

THE HONORABLE

IN THE SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

A.D., a minor, by and through his mother,
Christina Madison; G.J., a minor, by and
through his mother, Krystal Jenson; T.R., a
minor, by and through her mother, Michele
Forrester; A.P., a minor, by and through his
mother, Devon Parks; E.S. a minor, by and
through her mother, Jane Doe,

Plaintiffs,

v.

OFFICE OF SUPERINTENDENT OF PUBLIC
INSTRUCTION; CHRIS REYKDAL, in his
official capacity as SUPERINTENDENT OF
PUBLIC INSTRUCTION,

Defendants.

No.

CLASS ACTION COMPLAINT

Plaintiffs, by and through their attorneys, bring this action on their own behalf and on behalf of all other similarly situated individuals, and allege as follows:

I. INTRODUCTION

1. Plaintiffs bring this class action lawsuit on behalf of themselves and similarly situated students who require special education and who reside in the Pasco or Yakima School Districts (the “Districts”) in the state of Washington. Plaintiffs seek declaratory and injunctive relief to compel the Defendants—the state agency and its head official responsible for overseeing

1 K-12 public education in Washington—to exercise adequate supervision and take appropriate
2 action regarding the Districts’ use of excessive and discriminatory exclusionary discipline
3 against students with special education needs, which deprives them of their right to an
4 appropriate public education guaranteed by Washington law.

5 2. Students with special education needs are among the most vulnerable students,
6 but they are being disciplined in a manner that removes them from their classrooms at a rate
7 vastly disproportionate to their peers without special education needs, often for behaviors that are
8 related to their disabilities and that do not implicate student safety.

9 3. The disproportionate and excessive discipline of students with special education
10 needs is a systemic, statewide problem. Over 40,000 students are suspended or expelled from
11 Washington public schools annually, including more than 12,000 students who receive special
12 education. Although special education students comprised 14 percent of the statewide student
13 body in the 2014–2015 school year, they constituted 29 percent of all suspended and expelled
14 students. During the last three years for which Defendant Office of Superintendent of Public
15 Instruction (“OSPI”) has collected data, the disparity in discipline rates statewide for special
16 education students compared to non-special education students has steadily increased.

17 4. As alarming as these official statistics are, the actual rates at which students with
18 special education needs are excluded from the classroom are even higher due to systematic
19 underreporting of disciplinary methods that do not qualify as official suspensions, but exclude
20 students all the same. For example, parents of students with special education needs report
21 routinely receiving phone calls from schools requesting that they pick up their student from
22 school early—an informal method of exclusion that is not recorded as a suspension, but
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1 nevertheless causes students to miss lessons and fall behind their peers. Students with special
2 education needs disproportionately receive these *de facto* suspensions.

3 5. Plaintiffs and similarly situated students suffer considerable harm resulting from
4 their disproportionately high out-of-school suspensions and exclusions from school. Social
5 science data demonstrates that students receiving such discipline are up to 10 times more likely
6 to drop out of high school than students who are not disciplined, and are more likely to become
7 involved with the juvenile and criminal justice systems. *See Report to the President, MY*
8 *BROTHER’S KEEPER TASK FORCE*, 26 (May 2014),
9 https://obamawhitehouse.archives.gov/sites/default/files/docs/053014_mbk_report.pdf.

11 6. The formal discipline and informal exclusion of students with disabilities due to
12 behavior related to their disabilities results in significant periods of missed classroom instruction.

13 7. Such discipline and exclusion not only deprives these students of their right to an
14 education in violation of the state constitution, but also violates state antidiscrimination laws,
15 which prohibit discrimination based on disability.

16 8. The excessive and unwarranted targeting of these children for exclusionary school
17 discipline is the direct result of Defendants’ failure to monitor and exercise appropriate
18 supervisory authority over Washington’s school districts and schools.

19 9. As the primary public agency and public official responsible for overseeing K-12
20 public education in Washington State, respectively, Defendants OSPI and the Superintendent of
21 Public Instruction Chris Reykdal are responsible for assisting school districts in implementing
22 programs to meet the needs of children with special education needs; requiring each school
23 district to ensure an appropriate educational opportunity for all children with special education
24 needs; monitoring and enforcing school district compliance with state laws prohibiting disability
25 needs; monitoring and enforcing school district compliance with state laws prohibiting disability
26 needs; monitoring and enforcing school district compliance with state laws prohibiting disability
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1 discrimination in public schools; and ensuring that special education students are not disciplined
2 or excluded from school or otherwise denied educational opportunity due to behavior related to
3 their disabilities.

4 10. Defendants have long been aware of the widespread disproportionate discipline of
5 special education students in these districts, but have failed to take adequate steps to safeguard
6 the rights of these students.

7 11. Among other things, Defendants have failed to investigate and monitor school
8 districts engaged in the excessive discipline of students with special education needs; failed to
9 implement necessary systemic reform to protect students with special education needs; failed to
10 monitor the school districts' implementation of special education services and disciplinary
11 policies; failed to ensure that school districts and schools have robust procedures for preventing
12 and addressing discriminatory discipline and exclusion; and failed to ensure that school staff
13 serving special needs students are adequately trained and monitored. As a result, Plaintiffs and
14 others similarly situated have been deprived of their right to an education.

15 12. Defendants' failure to monitor and exercise appropriate supervisory authority has
16 also deprived Washington schools of the professional training, guidance, and resources required
17 to adequately support students with special education needs. Defendants have failed to ensure
18 that schools and school districts receive the training, skills, and monitoring and oversight
19 necessary to manage the behavior of students with special education needs. Defendants have
20 instead largely left school districts throughout the state unsupported in their efforts to educate
21 students with special education needs.

22 13. As a direct result, school districts throughout the state—and in particular, Pasco
23 and Yakima—have systematically excluded special education students with challenging
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1 behaviors from their classrooms rather than provide them the education guaranteed to them by
2 the Washington State Constitution.

3 14. Plaintiffs have been restrained, isolated, sent to a time out room without cause or
4 as a response to behaviors related to their disability, sent home early, suspended, and expelled.
5 Due to missed instructional time, Plaintiffs have fallen behind in school and been denied the
6 same education as their peers.

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8 15. The systematic nature of the discipline Plaintiffs face is not the result of any one
9 bad school, administrator, or district—or because Plaintiffs are bad children—but rather is the
10 inevitable result of Defendants’ abdication of responsibility.

11 16. Plaintiffs have suffered serious irreparable harm as a result and will be at
12 continued imminent risk of suffering further such injuries if their request for declaratory and
13 injunctive relief is not granted. Plaintiffs have no adequate remedy at law.

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15 **II. JURISDICTION AND VENUE**

16 17. Subject matter jurisdiction is proper in this Court pursuant to RCW 2.08.010,
17 7.24.010, and 7.24.020 because this is an action for state constitutional violations, state law
18 violations, and for injunctive relief.

19 18. Jurisdiction and venue are proper in this Court pursuant to RCW 4.92.010(5)
20 because Plaintiffs A.D., A.P., and T.R. reside in Yakima County; Plaintiffs G.J. and E.S. reside
21 in Pasco County; and Defendant operates as a state entity under RCW 4.92.010.

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23 **III. PARTIES**

24 19. Plaintiffs have been harmed and will continue to be harmed by Defendants’
25 failure to monitor and exercise appropriate supervisory authority to ensure that they are not
26 excluded from school due to behavior related to their disabilities.

1 **A. Plaintiff A.D.**

2 20. Plaintiff A.D. is a 13-year-old boy in the seventh grade residing in Yakima
3 County, Washington. He is enrolled at Lewis and Clark Middle School (Yakima School
4 District), located at 1114 W. Pierce Street, Yakima, Washington 98902. A.D. has received
5 special education services since he was in the fourth grade.

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7 21. A.D. was diagnosed with bipolar disorder at the age of four and Oppositional
8 Defiant Disorder at the age of six. As a young child, A.D. was also diagnosed with Attention
9 Deficit Hyperactivity Disorder (ADHD), Mood Disorder, and Anxiety Disorder.

10 22. Christina Madison is Plaintiff A.D.'s mother and legal guardian. Ms. Madison is
11 a single mother who works as a medical assistant and cares for A.D. and his nine-year-old sister.

12 23. A.D. attended the Selah School District from kindergarten through part of the
13 second grade. In kindergarten and the first grade, A.D. struggled with behavioral outbursts that
14 caused him to be removed from the classroom frequently. A.D. was evaluated for special
15 education services in the first grade, but was found not to qualify. A.D. attended the West
16 Valley School District from part of second grade through the third grade, and in the fourth grade,
17 A.D. moved to Yakima School District.

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19 24. During the fourth grade, A.D. was again evaluated for special education services
20 due to behavioral outbursts. His evaluation noted that A.D.'s "attendance is poor due to
21 disciplinary exclusions," and that the "school environment tends to exacerbate [A.D.]'s
22 behaviors." The team determined that A.D. was eligible for special education services, and that
23 due to his disability, A.D. "struggles with dealing appropriately with common school and social
24 situations such as changes in the daily schedule, transitioning between subjects or classes,
25 disagreements with peers, and following school and classroom rules." A.D.'s team also
26
27 determined that he has a pragmatic speech disorder, demonstrated by his difficulty interpreting

1 the social cues of others, deviating from routines, and interacting positively with other students
2 and adults. On February 24, 2017, A.D. was diagnosed with autism.

3 25. Since qualifying for special education services, A.D. has received services in an
4 isolated classroom intended to provide intensive special education instruction to students with
5 disabilities.

6 26. A.D. is also supported by a team from the Yakima Valley Farm Workers Clinic
7 Wraparound with Intensive Services (WISe) program, an independent non-profit that provides
8 comprehensive behavioral health services to individuals with complex behavior health needs and
9 their families. A.D.'s WISe team includes a psychotherapist and behavior intervention
10 specialists trained in behavioral therapy and crisis de-escalation.

11 27. Yakima School District staff have failed to fully implement the assistance offered
12 by WISe team members to manage A.D.'s behavior.

13 28. During the 2015–2017 school years, A.D. was repeatedly suspended, excluded
14 from the classroom, and informally disciplined due to incidents in which his behavior was
15 misinterpreted by school employees as defiant or insubordinate.

16 29. According to A.D.'s official school files, during the 2015–2016 and 2016–2017
17 school years, he was restrained by school employees on at least eight separate occasions during
18 which he experienced agitation and aggressive outbursts related to his disability. A.D. was
19 formally suspended for 41 days and sent home early from school on at least 11 other occasions
20 that did not result in formal suspensions. In total, A.D. was excluded from the classroom for
21 approximately 52 days. Examples of instances in which A.D. was excluded from his classroom,
22 without limitation, include:
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- 24 a. On September 9, 2015, A.D. was restrained twice and his great grandmother was
25 called to pick him up early from school.
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- 1 b. On September 11, 2015, A.D.'s great grandmother was called to pick him up early
2 from school.
- 3 c. On March 4, 2016, A.D. was sent home early.
- 4 d. On March 10, 2016, A.D. was sent home early.
- 5 e. On March 24, 2016, A.D.'s teacher determined that he "would not do well on the
6 bus" and A.D. was restrained when he attempted to board the bus.
- 7 f. On April 19, 2016, A.D. was restrained and sent home early.
- 8 g. On May 2, 2016, A.D. was restrained twice and received a four-day suspension.
- 9 h. On May 11, 2016, A.D. was restrained, ripping his shirt, and his teacher informed
10 Ms. Madison that she was "considering filing assault charges" against A.D. A.D.
11 received an emergency expulsion that was later converted to a short-term suspension.
- 12 i. On September 19, 2016, A.D. was restrained twice by his teacher and a School
13 Resource Officer (SRO) when he refused to change out of his gym clothes. A.D.
14 received a five-day suspension for the incident, which his WISE team determined was
15 a manifestation of his disability.
- 16 j. On September 30, 2016, A.D. was sent home early.
- 17 k. On October 24, 2016, A.D. was restrained and removed from the classroom by the
18 SRO.
- 19 l. On November 9, 2016, A.D. was removed from the classroom by the SRO.
- 20 m. On November 28, 2016, A.D. received an emergency expulsion, converted to a 15-
21 day long term suspension, for "insubordination/failure to cooperate," for an incident
22 in which A.D. was found in the hallway instead of his classroom. A.D. believed that
23 an administrator had instructed him to go to the hallway.
- 24 n. On January 20, 2017, A.D. was sent home early, despite the fact that he had calmed
25 down and expressed a desire to remain in class. A.D. received a three-day suspension
26 for this incident.
- 27 o. On February 13, 2017, when A.D. was resting his head on his desk, his teacher
"pulled the chair back so he couldn't rest his head on the table." A.D. then became
agitated and aggressive, and was sent home early.
- p. On February 21, 2017, A.D. was sent home early, despite A.D.'s intervention team
arriving and concluding that he was ready to return to class.
- q. On May 17, 2017, A.D. received an emergency expulsion because he refused to do
his work and attempted to go to lunch with the rest of his class. When his teacher

1 attempted to restrain him, A.D. used profanity. A.D. and his mother contest his
2 teacher's version of the incident.

3 30. As of the date of filing, A.D. has missed 52 days of school due to suspension
4 during the 2016–2017 school year, yet the Yakima School District has offered A.D. just 16 hours
5 of compensatory education. A.D. has regularly been sent home without make-up work.

6 31. The Yakima School District does not have the professional training, guidance, or
7 resources to meet A.D.'s needs. In fact, A.D.'s teachers often trigger and escalate A.D.'s
8 emotional outbursts, which results in A.D. being disciplined and excluded. A.D.'s behavior plan
9 inexplicably places the onus on A.D. to address his own disability, rather than providing its staff
10 with the training to de-escalate A.D.'s behavior. The Yakima School District has declined to
11 offer A.D. services that Ms. Madison has requested in meetings because the District claims to not
12 have the funding to offer those services.
13

14 32. As a direct result of Defendants' failure to monitor and exercise appropriate
15 supervisory authority over the Yakima School District, A.D. has been denied the services he
16 requires to access his education, and has been repeatedly disciplined because of his special
17 education needs. A.D. has been denied his right to an education and has been unlawfully
18 discriminated against on the basis of his disability.
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20 **B. Plaintiff A.P.**

21 33. Plaintiff A.P. is an eight-year-old boy in the second grade residing in Yakima
22 County, Washington, who is currently homeschooled. During the 2015–2016 school year, he
23 attended McClure Elementary School ("McClure") (Yakima School District), located at 1222
24 South 22nd Avenue, Yakima, Washington 98092, and Whitney Elementary School ("Whitney")
25 (Yakima School District), 4411 West Nob Hill Boulevard, Yakima, Washington 98908. A.P. has
26 received special education services since he was three years old.
27

1 34. A.P. has suffered from medical issues related to his gastro-intestinal tract since he
2 was three months old. A.P. had delays in speech and walking, and was diagnosed with
3 Asperger’s Syndrome when he was seven years old. A.P. has trouble completing many school
4 tasks, interacting with his classmates, and is extremely stressed by crowds, such as at lunch time
5 or school assemblies. On March 13, 2013, A.P. was in a near-fatal car accident and also suffers
6 from Post-Traumatic Stress Disorder (PTSD) as a result.
7

8 35. Devon Parks is Plaintiff A.P.’s mother and legal guardian. Ms. Parks is a single
9 mother who cares for and homeschools A.P. Ms. Parks used to work as a waitress but was
10 forced to quit in order to care for and educate A.P. She now works part time at a different
11 restaurant and lives at home with her mother. Ms. Parks would like to move into her own home
12 with A.P., but cannot afford to because she needs to stay home to care for A.P.
13

14 36. A.P. began the 2015–2016 school year at McClure in Yakima, Washington. The
15 Yakima School District placed A.P. in a general education first grade setting without consulting
16 Ms. Parks, and held meetings to address A.P.’s education plans without her present. After
17 consistent disciplinary actions against A.P., Ms. Parks withdrew A.P. from McClure.
18

19 37. After homeschooling A.P. for five months, Ms. Parks re-enrolled A.P. at Whitney
20 in May 2016, which was the only school in the district—other than McClure—that seemed it
21 could accommodate A.P. A.P. faced a rash of disciplinary actions during the two short months
22 he attended Whitney, including spending 11 days suspended and receiving multiple disciplinary
23 referrals. Ms. Parks withdrew A.P. from school and now homeschools him, but wishes he could
24 return to the public education system.

25 38. During the 2015–2016 school year, A.P. was repeatedly suspended, excluded
26 from the classroom, and informally disciplined due to behavioral incidents related to his
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1 disability at both McClure and Whitney. According to A.P.'s official school files, A.P. was
2 restrained at least three times; formally suspended for 12.5 days; and sent home from school
3 early at least three times every week, which did not result in formal suspensions. A.P. was also
4 removed from his normal classroom setting at least 11 times. In total, A.P. was excluded from
5 the classroom for approximately 24 days. Examples of instances in which A.P. was disciplined
6 during the 2015–2016 school year for behavior related to his disability include, without
7 limitation:
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- 9 a. At McClure, A.P. was regularly denied recess time because he “[took] too long in the
10 bathroom” because of his gastro-intestinal condition.
- 11 b. On May 12, 2015, A.P. was suspended for refusing to come in from recess. This
12 incident was recorded as a suspension for “dangerous behavior.”
- 13 c. On May 5, 2016, A.P. received a “dangerous behavior” suspension for disrupting the
14 classroom and refusing to take a test.
- 15 d. On May 10, 2016, A.P. was suspended for refusing to take a test and disrupting other
16 testers.
- 17 e. On May 25, 2016, A.P. was suspended for disrupting class, attempting to run out the
18 door, and “stomping” on a teacher’s foot.
- 19 f. On June 1, 2016, A.P. was emergency expelled for being involved in a fight in which
20 he defended himself from bullying. A.P. was injured, and suffered a ruptured
21 eardrum, bruises, and scratches. Ms. Parks has reported the fact that A.P. is bullied to
22 McClure. In response, the school’s principal told Ms. Parks A.P. would just “have to
23 take it.” The school converted the emergency expulsion to a suspension.
- 24 g. Ms. Parks received frequent calls, often within an hour of school starting, requesting
25 her to pick up her son because he was not listening or would not participate, both
26 behaviors related to his disability.
- 27 h. McClure Elementary repeatedly isolated A.P. in the “shoebox,” a small classroom
that includes only a desk and chair, in which the lights are turned off. Ms. Parks once
went to pick up A.P. from the “shoebox,” where she found a school official outside
blocking the door and her son locked in the dark room crying and banging on the door
to get out.
- i. On one occasion, a counselor physically carried A.P. out of a classroom and into an
office, leaving handprints on A.P.’s arm.

1 39. The Yakima School District does not have the professional training, guidance, or
2 resources to meet A.P.’s needs. In fact, employees of the Yakima School District have flagrantly
3 and repeatedly expressed their desire to push A.P. out of school altogether. During A.P.’s initial
4 enrollment meeting at Whitney, the principal stated to Ms. Parks that he would “do anything” to
5 get A.P. out of the school.
6

7 40. Ms. Parks attempted to enroll A.P. in the neighboring West Valley School
8 District, which refused to admit A.P. due to his disciplinary record. As a result, Ms. Parks was
9 forced to homeschool A.P. during the 2016–2017 school year.

10 41. Yakima School District has refused to provide A.P. with supplemental online
11 schooling. A.P. is not currently receiving any special education services from the Yakima
12 School District.
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14 42. As a direct result of Defendants’ failure to monitor and exercise appropriate
15 supervisory authority over the Yakima School District, A.P. has been completely forced out of
16 the public school system. He has been denied the services he requires to access his education,
17 and has been repeatedly disciplined because of his special education needs. A.P. has been denied
18 his right to an education and has been unlawfully discriminated against on the basis of his special
19 education needs.
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21 **C. Plaintiff G.J.**

22 43. Plaintiff G.J. is a 10-year-old boy in the third grade residing in Franklin County,
23 Washington. He is enrolled at McGee Elementary School (“McGee”) (Pasco School District),
24 located at 4601 N. Horizon Drive, Pasco, Washington 99301. G.J. has received special
25 education services since he was three years old.

26 44. G.J. was born with microcephaly, and has also been diagnosed with seizure
27 disorder, ADHD, pervasive developmental disorder, and mood disorder. He has received special

1 education services since he was a preschooler under the category of “other health impairment.”

2 On January 26, 2017, G.J. was diagnosed with social pragmatic communication disorder.

3 45. Krystal Jenson is Plaintiff G.J.’s mother and legal guardian. She is a single
4 mother who cares for G.J. and his brother. Ms. Jenson was inspired to enter the medical field
5 because of G.J. Although Ms. Jenson has an Associate Degree in Applied Science and recently
6 obtained her certificate to be a medical office administrative assistant, she has been out of work
7 for several years while caring for G.J.
8

9 46. G.J. receives services in a self-contained classroom. Due to Pasco School
10 District’s special education policies, G.J. has attended three different elementary schools in four
11 years.
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13 47. During the 2016–2017 school year, G.J. was repeatedly sent home early, excluded
14 from the classroom, and informally disciplined due to behavior related to his disability. As of
15 the date of this filing, G.J. was sent home early from school on at least two separate occasions
16 that did not result in formal suspensions and was excluded from his normal classroom in other
17 areas of the school, such as the time out room or the office, on at least 15 different occasions.
18 Examples of instances in which G.J. was excluded from his classroom during the 2016–2017
19 school year include:
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- 21 a. On September 2, 2016, G.J. was sent home early because another student reported
that G.J. had taken off some of his clothes.
- 22 b. On September 8, 2016, G.J. lost his privilege to use the school foyer bathroom
23 because he was bothering other students and did not listen to instructions to leave.
- 24 c. On September 15, 2016, G.J. was denied recess for two days because he refused to
25 get on the bus, ran in circles around the flag pole, and bothered the secretary.
- 26 d. On September 20, 2016, G.J. was sent to the time out room for being “aggressive”
27 during music class.

- 1 e. On September 26, 2016, G.J. was sent to the time out room and had privileges taken
2 away for striking another child on the playground.
- 3 f. On September 30, 2016, G.J. was sent home early for a behavioral incident that was
4 not recorded as a formal suspension. G.J.'s behavior referral noted that this incident
5 was a "Major Problem Behavior," but does not explain the behavior, and only noted
6 that G.J.'s behavior "escalated" and that Ms. Jenson was contacted to pick G.J. up.
- 7 g. On January 27, 2017, G.J. was denied recess and lunch for five days because he
8 struck another student on the back. G.J. was not allowed any free time and was
9 required to sit in silence in the time out room. Ms. Jenson called the school and had
10 the punishment reduced to three days because it was overly punitive.
- 11 h. On February 28, 2017, G.J. was given a one-day recess time out for "aggressive
12 behavior" because he did not want to play with other children on the playground.

13 48. The Pasco School District does not have the professional training, guidance, or
14 resources to meet G.J.'s needs. The Pasco School District does not communicate with Ms.
15 Jenson about her son's discipline, including how often he is sent to the time out room, and often
16 misrepresents incidents where G.J. is disciplined. Despite his disabilities being the
17 uncontroverted cause of his behavior, G.J.'s file indicates that he is to receive "regular
18 discipline." The school has refused to consider Ms. Jenson's repeated request that G.J. receive a
19 behavior plan. Indeed, at a recent evaluation meeting, McGee staff informed Ms. Jenson that
20 parents are not allowed to write behavior plans.

21 49. As a direct result of Defendants' failure to monitor and exercise appropriate
22 supervisory authority over the Pasco School District, G.J. has been denied the services he
23 requires to access his education, and has been repeatedly disciplined. G.J. has been denied his
24 right to an education and has been unlawfully discriminated against on the basis of his disability.

25 **D. Plaintiff T.R.**

26 50. Plaintiff T.R. is a nine-year-old girl in the third grade residing in Yakima County,
27 Washington. She is enrolled at McKinley Elementary School ("McKinley") (Yakima School
District), located at 521 S. 13th Avenue, Yakima, Washington 98902. On information and

1 belief, she is a student with a disability who requires special education services, but has not yet
2 been evaluated.

3 51. Michele Forrester is Plaintiff T.R.’s mother and legal guardian.

4 52. Mrs. Forrester has made multiple requests that Yakima School District evaluate
5 her daughter for special education services, including to T.R.’s teachers during parent-teacher
6 conferences, members of the administration, the vice principal, nurse, and school counselor. In
7 response to Mrs. Forrester’s repeated requests, school employees expressed a desire to “wait and
8 see” and “try something else first.” T.R. is currently testing three years behind in reading and is
9 in a special reading group. To help remedy this issue, T.R. used an assistive device called a
10 phonics phone during reading assignments until halfway through this year, when her teacher told
11 her she could no longer use it.
12

13 53. Yakima has never evaluated T.R. for special education services, and instead has
14 set arbitrary guidelines for testing, such as requiring that T.R. wear her new glasses for one year,
15 despite the fact that she has worn the same prescription glasses for three years. Instead of
16 evaluating T.R. for an Individualized Education Program (IEP), the school has enacted a Section
17 504 accommodation plan on the basis of a vision disability. During a meeting at McKinley, the
18 vice principal told T.R.’s parents that they were going to “push her along” and that “grades at
19 this age don’t really matter anyway.”
20

21 54. The Yakima School District does not have the professional training, guidance, or
22 resources to meet T.R.’s needs. During the 2016–2017 school year, T.R. was excluded from the
23 classroom and informally disciplined. T.R. is often scolded, embarrassed, put in time outs, and
24 sent home early. McKinley has never sent home records of disciplinary actions, and instead Mrs.
25 Forrester is forced to pry the information from T.R., who is often extremely distraught about the
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1 incident. McKinley offers an anger management class that Mrs. Forrester thinks would benefit
2 her child; however, the school refuses to enroll T.R. in the course.

3 55. T.R. has been subjected to severe, persistent, and pervasive bullying at McKinley
4 related to her suspected disability of autism. T.R.'s classmates tease her because she is cross-
5 eyed, has delayed speech, and often needs to fidget and walk around. T.R. has been excluded
6 from work groups and games on the playground. T.R.'s teachers never intervene, and when T.R.
7 stands up for herself, she is often the one who gets in trouble. These instances of bullying have
8 created an intimidating and threatening educational environment that has substantially interfered
9 with T.R.'s education and threatened her life. In 2016, T.R. attempted to commit suicide by
10 running out in front of a moving car. Yakima's failure to prevent and address bullying against
11 T.R. constitutes discrimination based on her disability.
12

13 56. As a direct result of Defendants' failure to monitor and exercise appropriate
14 supervisory authority over the Yakima School District, T.R. has been denied the services she
15 requires to access her education, repeatedly disciplined for behavior related to her disability, and
16 unlawfully denied her right to an education.
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18 **E. Plaintiff E.S.**

19 57. Plaintiff E.S. is a nine-year-old girl in the third grade residing in Pasco County,
20 Washington. She is enrolled at McGee Elementary School (Pasco School District), located at
21 4601 N. Horizon Drive, Pasco, Washington 99301. E.S. has received special education services
22 since she was seven years old.
23

24 58. E.S. was diagnosed with sensory processing disorder and social and emotional
25 delay at the age of five. E.S. is being tested for ADHD and autism.

26 59. Jane Doe is Plaintiff E.S.'s mother and legal guardian. Ms. Doe is pursuing her
27 claim anonymously because she is part of an address confidentiality program in order to protect

1 her from an abusive ex-partner. Jane Doe works as a homecare aid part-time. Because of E.S.'s
2 disciplinary issues at school, Ms. Doe cannot work full time and has given up her dream of going
3 to mortician school. Ms. Doe has developed anxiety issues and has suffered panic attacks when
4 her phone rings because she is worried it is the school calling to tell her E.S. is in trouble.

5 60. E.S. attended Rosalind Franklin STEM Elementary from first grade to halfway
6 through third grade. E.S. struggles with interactions with her peers, understanding social cues,
7 paying attention in class, and expressing her emotions appropriately for her age because of her
8 disorder. E.S. also has problems with bright lights, noises, crowds, and temperature.

9 61. After a year of requests, E.S. was finally put on an IEP in March 2016 and a
10 behavioral plan in the last month of second grade. E.S. was repeatedly disciplined due to
11 behaviors related to her disability, culminating in her expulsion from Rosalind Franklin STEM
12 Elementary in January 2017.

13 62. In February 2017, E.S. started at McGee Elementary School. E.S. has continued
14 to face disciplinary actions at her new school because of behaviors relating to her disability.
15 During the 2015–2016 and 2016–2017 school years, E.S. missed nine days of school due to her
16 expulsion, was suspended for 3.5 days, excluded from her normal classroom in other areas of the
17 school more than 10 times, and informally disciplined, such as being denied lunch time or recess,
18 more than 40 times.

19 63. Examples of instances in which E.S. was excluded from her classroom during the
20 2016–2017 school year include:

- 21
- 22 a. On April 23, 2015, E.S. was suspended because she defended herself from a girl who
 - 23 was pushing her.
 - 24 b. On October 16, 2016, E.S. was suspended for “fighting.”
 - 25
 - 26
 - 27

- 1 c. On October 17, 2016, the school began keeping E.S. in the resource room for every
2 lunch and recess break regardless of her behavior that day. The school had told Ms.
3 Doe that E.S. would only be in the resource room for one day. When Ms. Doe finally
4 found out weeks later, the school told her it was for the “safety and well-being of the
5 other children.” Ms. Doe subsequently found E.S. alone in the resource room when
6 she picked her up during lunch one day.
- 7 d. On November 11, 2016, E.S. was suspended for a physical altercation with another
8 student. The principal told E.S. that the “safety of other children at the school is more
9 important than your education.”
- 10 e. On information and belief, Ms. Doe was called to pick up E.S. early from school on
11 two separate occasions in 2016 that did not result in any formal disciplinary records.
- 12 f. On January 24, 2017, E.S. was emergency expelled and missed nine days of school
13 after she pushed a girl who was attempting to hold her still, resulting in E.S. falling
14 out of her chair. When this occurred, the class was unsupervised while the teachers
15 ate lunch in another room. The principal informed Ms. Doe she was expelling E.S. to
16 “give the other girl a break” and because the other girl’s father is a teacher at the
17 school so “she was in a pickle.”
- 18 g. On May 16, 2017, E.S. was not permitted to attend the school field trip because she
19 did not want to do her work and threw her pencil. Ms. Doe had already signed up to
20 chaperone, and so she went on the field trip while E.S. spent all day in the resource
21 room at school.
- 22 h. On May 22, 2017, E.S. was sent to the resource room for pushing back her chair,
23 talking, and pushing buttons on her laptop.
- 24 i. On May 23, 2017, E.S. received a time out for being disruptive and misusing her
25 materials.
- 26 j. On May 25, 2017, E.S. received a time out because “every time E.S. is asked to get
27 something out or get started on work she argues and won’t do as asked.”
- k. On May 31, 2017, E.S. received a two-day time out because “E.S. was 10 min[utes]
late to specials because she argues every time she is asked to do something.”
- l. On information and belief, E.S. has spent nearly every day of May 2017 in the
resource room during lunch and recess breaks.

64. The Pasco School District does not have the professional training, guidance, or
resources to meet E.S.’s needs. Instead of working with E.S. to overcome educational and social
obstacles relating to her disorder, the School District isolates E.S. during free time.
Administrators and teachers in the Pasco School District have repeatedly ignored E.S.’s issues

1 with bullying because of her disability and instead discipline her for interactions with other
2 students.

3 65. Ms. Doe e-mailed OSPI following her daughter’s expulsion to no avail.

4 66. As a direct result of Defendants’ failure to monitor and exercise appropriate
5 supervisory authority over the Pasco School District, E.S. has been denied the services she
6 requires to access her education, repeatedly disciplined for behavior related to her disability, and
7 unlawfully denied her right to an education.
8

9 **F. Defendants**

10 67. Defendant Chris Reykdal is the Superintendent of Public Instruction and is named
11 in his official capacity. He is responsible for “supervision over all matters pertaining to the
12 public schools of the state.” RCW 28A.300.040(1). Washington state law also provides that
13 Defendant Reykdal “shall require each school district in the state to insure an appropriate
14 educational opportunity for all children with disabilities between the ages of three and twenty-
15 one.” RCW 28A.155.020. Through OSPI’s administrative section or unit for the education of
16 children with disabilities who require special education, Defendant Reykdal has the duty and
17 authority to “[a]ssist school districts in the formation of programs to meet the needs of children
18 with disabilities.” RCW 28A.155.090(1). In addition to these responsibilities, Washington state
19 law also prohibits discrimination in public schools on the basis of “the presence of any sensory,
20 mental, or physical disability,” RCW 28A.642.010, and requires that Defendant Reykdal “shall
21 develop rules and guidelines to eliminate” such discrimination as it applies to, among other
22 things, “counseling and guidance services to students” and “access to course offerings,” RCW
23 28A.642.020.
24
25

26 68. Defendant Office of Superintendent of Public Instruction (“OSPI”) is the principal
27 state agency charged with overseeing K-12 public education in Washington State. RCW

1 29A.300.040. Under Washington state law, “[t]here is established in [OSPI] an administrative
2 section or unit for the education of children with disabilities who require special education.”

3 RCW 28A.155.020. OSPI provides guidance for parents of students with disabilities regarding
4 special education, publishes data regarding special education in Washington school districts, and
5 receives and investigates complaints alleging that state agencies or school districts have violated
6 state special education laws or rules.
7

8 **IV. CLASS ACTION ALLEGATIONS**

9 69. Class Definition. Plaintiffs A.D., A.P., G.J., T.R., and E.S. bring this action
10 pursuant to Civil Rule 23(a) and (b)(2), on behalf of themselves and all others similarly situated
11 as members of the following proposed Plaintiff class (“the Class”):

12 All children with disabilities who require special education, residing in either the
13 Pasco School District or Yakima School District, and who are enrolled or wish to
14 be enrolled in public school in one of those districts.

15 70. Numerosity. The Class is so numerous that joinder of all members is
16 impracticable. In Washington State, as of May 2016, there were 146,807 students with
17 disabilities receiving special education services and 33,130 students with disabilities covered by
18 Section 504 plans under the Rehabilitation Act. As of May 2016 in the Pasco School District,
19 there were 2,322 students with disabilities receiving special education services and 201 students
20 with disabilities covered by Section 504 plans. In the 2014–15 school year in the Pasco School
21 District, almost one of every 10 special education students in Pasco received a suspension or
22 expulsion. A total of 242 special education students were suspended or expelled. This amounted
23 to 9.3 percent of all special education students, a rate significantly greater than the 3.8 percent of
24 non-special education students who received a suspension or expulsion. As of May 2016 in the
25 Yakima School District, there were 2,219 students with disabilities receiving special education
26 services and 328 students with disabilities covered by Section 504 plans. In the 2014–15 school
27

1 year in the Yakima School District, 227 special education students were suspended or expelled.
2 This amounted to 8.4 percent of all special education students, a rate significantly greater than
3 the 6.3 percent of non-special education students who received a suspension or expulsion.

4 71. Commonality. There are questions of law and fact common to the Class. Without
5 limitation, these questions include:

- 6 a. Whether the discipline and exclusion of students with special education needs due to
7 behavior related to their disabilities constitutes a denial of the right to an education
8 under Article IX, Section 1 of the Washington State Constitution;
- 9 b. Whether the discipline and exclusion of students with special education needs due to
10 behavior related to their disabilities constitutes discrimination based on disability in
11 violation of the Washington Law Against Discrimination, RCW 49.60.030;
- 12 c. Whether Defendants have breached their duty under Article IX, Section 1 of the
13 Washington State Constitution to provide for the education of all children in
14 Washington State by failing to ensure that students with special education needs are
15 not disciplined or excluded due to behavior related to their disabilities;
- 16 d. Whether Defendants have breached their duty under the Washington Law Against
17 Discrimination, RCW 49.60.030, to eliminate discrimination based on special
18 education needs by failing to ensure that students with disabilities are not disciplined
19 or excluded due to behavior related to their disabilities;
- 20 e. Whether the rights of students with special education needs have been, and will
21 continue to be, violated as a result of Defendants' failure to exercise appropriate
22 authority to ensure that students with disabilities are not disciplined or excluded due
23 to behavior related to their disabilities; and
- 24 f. Whether Plaintiffs and Class members are entitled to declaratory and injunctive relief.

25 72. Typicality. Plaintiffs' claims are typical of the claims of the members of the
26 Class Plaintiffs seek to represent.

27 73. Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class
they seek to represent. As students with disabilities, Plaintiffs have a personal interest in the
issues of discipline and exclusion of students with disabilities due to behavior related to
disabilities and are committed to prosecuting this action vigorously on behalf of the Class.

1 Plaintiffs do not have interests that are contrary to or that conflict with those of the proposed
2 Class. Plaintiffs are represented by competent counsel who will vigorously prosecute this case
3 on behalf of the proposed Class: the American Civil Liberties Union of Washington Foundation
4 (“ACLU”) and Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul, Weiss”), as *pro bono* co-
5 counsel. The ACLU is a statewide, nonpartisan, nonprofit organization dedicated to the
6 preservation of civil liberties. Paul, Weiss is a firm of more than 900 lawyers. It represents both
7 large and small publicly and privately held corporations and investors, as well as clients in need
8 of *pro bono* assistance, in a wide variety of matters. Plaintiffs and their counsel are committed to
9 prosecuting this action vigorously on behalf of the Class and have the financial resources to do
10 so.
11

12 74. Defendants have acted or failed to act on grounds generally applicable to the
13 Class, thereby making class-wide final injunctive relief appropriate.
14

15 75. The harms suffered by Plaintiffs and the Class are capable of repetition while
16 evading review. There is a continuing and substantial public interest in these matters. Plaintiffs
17 have no adequate remedy at law.

18 **V. DEFENDANTS ARE CONSTITUTIONALLY AND STATUTORILY**
19 **OBLIGATED TO PROVIDE FOR THE EDUCATION OF STUDENTS WITH**
20 **SPECIAL EDUCATION NEEDS**

21 76. Article IX, Section 1 of the Washington State Constitution provides that “[i]t is
22 the paramount duty of the state to make ample provision for the education of all children residing
23 within its borders, without distinction or preference on account of race, color, caste, or sex.” *All*
24 *children in Washington State—including students with special education needs—have the*
25 *constitutional right to an education encompassing “the basic knowledge and skills needed to*
26 *compete in today’s economy and meaningfully participate in this state’s democracy.”* *McCleary*
27 *v. State*, 173 Wn.2d 477, 483 (2012). Article IX places the duty of providing all students with an

1 adequate education “squarely upon” Defendants. *See Northshore Sch. Dist. No. 417 v. Kinnear*,
2 84 Wn.2d 685, 689 (1974).

3 77. The Washington State Constitution charges Defendants with supervising “all
4 matters pertaining to public schools,” Const. art. III, § 22, including “supervision and control
5 over all the subordinate officers of the common school system.” *State v. Preston*, 84 Wash. 79,
6 86-87 (1915).

7
8 78. Defendants are responsible for the general supervision of special education
9 programs, including those relevant to Plaintiffs and the proposed Class. RCW 28A.155.090.
10 The Washington state legislature explicitly declared special education a part of the State’s
11 constitutional obligation and established a state-wide special education program, guaranteeing an
12 opportunity for an appropriate education at public expense for all eligible students with
13 disabilities. RCW 28A.155.220(3)(f).

14
15 79. The purpose of Washington State’s special education programs is “to ensure that
16 all children with disabilities . . . have the opportunity for an appropriate education at public
17 expense as guaranteed to them by the Constitution of this state and applicable federal laws.”
18 RCW 28A.155.010.

19 80. Defendants’ obligations include “assist[ing] school districts in the formation of
20 programs to meet the needs of children with disabilities.” RCW 28A.155.090(1). Defendant
21 Reykdal has a specific duty to “require each school district in the state to insure an appropriate
22 educational opportunity for all children with disabilities between the ages of three and twenty-
23 one.” RCW 28A.155.020.

24
25 81. Defendants’ obligations to provide for the education of children with disabilities
26 who require special education includes the responsibility of ensuring that such students are not
27

1 subject to discrimination based on their disability. State law prohibits disability discrimination in
2 Washington public schools. RCW 28A.642.010; RCW 49.60.030. Prohibited discrimination
3 includes discipline or exclusion due to behavior related to a student’s disability. A student who
4 requires special education services cannot be suspended or expelled for more than 10
5 consecutive school days for misconduct that is a “manifestation of the child’s disability.” 20
6 U.S.C. § 1415(k)(1)(C); WAC 392-172A-05145. A student’s conduct is a manifestation of his or
7 her disability if the conduct in question was caused by, or had a direct and substantial
8 relationship to, the child’s disability. 20 U.S.C. § 1415(k)(1)(E)(i); WAC 392-172A-05145(5).

10 82. Defendants are responsible for monitoring and enforcing school district
11 compliance with state laws prohibiting disability discrimination in public schools. RCW
12 28A.642.020; RCW 28A.642.030. These responsibilities include preventing, addressing, and
13 remediating discrimination based on disability in public schools by ensuring that special
14 education students are not disciplined or excluded from school or otherwise denied educational
15 opportunity due to behavior related to their disabilities. *See* RCW 28A.642.030; WAC 392-190-
16 076; WAC 392-190-077.

18 83. Defendants are required to develop guidelines to guide their interpretation and
19 administrative enforcement of RCW 28A.642 and have the authority to enforce the guidelines
20 and state regulations implementing RCW 28A.642. *See* WAC 392-190-005.

22 84. Defendants are statutorily empowered to enforce and obtain compliance with
23 RCW 28A.642 and address school district policies and practices of disciplining or excluding
24 special education students due to behavior related to their disabilities. RCW 28A.642.050; WAC
25 392-190-080. Defendants’ authority to obtain compliance with RCW 28A.642 includes, without
26 limitation: (1) “termination of all or part of state apportionment or categorical moneys to the
27

1 offending school district . . .”; (2) “termination of specified programs wherein the violation or
2 violations are found to be flagrant in nature”; (3) “institution of a mandatory affirmative action
3 program within the offending school district . . .”; and (4) “placement of the offending school
4 district . . . on probation with appropriate sanctions until such time as compliance is achieved or
5 assured, whichever is deemed appropriate in the particular case by the superintendent of public
6 instruction.” WAC 392-190-080.

7
8 **VI. DEFENDANTS HAVE LONG KNOWN THAT SPECIAL EDUCATION**
9 **STUDENTS ARE DISPROPORTIONATELY DISCIPLINED AND EXCLUDED**
10 **FROM SCHOOL**

11 85. Based upon their own collection of school disciplinary data, Defendants are aware
12 that special education students are disproportionately disciplined and excluded from school.

13 **A. Defendants Collect Disciplinary Data Illustrating the Disproportionate Discipline of**
14 **Special Education Students**

15 86. Defendants, charged with monitoring and supervising the education of all students
16 in grades K-12, have long known about the widespread discipline and exclusion of special
17 education students throughout the state’s 295 school districts.

18 87. Defendants receive (and publish) a significant volume of data reflecting the
19 disproportionality with which special education students are disciplined statewide. Defendants
20 receive vast amounts of information from two repositories: (1) The United States Department of
21 Education’s Office of Civil Rights, and (2) the state’s own school districts.

22 88. The United States Department of Education’s Office of Civil Rights (“OCR”)
23 requires that all public schools in the nation report data on education and civil rights issues. 20
24 U.S.C. § 3413(c)(1). This data is collected by the OCR via a biennial survey referred to as the
25 Civil Rights Data Collection (“CRDC”). OSPI maintains a link to the CRDC on its website.
26
27

1 89. Since 2009, the CRDC has collected from public schools across the country,
2 including those in Washington State, the following categories of data regarding discipline: in-
3 school suspension, out-of-school suspension, corporal punishment, expulsion (with and without
4 services), zero-tolerance expulsion, referral to law enforcement and school-related arrests, and
5 has disaggregated the data for students with disabilities by race/ethnicity, sex, and Limited
6 English Proficiency (LEP) status.
7

8 90. In 2013, the CRDC began to collect additional information, including the number
9 of instances of and school days missed due to out-of-school suspension, as well as discipline-
10 related transfers to alternative schools. School districts were required to report this information
11 as of the 2015–2016 school year.
12

13 91. Each individual school district also provides to Defendants on an annual basis
14 data regarding long-term suspensions and expulsions of students for the preceding school year.
15 *See* RCW 28A.300.042. Defendants examine this data, disaggregated by categories such as a
16 student’s special education status, socioeconomic status, and ethnicity. This data reveals
17 discrepancies such as those:

- 18 a. Among school districts or other public agencies; and
- 19 b. Between nondisabled students and students eligible for special education within
20 school districts or other public agencies.

21 92. Since 2009, Defendants have collected this data utilizing The Comprehensive
22 Education Data and Research System (“CEDARS”). According to Defendants, CEDARS “is a
23 longitudinal data system managed by OSPI to collect, store and report data related to students,
24 courses, and teachers in order to meet state and federal reporting requirements, and to help
25 educators and policy makers to make data driven decisions.” OSPI, *CEDARS Data Manual*
26 (Apr. 2017), <http://www.k12.wa.us/CEDARS/Manuals.aspx>.
27

1 93. Since 2013, state law has required that school districts report to Defendants
2 disaggregated school data on disciplinary actions.

3 94. Defendants publicly report disaggregated school data on disciplinary actions for
4 school districts with at least 500 students or 20 students in a given student group.

5 **B. Defendants’ Own Data Demonstrate that Special Education Students Are**
6 **Disproportionately Disciplined**

7 95. Data gathered and reported by Defendants on school disciplinary action reflects
8 that Defendants have allowed students with disabilities to be disciplined and excluded from
9 school at a rate vastly disproportionate to that of students without special education needs.

10 96. Defendants publish a “Discipline Rate,” which is the percentage of students
11 within a demographic group (i.e., special education, non-special education) who were suspended
12 or expelled in a school year. The Discipline Rate is calculated by dividing the number of distinct
13 students within a demographic group who received a suspension or expulsion by the total
14 number of students within that demographic group.

15 97. Comparing the Discipline Rate between special education students and their non-
16 special education peers reveals a disparity in the rate at which special education students are
17 suspended or expelled—and during the three years for which Defendants have gathered and
18 reported data, this disparity has persisted and worsened. Statewide in the 2012–2013 school
19 year, the Discipline Rate for special education students was 2.2 times greater than that of their
20 non-special education peers (7.8 percent compared to 3.5 percent); it was 2.3 times greater in
21 2013–2014 (7.3 percent compared to 3.2 percent); and 2.5 times greater in 2014–2015 (7.9
22 percent compared to 3.2 percent).

23 98. In almost every school district in the state of Washington, the Discipline Rate for
24 special education students exceeded that of their non-special education peers.
25
26
27

1 99. During the 2014–2015 school year, special education students comprised 29
2 percent of suspended or expelled students statewide despite only accounting for 14 percent of the
3 total student population.

4 **C. Yakima**

5 100. Defendants are aware that Yakima School District has discriminated against its
6 special education students through its disproportionate application of exclusionary discipline.

7 101. In the 2012–2013 school year, Yakima had 18,184 enrolled students, of which
8 2,641 were special education students; in 2013–2014, total enrollment was 18,232, of which
9 2,612 were special education students; in 2014–2015, total enrollment was 18,554, of which
10 2,711 were special education students.

11 102. Comparing the Discipline Rate between special education students and their non-
12 special education peers in Yakima reveals a disparity in the rate at which special education
13 students are suspended or expelled. In the 2012–2013 school year, the Discipline Rate for
14 special education students was 1.2 times greater than their non-special education peers (11.1
15 percent compared to 8.9 percent) and it was 1.3 times greater in 2013–2014 (9.6
16 percent compared to 7.4 percent) and 2014–2015 (8.4 percent compared to 6.3 percent).

17 103. Notably, the Discipline Rates in Yakima exceeded the statewide averages for
18 special education students for all three years. For example, in the most recent school year for
19 which discipline data is available (2014–2015), Yakima’s 8.4 percent Discipline Rate for special
20 education students exceeded the statewide average of 7.9 percent.

21 104. This results in the disproportionate suspension and expulsion of hundreds of
22 special education students in Yakima. During the 2014–2015 school year in Yakima, special
23 education students comprised 19 percent of suspended or expelled students despite only
24 accounting for 15 percent of the total student population.

1 **D. Pasco**

2 105. Defendants are aware that Pasco School District has discriminated against its
3 special education students through the district's disproportionate application of exclusionary
4 discipline.

5 106. In the 2012–2013 school year, Pasco had 18,268 enrolled students, of which 2,446
6 were special education students; in 2013–2014, total enrollment was 18,645, of which 2,528
7 were special education students; in 2014–2015, total enrollment was 19,092, of which 2,610
8 were special education students.
9

10 107. Comparing the Discipline Rate between special education students and their non-
11 special education peers in Pasco reveals a disparity in the rate at which special education
12 students are suspended or expelled. In the 2012–2013 school year, the Discipline Rate for
13 special education students was double that of their non-special education peers (8.3 percent
14 compared to 4.1 percent); it was 2.4 times greater in 2013–2014 (9.6 percent compared to 4.0
15 percent); and it was 2.4 times greater in 2014–2015 (9.3 percent compared to 3.8 percent).
16

17 108. The Discipline Rates in Pasco exceeded the statewide averages for special
18 education students for all three years. For example, in the most recent school year for which
19 discipline data is available (2014–2015), Pasco's 9.3 percent Discipline Rate for special
20 education students exceeded the statewide average of 7.9 percent.
21

22 109. Hundreds of special education students in Pasco are disproportionately suspended
23 and expelled as a result. During the 2014–2015 school year in Pasco, special education students
24 comprised 29 percent of suspended or expelled students despite only accounting for 14 percent
25 of the total student population.
26
27

1 **VII. DEFENDANTS HAVE FAILED TO EXERCISE APPROPRIATE AUTHORITY**
2 **TO PROTECT SPECIAL EDUCATION STUDENTS' RIGHT TO AN**
3 **EDUCATION**

4 110. Despite being aware of the harms of exclusionary discipline and the excessive
5 discipline of special education students, defendants have failed to exercise appropriate authority
6 to protect these students' right to an education free from discrimination. Defendants have failed
7 to investigate and ensure compliance with the law when faced with plain evidence of
8 disproportionate discipline of special education students. And, Defendants have failed to provide
9 school districts with the tools necessary to educate and manage the behavior of students with
10 special education needs.

11 **A. Defendants Have Failed to Investigate and Ensure Compliance with the Law Where**
12 **Excessive Discipline of Special Education Students Is Apparent**

13 111. Defendants have failed to remedy the severe and systemic discrimination against
14 special education students. Defendants have the legal authority to address discrimination
15 through civil enforcement actions. *See* RCW 28A.642. Yet Defendants have remained idle in
16 the face of mounting evidence of discriminatory practices against special education students. In
17 the seven years they have had the authority to do so, Defendants have only once brought a civil
18 case against a school district to remedy discriminatory practices.

19 112. Defendants review every school district's compliance with federal and state
20 special education laws through periodic Consolidated Program Reviews. Districts are reviewed
21 on a rotation schedule: the four districts receiving the largest federal funding are reviewed
22 annually, and other districts reviewed at least once every five years.

23 113. During the review, an OSPI team assesses school districts' federal and selected
24 state programs. Reviews are conducted either as desk reviews, where team members review
25 submitted documentation, or on-site reviews, where team members review documentation and
26
27

1 interview district and building staff. Defendants report annually to the public on the
2 performance of each school district toward the performance indicators included in the state's
3 Performance Plan, which measure each district's performance in implementing special education
4 programs. WAC 392-172A-07025.

5
6 114. Defendants conducted Consolidated Program Reviews for Pasco School District
7 in the 2012–2013, 2013–2014, and 2016–2017 school years, and conducted reviews for Yakima
8 School District in the 2013–2014 and 2016–2017 school years.

9 115. Defendants' own Consolidated Program Reviews reveal discriminatory use of
10 school discipline against students with disabilities. Defendants' reviews indicate, among other
11 things, that school districts across the state have failed to maintain adequate complaint
12 procedures, failed to ensure that teachers and paraprofessionals were sufficiently qualified, and
13 failed to identify and evaluate students with disabilities for special education services.
14

15 116. But Defendants have not investigated, much less remediated, the excessive use of
16 exclusionary discipline against students with special education needs. Defendants rarely, if ever,
17 conduct any interviews as part of those investigations. Moreover, even when a school district
18 has been found to have violated a student's rights, Defendants mandate a remedy but do not
19 actually oversee, monitor, or validate the respective school district's remediation.
20

21 **B. Defendants Have Failed to Provide School Districts with the Tools Necessary to**
22 **Educate and Manage the Behavior of Students with Special Education Needs**

23 117. Defendants are well aware of the panoply of non-punitive, evidence-based
24 disciplinary strategies and supports that could be used instead of removing children from
25 classrooms. Defendants have failed to provide school districts and schools with information and
26 training about these strategies. As a result, school districts and schools lack information and
27

1 guidance as to the availability and appropriate implementation of these strategies and students
2 with disabilities are disproportionately removed from their classrooms.

3 118. Although Defendants recognize and promote national best practices for handling
4 student behavior issues, including a “Behavior Menu of Best Practices and Strategies” published
5 on their website that discusses Positive Behavioral Interventions and Supports (PBIS);
6 Restorative practices; Trauma-informed care; and Cultural and linguistic competence training,
7 Defendants have, failed to provide staff with training about these practices, and failed to
8 systematically promote their use as an alternative to exclusionary discipline.
9

10 119. For example, Defendants have failed to provide school districts or schools with
11 sufficient information, support, encouragement, and training with respect to the following
12 strategies:

13 **1. Positive behavioral interventions and supports.**
14

15 120. Positive Behavioral Interventions and Supports (“PBIS”) is an evidence-based
16 approach to preventing and responding to classroom and school discipline problems. The
17 emphasis of PBIS is on school-wide systems of support that include proactive strategies for
18 defining, teaching, and supporting appropriate student behaviors to create positive school
19 environments.
20

21 121. Research has shown that the implementation of PBIS in schools can reduce
22 exclusionary discipline for many student populations. *See* Russell J. Skiba & Daniel J. Losen,
23 *From Reaction to Prevention*, 39 AM. EDUCATOR 1, 7 (Winter 2015–2016),
24 http://www.aft.org/sites/default/files/ae_winter2015.pdf. Although Defendant OSPI’s website
25 includes an external link to PBIS resources, it has not provided school districts or schools with
26 specific training on when and how to use PBIS or otherwise encouraged districts and schools to
27 consider its appropriate use.

1 **2. Restorative practices.**

2 122. Restorative practices aim to hold an “offender” accountable for his or her actions,
3 often by requiring the offender to face the victim and engage in restoration of what was lost.
4 These programs are flexible; some utilize trained “restorative justice practitioners,” while others
5 involve peer juries or student restorative circles.

6 123. Schools across the country, including those in Philadelphia, Oakland, and Denver,
7 have found success using restorative practices programs to both reduce the use of exclusionary
8 discipline and the incidence of harmful student behavior. *See* Trevor Fronius et al., *Restorative*
9 *Justice in U.S. Schools: A Research Review*, WESTED JUSTICE & PREVENTION RESEARCH CTR.
10 20–21 (Feb. 2016), [https://jprc.wested.org/wp-content/uploads/2016/02/RJ_Literature-](https://jprc.wested.org/wp-content/uploads/2016/02/RJ_Literature-Review_20160217.pdf)
11 [Review_20160217.pdf](https://jprc.wested.org/wp-content/uploads/2016/02/RJ_Literature-Review_20160217.pdf).

12 124. While OSPI provides some information and research about restorative practices in
13 the forms of online guides, it does not provide resources for schools to implement these practices
14 or actively assist the Districts in the implementation of these practices.

15 **3. Trauma-informed approaches.**

16 125. Trauma-informed, or trauma-sensitive, approaches have also successfully reduced
17 the use of exclusionary discipline, particularly for students who suffer from social and emotional
18 problems related to many student disabilities, including depression, emotional behavior disorder,
19 and bi-polar and mood disorders. *See* Maura McInerney & Amy McKlindon, *Unlocking the*
20 *Door to Learning: Trauma-Informed Classrooms and Transformational Schools*, EDUC. LAW
21 CTR. 1, [http://www.elc-pa.org/wp-content/uploads/2015/06/Trauma-Informed-in-Schools-](http://www.elc-pa.org/wp-content/uploads/2015/06/Trauma-Informed-in-Schools-Classrooms-FINAL-December2014-2.pdf)
22 [Classrooms-FINAL-December2014-2.pdf](http://www.elc-pa.org/wp-content/uploads/2015/06/Trauma-Informed-in-Schools-Classrooms-FINAL-December2014-2.pdf). One Pennsylvania school implementing the trauma-
23 informed model reduced suspensions by 83 percent and expulsions by 40 percent. *Id.* at 11.
24
25
26
27

1 126. OSPI itself has recognized the success of trauma-informed approaches, publishing
2 a handbook to provide guidance and technical assistance in implementing such approaches. *See*
3 OSPI, *Compassionate Schools: The Heart of Learning and Teaching* (Dec. 5, 2016)
4 <http://www.k12.wa.us/compassionateschools/>.

5 127. In Washington State, Lincoln Alternative High School in Walla Walla has
6 employed trauma-informed, non-exclusionary practices with individual supports, which resulted
7 in a 90 percent reduction in suspensions and 75 percent reduction in fighting. Lincoln has
8 achieved this success despite serving a large number of students with a history of traumatic
9 experiences. James Redford & Karen Pritzker, *Teaching Traumatized Kids*, THE ATLANTIC, July
10 7, 2016, [http://www.theatlantic.com/education/archive/2016/07/teaching-traumatized-](http://www.theatlantic.com/education/archive/2016/07/teaching-traumatized-kids/490214/)
11 [kids/490214/](http://www.theatlantic.com/education/archive/2016/07/teaching-traumatized-kids/490214/).

12 128. Yet, Defendants have failed to provide the support needed for schools and school
13 districts to implement and sustain trauma-informed practices systemically.
14

15 **4. Best practices for specific disabilities.**

16 129. Defendants either are or should be aware of best practices for specific disabilities
17 as well. Such practices vary, but commonly emphasize non-punitive strategies for addressing
18 behavior and improving learning and instruction.
19

20 130. ADHD: The U.S. Department of Education Data & Research has outlined a wide
21 array of effective behavioral techniques for students with Attention Deficit Hyperactivity
22 Disorder (ADHD) that include an emphasis on praise and positive support rather than
23 punishment.
24

25 131. Autism Task Force: Washington State's Autism Task Force (ATF) has created
26 detailed recommendations for behavior and instruction strategies for students with autism. These
27 strategies, which include Applied Behavior Analysis (ABA), Comprehensive Autism Planning

1 System (CAPS), and family involvement, do not identify exclusionary discipline as an effective
2 behavioral or instructional approach.

3 132. Although Defendants participated in developing the ATF’s recommendations,
4 Defendants have failed to provide the resources, guidance, and support needed to effectively
5 implement these best practices. Community health advocates report that autistic students, and
6 their families, face an acute need for adequate programs.

7
8 133. As a direct result of Defendants’ failure to provide information, training, and
9 guidance, school district policies on student discipline across the state react to student behavior
10 issues by suspending or expelling misbehaving students.

11 **VIII. DEFENDANTS HAVE FAILED TO ENSURE THAT SCHOOL STAFF SERVING**
12 **SPECIAL EDUCATION STUDENTS ARE ADEQUATELY TRAINED AND**
13 **MONITORED**

14 134. Training and professional development regarding effective instructional strategies
15 and classroom management are among “the most powerful tools for preventing disruptive
16 student behaviors” and reducing the use of suspension and expulsion for all students. *See* U.S.
17 DEP’T OF EDUC., GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE
18 AND DISCIPLINE, 7 (Jan. 2014), [https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-](https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf)
19 [principles.pdf](https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf).

20 135. Defendants are ultimately responsible for supervising public school teachers,
21 administrators, and other school employees. But Defendants have not provided the teachers,
22 administrators, and paraprofessionals who serve students with disabilities with the training,
23 resources, or guidance required to meet the needs of students with disabilities—or ensured that
24 their school districts and schools do so. As a result, in dealing with the challenging behaviors
25 often exhibited by students with disabilities, school districts and their staff too often resort to
26 suspension, expulsion, or other methods of removing these students from the classroom.
27

1 **A. Defendants Have Failed to Ensure that Special Education and General Education**
2 **Teachers Receive Adequate Training**

3 136. Defendants have failed to ensure that adequate professional development and
4 training is provided for administrators, teachers, and school staff. As a result, administrators and
5 teachers lack adequate resources and guidance on how best to handle often complicated and
6 difficult student behavioral issues.

7 137. The vast majority of professional development and training opportunities on
8 topics relevant to special education students and school discipline are offered at the school
9 district and school building levels.

10 138. Defendants have not standardized the quality of district-level trainings, which
11 vary widely from district to district.

12 139. One former Pasco staff member reports that the Pasco School District's training
13 focused only on how to fill out paper work, adhere to policies, and avoid legal liability, without
14 providing guidance on how to help students and effectively address and correct behavior issues.

15 140. Even when school districts identify or provide beneficial training and professional
16 development opportunities, Defendants have failed to ensure that all teachers have access to
17 trainings. Teachers are often unable to attend useful trainings because they do not have adequate
18 time or funds to do so, or because they are only offered to a particular subset of teachers.

19 141. Without adequate guidance from Defendants, virtually every school district and
20 school is left to independently determine how to support and serve special education students.
21 School districts have had to develop their own forms and systems for complying with special
22 education laws. Some schools have developed specific classes and programs for students who
23 could benefit from a curriculum to learn appropriate behavior and self-management of behavior,
24 but many have not.
25
26
27

1 142. Teachers, staff members, and administrators desire training and resources to
2 enable them to better serve special education students, and believe that OSPI should play a
3 stronger role in coordinating among Educational Service Districts (“ESDs”) and school districts
4 by serving as a clearinghouse for best practices and resources.

5 143. When training is offered, it is woefully inadequate to ensure that students with
6 disabilities receive the level of education required under state law. Unless they pursued elective
7 coursework in special education topics while obtaining their teaching or administrator degrees,
8 teachers and administrators largely learn about special education law on the job.

9 144. Defendants’ failure to ensure the provision of basic, uniform training on special
10 education, student behavior, and other relevant subjects often means that teachers and
11 administrators resort to exclusion or discipline when special education students have behavior
12 issues at school.

13
14
15 **B. Defendants Have Failed to Ensure that Paraprofessionals Receive Adequate
16 Training**

17 145. Paraprofessional educators are support staff who provide assistance to general
18 education and special education teachers; they play a critical role in providing specialized
19 instruction to special education students. Paraprofessionals are often the staff members
20 responsible for actually providing individualized instruction and performing behavioral
21 interventions for small groups of students, or students who require highly individualized
22 attention. In any school, paraprofessionals are likely to be the staff members who have the most
23 interaction with special education students. Despite their position “on the front lines” in the
24 classroom, paraprofessionals are likely to be the least-trained staff members at their school.

25 146. Paraprofessionals in Washington State must meet the minimum standards
26 required by the Elementary and Secondary Education Act (“ESEA”). According to OSPI
27

1 guidance, paraprofessionals must have a high school diploma or GED and meet one of three
2 criteria: the completion of two years of higher education, the completion of an Associate’s
3 degree, or demonstrated knowledge of, and ability to, assist in reading, writing, and mathematics
4 instruction through a “formal state or approved local assessment.” *See* OSPI, WASH. STATE
5 PARAEDUCATOR GUIDELINES, 1 (Mar. 2016),
6 <http://www.k12.wa.us/Paraeducators/pubdocs/ParaeducatorGuidelinesUpdateMarch2016.pdf>.

8 147. Washington state law requires paraprofessional staff to “present evidence of skills
9 and knowledge necessary to meet the needs of students eligible for special education” and “be
10 under the supervision of a certificated teacher with a special education endorsement or a
11 certificated educational staff associate.” WAC 392-172A-02090(1)(f). OSPI has developed 14
12 “recommended” core competencies, including the “ability to provide positive behavioral support
13 and management,” the ability to apply effective instruction under the supervision of a certificated
14 staff member, and the ability to provide instructional support in teaching and learning. *See*
15 OSPI, *Paraeducators: Special Educ. Recommended Core Competencies* (Sept. 15, 2010),
16 <http://www.k12.wa.us/Paraeducators/CoreCompDefinitions.aspx>.

18 148. Defendants have the ability to direct professional development funds to
19 paraprofessionals. RCW 28A.415.310(2).

21 149. Despite these recommendations and Defendants’ awareness of the important role
22 paraprofessionals play in our educational system, Defendants have failed to ensure that the
23 paraprofessionals serving Washington children with special needs are actually equipped, trained,
24 and capable of doing so.

25 150. As a result of Defendants’ failure to monitor and exercise appropriate supervisory
26 authority over Washington’s school districts, paraprofessionals are frequently unprepared to
27

1 meet the needs of special education students. Although paraprofessionals receive the least
2 amount of training, they are often tasked with supporting and serving students with the greatest
3 needs. While some paraprofessionals over time become experienced in supporting and special
4 education students, many arrive in classrooms eager to serve without adequate preparation.
5 Given the many demands on their time, teachers often are unable to provide feedback, guidance,
6 and supervision to the paraprofessionals.
7

8 **IX. DEFENDANTS HAVE FAILED TO MONITOR SCHOOL DISTRICTS’**
9 **IMPLEMENTATION OF SPECIAL EDUCATION SERVICES AND**
10 **DISCIPLINARY POLICIES**

11 151. Defendants’ failure to ensure that special education services and district
12 disciplinary policies are properly implemented has unlawfully denied Plaintiffs and the Class
13 their right to an education. Among other things, school districts have not properly implemented
14 special education services and have developed an informal suspension protocol that leads to
15 widespread, unlawful, and unrecorded classroom exclusions of special education students. As a
16 result, special education students are disproportionately excluded from the classroom and denied
17 their constitutional right to an education.

18 **A. Defendants Have Failed to Monitor School Districts’ Implementation of Special**
19 **Education Services**

20 152. Without adequate oversight from Defendants, school districts have failed to
21 identify children in need of special education services, failed to develop and implement
22 appropriate education plans for students with special education needs, and failed to ensure that
23 students with special education needs are not disciplined for behavior that results from their
24 disability.
25

26 153. The Yakima School District consistently fails to respond to requests that students
27 be evaluated for special education services. For example, Plaintiff T.R.’s mother has requested

1 that her child be evaluated for special education services on multiple occasions over the past two
2 years. The Yakima School District has refused to do so.

3 154. The Yakima and Pasco School Districts have failed to provide parents with input
4 into their children’s education. Both Districts often hold critical meetings about students’ special
5 education services outside the presence of parents.
6

7 **B. Defendants Have Failed to Ensure that School Districts and Schools Have Robust**
8 **Procedures for Preventing and Addressing Discriminatory Discipline and Exclusion**
9 **of Special Education Students**

10 155. Because managing the behavior of students with disabilities is a challenging task,
11 Defendants must pay particular attention to how school districts discipline special education
12 students. Yet Defendants have not done so.

13 156. The Pasco and Yakima School Districts rely heavily upon informal suspensions or
14 isolations to address the behavior of students with disabilities. Such informal exclusions are not
15 recorded as discipline, and thereby evade the protections for special education students mandated
16 under state law.

17 157. Schools in these districts routinely call parents to pick up children early from
18 school due to a child’s behavior. These incidents go unrecorded in students’ records as exclusion
19 and are generally not recorded as disciplinary action or reported to parents, in part because these
20 informal “early dismissal” suspensions are not guided by any policy at the school, district, or
21 state levels.
22

23 158. Plaintiffs have been subjected to such discriminatory informal discipline. The
24 parents and guardians of G.J., A.D., and A.P. have repeatedly been asked to pick Plaintiffs up
25 from school early. These early dismissals were not recorded as suspensions.

26 159. Defendants have also failed to ensure that the Yakima and Pasco School Districts
27 follow their own stated policies regarding the discipline of special education students. Pasco

1 School District requires that “[p]rior to the imposition of a corrective action or punishment upon
2 a special education student,” the causal relationship between the students’ disability and behavior
3 must be considered.” PASCO SCHOOL DISTRICT NO. 1, STUDENTS – SERIES 3300, at 2 (Mar. 11,
4 2014),

5 [http://www.psd1.org/cms/lib4/WA01001055/Centricity/Domain/27/3000%20Series%2003-10-
6 16%20final.pdf](http://www.psd1.org/cms/lib4/WA01001055/Centricity/Domain/27/3000%20Series%2003-10-16%20final.pdf). Yakima School District also imposes special requirements for the discipline of
7 special education students, and requires staff to “be aware that monitoring of in-school
8 suspension for students who are special education/Section 504 may constitute a pattern of
9 exclusion.” YAKIMA SCHOOL DISTRICT, OPERATIONAL PROCEDURES 3200, *Student Rules,*
10 *Regulations, and Conduct: Discipline 5,*

11 <https://www.yakimaschools.org/cms/lib/WA02219114/Centricity/domain/351/policy/3/3200.pdf>.

12
13 160. Despite these written policies, the Districts consistently fail to consider the
14 relationship between special education students’ behavior and their disabilities before imposing
15 discipline, particularly with regard to informal exclusions.
16

17 **X. SPECIAL EDUCATION STUDENTS SUFFER SERIOUS INJURY AS A RESULT**
18 **OF DEFENDANTS’ INACTION**

19 161. As a result of Defendants’ failure to monitor and exercise appropriate supervisory
20 authority over the Yakima and Pasco School Districts, Plaintiffs have suffered serious repeated
21 and irreparable harm. They have lost educational time, fallen behind in their studies, and
22 endured abusive restraint and isolation. They will continue to suffer long-term, negative
23 educational consequences as a result of their on-going exclusion from school.
24

25 **A. Lost Educational Time**

26 162. Due to Defendants’ failure to monitor and exercise appropriate supervisory
27 authority over the school districts, Plaintiffs have been permanently deprived of significant

1 educational time.

2 163. Plaintiffs have frequently been suspended, sent home early, or excluded from the
3 classroom due to behavior related to their disabilities.

4 **B. Abuse of Restraint and Isolation**

5 164. Defendants have failed to ensure that school districts use restraint and isolation
6 appropriately. As a result, special education students are disproportionately, and often
7 unnecessarily, subject to these practices.

8 165. “Isolation” occurs when a student is restricted alone in a room, or any other form
9 of enclosure, from which she may not leave. RCW 28A.600.485(1)(a). “Restraint” involves
10 “physical intervention or force used to control a student.” RCW 28A.600.485(1)(b).

11 166. The Washington State Legislature has found that restraint and isolation are
12 practices with “no educational or therapeutic benefit” that “pose[] significant physical and
13 psychological danger to students and school staff,” and has prescribed that such practices be used
14 only when a students’ behavior poses “an imminent likelihood of serious harm.” Laws of 2015,
15 ch. 206, § 1.

16 167. Yet restraint and isolation are troublingly common practices. According to the
17 most recent available data self-reported by school districts to Defendants, statewide, more than
18 2,000 students were involved in 11,409 incidents that required restraint between January and
19 June of 2016. Two hundred and fifty-seven of those incidents resulted in injury to those
20 students. *Id.* Statewide, 1,458 students were involved in 8,710 incidents involving isolation, and
21 106 of those incidents resulted in injury to those students.

22 168. Yakima School District’s use of restraint and isolation is particularly troubling.
23 School officials in Yakima restrained 21 students—either by a physical hold or use of a restraint
24 device—over 100 times during the first six months of 2016.

1 169. The data demonstrates that the same student is often restrained multiple times.
2 For example, Robertson Elementary School reported that just seven students were subjected to
3 60 incidents of restraint—meaning, on average, each student restrained experienced over eight
4 separate incidents of restraint. Plaintiff A.P. was repeatedly disciplined by being sent to the
5 “shoebox,” a small room with only a desk and chair, and forced to sit in the dark. Over the past
6 two years, Plaintiff A.P. has been restrained at least seven times.
7

8 170. In Pasco School District, isolation is also used frequently. School officials in
9 Pasco restrained 17 students over 40 times during the first six months of 2016. Livingston
10 Elementary School reported 24 incidents of restraint for seven students—meaning that each
11 student restrained experienced over three separate incidents of restraint.
12

13 171. Plaintiff G.J. and E.S.’s mothers report that their children have been sent to the
14 time out room for minor disciplinary issues.
15

16 172. Defendants have failed to provide adequate guidance on the appropriate use of
17 restraint and isolation, and failed to supervise school districts’ use of these practices. This has
18 led to the abuse of restraint and isolation against Plaintiffs and similarly situated class members.
19

20 **C. Long-Term Harms**

21 173. The immediate harms suffered by Plaintiffs as a result of Defendants’ inaction are
22 likely to be compounded over time by the negative educational and long-term outcomes for
23 students who are suspended or expelled, in what is known as the “school-to-prison pipeline.”
24

25 174. Students who receive out-of-school suspensions or expulsions are more likely to
26 drop out of high school than peers. *See Report to the President, MY BROTHER’S KEEPER TASK*
27 *FORCE*, 26 (May 2014),
https://obamawhitehouse.archives.gov/sites/default/files/docs/053014_mbk_report.pdf.

1 175. Indeed, one study found that 10 percent of students suspended or expelled at least
2 once between the seventh grade and the 12th grade in Texas dropped out of school, in contrast
3 with a two percent drop-out rate for students with received no such disciplinary actions.
4 Suspensions and expulsions have proven to be better predictors of high school dropouts than low
5 socioeconomic status, not living with both biological parents, and frequent school changes.

6 176. Students who miss significant amounts of class work are also likely to drop out.
7 In one survey of high school dropouts, 43 percent reported that one of the principal reasons for
8 their dropping out was because they missed too many days of school and could not catch up.
9

10 177. Washington’s special education students are already at a higher risk of dropping
11 out of school than their non-special education peers. During the 2014–2015 school year, only
12 58.6 percent of special education students graduated from high school in the state of Washington,
13 as compared to 78.2 percent of non-special education students. NAT’L CTR. FOR EDUC.
14 STATISTICS, COMMON CORE OF DATA, *Table 1. Public high school 4-year adjusted cohort*
15 *graduation rate (2014–2015)*,
16 https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2013-14.asp.

17 178. Washington’s graduation rate for special education students falls six points below
18 the national average, and the graduation gap between special education and non-special
19 education students in Washington is even higher than it is nationwide. *See id.* (showing a
20 nationwide disparity of 18.6 percentage points, compared to state disparity of 19.4 percentage
21 points).
22

23 179. Pasco and Yakima’s special education students experience lower graduation rates
24 than special education students nationally. *See* OSPI, DATA AND REPORTS, DROPOUT AND
25 GRADUATION REPORTS, Appendix C District Adjusted 4 year (2014-2015) (61.6 and 53.5
26
27

1 percent, respectively, compared to a nationwide average of 64.6 percent),
2 <http://www.k12.wa.us/DataAdmin/Dropout-Grad.aspx>. In fact, in Yakima, just over half of all
3 special education students graduated from high school in 2015. *See id.*

4 180. Students who have been suspended or expelled are more likely to become
5 involved with the juvenile and criminal justice systems. High school dropouts are 3.5 times
6 more likely than high school graduates to be arrested in their lifetime. Sixty-eight percent of
7 state prison inmates nationwide are high school dropouts.

8
9 181. Data from the U.S. Department of Education shows that students with disabilities
10 are disproportionately subject to school-based arrests and referrals to law enforcement. U.S.
11 Dep't Of Educ., Office For Civil Rights, *Civil Rights Data Collection Data Snapshot: School*
12 *Discipline*, 1 (Mar. 2014). Nationwide, “[s]tudents with disabilities represent a quarter of the
13 students who are referred to law enforcement or subjected to school related arrests, while
14 representing just 12 percent of the student population.” *Id.* at 7.

15
16 Children with special education needs disproportionately populate the juvenile justice
17 system. Thirty to seventy percent of youths in juvenile corrections facilities have disabilities
18 compared to roughly nine percent of public school students.

19 182. Suspension and expulsion do not reduce student misbehavior. Defendants’ own
20 report, *Helping Students Finish School*, supports these conclusions, citing studies finding that
21 “schools contribute to students’ involuntary withdrawal from school by systematically excluding
22 and discharging troublemakers and other problematic students.” OSPI, HELPING STUDENTS
23 FINISH SCHOOL, 33 (Updated May 2006).

24
25 183. Studies of suspension have found relatively high rates of repeat offenses among
26 those who are suspended out of school.

27

1 **XI. CAUSES OF ACTION**

2 **Count One: Violation of Article IX, Section One of the Washington State Constitution**

3 184. The allegations of paragraphs 1 through 183 are incorporated herein.

4 185. Defendants’ failure to monitor and exercise appropriate supervisory authority
5 over Washington’s school districts and schools has denied the state’s special education students
6 of their right to a basic education guaranteed by Article IX, Section 1 of the Washington State
7 Constitution.

8 186. Article IX, Section 1 imposes a judicially enforceable, mandatory, affirmative
9 “paramount duty” upon the State to “make ample provision for the education of all children
10 residing in its borders.” *See Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wn.2d 476, 510–11
11 (1978). All children residing in Washington possess a correlative individual right, arising from
12 the State’s constitutionally imposed duty, to an education. *Id.* at 510–13.

13 187. Defendant Reykdal, as Superintendent of Public Instruction, is charged with
14 effectuating the State’s paramount duty under RCW 28A.300.40, which provides that Defendant
15 has “supervision over all matters pertaining to the public schools of the state.” Defendants’ duty
16 includes matters pertaining to special education, over which Defendant also has explicit
17 authority. RCW 28A.155.090.

18 188. As supported by the above data *see supra* ¶¶95-109, Plaintiffs were suspended at
19 rates far exceeding their peers without disabilities in the Yakima and Pasco School Districts, and
20 statewide. Plaintiffs were repeatedly and consistently removed from their classrooms due to
21 behaviors related to their disabilities.

22 189. The excessive and discriminatory discipline of the Class members has deprived
23 the Class of their basic right to an education. Defendants’ failure to monitor and exercise
24

1 appropriate supervisory authority over Washington’s schools and school districts constitutes
2 deliberate indifference in violation of Article IX, Section 1 of the Washington State Constitution.

3 **Count Two: Violations of the Washington Law Against Discrimination**

4 190. The allegations of paragraphs 1 of 183 are incorporated herein.

5 191. Defendants’ failure to monitor and exercise appropriate supervisory authority
6 over Washington’s school districts and schools violates the Washington Law Against
7 Discrimination. RCW 49.60.030.

8 192. The Washington Law Against Discrimination prohibits discrimination based on
9 disability and preserves “[t]he right to be free from discrimination.” RCW 49.60.030(1).

10 193. “The right to be free from discrimination” includes “[t]he right to the full
11 enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of
12 public resort, accommodation, assemblage, or amusement.” RCW 49.60.030(1)(b); accord RCW
13 49.60.215. The statute applies to “educational institution[s].” RCW 49.60.040(2).

14 194. Plaintiffs and Class members are students with disabilities.

15 195. Public schools are educational institutions subject to the Washington Law Against
16 Discrimination. RCW 49.60.040(2).

17 196. Plaintiffs and class members were denied educational services comparable to
18 those provided to non-disabled students by or at the place of public accommodation, and their
19 disabilities were a substantial factor causing the discrimination.

20 197. Defendant Reykdal, as Superintendent of Public Instruction, is charged with
21 “supervision over all matters pertaining to the public schools of the state.” RCW
22 28A.300.040(1).

23 198. As supported by the above data, *see supra* ¶¶95-109, Plaintiffs were suspended at
24 rates far exceeding their non-disabled peers in Washington public schools, a place of public

1 accommodation, for reasons substantially related to their disabilities. Plaintiffs were denied the
2 right to services comparable to their non-disabled peers, namely the right to “full enjoyment” of
3 its schools.

4 199. Defendants’ failure to monitor and exercise appropriate supervisory authority
5 over Washington’s schools and school districts violates the Washington Law Against
6 Discrimination.
7

8 **XII. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs respectfully request that this Court:

10 A. Order that Plaintiffs may maintain this action as a class action pursuant to CR 23;

11 B. Declare unconstitutional and unlawful Defendants’ violation of Plaintiffs’ rights,
12 including their constitutional right to an education in violation of Article IX, Section 1 of the
13 Washington State Constitution and their right to be free from discrimination based on their
14 disability under the Washington Law Against Discrimination;

15 C. Declare that Defendants are responsible for the constitutional and statutory
16 violations found;

17 D. Grant injunctive relief as the Court deems appropriate;

18 E. Award Plaintiffs’ attorneys’ fees and costs; and

19 F. Grant other and further relief as the Court may deem just and proper.
20

21 DATED this 8th day of June, 2017.
22

23 Respectfully submitted,

24 AMERICAN CIVIL LIBERTIES UNION OF
25 WASHINGTON FOUNDATION

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