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

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

Plaintiffs,

v.

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

Defendants

Case No.

**PLAINTIFFS' COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Date: December 14, 2023

Dept.: Yet to be assigned

Judge: Yet to be assigned

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1 Plaintiffs, through their Guardians ad Litem, bring this action and allege that:

2 **INTRODUCTION**

3 1. This is a Complaint for Declaratory and Injunctive Relief (“Complaint”) against  
4 the State of California, the State Board of Education, the California Department of Education,  
5 and the State Superintendent of Public Instruction Tony Thurmond in his official capacity  
6 (collectively “the State”).

7 2. The United States and California Constitutions agree that public education is the  
8 institution by which all children receive equal opportunity to better their circumstances, become  
9 meaningful participants in our democracy, and identify and realize their dreams for a fulfilling  
10 life. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 495 (1954). The California Constitution  
11 goes further, recognizing education as a “fundamental right,” perhaps the most vital of all  
12 fundamental rights, to be obstructed only upon a showing that there is a compelling interest for  
13 doing so. *Butt v. State*, 4 Cal.4th 668, 692-93 (1992).

14 3. No court has ever so much as suggested that it be otherwise for disabled students.  
15 To the contrary, the California legislature has enacted a statutory scheme to ensure it is not. *See*  
16 *Cal. Educ. Code § 56000 et seq.*; *Hayes v. Comm’n on State Mandates*, 11 Cal.App.4th 1564,  
17 1592 (1992) (declaring that Section 56000 requires the State and local educational agencies “to  
18 do [nothing] more than the Constitution already required of them[.]”). These laws, borne of the  
19 unfortunate reality that children with disabilities are too often treated as if they were second-  
20 class students not entitled to the same degree of respect as students without disabilities, spell out  
21 the scope and nature of their entitlements to an education that enables them to reach their full  
22 potential, no different from their peers without disabilities. Recognizing, too, that there are  
23 lifelong consequences to being unnecessarily segregated from students without disabilities, or to  
24 being misidentified in the first place as students with disabilities, the law properly demands that  
25 educators meet their obligations without delay to a student’s educational progress. Time and  
26 precision matter. The responsibilities of our statewide system of education are not just to these  
27 students and their families, but also to the larger community, to put an end to societal  
28 discrimination against individuals with disabilities once and for all.

1           4.       The California Supreme Court has accordingly recognized that it is the obligation  
2 of the State, and its officials and agencies to ensure that all students possess the right to equal  
3 access to a public education system that meets the prevailing statewide standards. *Butt*, 4 Cal.4th  
4 686-87. This includes an education that “will equip [them] with the substantive knowledge and  
5 skills they need to succeed in life,” *O’Connell v. Superior Court*, 141 Cal.App.4th 1452, 1478  
6 (2006), including “instruction in phonics, reading comprehension, creative writing, [and]  
7 handwriting skills . . .” *Butt*, 4 Cal.4th 687 n.16. To fulfill this constitutional promise, the State  
8 has established a system of local schools and imposed minimum standards that school districts  
9 must meet. Included in these basic requirements are two prevailing statewide standards. First,  
10 school districts must provide all students with 180 days of school. *See* Cal. Educ. Code § 46200  
11 *et seq.* Second, the State requires that all disabled students with exceptional needs receive a free  
12 appropriate public education, including the specialized services and tools they need to make  
13 grade-to-grade progress and acquire the skills they need to live an independent life. Cal. Educ.  
14 Code § 56000 *et seq.* Both require disabled students with exceptional needs have access to the  
15 fundamentals of education, including instruction in “phonics, reading comprehension, creative  
16 writing, [and] handwriting skills,” *Butt*, 4 Cal. 4th at 687-88 & n.16, and other “skills they need  
17 to succeed as productive members of modern society,” *O’Connell*, 141 Cal. App. 4th at 1482.

18           5.       Tragically, these legal and moral responsibilities have not been met in the Del  
19 Norte County Unified School District (“the District”). Plaintiffs are California elementary,  
20 middle, and high school disabled students with exceptional needs, as defined by California  
21 Education Code section 56000 *et seq.*, who are entitled to receive specialized services in the  
22 District. An assessment determined that each of these students requires specialized services and  
23 supports, which are identified in their respective Individual Education Plans (“IEPs”), prepared  
24 in accordance with California Education Code § 56345. Over the course of the last several  
25 years, however, they each have been denied access to 180 days of instruction and the services  
26 identified in their IEPs because of the District’s inability to provide those services. Although  
27 ultimately responsible for this guarantee, and on notice of the District’s inability to meet it, the  
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1 State of California has failed to step in to secure the Constitutionally-guaranteed education for  
2 these students.

3           6.       The District is facing a historical shortage of qualified special education service  
4 providers, which has forced Plaintiffs and other disabled students with exceptional needs to miss  
5 numerous school days or, equivalently, to sit in classrooms where little to no learning occurs.  
6 Plaintiffs and disabled students with exceptional needs throughout the District have been denied  
7 the assistance of classroom and individualized aides, and have been instructed to stay home  
8 because instructional staff or aides were not available. Speech therapy services have been  
9 denied or compromised due to the shortage of Speech and Language Pathologists (“SLPs”).  
10 Physical therapy services have also diminished, and in the 2023-2024 school year have been  
11 completely denied because the District has no qualified physical therapist (“PT”) on staff or  
12 under contract. The failure to secure qualified School Psychologists, on staff or under contract,  
13 has meant that assessments of new students are delayed, effectively denying students  
14 appropriate and necessary support services while they wait months to be evaluated. For  
15 Plaintiffs, and almost every disabled student with exceptional needs, these shortages have closed  
16 the school doors in actuality and in effect.

17           7.       The District’s shortage of behavioral aides or “aides” has eliminated educational  
18 opportunities for numerous students. At Del Norte High School, for example, at least seven  
19 disabled students with exceptional needs who cannot attend school without one-to-one or two-  
20 to-one aides have already lost an average of 32 out of 53 school days for the current academic  
21 year—more than 60%. In response to the shortage, the District cut the school days for disabled  
22 students with exceptional needs in half, so students can share classroom and individual aides.  
23 But the District lacks enough aides to even implement this educationally unsound solution, and  
24 Plaintiffs (as well as many other students,) continue to lose school days. Countless other  
25 disabled students with exceptional needs attend class where little to no learning occurs because  
26 the lack of aides prevents teachers from providing instruction.

27           8.       Plaintiffs and disabled students with exceptional needs throughout the District  
28 have suffered significant educational loss and stagnation of academic, social, and emotional

1 progress, while many students have also significantly regressed. For example, disabled students  
2 who once displayed age and grade-appropriate reading, writing, and mathematics have almost  
3 completely lost these abilities. Further, many disabled students with exceptional needs in the  
4 District are non-verbal, and use an Augmentative and Alternative Communication (“AAC”)  
5 device—a tool that helps people who have difficulty communicating using speech. But without  
6 sufficient support from aides and SLPs to model and help them use their device, students have  
7 almost completely lost their ability to use the devices, and therefore their ability to communicate  
8 with their family, friends, and school community. Students with the most significant support  
9 needs, such as students with developmental disabilities, are losing the functional living skills  
10 necessary to live an independent life and work after school.

11 9. The District has demonstrated that it is incapable of providing disabled students  
12 with exceptional needs with the educational services and supports necessary to ensure full  
13 access to a public education equivalent to the education of students without disabilities.

14 10. The State has been aware of the District’s inability to provide an appropriate  
15 education to Plaintiffs and other disabled students with exceptional needs. The State has both  
16 state and federal funds available to it to provide supports and direct services to disabled students  
17 with exceptional needs. It has the power and, under these circumstances, the obligation to take  
18 direct control of the District, through receivership or directive actions. But the State has taken  
19 no effective steps to ensure that Plaintiffs, and other disabled students with exceptional needs,  
20 receive the support services needed for them to have access to learning or a free appropriate  
21 public education in accordance with their Constitutional rights.

22 11. Plaintiffs seek immediate intervention by asking this court to order the State to  
23 fulfill its obligation to Plaintiffs and other disabled students with exceptional needs by taking all  
24 steps necessary to ensure that the educational supports and services needed to provide those  
25 students with equal access to a public education are provided to them. Without judicial  
26 intervention, the State will remain passive while Plaintiffs and other disabled students with  
27 exceptional needs in the District suffer.

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1 **JURISDICTION AND VENUE**

2 12. Plaintiffs, and their Guardians ad Litem, each reside in the County of Del Norte.  
3 Defendants provide funding and services to support educational operations in the County of Del  
4 Norte. Plaintiffs seek injunctive and declaratory relief, and this Court has jurisdiction over all of  
5 the claims asserted in this complaint.

6 **PARTIES**

7 13. Plaintiff, Olivia R., by and through her guardian ad litem Melony Lenover, is an  
8 eleventh-grade student at Del Norte High School. Based on her intellectual disability, she  
9 qualifies for specialized education services, including specialized instruction, one-to-one aide,  
10 speech therapy, occupational therapy, and physical therapy. Olivia is also non-ambulatory and  
11 has a mitochondrial disorder that makes her immunocompromised, which requires her to attend  
12 all classes virtually. Because the District has a shortage of aides, it has failed to provide Olivia  
13 with her one-to-one aide this school year, and as a result she has missed at least 50 school days  
14 so far, depriving her of occupational therapy, speech therapy, and reading instruction. The  
15 District has also failed to provide Olivia with a physical therapist. As a result, Olivia struggles  
16 to use her AAC device, move around, raise her arms in the air, and read.

17 14. Plaintiff, Monica C., by and through her guardian ad litem Lisa Fintel, is a sixth-  
18 grade student at Crescent Elk Middle School. Based on her intellectual disability, she qualifies  
19 for specialized education services, including specialized instruction, speech therapy, physical  
20 therapy, and behavioral services. Because Monica is immunocompromised, she is currently in  
21 the District’s home and hospital program, which means she receives her IEP services at home.  
22 Because the District has a shortage of qualified special education teachers, speech therapists,  
23 and physical therapists, it has failed to provide Monica with any services this year. As a result,  
24 Monica can no longer do basic addition, and has also regressed substantially in her reading,  
25 writing, and handwriting.

26 15. Plaintiff, Caleb W., by and through his guardian ad litem Gloria Sanchez, is a  
27 third-grade student at Bess Maxwell Elementary School. Based on his Autism, he qualifies for  
28 specialized education services, including specialized instruction, a one-to-one aide, speech

1 therapy, and occupational therapy. Because the District has a shortage of aides, it has failed to  
2 provide Caleb with a one-to-one aide for at least 30 days. As a result, Caleb is forced to attend  
3 class without the behavioral support necessary to stop him from engaging in physically  
4 aggressive behavior. His aggressive behaviors have increased in intensity and frequency and  
5 have effectively barred him from learning. He has also not made any progress in using his AAC  
6 device, which has cut off his communication with friends, family, and community.

7         16. Plaintiff, Jonah B., by and through his guardian ad litem Jennifer Gaball, is a  
8 fourth-grade student at Pine Grove Elementary School. Based on his Autism, he qualifies for  
9 specialized education services, including specialized instruction, speech therapy, occupational  
10 therapy, and two-to-one aides. Because the District has a shortage of aides, it has failed to  
11 provide Jonah with his two-to-one aides and has forced him to miss up to ten school days this  
12 year. Because Jonah has missed so much school already, his reading has stagnated and his  
13 communication has regressed. His reading has stagnated at a first-grade level and he is unable to  
14 use his AAC device, which has cut off his communication with friends, family, and community.

15         17. Plaintiff, Raj K., by and through his guardian ad litem Daniel McQuillen, is part  
16 of the Yurok Tribe and a fifth-grade student at Margaret Keating Elementary School. Based on  
17 his emotional disturbance, he qualifies for specialized education services, including specialized  
18 instruction and a one-to-one aide. Because the District has a shortage of aides, it has failed to  
19 consistently provide Raj with a one-to-one aide, which has forced him to miss at least ten school  
20 days. When Raj has had an aide, that aide has been untrained and unqualified to work with him,  
21 but because the District does not have any other aides, the school principal has told the aide not  
22 to provide behavioral interventions to Raj, which amounts to providing no aide at all. Left  
23 unsupported, Raj consistently engages in aggressive behaviors and wanders the halls of the  
24 school. This has resulted in the loss of an additional six days, when he was improperly  
25 suspended due to the inappropriate response to his disability related behavior. Because he has  
26 missed so much school and cannot engage in instruction, Raj struggles to read paragraphs and  
27 his reading has regressed to a first-grade level.

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1           18.     Plaintiff, Shawn T., by and through his guardian ad litem Linda Vang, is an  
2 eleventh-grade student at Del Norte High School. Based on his Autism, he qualifies for  
3 specialized education services, including specialized instruction, two-to-one aides, and speech  
4 therapy. Because the District has a shortage of aides, it has failed to provide Shawn with two-to-  
5 one aides, which has forced him to miss twenty days of school this school year. As a result of  
6 missing so much class time, Shawn has lost the ability to use his AAC device and lost his potty-  
7 training skills. Last school year, Shawn’s aide left on medical leave, which forced the District to  
8 provide Shawn with an untrained and unqualified aide. Beyond being unqualified, this newly-  
9 appointed aide shockingly physically assaulted Shawn—choking him for an entire minute. The  
10 extreme trauma resulting from this vicious attack by a trusted aide caused Shawn to miss 60  
11 days of school, and the trauma and resulting educational deficit, may never be fully overcome.

12           19.     The above are but a few of the stories being written every day by disabled  
13 students with exceptional needs throughout the District, and that require the State’s immediate  
14 intervention.

15           20.     The State, and its actions are governed by the California Constitution, which  
16 provides for the fundamental right of every student to receive a free public education, and that  
17 all students, including those with disabilities are entitled to equal access to that education. Cal.  
18 Const., art. I, § 7; art. IV, § 16; art. IX. The State has plenary power in all school district affairs,  
19 and the pervasive responsibility and power to ensure a fair, high quality public education for all  
20 California students. *Butt*, 4 Cal. 4th 668 at 689.

21           21.     Defendant Tony Thurmond, in his official capacity as State Superintendent of  
22 Public Instruction, is the State Superintendent and is a constitutional officer of the state charged  
23 with the supervision of all California schools and school districts. The State Superintendent, as  
24 the executive officer of CDE, is obligated to take all necessary steps to ensure that school  
25 districts comply with state and federal requirements concerning educational programs and  
26 services. Cal. Educ. Code §§ 3311133301-33033. In his capacity as the State Superintendent, he  
27 is required to assist school districts and county offices of education to recognize and eliminate  
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1 unlawful discrimination that may exist within their programs or activities and to meet state anti-  
2 discrimination mandates. Cal. Code Regs., tit. 5, §§ 4900-4901.

3 22. Defendant State Board of Education (“SBE”) is a governmental entity  
4 established in the California constitution with the power to set the education policies of the State  
5 and is responsible for establishing rules and regulations consistent with state law for the  
6 management of the day and evening elementary schools, the day and evening secondary  
7 schools, and other schools, that receive in whole or in part financial support from the State.  
8 Educ. Code §33031.

9 23. Defendant California Department of Education (“CDE”), is a department of the  
10 State statutorily charged with administering and enforcing laws pertaining to education,  
11 including those laws that guarantee common schools and equal access to public education under  
12 the California Constitution. Cal. Const., art. I, § 7; art. IV, § 16; art. IX, § 1; Cal. Educ. Code §  
13 33308. Within those responsibilities, CDE must ensure that local education agencies (“LEAs”)  
14 funded by the State are also in compliance with those constitutional mandates, statutes, and  
15 regulations.

16 24. Defendants DOES 1-100, inclusive, are individuals or entities currently unknown  
17 to Plaintiffs who bear responsibility for ensuring that Plaintiffs and other disabled students with  
18 exceptional needs receive the benefit of a free public education.

## 19 **FACTUAL ALLEGATIONS**

### 20 **Background on Education Services for Students With Exceptional Needs**

21 25. California Education Code section 56000 *et seq.* requires school districts to  
22 provide “students with exceptional needs” with the designated instruction and services and  
23 supports necessary to provide assured an education appropriate to his or her needs. Once  
24 determined as eligible for special education, a student receives a written individualized  
25 education program (“IEP”). Cal. Educ. Code § 56001(e). Among other requirements, an IEP  
26 includes a statement of the specialized education and related services and supplementary aides  
27 and services and a statement of modifications and accommodations needed. Cal. Educ. Code §  
28 56032. Designated instruction and services include classroom or home instruction, speech-

1 language pathology and audiology services, physical and occupational therapy, and behavioral  
2 services. Cal. Educ. Code §§ 56031(a), (b)(1), 56363(a). They also include other supportive  
3 services required to assist a student with exceptional needs to benefit from education, including  
4 the assistance of behavioral aides. Cal. Educ. Code § 56363(a).

5 26. The State has recognized that this involves individualized specialized education  
6 services calculated to achieve advancement from grade to grade and meet the state academic  
7 content standards—standards that mark the baseline “content [all] students need to master by the  
8 end of each grade level[.]”<sup>1</sup> For disabled students who cannot meet these standards, requires  
9 instruction in the socio-emotional and behavioral tools necessary for employment, and  
10 independent living including like cooking, potty training, and counting money.

11 **Conditions at Del Norte Unified School District**

12 27. Del Norte County Unified School District is a public school district established  
13 under the laws of California. It is funded by the State in order to provide 180 days of free public  
14 education to students located within its boundaries. As a unified district, it enrolls students in its  
15 elementary, middle, and high schools. It is subject to the oversight and control of Defendant  
16 State of California, and as such is statutorily required to comply with all policies established by  
17 Defendant California State Board of Education, and is monitored by and must provide specified  
18 information to Defendant California Department of Education.

19 28. The District is in a remote part of Northern California and is the largest school  
20 district in a county that is economically depressed. According to 2022 U.S. Census data, Del  
21 Norte County had an estimated population of 27,745, ranking 49th out of 58 California counties.  
22 21.4% of the population lives in households under the poverty level, compared to 12.2%,  
23 statewide. Only 16% of the population holds a college degree or higher compared to 35%,  
24 statewide. The median household income is \$53,280, compared to \$84,097, statewide, and per  
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26 <sup>1</sup> See CAL. STATE BD. OF EDUC., English-Language Arts Content Standards for  
27 California Public Schools (Dec. 1997),  
28 <https://www.cde.ca.gov/be/st/ss/documents/elacontentstnds.pdf> (“California 1997 Content  
Standards”); CAL. STATE BD. OF EDUC., California Common Core State Standards (Mar. 2013)  
v, <https://www.cde.ca.gov/be/st/ss/documents/finalesccsstandards.pdf> (“California Common  
Core Standards”).

1 capita income was \$24,708, compared to \$41,276, statewide. Its population per square mile in  
2 2020 was 27.6, compared to 253.7, statewide.<sup>2</sup>

3 29. The District serves a greater rate of special education, Native American, and  
4 indigent students than other California school districts. Students with IEPs make up 15.4%<sup>3</sup> of  
5 students compared to the 13% state average.<sup>4</sup> And because Del Norte County is also home to  
6 several Native American tribes, including the Tolowa Dee-ni' Nation and Yurok Tribe, Native  
7 American students make up 15.2% of students with IEPs in the District, far higher than the State  
8 average of 0.7%. Over 65% of students in the District are eligible for reduced priced meals  
9 compared to the State average of 60%.<sup>5</sup>

10 30. As a result of geographic location and demographics, the District faces unique  
11 challenges attracting and maintaining the staff necessary to serve its disabled students with  
12 exceptional needs. As a result, services and supports identified as necessary to provide basic  
13 education to those students have not been provided by the District, which has resulted in  
14 profound educational deficits, regression of skills, and loss of instruction days for Plaintiffs and  
15 other disabled students with exceptional needs.

16 31. The District faces the greatest staffing shortage in behavioral aides. Behavioral  
17 aides serve a critical role for both disabled students with exceptional needs and other students in  
18 their classrooms. In general, three levels of aide support are identified as necessary through the

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19 <sup>2</sup> United States Census Bureau, *Quick Facts Del Norte County, California*,  
20 <https://www.census.gov/quickfacts/fact/table/delnortecountycalifornia,CA/PST045222>.

21 <sup>3</sup> California Department of Education Data Quest, *Selected District Level Data – Del*  
*Norte County Unified for the year 2022-23*,  
22 [https://dq.cde.ca.gov/dataquest/dqcensus/EnrCharterSub.aspx?cds=0861820&aggllevel=district](https://dq.cde.ca.gov/dataquest/dqcensus/EnrCharterSub.aspx?cds=0861820&aggllevel=district&year=2022-23&ro=y)  
&year=2022-23&ro=y.

23 <sup>4</sup> California Department of Education Data Quest, *2022-23 Enrollment by Subgroup for*  
*Charter and Non-Charter Schools, Del Norte County Unified Report*,  
24 [https://dq.cde.ca.gov/dataquest/dqcensus/EnrCharterSub.aspx?cds=0861820&aggllevel=district](https://dq.cde.ca.gov/dataquest/dqcensus/EnrCharterSub.aspx?cds=0861820&aggllevel=district&year=2022-23)  
&year=2022-23 (last visited December 7, 2023); California Department of Education Data  
25 Quest, *2022-23 Enrollment by Subgroup for Charter and Non-Charter Schools, State Report*,  
[https://dq.cde.ca.gov/dataquest/dqcensus/EnrCharterSub.aspx?cds=00&aggllevel=state&year=20](https://dq.cde.ca.gov/dataquest/dqcensus/EnrCharterSub.aspx?cds=00&aggllevel=state&year=2022-23)  
26 [22-23](https://dq.cde.ca.gov/dataquest/dqcensus/EnrCharterSub.aspx?cds=00&aggllevel=state&year=2022-23) (last visited December 7, 2023).

27 <sup>5</sup> California Department of Education Data Quest, *Selected District Level Data – Del*  
*Norte County Unified for the year 2022-23*,  
[https://dq.cde.ca.gov/dataquest/Cbeds3.asp?FreeLunch=on&cSelect=0861820--](https://dq.cde.ca.gov/dataquest/Cbeds3.asp?FreeLunch=on&cSelect=0861820--Del+Norte+County+Unified&cChoice=DstProf1&cYear=2022-23&cLevel=District&cTopic=FRPM&myTimeFrame=S&submit1=Submit)  
28 [Del+Norte+County+Unified&cChoice=DstProf1&cYear=2022-](https://dq.cde.ca.gov/dataquest/Cbeds3.asp?FreeLunch=on&cSelect=0861820--Del+Norte+County+Unified&cChoice=DstProf1&cYear=2022-23&cLevel=District&cTopic=FRPM&myTimeFrame=S&submit1=Submit)  
[23&cLevel=District&cTopic=FRPM&myTimeFrame=S&submit1=Submit](https://dq.cde.ca.gov/dataquest/Cbeds3.asp?FreeLunch=on&cSelect=0861820--Del+Norte+County+Unified&cChoice=DstProf1&cYear=2022-23&cLevel=District&cTopic=FRPM&myTimeFrame=S&submit1=Submit) (last visited  
December 7, 2023).

1 IEP process: floating aides, one-to-one aides, and two-to-one aides. Most students with non-  
2 significant support needs, like learning disabilities or attention deficit hyperactivity disorder,  
3 require at least one classroom—or “floating”—aide who supports all students in the class. These  
4 aides redirect students’ attention or provide individualized classroom support. Students with  
5 more significant support needs, like autistic or developmentally disabled students, may engage  
6 in more disruptive behaviors, like physical aggression or eloping from their classroom. In  
7 addition to classroom aides, these students often require a one-to-one aide who provides  
8 individualized and frequent behavior support. Two-to-one aides may be required for students  
9 with even more significant behaviors, including self-injurious ones.

10         32.     The harm from the aide shortage is exacerbated by the shortage of Board  
11 Certified Behavior Analysts (“BCBAs”). BCBAs are licensed mental health clinicians who  
12 study behavior patterns and create plans to help clients improve or change disruptive behavior.  
13 At the District, BCBAs are responsible for training the District’s Registered Behavior  
14 Technicians (“RBTs”) and Behavior Intervention Technicians (“BITs”) on students’ disability-  
15 related behaviors and effective interventions to prevent or eliminate those behaviors. These  
16 technicians are in turn responsible for providing training to the aides who work directly with the  
17 students, including classroom aides, one-to-one aides, and two-to-one aides. As a result of the  
18 BCBA shortage, classroom and individual aides have not received this critical training and do  
19 not know how to read an IEP and identify what supports and services they must provide their  
20 students. They cannot and do not identify precursors to disability-related behavior or provide  
21 proactive behavioral interventions to prevent that behavior from escalating. This is  
22 demonstrated by the fact that the frequency of disruptive disability-related behavior, including  
23 crying, physical aggression, and eloping has exponentially risen. Because of the lack of skills  
24 necessary to de-escalate these students, classroom aides have instead resorted to using harmful  
25 and traumatic restraints and discipline measures excluding students from the classroom, or  
26 suspending them from school.

27         33.     The District is also facing a shortage of qualified special education teachers.  
28 Three schools—Crescent Elk Middle School, Mountain Elementary School, and Mary Peacock

1 Elementary School—have listed vacancies for qualified special education teachers.  
2 Additionally, the District lacks enough qualified special education teachers at Redwood  
3 Elementary School, Bess Maxwell Elementary School, as well the District’s “home and  
4 hospital” program for students who must receive education services at home. As a result of  
5 these shortages, qualified special education teachers in the District have caseloads that exceed  
6 legal standards and make it impossible to teach the full curriculum for all students assigned to  
7 them. *See* California Code of Regulations, tit. 5, § 3100.

8           34.     The District also suffers from a critical shortage of Speech and Language  
9 Pathologists (“SLPs”). Currently, the District has only four full-time SLPs who carry heavy  
10 caseloads of up to 80 students each—far above the number recognized as appropriate by  
11 professional standards. Because of their high caseloads, SLPs lack the time to provide  
12 individualized, one-to-one speech therapy required by students’ IEPs. Instead, SLPs must  
13 simultaneously provide speech therapy to three to four students at a time, cutting the required  
14 speech therapy minutes provided by two-thirds or three-fourths.

15           35.     The District currently has vacancies for several School Psychologists, and has  
16 been understaffed for some time. School Psychologists play an essential evaluation role in the  
17 IEP process. As a result of the shortages, IEPs for some students have been delayed for months,  
18 causing the deprivation of the specialized education services necessary for their education.

19           36.     Plaintiffs are informed and believe that Defendants are and have been aware of  
20 this critical shortage of qualified and trained personnel, as the CDE receives data reporting the  
21 number of school personnel by classification and certification level as part of the mandatory  
22 data reporting required by all school districts. Del Norte County Unified has reported that data  
23 to the Defendants, as required.

24           37.     As a result of these shortages, appropriate services cannot be provided to  
25 students, and they are advised not to attend school. Plaintiffs are informed and believed that  
26 these forced days of lost instruction are reported as excused absences in data reported to the  
27 CDE, and available to all Defendants. Plaintiffs are further informed and believe that this data is  
28 part of the data used to compute absenteeism rates. In reports generated by Defendants, the

1 District's excused absenteeism rate increased from 45.4% to 63.2% between the 2021-2022  
2 school year and 2022-2023 school year.

3 **Impact of Staff Shortages and Failure to Provide Services on Plaintiffs**

4  
5 **A. Oliva R.**

6 38. Plaintiff, Olivia R. has intellectual and physical disabilities that make it necessary  
7 for her to attend school virtually. She is also non-verbal and uses an AAC device. According to  
8 her IEP, she is entitled to attend art class for one hour per day, dance class for one hour per day,  
9 speech therapy for 30 minutes per week, occupational therapy for 15 minutes each week,  
10 physical therapy for 30 minutes each week, and 240 minutes of reading instruction each week.  
11 To help Olivia participate virtually in her classes and services, Olivia's IEP requires that she  
12 have a one-to-one aide. The aide is supposed to pick up the computer on which she is attending  
13 class virtually, guide her through the classroom, initiate conversations with other students, and  
14 generally help her interact with others. When there is no one-to-one aide to work with Olivia or  
15 the classroom aide cannot fill in that role, the District has told her mother that Olivia may not  
16 attend school.

17 39. During the 2022-23 school year, Olivia missed at least 50 school days because  
18 staffing shortages prevented her from having a one-to-one aide. This school year, Olivia has  
19 attended only seven out of over 50 school days because she has not had a one-to-one aide. Not  
20 being able to attend school has destroyed Olivia's confidence and ability to interact with others.  
21 Last school year, Olivia would interact with other students virtually using her AAC device. On  
22 the few days she has attended this year, she has not interacted at all. Because she is not getting  
23 practice with using her AAC device at school, she rarely uses it at home.

24 40. Olivia has also not received her individualized reading services at least six times  
25 this school year. Her teacher canceled these individual sessions because her class is so short-  
26 staffed. Because she has missed so many reading sessions, Olivia's reading progress has been at  
27 a standstill this year. Olivia also did not receive physical therapy services until November 6 of  
28 this year because the District did not have any physical therapists. Because she has missed so

1 much physical therapy this year, her physical abilities have regressed. She cannot raise her arms  
2 in the air, her ability to move around the house on her hands and knees has substantially  
3 regressed and she is becoming increasingly dependent on her mother to pick her up and move  
4 her places.

5 41. The District acknowledges that it did not meet the requirements of Olivia’s IEP,  
6 and offered compensatory services. However, due to staff shortages and the lack of supportive  
7 resources, the District has not actually provided those compensatory services.

8 **B. Monica C.**

9 42. Plaintiff, Monica C., has an IEP because she has Autism. According to her IEP,  
10 Monica is entitled to specialized instruction, speech therapy, physical therapy, and behavioral  
11 services. Because Monica is immunocompromised, she is currently in the District’s home and  
12 hospital program, which means she receives her IEP services at home.

13 43. This school year, Monica has not received any services because the District has a  
14 shortage of qualified special education teachers, speech and language pathologists, and physical  
15 therapists. As a result, Monica cannot do basic addition anymore and has regressed substantially  
16 in her reading, writing, and handwriting— she previously able to do addition and subtraction  
17 and was emerging with multiplication and division ideas, but now she cannot even say the  
18 correct answer to  $6 + 6$ . She also used to be able to use mnemonics and other language-based  
19 exercises to do math and learn math concepts, but she cannot do them anymore. Her writing has  
20 also gotten much worse—she does not have the same structure in her letter and numbers and her  
21 writing is almost illegible now. Monica has also lost her ability to adhere to a daily schedule  
22 because of the lack of structure, so her progress in reading and writing has halted. She has also  
23 lost her feeling of connectedness to a trusted adult outside of her home, with whom she  
24 celebrated her victories and looked forward to meeting with on a regular, predictable schedule.

25 **C. Caleb W.**

26 44. Plaintiff, Caleb W. has an IEP because he has Autism. Caleb is in the classroom  
27 for disabled students with exceptional needs who have more significant support needs. Caleb is  
28 also non-verbal and uses an AAC device. Without this device, Caleb cannot communicate with



1 others. According to his IEP, Caleb is entitled to a one-to-one aide because his disability causes  
2 him to be physically aggressive and he needs assistance engaging in classroom instruction and  
3 specialized education services. A one-to-one aide would also model and help Caleb use his  
4 AAC device. Without an aide, Caleb cannot learn the life skills he needs to become  
5 independent. Caleb also requires speech therapy and occupational therapy.

6 45. This school year, Caleb has not had a one-to-one aide at all because the District  
7 does not have enough staff. Even though Caleb still goes to school, he cannot engage in the  
8 educational material. School staff have reported that Caleb engages in physically aggressive  
9 behavior every day, which prevents him from participating in classroom instruction and  
10 learning. He also brings these behaviors back home. When Caleb consistently had his one-on-  
11 one aide during the last school year, his behavior was much better. He was rarely physically  
12 aggressive and at his IEP team meetings last year, and District staff stated he was able to pay  
13 attention in class.

14 46. Because Caleb does not have an aide to model and help him use his AAC device  
15 or help him in speech therapy, he has not made progress this year in using the device. He  
16 continues making the same four requests for food that he made at the beginning of the school  
17 year and has not learned any new requests or words. Caleb's AAC device is his only tool to  
18 communicate with his family, his friends, and his community, the lack of an aide has cut Caleb  
19 off from the world.

20 **D. Jonah B.**

21 47. Plaintiff, Jonah B. has an IEP because he has Autism. Jonah's disability causes  
22 him to engage in self-injurious behaviors that prevent him from learning. Because Jonah's  
23 disability puts him in danger of hurting himself and other students, his IEP says that he requires  
24 two-to-one aides at all times. One is a primary aide and the other is a secondary aide. These  
25 aides help Jonah calm down, prevent him from hitting himself, and help him learn.

26 48. When one of the two aides is absent from school, the District directs Jonah to  
27 stay at home. This school year, the District forced Jonah to stay at home from school for  
28 approximately ten days because his primary or secondary aide was absent. Because Jonah has

1 missed so much school already, his reading and communication are becoming worse. For  
2 example, Jonah used to be able to say “I want goldfish, please” when he wanted to eat. Now, he  
3 just points to food and is nonverbal in his request. This is because he is not getting enough  
4 practice and instruction at school. Jonah is reading at only a first-grade level, despite being in  
5 the fourth-grade, and his reading has not improved at all this school year.

6 49. Jonah’s IEP says that he must receive 30 minutes of occupational therapy each  
7 week. But because of staff shortages, Jonah has not received any occupational therapy this  
8 school year. As a result, Jonah’s handwriting has become worse. Last school year, Jonah  
9 regularly practiced handwriting and could write legible words. Now his writing is illegible.

10 50. The District offered Jonah compensatory education for the time Jonah lost.  
11 However, the District only offered 18 hours of compensatory education. Based on the amount of  
12 time Jonah missed, he is entitled to at least 60 hours. Moreover, the District’s offer of  
13 compensatory education was offered only during hours when he would be attending his other  
14 scheduled classes. In order to take advantage of it, he must lose regular classroom instruction  
15 time.

16 **E. Raj K.**

17 51. Plaintiff, Raj K. has an IEP because he has an emotional disturbance disorder.  
18 Raj currently splits his time between the general education classroom and classroom for  
19 disabled students with exceptional needs. According to his IEP, Raj is entitled to a one-to-one  
20 aide because his disability causes him to hit, fight, and elope from the classroom. Raj needs his  
21 one-to-one aide to provide behavioral interventions to prevent him from escalating and help him  
22 stay focused in school. Raj, like other students with IEPs, needs consistency in his environment  
23 to form trusting relationships.

24 52. In the current school year, the District has forced Raj to stay home for at least ten  
25 days because the District did not have a one-to-one aide available. The aide that does work with  
26 Raj lacks the proper training to evaluate Raj’s needs and provide the appropriate supports.  
27 Instead, the aide has provoked Raj, causing him to become upset and engage in more physically  
28 aggressive behaviors.

1           53.     Raj’s father submitted a request to the District for a properly trained aide to serve  
2 as Raj’s one-to-one aide. The District could not provide a new aide due to lack of staffing.  
3 Instead, the District instructed the one-to-one aide to not interact with Raj and as an alternative,  
4 follow him around and record data about Raj’s behaviors. This is inconsistent with his IEP and  
5 has resulted in a lack of appropriate intervention and inadequate academic support. As a result,  
6 Raj was improperly suspended for six days during the current academic year for behavior  
7 stemming from his disability. His absence from school and his inability to engage in classroom  
8 instruction has caused Raj’s academic skills to regress. Raj is reading at a first-grade level,  
9 despite being in the fifth grade. Last school year, Raj improved his reading skills and could read  
10 books. Now, he struggles reading paragraphs.

11       **F. Shawn T.**

12           54.     Plaintiff, Shawn T. has an IEP because he is Autistic. Shawn is currently in the  
13 classroom for disabled students with exceptional needs who have more significant support  
14 needs. Shawn is also non-verbal and uses an AAC device. According to his IEP, Shawn is  
15 entitled to a one-to-one aide because he engages in self-injurious behavior. Shawn also needs  
16 assistance from his aide to vocalize and use his AAC device. Without his aide, Shawn cannot  
17 communicate with his peers or teachers. When Shawn’s one-to-one aide is absent, the District  
18 directs Shawn to stay at home. Shawn is also entitled to speech therapy and occupational  
19 therapy each week.

20           55.     During the 2022-23 academic year, Shawn was forced to stay home for 10 days  
21 because no aide was available to work with him. In February of the 2022-23 school year,  
22 Shawn’s regular one-to-one aide was out for medical reasons for an extended period of time.  
23 The aide that took his place was unfamiliar with Shawn, and, on information and belief, lacked  
24 the proper training to address his needs. On February 28, 2023, the aide reacted to Shawn’s  
25 attempt to elope from the classroom by cornering Shawn and choking him for one minute.  
26 Choking is never an appropriate or legally authorized. Further, Shawn was not a danger to  
27 himself or others at the time, so any use of force was inappropriate. Plaintiffs are informed and  
28

1 believe that the aide was the subject of prior complaints for inappropriate interventions  
2 involving force.

3           56.       Because of this incident Shawn’s mother pulled him from school due to fears for  
4 his safety and the fact that he was traumatized and scared to go back to school. Shawn’s mother,  
5 and guardian ad litem, Linda Vang, immediately requested that a different aide be assigned to  
6 Shawn so that he could return to school. Vang had to make multiple requests, and the District  
7 either did not respond, or scheduled, but cancelled meetings to discuss this request. Vang was  
8 advised, informally, that the District could not provide a different aide due to short staffing.  
9 Only after missing 60 days of school was Shawn assigned a new aide and placement change.

10           57.       After an administrative complaint was filed with Defendant, CDE, and resolved  
11 in Shawn’s favor, the District agreed to provide 100 compensatory education hours during the  
12 summer of 2023. However, they were unable to provide 20% of those hours due to staffing  
13 shortages and the lack of one-on-one aide support.

14           58.       This academic year, Shawn has missed over twenty days of school because the  
15 District did not have a one-on-one aide available for him. As a result of the missed school days  
16 from the previous year and the current year, Shawn’s functional and communication skills have  
17 worsened. He is no longer potty trained, and his current one-to-one aide has reported that he  
18 regularly urinates in class to get out of unwanted tasks. Prior to these missed school days, he had  
19 not engaged in this type of behavior for many years. Further, Shawn’s ability to vocalize and  
20 use his AAC device to communicate has significantly decreased.

21           59.       Plaintiffs are informed and believe that their experiences are common, and that  
22 numerous disabled students with specialized needs are, likewise, being excluded from attending  
23 school and learning because of the District’s shortage of aides, BCBA’s, speech and language  
24 pathologists, physical therapists, and school psychologists.

25           60.       The Del Norte Unified School District is incapable of providing the academic  
26 and behavioral supports necessary to provide Plaintiffs, and other disabled students with  
27 specialized needs, with full and equal access to an education that meets the prevailing standards  
28 in the State.



1 prevailing practice in the State, and education professionals, as well as Del Norte Unified  
2 teachers, acknowledge that 180 days is the minimum amount of time necessary to provide  
3 disabled students with specialized needs with the academic, socio-emotional, and functional life  
4 skills instruction necessary for their academic promotion and participation in the workforce.

5 67. Second, the Legislature has recognized that disabled students with specialized  
6 needs, such as Plaintiffs, require additional specific standards and educational services to ensure  
7 access to the free public school system. Accordingly, the State requires all that all disabled  
8 students with specialized needs receive a free appropriate public education tailored to their  
9 needs in publicly supported programs including the specialized education services and tools  
10 they need to make grade-to-grade progress and acquire the skills they need to live an  
11 independent life. *See* Cal. Educ. Code § 56000 *et seq.* This prevailing statewide standard  
12 ensures that disabled students with exceptional needs have access to the fundamentals of  
13 education, including instruction in “phonics, reading comprehension, creative writing, [and]  
14 handwriting skills,” *Butt*, 4 Cal. 4th at 687-88 & n.16, and other “skills they need to succeed as  
15 productive members of modern society,” *O’Connell*, 141 Cal. App. 4th at 1482.

16 68. The education of disabled students with exceptional needs at Del Norte County  
17 Unified School District falls below the minimum and prevailing statewide standards for  
18 education due to staffing shortages, lack of trained staff, and the District’s inability or  
19 unwillingness to compensate for those deficits. Plaintiffs and other special education students  
20 have been denied the right to attend every school day during the 2022-23 and 2023-24 school  
21 years, or are forced to attend class where little to no learning occurs. As a result, they have  
22 received or will receive fewer than 180 days of educational instruction, thus denying their right  
23 to a free public education.

24 69. As a result of the staffing shortages, lack of trained staff and the District’s  
25 inability or unwillingness to compensate for those deficits, the education of special education  
26 students in the District falls below the minimum and prevailing statewide standards for  
27 education. Plaintiffs, along with numerous other disabled students, with exceptional needs  
28 have been denied the right to a free appropriate public education guaranteed to all California

1 disabled students with exceptional needs, because the education services provided fail to meet  
2 the level of education services required, which has had a “real and appreciable impact on  
3 [special education] students’ fundamental right to basic educational equality,” including the loss  
4 of “instruction in phonics, reading comprehension, creative writing, handwriting skills,”  
5 mathematics, counting money, emotional and behavioral regulation, cooking, speech,  
6 communication, motor skills, physical therapy, potty training, and doing laundry, among others.  
7 *See Butt*, 4 Cal. 4th 668, 688 & n. 16. Accordingly, disabled students with exceptional needs  
8 have been denied their right to 180 school days and a free and appropriate public education.  
9 Plaintiffs are informed and believe that the Defendants were and are on notice of the fact that  
10 the District was and is unable or unwilling to provide Plaintiffs, and other students with  
11 disabilities, with 180 days of instruction and a free and appropriate public education, but have  
12 failed to intervene to ensure that this educational policy and practice is eliminated.

13         70. Plaintiffs are informed and believe that the Defendants were and are on notice of  
14 the fact that the District was and is unable or unwilling to provide Plaintiffs, and other disabled  
15 students with exceptional needs, with substantially all of the educational services and supports  
16 required in their IEPs, and that as a result, those students were provided an education that falls  
17 seriously below prevailing statewide standards, resulting in educational inequality. But  
18 Defendants have failed to intervene or take any action to ensure that this educational inequality  
19 is eliminated, or even addressed.

20         71. Defendants have the obligation and power to intervene, including the power to  
21 place the District in receivership, but failed to exercise those powers. By operation of their  
22 disregard and failure to act, Defendants have violated their obligations and failed to perform  
23 their constitutional duties, and have denied and are denying Plaintiffs and other disabled  
24 students with exceptional needs enrolled in the District their right to a free appropriate public  
25 education.

26         72. Plaintiffs, and other disabled students with exceptional needs, have and are  
27 suffering severe and irreparable educational deficits, emotional distress and trauma as a result of  
28 Defendants’ failure to act. Those deficits, distress and trauma will continue, unless Defendants

1 take immediate action to intervene and directly ensure that students receive the education  
2 services necessary to meet prevailing statewide standards, including those applicable to disabled  
3 students with exceptional needs.

4 73. There is no clear, alternative remedy available to Plaintiffs, or other students.  
5 Therefore, Plaintiffs are entitled to immediate injunctive relief directing Defendants to take  
6 appropriate steps to provide the appropriate education services to Plaintiffs and other disabled  
7 students with exceptional needs.

8 **SECOND CAUSE OF ACTION**

9 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS FOR VIOLATION OF**

10 **THE EQUAL PROTECTION CLAUSES**

11 **OF THE CALIFORNIA CONSTITUTION, ARTICLE I, SECTION 7(A) &**

12 **ARTICLE IV, SECTION 16(A)**

13 74. Plaintiffs incorporate by reference, as if fully alleged here, the allegations  
14 contained in Paragraphs one through 73 of this complaint.

15 75. The State bears the nondelegable responsibility and the ultimate authority to  
16 ensure that public schools are providing basic educational equality to all students, as guaranteed  
17 by the Constitution. Cal. Const., art. IX, § 5; art. I, § 7. Public education is an obligation that the  
18 State assumed by the adoption of the California Constitution and by operation of constitutional  
19 provisions and statutes delegated to Defendants.

20 76. The California Constitution prohibits the State from intentionally or  
21 unintentionally maintaining, operating, or financing the common public school system in a way  
22 that denies educational equality absent a compelling reason.

23 77. The District's inability or unwillingness to address staff shortages and  
24 inadequately trained staff, has meant that Plaintiffs and other students with disabilities have  
25 been denied an education, and educational opportunities, equivalent to that of non-disabled  
26 students enrolled in the District and to other disabled students with exceptional needs  
27 throughout the State.

28





1 obligations to ensure Plaintiffs and other disabled students with exceptional needs are afforded  
2 equal access to 180 days of instruction and a free appropriate public education and the nature of  
3 the actions Defendants are empowered or required to take in the event that is denied.

4 84. Therefore, Plaintiffs seek a declaration that Defendants, and each of them, are  
5 constitutionally obligated to take all direct action necessary to ensure that Plaintiffs and other  
6 disabled students with exceptional needs in the Del Norte County Unified School District are  
7 receiving a free and appropriate education equivalent to the prevailing standard of education  
8 otherwise provided to children enrolled in California public schools.

9 **REQUESTED RELIEF**

10 WHEREFORE, Plaintiffs respectfully request this court:

11 1. Based on the irreparable harm being suffered by Plaintiffs and others,  
12 issue a preliminary injunction directing Defendants to immediately take all actions  
13 necessary to ensure that, within 30 days of the entry of the Court’s order, the students  
14 enrolled in the Del Norte County Unified School District are receiving all education  
15 services necessary to provide Plaintiffs, and other disabled students with exceptional  
16 needs, full and equal access to a program that meets prevailing educational standards for  
17 the state; and

18 2. Enter judgment for the Plaintiffs, and enter a permanent injunction  
19 directing Defendants to take all actions necessary to ensure that the students enrolled in  
20 the Del Norte County Unified School District receive all education services necessary to  
21 provide Plaintiffs, and other disabled students with exceptional needs, full and equal  
22 access to a program that meets prevailing educational standards for the state; and

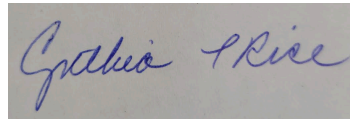
23 3. Enter judgment declaring that Defendants, and each of them, has the  
24 ongoing obligation to intervene and take all steps necessary to ensure that students who  
25 are enrolled in California public schools receive all education services necessary to  
26 provide Plaintiffs, and other disabled students with exceptional needs, full and equal  
27 access to a program that meets prevailing educational standards for the state; including  
28

1 but not limited to, taking action to place the District in a receivership until such time as it  
2 can itself meet those standards.

3 Respectfully submitted.

4  
5 

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