Defendants/Respondents KHSD, SUPERINTENDENT SCHAEFER, and
17 BOARD OF TRUSTEES have a clear and present duty under Educ. Code §§ 48432.3 and
18 48432.5 to adopt policies and procedures governing the voluntary and involuntary transfer of
19 pupils to continuation high schools. As part of that duty, Defendants/Respondents must ensure
20 that there is a clear criterion for determining which pupils may voluntarily transfer or be
21 recommended for transfer to a continuation high school and that this criterion is not applied
22 arbitrarily. Educ. Code 48432.3(a). Defendants/Respondents may not impose an involuntary
23 transfer unless other means of correction fail to bring about student improvement. Educ. Code §
24 48432.5. In addition, Defendants/Respondents must ensure that no specific group of pupil is
25 disproportionately enrolled in continuation high schools. Educ. Code § 48432.3(b).

1 262. Defendants/Respondents KHSD, SUPERINTENDENT SCHAEFER, and
2 BOARD OF TRUSTEES have transferred, and continue to transfer, students to continuation high
3 schools without following the voluntary and/or involuntary transfer procedures set forth in Educ.
4 Code §§ 48432.3 and 48432.5.
5

6 263. Defendants/Respondents KHSD, SUPERINTENDENT SCHAEFER, and
7 BOARD OF TRUSTEES have failed to develop and/or implement policies and procedures
8 consistent with their statutory duties pursuant to Educ. Code §§ 48432.3 and 48432.5.
9 Defendants/Respondents' failure has resulted in the disproportionate transfer of African-
10 American and Latino pupils to continuation high schools that fail to address their individual
11 educational needs or promote their educational interests.
12

13 264. Defendants/Respondents KHSD, SUPERINTENDENT SCHAEFER, and
14 BOARD OF TRUSTEES have a clear and present duty under Educ. Code § 48918 to adopt rules
15 and regulations governing procedures for the expulsion of pupils which must include an
16 expulsion hearing, written notice of the hearing with a statement of the specific facts and
17 charges, a record of the hearing, and written notice of the decision accompanied by notice of the
18 right to appeal.
19

20 265. Defendants/Respondents KHSD, SUPERINTENDENT SCHAEFER, and
21 BOARD OF TRUSTEES have a clear and present duty under Educ. Code § 48916 to adopt rules
22 and regulations establishing a procedure for the filing and processing of requests for readmission
23 and the process for the required review of all expelled pupils for admission including setting a
24 specific date for when an expelled pupil will be reviewed for readmission.
25

26 266. Defendants/Respondents KHSD, SUPERINTENDENT SCHAEFER, and
27 BOARD OF TRUSTEES have failed to develop and/or implement policies and procedures
28

1 consistent with their statutory duties pursuant to Educ. Code §§ 48916 and 48918. Defendants'
2 failure has resulted in the disproportionate transfer of African-American and Latino pupils to
3 county community schools including the transfer of Plaintiffs/Petitioners ISIDRO LARRALDE,
4 GABRIEL ELDER, ROBERT ROBLES, and CARMEN RAMIREZ, in addition to Kenton M.
5 and Antonio M. and other children of the Parent Plaintiffs/Petitioners; transfers of students,
6 including Plaintiff/Petitioner CARMEN RAMIREZ and Antonio M., following a coerced waiver
7 of rights and without adequate notice or an expulsion hearing; unlawful failure to readmit
8 students, as was the case for Plaintiff/Petitioner GABRIEL ELDER, Antonio M., and Avery S.,
9 who have completed their expulsion terms and satisfied the conditions of their rehabilitation
10 plans; and the placement of Plaintiffs/Petitioners, their children, their members' children, and
11 other African-American and Latino students, into community schools with higher dropout rates,
12 limited course offerings, and no access to the extracurricular activities otherwise available in
13 comprehensive schools.
14

15
16 267. Defendants/Respondents have a clear and present ministerial duty to comply with
17 Educ. Code §§ 51747, et seq. and 5 C.C.R. §§ 11700, et seq. governing the administration of
18 independent study programs, including the requirement that participation in an independent study
19 program be voluntary and that students on independent study have the same access to existing
20 services and resources as is provided to other students.
21

22 268. Defendants/Respondents administer or oversee independent study programs in
23 violation of the statutory and regulatory requirements governing those programs.
24 Defendants/Respondents place students on independent study programs as a discipline measure,
25 force their participation in these programs against their will and without their informed consent,
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1 and deny students in independent study programs equal access to existing services and resources
2 such as counselors, computer labs, libraries, and extracurricular activities.

3 269. Recipients of state funding are prohibited from discriminating on the basis of
4 protected characteristics, including race or national origin. "No person in the State of California
5 shall, on the basis of race, [or] national origin [], be unlawfully denied full and equal access to
6 the benefits of, or be unlawfully subjected to discrimination under, any program or activity that
7 is conducted, operated, or administered by the state or by any state agency, [or] is funded directly
8 by the state." Gov. Code § 11135(a). Defendants/Respondents have violated their duty to
9 comply with these anti-discrimination provisions by implementing and failing to intervene to
10 stop the implementation of suspension, expulsion, truancy, and involuntary transfer policies that
11 have denied and are denying African-American and Latino students, including
12 Plaintiffs/Petitioners, their children, their members or their members' children, full and equal
13 access to public education.

14 270. As recipients of Federal financial assistance in the form of education grants and
15 contracts, Defendants/Respondents are subject to the provisions of Title VI of the Civil Rights
16 Act of 1964, 20 U.S.C. § 2000d, and its implementing regulations, which prohibit discrimination
17 on the basis of race, color or national origin. As a condition of the receipt of federal funding for
18 educational programs, Defendants/Respondents are prohibited from implementing programs or
19 criteria for participation in educational programs that disparately limit the participation of
20 Petitioners and other LEP children who are Latino or African-American. In violation of Title VI,
21 Defendants/Respondents have implemented and are continuing to implement highly
22 discretionary suspension, expulsion, and involuntary transfer policies that result in the
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(All Plaintiffs/Petitioners against All Defendants/Respondents)

274. Plaintiffs/Petitioners incorporate by reference all preceding paragraphs as though fully set forth here.

275. An actual controversy has arisen and now exists between Plaintiffs/Petitioners and Defendants/Respondents concerning their respective rights and duties in that Plaintiffs/Petitioners contend that each Defendant/Respondent has violated one or more of its legal duties or obligations as to Plaintiffs/Petitioners, whereas Defendants/Respondents dispute these contentions and contends that their actions are consistent with those duties and obligations; specifically:

a. Plaintiffs/Petitioners assert that the KERN COE and KHSD Defendants/Respondents have the affirmative obligation under state and federal mandates, as alleged herein, to take affirmative steps to address disparities in the number of African-American and Latino students (when compared to other students) subjected to discipline, suspension, expulsion, involuntary transfer or assignment to independent study; and that the KERN COE and KHSD Defendants/Respondents have violated that obligation.

b. Plaintiffs/Petitioners assert that the alternative schools to which Plaintiffs/Petitioners, their children, their members or their members' children were assigned have failed to provide equal educational opportunity and, therefore, violated the free common schools guarantee.

c. Plaintiffs/Petitioners assert that Defendants/Respondents State of California, CDE and TORLAKSON, each have the independent obligation to ensure that the KHSD and KERN COE Defendants/Respondents comply with the free common schools guarantee and provide equal educational access to a general educational setting, and ensure that all policies and

1 practices are applied in a manner that do not disparately impact African-American and Latino
2 students by disproportionately subjecting them to discipline, suspension, expulsion, involuntary
3 transfer, assignment to independent study or other limitations on access to a general educational
4 setting; and that the State of California, CDE and TORLAKSON have failed to take the
5 necessary action to fulfill this obligation.
6

7 **d.** Plaintiffs/Petitioners assert that the provisions of Education Code § 48900 insofar
8 as it allows for suspension, expulsion or involuntary transfer of students based on behavior
9 characterized as an “ obscene act,” or, for having “engaged in habitual profanity or vulgarity,”
10 or, for having “[d]isrupted school activities or otherwise willfully defied the valid authority of
11 supervisors, teachers, administrators, school officials, or other school personnel” is vague,
12 ambiguous, and overbroad and has not been uniformly defined or construed in a manner that
13 allows a student adequate notice of the type of activity that might subject him or her to
14 suspension, expulsion or involuntary transfer and, therefore, violates the due process protections
15 of the United States Constitution and is void.
16

17 276. Plaintiffs/Petitioners desire a judicial determination of their rights and duties, and
18 a declaration as to legal duties and obligations of Defendants/Respondents
19

20 277. A judicial declaration is necessary and appropriate at this time under the
21 circumstances in order that Plaintiffs/Petitioners may ascertain their rights and the duties and
22 obligations of Defendants/Respondents.

23 278. Plaintiffs/Petitioners bring this action in furtherance of the public policy and to
24 enforce important rights affecting the public interest as established by the U.S. Constitution, the
25 California Constitution, and the federal and state laws alleged in this complaint. Therefore,
26 Plaintiffs/Petitioners seek attorneys’ fees pursuant to Code Civ. Proc. § 1021.5.
27
28

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs/Petitioners pray for judgment as follows:

3 279. Plaintiffs/Petitioners respectfully request that this Court enter a declaratory
4 judgment stating that the administration of student discipline in the KHSD violates Article IX,
5 Sections 1 and 5 of the California Constitution; the Equal Protection Clauses of the California
6 Constitution, Article I, Section 7(A) & Article IV, Section 16(A); Govt. Code § 11135; the
7 Equal Protection Clause and Due Process Clause of the Fourteenth Amendment to the United
8 States Constitution; and 42 U.S.C. §1983.

9
10 280. Plaintiffs/Petitioners respectfully request that this Court enter a permanent
11 injunction barring the race-based administration of student discipline in the Kern High School
12 District.

13
14 281. Plaintiffs/Petitioners respectfully request that this Court enter a decree enjoining
15 Defendants/Respondents to eradicate race-based discrimination in the administration of student
16 discipline in Kern High School District.

17 282. Plaintiffs/Petitioners respectfully request that this Court order
18 Defendant/Respondent KHSD to provide educational remediation services to Student
19 Plaintiffs/Petitioners, and to identify and provide remediation services to other students of KHSD
20 who were subjected to suspension, expulsion or involuntary transfer as a result of KHSD's
21 unlawful and discriminatory policies and that such services be specifically designed to meet the
22 unique educational needs of each student.

23
24 283. Plaintiffs/Petitioners respectfully request that this Court order
25 Defendants/Respondents KERN COUNTY OFFICE OF EDUCATION, TOM TORLAKSON,
26 in his capacity as STATE SUPERINTENDENT OF PUBLIC INSTRUCTION; CALIFORNIA
27

1 DEPARTMENT OF EDUCATION and the STATE OF CALIFORNIA to take all steps
2 necessary to ensure that schools and school districts, including KHSD and KERN COE, comply
3 with state laws regulating the discipline and involuntary transfer of students and do so in a
4 manner that is racially and ethnically neutral and ensure that they, comply with their obligations
5 under state and federal law to provide equal educational opportunity to all students.
6

7 284. Plaintiffs/Petitioners respectfully request that this Court enter a writ of mandate
8 directing Defendants/Respondents to comply with their mandatory constitutional and statutory
9 duties alleged in this Complaint/Petition.

10 285. Plaintiffs/Petitioners respectfully request costs of suit, including reasonable
11 attorneys' fees under 42 U.S.C. § 1988 and Code Civ. Proc. § 1021.5 and any and all further
12 relief to which they may be entitled.
13

14 Respectfully submitted.

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16 Lillian May Marshall-Bass Eva Paterson
17 Sahar Durali Allison Elgart
18 Cynthia L. Rice
19 Franchesca Verdin

20 **Greater Bakersfield Legal Assistance** **Mexican American Legal Defense and**
21 Lyndsi Andreas **Educational Fund**
22 Stanley Wu Thomas A. Saenz
23 Martha L. Gomez

24 **Wilson Sonsini Goodrich & Rosati,**
25 **Professional Corporation**
26 Steven Guggenheim
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Arlene Sanders et.al. v. Kern High School District et.al.
KCSC Case #: S-1500-CV-283224-NFT-EB

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