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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

J.V. through his guardian ad litem, ANABEL FRANCO; B.K. through his guardian ad litem, CYNTHIA BROWN; and all other students similarly situated,

Plaintiffs,

vs.

POMONA UNIFIED SCHOOL DISTRICT; POMONA SPECIAL EDUCATION LOCAL PLANNING AREA; ANA PETRO, CHRISTINE GOENS, KAMERON SHIELDS, BEATRIZ KRIVAN, JENNIFER YALES, SELENE AMANCIO, BRIAN EL MAHMOUD, DANIELLA SOTO, MARY GARCIA, CINDY GREEN, ELAINE MARKOFSKI, SUPERINTENDENT RICHARD MARTINEZ in his Official Capacity only, DOLORES MURILLO, and DOES 1-10,

Defendants.

CASE NO. 2:15-cv-007895-JAK-MRWx

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

[FRCP 23(b)(2)]

Motion Hearing: August 29, 2016
Time: 8:30 a.m.
Location: Courtroom 750
Judge: Hon. John A. Kronstadt

First Amended Complaint Filed:
November 6, 2015

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Plaintiffs J.V. and B.K., through their *guardians ad litem*, (collectively, "Student Plaintiffs") submit this Memorandum to Support their Motion for Class Certification ("Motion") to certify a class, appoint class representatives, and appoint class counsel.

I. INTRODUCTION

This case addresses a longstanding failure of Pomona Unified School District ("PUSD" or "District") to provide a safe learning environment for its most vulnerable students: those with developmental disabilities such as autism and intellectual disabilities. PUSD fails to ensure that staff working with these students are properly trained or supervised, and fails to maintain procedures to provide prompt and accurate reporting of student injuries to District administration and parents. As a result, these students are systematically excluded from access to a public education.

Rule 23(b)(2) class actions are uniquely designed to address Defendants' repeated failure to ensure a safe learning environment for students with developmental disabilities. Moreover, the primary purpose of the Americans with Disabilities Act's ("ADA")[1], ensuring access to government services, programs, and activities, lies at the heart of this case. The supporting evidence shows that at least 667 current PUSD students either have been or are at substantial risk of being deprived of their civil rights by the District. The core issue of Student Plaintiffs' claims on behalf of the Plaintiff Class is whether Defendants' systemic failure to provide a safe learning environment for students with developmental disabilities results in unlawful discrimination under the ADA and Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act").[2]

The declarations submitted to support this Motion show that being injured while under the care of District staff results in exclusion and segregation, and causes severe emotional distress and loss of enjoyment of life. The injuries and dangers are invidious and should be remedied immediately on a systemic basis.

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[1] 42 U.S.C. § 12101, *et seq.*

[2] 42 U.S.C. § 794, *et seq.*

II. STATEMENT OF FACTS

Student Plaintiffs seek to represent current and former PUSD students denied their right to a safe learning environment and unlawfully discriminated against under the ADA and Rehabilitation Act. During the 2014-2015 school year, approximately 25,000 students were enrolled in District schools. Request for Judicial Notice ("RJN") ¶ 3, Ex. C. Of those students, 667 had either autism (368) or intellectual disabilities (299) and required special education services. *See* Declaration of Elizabeth Eubanks [Evidentiary] ("Eubanks Decl. II") ¶ 5, Ex. D (Deposition of Jennifer Yales, June 3, 2016) ("Yales Dep.") at 14:25-16:23; RJN ¶ 4, Ex. D. Students with autism can exhibit a combination of behaviors, including the inability to use oral language for appropriate communication; impairment in social interaction; obsession to maintain sameness; extreme preoccupation with objects or inappropriate use of objects; extreme resistance to controls; peculiar motor mannerisms; or self-stimulating, ritualistic behavior. Cal. Ed. Code § 56846.2. Students with intellectual disabilities have significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior. *See* 34 C.F.R. 300.8(6). These are some of PUSD's most vulnerable students.

A. The District Fails to Provide A Safe Learning Environment for Students with Autism or Intellectual Disabilities.

District students with autism or intellectual disabilities have been injured at school to such a degree that six PUSD parents are willing to support this Motion with their declarations. These injuries are not "typical" injuries a child might sustain in school. In each case, the student's parents attempted to gain information from their respective PUSD schools about how their child had been so seriously hurt. In each case, the District either could not or would not provide these parents with adequate information or documentation of injuries. In each case, due to their disabilities, the children are unable to fully explain what happened. Without information from the District, parents are left in the dark. Ultimately, in response to repeated parental reports of significant injuries, PUSD failed to take any action at a systemic level to improve training, policies, or practices to

prevent future injuries from occurring. Parents fear for their children's safety at school, and need relief on a class-wide basis.

J.V. was first injured in 2012, when he came home from school with a black eye. Declaration of Anabel Franco ("Franco Decl.") ¶ 6. His mother, Ms. Franco, contacted the school to find out what happened, but no one could explain it. *Id.* ¶¶ 5-6, 8. J.V. continued coming home with injuries over the next two years. For example, on April 27, 2014, J.V. came home with multiple bruises and a puncture wound on his back, and on August 29, 2014, he came home with multiple bruises on his thigh and a bruise on his ankle the size of an egg. *Id.* ¶¶ 9-10. Ms. Franco repeatedly contacted the school and District representatives by telephone, email, text, and in-person, but her concerns were not addressed. *Id.* ¶¶ 7-8, 12-13, 16. On October 2, 2014, J.V. sustained yet another injury—his tooth cracked and fell out, and his mouth was bleeding. *Id.* ¶ 14. When Ms. Franco picked her son up from school that day, she was told that his tooth had fallen out, but not how or why it happened. *Id.* ¶ 14. Instead, she received a phone call later that evening indicating that J.V. had been physically restrained, and that she would receive an incident report the next day. *Id.* ¶ 15. More than two weeks later, Ms. Franco received a written summary, not from the District, but from a third-party outside agency, Autism Spectrum Therapies, whose employee observed the restraint, indicated the restraint was "incorrect," and intervened to stop it. Franco Decl. ¶¶ 17, 19, Ex. A (AST Report). On October 20, 2014, J.V. again came home injured, with multiple bruises on his back. *Id.* ¶ 16. Ms. Franco texted pictures of these injuries to PUSD's nurse. *Id.* After these events, Ms. Franco no longer felt it was safe to send J.V. to San Antonio Elementary and removed him from school for that reason. *Id.* ¶ 5.

On October 5, 2014, P.H. came home from school with multiple scratches and bruises on his back, arms, and legs. Declaration of Frank Hahn ("Hahn Decl.") ¶ 7. P.H.'s father took pictures of the injuries. *Id.* The following day, he showed the injuries to the vice principal, who looked at them, and then walked away. *Id.* ¶¶ 9-10. Mr. Hahn also wrote a note to the classroom teacher asking her to explain P.H.'s injuries. *Id.* ¶ 13. The

teacher was "not sure how he bruised himself" but stated it was likely self-inflicted. *Id.* ¶ 14. Mr. Hahn never received any documentation pertaining to his son's injuries and these injuries took several weeks to heal. *Id.* ¶¶ 7, 15. After this incident, Mr. Hahn no longer felt safe sending P.H. to Pomona High School, and transferred him to an Adult Transition Program. *Id.* ¶ 16. Since his transfer, P.H. has not come home with any bruises. *Id.*

B.K. began exhibiting a change in behavior shortly after beginning at Simons Middle School. Declaration of Cynthia Brown ("Brown Decl.") ¶¶ 6-7. His mother, Ms. Brown, told the District that B.K. began flinching when people got close, exclaiming "Red Face!," and now refused to participate with her in activities he previously enjoyed. *Id.* PUSD ignored these concerns. *Id.* ¶¶ 13, 15-16. On March 5, 2015, Ana Petro, a classroom aide, was alone with B.K. in a classroom and pushed him and slapped him across the face. *Id.* ¶¶ 9, 18, Ex. A (Police Report). Two general education students were witnesses. *Id.* Ms. Brown asked for information about what happened to her son on multiple occasions, but the District refused to provide her with any information. *Id.* ¶¶ 9-11, 15-16. After these events Ms. Brown no longer felt safe sending B.K. to Simons and removed him from school. *Id.* ¶ 14.

In 2014 and 2015, A.G. began coming home from school with various bruises as well as multiple significant injuries, such as a bruise on his head, a scrape that extended from his forehead to his nose, swollen bumps on his face, and bruises on his buttocks. Declaration of Angela Garcia ("Garcia Decl.") ¶¶ 5-8. On each occasion, Ms. Garcia contacted the teacher to find out what had happened. *Id.* ¶¶ 4, 6-8. The teacher blamed the first two injuries on A.G., saying that he ran into a wall, tripped, or hit a table. *Id.* ¶¶ 6-7. The teacher did not have an explanation for the bruises on his buttocks. *Id.* ¶ 8. Ms. Garcia took A.G. to the doctor who opined the injuries were not consistent with a fall. *Id.* ¶ 9. Ms. Garcia was never provided any incident reports describing how these injuries occurred. *Id.* ¶¶ 6, 10.

In April 2014, M.M. came home from San Jose Elementary School with a greenish bruise on his head, but his mother, Ms. Mesa-Lara, was not notified of any injury or

provided with an incident report to explain the bruise. Declaration of Cynthia Mesa-Lara ("Mesa-Lara Decl.") ¶ 7. M.M. told her that the bruise was caused by a classroom aide, Raul, pulling on him. *Id.* ¶ 8. When his mother notified the principal, he stated he would "investigate," however, no one at the school knew how M.M. was injured; therefore, the principal concluded that nothing happened. *Id.* ¶ 9. During the 2015-2016 school year, M.M. came home from school upset, reporting that a classroom aide had yelled at him. *Id.* ¶ 11. Another parent later observed this aide verbally abusing her son. *Id.* ¶ 12. Ms. Mesa-Lara contacted the District and spoke to Johanna, a woman working on M.M.'s case. *Id.* ¶ 14. Johanna agreed with her that children were being neglected by classroom aides, however, PUSD has done nothing to address the problems. *Id.* ¶¶ 14-15.

On several occasions, A.S. came home from Ranch Hills Elementary School with injuries, including a fat lip, bruising on his face, and bruising on his upper body and back. Declaration of Celia Fernandez ("Fernandez Decl.") ¶¶ 5, 8-10. On January 25, 2016, A.S. came home with many marks and bruises on his body. *Id.* ¶ 10. A.S.'s grandmother, his legal guardian, showed the school principal the injuries, and the principal said she would investigate the situation. *Id.* ¶ 12. A.S.'s grandmother repeatedly asked for the results of the investigation or a report as to what happened, but the District has not provided her with any report or answers. *Id.* ¶ 14. Ms. Fernandez removed A.S. from school due to concerns for his safety. *Id.* ¶ 15.

B. PUSD Policies and Procedures Do Not Ensure A Safe Learning Environment for Students with Disabilities.

The District fails to maintain a cohesive or comprehensive policy that provides for accurately reporting student injuries, and fails to provide adequate supervision to ensure that students are not injured by improper actions by staff.

There is no written board policy pertaining to student injuries. The only seemingly-applicable policy relates to student "accidents," and states "an accident report is completed by the certificated staff member under whose supervision the accident occurs." Eubanks Decl. II ¶ 4, Ex. C, Interrog. Resp. No. 2. But a student injury will often go

unreported under this policy because "'Accident' is not a defined term within the Board Policy, and not all injuries may be reported as accidents (e.g., skinned knees), just as not all accidents will result in injuries." *Id.*

Instead, Defendants rely entirely upon an informal system, which by Defendants' own documentation, is ineffectively implemented and lacks oversight. The informal policy, as described by Defendants, fails to include any method of oversight and expressly excludes the staff, supervisors, and parents from obtaining information.

When a student is injured, regardless of the cause, he or she is sent to the health office. *Id.* The school nurse or health assistant then documents the health office visit in a "data management system," "Zangle," by date, reason for visit, service provided, and disposition. *Id.* The only evidence of how PUSD actually utilizes the "Zangle" system relates to Plaintiff B.K. The District produced all of B.K.'s health office visits reported through the "Zangle" system from 2013 to present. Eubanks Decl. II ¶ 4, Ex. C, Interrog. Resp. No. 11. However, this "Zangle Log" is nothing more than a collection of blank fields and otherwise useless information. No reasonable person could gleam any sense of what happened to B.K. on any particular date as most entries are simply filled-out as "other" or "<Unset>", which "indicate that the person completing the daily health log did not indicate a service or disposition for that visit." *Id.* B.K.'s Zangle log doesn't even show an entry from March 5, 2015, the date he was assaulted by Defendant Petro. *See id.* With no oversight and no means of ensuring a school nurse or health assistant actually enters anything into Zangle, PUSD cannot reasonably argue the Zangle system adequately documents student injuries.

According to PUSD testimony and documents, only five categories of injuries require a written incident report and parent notification: (1) injuries that may require medical care; (2) injuries resulting from fights or other contact with other individuals; (3) injuries resulting from defective equipment or unsafe conditions; (4) injuries associated with a previous medical condition; and (5) specific injuries requiring completion of a written report (sprain or dislocations, fractures, eye injuries, permanent tooth loosened or

lost, lacerations requiring stiches, burns, all head injuries, nose injuries with swelling, unconsciousness). Eubanks Decl. II ¶ 7, Ex. F (Guidelines); ¶ 6, Ex. E (Deposition Transcript of Cindy Green, June 3, 2016) ("Green Dep.") at 32:16-23; 34:13-35:3.

Incident reports are not provided to special education staff nor are they maintained in the student file—they are instead sent to Risk Management. *Id.* ¶ 7, Ex. F; Green Dep. 34:13-35:22; Yales Dep. 54:17-55:2. PUSD expressly prohibits providing these reports to parents. The Guidelines for Personnel Making Student Incident Reports state in bold capital letters "**DO NOT DISTRIBUTE COPIES OF INCIDENT/INJURY REPORTS TO NON-DISTRICT PERSONNEL."** *Id.* The District's 30(b)(6) witnesses testified that they had never received an incident report and they did not know who maintains or receives them. Green Dep. 34:13-20; Yales Dep. at 54:21-55:9; 56:12-15. Because of the policy to provide these documents only to Risk Management, parents and staff that work directly with students are left without important information. Even with this written policy, Defendants only provided "information" regarding ***four*** incident reports created since 2012 for all of the District's 2,800 special education students. Eubanks Decl. II ¶ 10, Ex. K (July 6, 2016 S. D. Harbottle Letter to C. Scheuneman).

Defendants have a separate procedure in place when a student is physically restrained. A "Behavior Emergency Report" ("BER") must be completed any time a "behavior emergency" or "behavior intervention" occurs. Eubanks Decl. II ¶ 4, Ex. C, Interrog. Resp. No. 4; ¶ 8, Ex. G at 27.5; Green Dep. 14:2-17:12; Yales Dep. 72:2-7. BERs must be completed the "same day the incident occurs" by the staff member who initiated the intervention. Eubanks Decl. II ¶ 8, Ex. G at 27.5; Yales Dep. 74:15-22. If a student is injured during a physical restraint, then both a BER and incident report are to be completed. Yales Dep. 79:7-11.

The District's 30(b)(6) witnesses demonstrated that Defendants do not understand or comply with established procedures. Ms. Yales, Director of Special Education with the Pomona Special Education Local Planning Area ("SELPA") and Ms. Green, Special Education Program Administrator, gave contradictory testimony about who is to

complete the BER. Ms. Yales testified that a certificated staff member present in the room must complete the report, while Ms. Green testified that it should be "[w]hichever staff member actually performed the physical intervention." Green Dep. 14:17-18; Yales Dep. 76:4-77:5. Even if a third party is present and makes its own report, a District BER is required. Green Dep. 15:8-16:3. In the case of J.V.'s October 2, 2014 restraint, no BER was completed by District personnel, even after Ms. Franco and Ms. Green requested one. Green Dep. 25:18-26:22.

In the rare event a physical intervention is documented using a BER, Defendants have shown no process or procedure to utilize the forms to ensure there is oversight or investigation into whether an appropriate restraint was used, whether staff needs additional training, whether certain students are being restrained excessively, or whether certain staff are utilizing restraints excessively. Green Dep. 18:3-19:15; 20:18-21:20. Rather, once a BER is completed, it is sent to Ms. Green, who keeps it in her personal filing cabinet. Green Dep. 16:6-17:12; 18:3-9. Although the family of the student is notified a restraint was used, there is no systemic procedure in place to ensure restraints are being utilized properly and that the staff is not—knowingly or unknowingly—injuring the student. *Id.* Other than Ms. Green's filing cabinet, BERs are not provided to the Director of Special Education or any person in a supervisory capacity, nor have they been aggregated or summarized since 2013. Green Dep. 16:6-17:12; 18:3-9; 21:14-19.

Restraint reporting relies entirely on the staff who initiated the restraint to self-report. If the staff does not complete a BER, there is no way for Ms. Green, or any supervisory official, to know a restraint was used unless a third party reports it. Green Dep. 24:15-18. The failures of this system are highlighted in J.V.'s case where the restraint was stopped by a speech therapist because it was improper, was observed and reported by AST, yet the District still failed to complete either of the required BER or incident report to document the resulting loss of J.V.'s tooth. Franco Decl. ¶¶ 5, 14, 17. Had third party AST not completed an incident report, Ms. Franco would have no information at all about why, how, or who restrained and injured her son.

Ultimately, PUSD fails to follow and implement measures to ensure staff compliance with even deficient policies and procedures about documenting injuries and physical restraints. Through discovery and repeated requests by parents of injured students, not a single BER or incident report was produced to Student Plaintiffs or any of the declarant parents regarding any of the injuries alleged herein. *See* Brown Decl. ¶ 16; Fernandez Decl. ¶ 16; Franco Decl. ¶ 5; Garcia Decl. ¶ 10; Hahn Decl. ¶ 15; Mesa-Lara Decl. ¶ 18. PUSD either does not document these incidents, or District staff systemically ignore parental requests for information sought in an effort to ensure their children are safe. Ultimately, PUSD practices woefully fail to provide effective oversight of staff charged with the safety and education of students with disabilities, and do nothing to determine whether staff acted appropriately or complied with applicable law.

C. Staff Are Not Adequately Trained to Ensure A Safe Learning Environment for Students with Disabilities.

District written policies state the responsibilities for special education programming are, in part, as follows: the school principal is the primary evaluator for all special educational instructional aides assigned to their campuses, and the special education teacher, as the person who "retains best knowledge of the student," is responsible for the formation and implementation of behavior teaching and intervention plans. Eubanks Decl. II ¶ 8, Ex. G at 27.2, 27.3, 42.1.

Defendants utilize a program called "Non-Violent Physical Crisis Intervention" ("NCPI") to train special education teachers and personnel assigned to special education classrooms with respect to behavior intervention. Yales Dep. 57:19-58:10. According to PUSD policy, NCPI training and certification are to be provided to all special education staff working with special education students. Eubanks Decl. II ¶ 4, Ex. C, Interrog. Resp. No. 16; ¶ 8, Ex. G at 27.1, 27.5.

The District's testimony directly contradicts written policy. Ms. Green testified that every two years staff are "invited" to participate in restraint training, but not all invited staff attend so it "may be three years and/or the next month" before an individual

is trained. Green Dep. 49:11-12. Further, Ms. Yales testified that they "do not track . . . trainings" but do maintain a "database" of "staff that has been invited and if they attended." Yales Dep. 68:2-3, 69:9-11. The entirety of this "database" for the applicable class period consists of a one-page chart that covers June 18, 2013 to May 23, 2014, and only shows a broad description of the audience (*e.g.*, "preschool teachers"), the total number of participants, the trainers involved, and the topic. *See* Eubanks Decl. II ¶ 2, Ex. A (Training Spreadsheet). It does not identify who was "invited" or who attended. *See id.* There is no log of trainings that occurred after May 23, 2014. *See* Yales Dep. 68:2-3; Eubanks Decl. II ¶ 3, Ex. B (June 24, 2016 S. D. Harbottle Letter to C. Scheuneman). As a result, the District has no mechanism to ensure that staff working with a highly vulnerable student population are properly trained.

PUSD's systemic failure to ensure that its staff is properly trained is evident in the Student Plaintiffs' situation. At the time J.V. was injured on October 2, 2014, neither the school principal nor his special education teacher had been NCPI trained. Eubanks Decl. II ¶ 9. Further, even though the restraint utilized by Defendants Garcia and Soto was deemed to be "improper," neither of them has been re-trained since. *Id.* The third aide in J.V.'s classroom, Defendant Mahmoud, was trained for the first time in October 2015—one year after J.V. was restrained. *Id.* When B.K. was injured, his school principal had not been trained. *Id.* Ultimately, PUSD fails to implement proper training oversight and compliance, and as a result, District staff directly responsible for supervising student restraints are not equipped to do so.

III. PROPOSED CLASS REPRESENTATIVES

Student Plaintiffs, J.V. and B.K., should be certified as class representatives. Each has experienced mistreatment by PUSD staff as a result of inadequate training, policies, and procedures to ensure they are provided a safe learning environment. The factual[3] and

[3] *See* Student Plaintiffs' and other putative class members' circumstances as set forth in the Declarations of Brown, Fernandez, Franco, Garcia, Hahn, and Mesa-Lara.

legal claims of the Student Plaintiffs against PUSD are typical of those held by the proposed class of PUSD students with developmental disabilities. Student Plaintiffs seek class-wide injunctive relief to implement the necessary district-wide improvements to PUSD policies to ensure safe and meaningful access to PUSD schools for students with developmental disabilities.

J.V. has autism and is a student with a disability under all applicable statutes. Franco Decl. ¶ 3. He is a resident of Pomona and attended school at PUSD's San Antonio Elementary School. *Id.* J.V. was repeatedly injured while attending school, supervised and restrained by inadequately trained and supervised staff, and his parents were denied written incident reports and behavior emergency reports. *Id*. ¶¶ 5-17.

B.K. has autism and is a student with a disability under all applicable statutes. He is a resident of Pomona and attended school at PUSD's Simons Middle School. B.K. was injured while attending school, exhibited new concerning behaviors, and severely regressed in previously-acquired skills. Brown Decl. ¶¶ 6-7, 13, 17. Additionally, third parties observed Defendant Ana Petro push and slap B.K. across the face, a crime for which she later pleaded *nolo contendere*. Brown Decl. ¶¶ 9, 18, Ex. A; RJN ¶ 5, Ex. E. PUSD repeatedly denied Ms. Brown information and documentation pertaining to B.K.'s injuries, including a copy of his school file, which was lost such that the District would have to "make it up." *Id.* ¶¶ 9-13.

IV. LEGAL ARGUMENT

A. The Proposed Class.

Plaintiffs propose certification of the following class of students:

> All students with developmental disabilities, as defined in California Welfare & Institutions Code section 4512[4], attending school in Pomona

[4] "Developmental disability" is defined as:

> [A] disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of

> Unified School District since August 2013, who are currently being or who have been denied their right to full and equal access to, and use and enjoyment of, the facilities, programs, services, and activities of the Pomona Unified School District ("the Plaintiff Class").

This class includes, but is not limited to, those students with a primary eligibility of "Autism-like" or "Intellectual Disability" as defined by the District and the California Department of Education. *See* Yales Dep. at 20:11-17; RJN ¶ 4, Ex. D. As of the December 1, 2014 reporting cycle, 667 students were designated with a primary eligibility "Autistic-like" or "Intellectual Disability." *See* Yales Dep. at 20:11-17; RJN ¶ 4, Ex. D. Due to the nature of their disabilities, these students depend most on, and are most vulnerable to, the unqualified and inadequately trained and supervised PUSD staff. *See* Cal. Ed. Code § 56846.2; 34 C.F.R. 300.8(6). Classes of developmentally disabled individuals have been certified in other cases.[5]

The Student Plaintiffs' claims, which involve injury to, and protection for, PUSD students with disabilities, are best remedied on a class basis. In cases involving students, "[t]he risk of mootness . . . where individual Plaintiffs might move away from the school district or graduate prior to the resolution of the claims . . . suggests class certification is

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> Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

Cal. Welf. & Inst. Code § 4512.

[5] *See, e.g.*, *Armstrong v. Davis*, 275 F.3d 849, 856-57 (9th Cir. 2001) ("all present and future California state prisoners and parolees with mobility, sight, hearing, learning, developmental and kidney disabilities that substantially limit one or more of their major life activities"); *K.W. ex rel. D.W. v. Armstrong*, 298 F.R.D. 479 (D. Idaho 2014) (developmentally disabled adults who choose to live in their own homes or community settings); *Lane v. Kitzhaber*, 283 F.R.D. 587, 602 (D. Or. 2012) ("all individuals in Oregon with intellectual or developmental disabilities who are in, or who have been referred to, sheltered workshops [and] who are qualified for supported employment services").

necessary." *CG v. Commonwealth of Pa. Dep't of Educ.*, No. CIV.A 1:06-CV-1523, 2009 WL 3182599, at *4 (M.D. Pa. Sept. 29, 2009); *see also Guckenberger v. Boston Univ.*, 957 F. Supp. 306, 326-27 (D. Mass. 1997) ("Students graduate, transfer, drop out, move away, grow disinterested, . . . [A]ll too often student-initiated disputes escape review."); *see also Ramon by Ramon v. Soto*, 916 F.2d 1377, 1380 (9th Cir. 1989) (certifying class of injured student plaintiffs).

This case seeks to prevent student injuries prospectively by reforming PUSD policy to adequately train staff and ensure proper injury documentation and reporting at the first sign of a problem. PUSD fails to proactively prevent injuries to students, and reactively fails to provide information to parents following injuries to students. *See supra* Part II. This action seeks adequate measures to ensure injuries are not only prevented, but information is given to parents to identify and prevent injuries.

The demographic and other characteristics of the population served by the District make joinder particularly impracticable and indicate class treatment is the best way to ensure a remedy reaches all families of students with disabilities. *See infra* Part IV.C.1 (assessing demographic and other "impracticability" factors).

B. Legal Standards for Class Certification.

Student Plaintiffs bear the burden of formulating a class definition and demonstrating that the class meets the requirements of Rule 23(a) and at least one of the requirements of Rule 23(b). *See, e.g.*, *United Steel Workers v. ConocoPhillips Co.*, 593 F.3d 802, 806 (9th Cir. 2010). A class must: (1) be so numerous that joinder of all members is impracticable; (2) entail questions of law and fact common to the class; (3) be represented by plaintiffs typical of those of the class; and (4) be represented by plaintiff and counsel who are adequate. *See* Fed. R. Civ. P. 23(a). These requirements are interpreted liberally in civil rights litigation. *See Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 156 (1982); *Jones v. Diamond*, 519 F.2d 1090, 1099 (5th Cir. 1975). ADA and the Rehabilitation Act are civil rights statutes. *See, e.g.*, *Chapman v. Pier 1 Imports (U.S.), Inc.*, 631 F.3d 939, 946 (9th Cir. 2011); *Greater Los Angeles Council on Deafness*

v. Zolin, 812 F.2d 1103, 1107 (9th Cir. 1987).

Certification requires "the party opposing the class [to have] acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). It is appropriate where, as here, "a single injunction or declaratory judgment would provide relief to each member of the class." *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011). "These requirements are unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole." *Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014). Rule 23(b)(2) "does not require a finding that all members of the class have suffered identical injuries." *Id*. (citing *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998)). "Rather, as the text of the rule makes clear, this inquiry asks only whether 'the party opposing the class has acted or refused to act on grounds that apply generally to the class.'" *Id.* (citing Fed. R. Civ. P. 23(b)(2)).

Student Plaintiffs seek certification under their ADA and Rehabilitation Act claims. "[T]he question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met." *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974) (internal quotations omitted). Even though evidence of the merits of a case may also bear on class certification, "weighing competing evidence is inappropriate at this stage of the litigation." *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 630-31 (S.D. Cal. 2010) (citing *Staton v. Boeing Co*., 327 F.3d 938, 954 (9th Cir. 2003) ("[I]t is improper to advance a decision on the merits to the class certification stage.")).

C. The Proposed Class Meets All the Requirements of Rule 23(a).

1. Numerosity. Numerosity requires that the class is so numerous that joinder of all members is "impracticable." Fed. R. Civ. P. 23(a)(1). It "requires examination of the specific facts of each case and imposes no absolute limitations." *Gen. Tel. Co. of Northwest v. EEOC*, 446 U.S. 318, 330 (1980). No specific number is required; whether

joinder is impracticable depends on the facts and circumstances of each case." *Bates v. United Parcel Serv.*, 204 F.R.D. 440, 444 (N.D. Cal. 2001) (citations omitted); *Cervantez v. Celestica Corp.*, 253 F.R.D. 562, 569 (C.D. Cal. 2008). "[D]istrict courts in this Circuit have found that classes with as few as 39 members met the numerosity requirement." *Franco-Gonzales v. Napolitano*, No. CV 10-02211 DMG (DTBx), 2011 WL 11705815, at *6 (C.D. Cal. Nov. 21, 2011). This District has found that "even presuming a class of 19, numerosity is met . . . [b]ecause Plaintiff in this case is requesting declaratory and injunctive relief, allowing a class action to be brought would be in the interests of judicial economy." *Escalante v. California Physicians' Serv.*, 309 F.R.D. 612, 618 (C.D. Cal. 2015). Evidence of the exact size of the class is not required. *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993). "Where the exact size of the class is unknown but general knowledge and common sense indicate that it is large, the numerosity requirement is satisfied." *Orantes–Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982).

Plaintiffs' class includes well over 40 special education students currently enrolled in PUSD schools. Approximately 25,000 students will attend PUSD schools next year. RJN ¶ 3, Ex. C. Of those 25,000 students, approximately 2,800 are classified as "special education students." Yales Dep. at 47:3-4; RJN ¶ 4, Ex. D. These 2,800 students are then classified by "primary eligibility." Yales Dep. at 17-20. As of the December 1, 2014, reporting cycle, 667 were designated with a primary eligibility "Autistic-like" or "Intellectual Disability." *See* Yales Dep. at 20:11-17; RJN ¶ 4, Ex. D.

Although Defendants may argue not every student has suffered direct physical harm at the hands of PUSD staff, all special education students attending school in the District, especially those in the two primary eligibilities discussed, are at risk of serious injury due to deficient policies and procedures. Defendants fail to ensure that staff are properly trained, document student injuries, or provide information to parents about their children's injuries. *See supra* Part II. This Circuit has recognized that "although a presently existing risk may ultimately result in different future harm for different [class members]—ranging from no harm at all to death—every [class member] suffers exactly

the same constitutional injury when he is exposed to a single statewide [ ] policy or practice that creates a substantial risk of serious harm." *Parsons*, 754 F.3d at 662. Here, PUSD students are exposed to ineffective or ineffectively-administered district-wide policies and practices for training and supervising staff and documenting and notifying parents of injuries, creating a substantial risk of serious harm. Declarants demonstrate the tangible risk to which their children are exposed. *See supra* Part II.A.

In assessing numerosity or "impracticability," the Court considers factors other than just the number of students harmed or at risk. "[T]he task of the court here is to determine the *impracticability* of joinder, not simply count heads." *Sherman v. Griepentrog*, 775 F. Supp. 1383, 1389 (D. Nev. 1991). The Ninth Circuit recognized that "[a]lthough the absolute number of class members is not the sole determining factor . . . [w]here the class is not so numerous . . . the number of class members does not weigh as heavily in determining whether joinder would be infeasible." *Jordan v. Los Angeles Cnty.*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982) (citing 3B MOORE'S FEDERAL PRACTICE ¶ 23.05(1) (2d ed. 1974)). In this situation, "other factors such as the geographical diversity of class members, the ability of individual claimants to institute separate suits, and whether injunctive or declaratory relief is sought, should be considered in determining impracticability of joinder." *Id.* (citing HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS § 1105 (1st ed. 1977)). Courts routinely rely on other factors when assessing impracticability and numerosity.[6]

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[6] *See, e.g.*, *Escalante*, 309 F.R.D. at 612 (class of 19 meets numerosity requirement in declaratory and injunctive relief); *Rodriguez v. Carlson*, 166 F.R.D. 465 (E.D.Wash. 1996) (joining a group primarily of monolingual Spanish-speaking, impoverished farmworkers was sufficiently impracticable); *Leyva v. Buley*, 125 F.R.D. 512 (E.D.Wash. 1989) ("[M]ere numbers have proven an inconsistent guideline. Rather, given a substantial number of potential plaintiffs, as here, courts focus more on the impracticability element, considering factors such as geographical dispersion, degree of sophistication, and class members' reluctance to sue individually, to determine whether joinder would be impracticable . . . . [J]oinder of 50 individual migrant workers as plaintiffs would be extremely burdensome, especially in light of their alleged lack of

Joinder is particularly impractical here due to a number of the characteristics of the population of the PUSD district boundary and the type of relief sought. Pomona consists largely of a low-income, Latino population. Pursuant to 2010 census data, 70.5% of the population identified as "Hispanic or Latino;" 64.6% reported a language other than English spoken at home; 67.3% of persons over age 25 graduated high school and only 16.5% had a Bachelor's degree or higher. RJN ¶ 1, Ex. A (Census.gov). 22.6% of the population is living in poverty. *Id.* These statistics suggest that the population's lack of sophistication, limited knowledge of the American legal system, and limited or non-existent English skills, makes them unlikely to bring an action on their own. *See Leyva*, 125 F.R.D. at 512. District families may be reluctant to bring suit or report complaints because they are afraid PUSD will retaliate against their children or make it more difficult for their children to obtain special education services. *See* Garcia Decl. ¶ 12; Mesa-Lara Decl. ¶ 19. At least one declarant is aware of other families who have experienced similar issues. Fernandez Decl. ¶ 18. Class-wide injunctive relief is the best way to ensure a remedy reaches all families of students with disabilities. *See supra* Part IV.D. Based on the number of putative class members and the characteristics of PUSD families, joinder is impracticable and a Rule 23(b)(2) class action is a superior means of remedying deficient PUSD policies and procedures.

2. Commonality. "Commonality" requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Class relief is 'peculiarly appropriate' when the 'issues involved are common to the class as a whole' and when they 'turn on questions of law applicable in the same manner to each member of the class.'" *Falcon*, 457 U.S. at 155 (quoting *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979)). Class members' claims need not be so similar as to share all, or even most, questions of law or fact—a "single issue common to the class" satisfies the commonality

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sophistication, limited knowledge of the American legal system, limited or non-existent English skills, and geographic dispersion.").

requirement. *Kincaid v. City of Fresno*, 244 F.R.D. 597, 602 (E.D. Cal. 2007); *see also Dukes*, 564 U.S. at 359 (quoting *id*. at 376 n. 9 (Ginsberg J., dissenting) ("'Even a single [common] question' will do")); *Rodriguez v. Hayes*, 578 F.3d 1032, 1048 (9th Cir. 2009), *rev'd on other grounds*, 591 F.3d 1105 (2010) (commonality where there is "some shared legal issue or a common core of facts" even if "members of the proposed class do not share every fact in common or completely identical legal issues"). Plaintiffs must show "the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation." *Parsons*, 754 F.3d at 674 (quoting *Dukes*, 564 U.S. at 350).

In the Ninth Circuit, "[i]n a civil-rights suit, [] commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds as stated in Harris v. Alvarado*, 402 F. App'x 180, 181 (9th Cir. 2010). For example, in *Parsons v. Ryan*, state prisoners filed suit against senior officials in the Arizona Department of Corrections ("ADC") challenging systemic deficiencies regarding medical, dental, and mental health care services and the conditions of confinement in isolation cells. 754 F.3d at 657. Plaintiffs alleged these uniform ADC policies and practices "expose[d] all members of the proposed class to a substantial risk of serious harm." *Id.* at 667-68. The Court concluded that "[w]hat all members of the putative class and subclass [had] in common [was] their alleged exposure, as a result of specified statewide ADC policies and practices that govern[ed] the overall conditions of health care services and confinement, to a substantial risk of serious future harm to which the defendants [were] allegedly deliberately indifferent." *Id*. at 678. And, "although a presently existing risk may ultimately result in different future harm for different inmates—ranging from no harm at all to death—every inmate suffers exactly the same constitutional injury when he is exposed to a single statewide ADC policy or practice that creates a substantial risk of serious harm." *Id*. Despite multiple policies, practices, and medical conditions at issue, the Ninth Circuit found commonality because the class "set forth numerous common contentions whose truth or falsity can be determined in one

stroke: whether the specified statewide policies and practices to which they are all subjected by ADC expose them to a substantial risk of harm." *Id*.

Student Plaintiffs' claims can also be determined in "one stroke." The controlling issue is whether PUSD's policies and practices regarding staff training, supervision, documentation, and parental notification, to which all class members are subjected by PUSD, expose them to a substantial risk of harm, and result in unlawful discrimination under the ADA and Rehabilitation Act. *See Parsons*, 754 F.3d at 687.

Armstrong v. Davis was such a case. There was commonality among a class of disabled prisoners and parolees alleging policies and practices for parole and parole revocation proceedings violated the ADA and Rehabilitation Act. *Armstrong*, 275 F.3d at 868. The court stated that "in a civil-rights suit . . . commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Id*. "In such circumstance, individual factual differences among the individual litigants or groups of litigants will not preclude a finding of commonality." *Id.* The Court held that "the differences that exist here do not justify requiring groups of persons with different disabilities, all of whom suffer similar harm from the [defendant's] failure to accommodate their disabilities, to prosecute separate actions." *Id*.

Commonality exists in classes of disabled individuals challenging state-wide or district-wide policies of discrimination. *See e.g.*, *Gray v. Golden Nat'l Recreational Area*, 279 F.R.D. 501, 509-10 (N.D. Cal. 2011) (commonality where "not every class member ha[d] been exposed to the same set of access barriers, but argue[d] that the claims stem[med] from the same system-wide, decades-long practices and policies of failing to assess and eliminate accessibility barriers, and require[d] a common determination of whether the policies or practices were sufficient to satisfy [the defendants'] legal obligations.").[7]

[7] *See Californians for Disability Rights v. California Department of Transportation*, 249 F.R.D. 334, 346 (N.D. Cal. 2008) (challenge to system-wide discriminatory practices issue common to class where the common question was "whether and to what extent

In *Lane v. Kitzhaber*, 283 F.R.D. 587, 590 (D. Or. 2012), the court certified a class of intellectually and developmentally disabled individuals who asserted ADA and Rehabilitation Act claims against the Director of the Oregon Department of Human Services, and others, for failure to provide disabled individuals an opportunity to work in an integrated setting. The court held that "[a] common question of law posed in this case [was] whether defendants have failed to plan, administer, operate and fund a system that provide[d] employment services that allow persons with disabilities to work in the most integrated setting." *Id*. at 598. The Court explained that, "[a]s in other cases certifying class actions under the ADA and Rehabilitation Act, commonality exists even where class members are not identically situated." *Id*. Defendants argued that some plaintiffs or putative class members might need more or different employment services than others. The court explained that:

> [A]ll plaintiffs are qualified for, but not receiving the full benefit of, supported employment services; all lack regular contact with non-disabled peers (other than paid staff); and all want to work, but are not working, in an integrated setting. As a result, they and all similarly situated persons suffer the same injury of unnecessary segregation in the employment setting. It is not necessary, as defendants contend, for plaintiffs to prove at this stage that they and all putative class members are unnecessarily segregated and would benefit from employment services. That is, in effect, the answer to the common question and not the common question of whether they are being denied supported employment services for which they are qualified.

Id. In finding commonality, the court explained that:

> Defendants do not contend, nor can they, that *Wal-Mart* [*Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)] overruled all prior cases and now bars certifying class actions by persons with differing disabilities for violations of the ADA and Rehabilitation Act. Instead, as was the situation before *Wal-*

Caltrans has violated the ADA on a 'systematic basis for many years through the use of improper design guidelines and the failure to ensure compliance with even those deficient guidelines.'"); *Moeller v. Taco Bell Corp*., 220 F.R.D. 604 (N.D. Cal. 2004) (class of mobility-impaired individuals to remedy architectural barriers); *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439 (N.D. Cal. 1994) (class of mobility-impaired individuals challenging access features of 70 movie theaters).

> *Mart*, despite the individual dissimilarities among class members, **"commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members**."

Id. at 597 (citing *Armstrong*, 275 F.3d at 868) (emphasis added).

In civil rights cases such as this, "commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members," even where there are "individual factual differences among the individual litigants." *Id.*; *Armstrong*, 275 F.3d at 868. "These system-wide challenges avoid the type of individualized inquiries that destroy commonality." *K.W.*, 298 F.R.D. at 486 (finding commonality where a class of developmentally disabled adults challenged the state's "generic method for making budget decisions, the forms [used] to notify people of those decisions and [the] system for handling budget appeals").

The common question here is whether and to what extent PUSD has violated the ADA and the Rehabilitation Act on a systematic basis through the use of improper and inadequate policies and procedures regarding staff training, supervision, injury documentation, and parental notification. To the extent Defendants argue their policies are adequate, they have failed to ensure compliance with even those deficient policies as evidenced by repeated failures. *See supra* Part II.A-C. A class remedy addressing PUSD policies and practices, improving staff supervision, and ensuring satisfactory training, will remedy all class members' education, and ensure safe access to public education to all other students with disabilities under the care of PUSD staff. *See supra* Part II-III.

3. Typicality. Typicality is a permissive standard. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Id.* The Court looks to "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The court will not "insist that the named plaintiffs' injuries be identical with those of the other class

members," only that their injuries are "similar to those of the named plaintiffs" and "result from the same, injurious course of conduct." *Parsons*, 754 F.3d at 685.[8]

The declarations of PUSD parents show the Student Plaintiffs' claims are typical of other members of the class. They are the direct result of inadequate and ineffective policies and procedures, and PUSD's failure to ensure compliance even with those deficient policies and procedures. *See supra* Part II. It is immaterial whether every class member suffered direct physical harm at the hands of PUSD staff. *See supra* Part IV.C.1-2. All special education students attending school in PUSD, especially those with primary eligibilities of "Autistic-like" and "Intellectual Disability," are at risk of serious injury due to PUSD policies, practices, and procedures. *See supra* Part II.A-C[9].

Student Plaintiffs and other PUSD students with developmental disabilities are exposed to inadequately trained and supervised staff, a lack of documentation or information provided to staff and parents, training procedures that are not followed or overseen, and an inadequate policy of informing parents of their children's injuries. *See supra* Part II. They "allege 'the same or [a] similar injury' as the rest of the putative class; they allege that this injury is a result of a course of conduct that is not unique to any of them; and they allege that the injury follows from the course of conduct at the center of the class claims." *Parsons*, 754 F.3d at 685 (quoting *Hanon*, 976 F.2d at 508).

4. Adequacy of Student Plaintiffs as Class Representatives.

"Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between

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[8] Nor does it require that named plaintiffs "be identically positioned to each []other or to every other class member." *Id*. at 686 (citing *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 n. 9 (9th Cir. 2011) ("Differing facts resulting in a claim of the same nature as other class members does not defeat typicality.")).

[9] *See Parsons*, 754 F.3d at 662 ("[A]lthough a presently existing risk may ultimately result in different future harm for different [class members]—from no harm to death—every [class member] suffers exactly the same constitutional injury when exposed to a single statewide [ ] policy or practice that creates substantial risk of serious harm.").

representatives and absentees." *Ellis*, 657 F.3d at 985 (citation omitted). "Adequate representation is usually presumed in the absence of contrary evidence." *Californians for Disability Rights*, 249 F.R.D. at 349. "Where the named plaintiffs in a class action are seeking the same type of relief for themselves as they seek for class members, the adequacy of representation requirement of Rule 23(a)(4) of the Federal Rules of Civil Procedure is satisfied." *Tefel v. Reno*, 972 F. Supp. 608, 617 (S.D. Fla. 1997).

The Student Plaintiffs are victims of deficient District policies and procedures for staff training, supervision, injury documentation, and parental notification. Class-wide injunctive relief will improve policies for safe and meaningful access to schools for students with developmental disabilities. Student Plaintiffs live in Pomona and are exposed to unsafe conditions when they return to school. *See, e.g.*, Franco Decl. ¶ 5.

5. Adequacy of Plaintiffs' Counsel. Class counsel must be able to "fairly and adequately represent the interests of the [entire] class." Fed. R. Civ. P. 23(g)(4). In appointing class counsel, the court considers: (i) counsel's work in identifying and investigating potential claims; (ii) counsel's experience in class action, complex, and similar claimed litigations; (iii) counsel's knowledge of the applicable law; and (iv) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1). The Court may also rely on other pertinent considerations. *Id*.

Disability Rights Legal Center ("DRLC") is a forty-year-old organization whose mission is to champion the rights of people with disabilities through education, advocacy, and litigation. Declaration of Elizabeth Eubanks ("Eubanks Decl.") ¶ 2. DRLC, through the Disability Rights Advocacy Center, partners with other public interest law offices and private law firms to litigate systemic issues and legislative advocacy efforts. *Id.* ¶ 3. Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury") is a highly-respected international law firm with extensive experience in complex litigation matters, including class actions. Declaration of Christine Scheuneman ("Scheuneman Decl.") ¶¶ 4, 8.

Both the DRLC and Pillsbury have represented the Plaintiffs for several months and have invested significant time, resources, and expense in the course of the

representation. Eubanks Decl. ¶ 4; Scheuneman Decl. ¶ 7. Counsel are dedicated and committed to remedying the situation within PUSD, and have a strong commitment to the betterment of the PUSD community as a whole. Eubanks Decl. ¶ 4; Scheuneman Decl. ¶ 12. As such, DRLC and Pillsbury should be appointed Class Counsel in this case.

D. The Proposed Class Meets All of the Requirements of Rule 23(b)(2).

Rule 23(b)(2) requires "the party opposing the class [to have] acted or [have] refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).[10] "Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class." *Dukes*, 564 U.S. at 361.

The requirements are "unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole." *Parsons*, 754 F.3d at 688. The policies and practices at issue need not "affect every member of the proposed class . . . in exactly the same way." *Id*. "It is sufficient if class members complain of a pattern or practice that is generally applicable to the class . . . [e]ven if some class members have not been injured by the challenged practice." *Walters*, 145 F.3d at 1047.[11]

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[10] Ascertainability is not required in Rule 23(b)(2) actions. *See Shelton v. Bledsoe*, 775 F.3d 554, 561 (3rd Cir. 2015); *Shook v. El Paso County*, 386 F.3d 963, 972 (10th Cir. 2004); *Yafe v. Powers*, 454 F.2d 1362, 1366 (1st Cir. 1972); *In re Yahoo Mail Litig.*, 308 F.R.D. 577, 597 (N.D. Cal. 2015); *Dunakin v. Quigley*, 99 F.Supp.3d 1297, 1326 (W.D. Wash. April 10, 2015); WILLIAM B. RUBENSTEIN, NEWBERG ON CLASS ACTIONS § 3:7 (Thomson Reuters ed., 5th ed. 2013).

[11] *See Baby Neal v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994) (certification when "defendant's conduct is central to the claims of all class members irrespective of their individual circumstances"); *Parsons*, 754 F.3d at 689 (risk of harm to each inmate remedied by class-wide response hiring more doctors across the prison system); *Lane*, 283 F.R.D. at 602 (injunctive relief "focuses on defendants' conduct, not treatment needs of each class member" requiring defendants to "provide supported employment services to all qualified class members, consistent with individual needs," was injunction applicable to all class members resolving case "in one stroke.").

Rule 23(b)(2) was designed to address Students Plaintiffs' claims because "the class members' claims are so inherently intertwined that injunctive relief as to any would be injunctive relief as to all." *See* WILLIAM B. RUBENSTEIN, NEWBERG ON CLASS ACTIONS § 4:34 (Thomson Reuters ed., 5th ed. 2013). The ADA's purpose, to ensure access to government services, programs, and activities lies at the heart of this case. A single injunction will bring uniform changes in policies and practices, providing relief to all class members in improved and better-implemented staff training and supervision, injury documentation and reporting to parents—ensuring a safe education for these vulnerable students. *See supra* Part IV.C.1-2.

A class-wide remedy is not merely possible but is necessary—individualized relief would be ineffective. Class members are unlikely to bring suit on their own accord. *See supra* Part IV.C.1. Student Plaintiffs are victims of systemic policy failure that cannot be remedied by an Individualized Educational Plan, as shown by PUSD's failure to remedy the Student Plaintiffs' educational experience since at least 2012—when J.V. first came home with an "unexplained" black eye. Franco Decl. ¶ 6. Without class-wide relief, students with developmental disabilities will continue to be denied access to a safe public education and there will be no remedy for the class members at all.

V. CONCLUSION

The Student Plaintiffs submit that the Court should certify the Plaintiff Class, appoint the Student Plaintiffs as class representatives, and appoint Disability Rights Legal Center and Pillsbury Winthrop Shaw Pittman LLP as Class Counsel.

Dated: July 11, 2016

PILLSBURY WINTHROP SHAW PITTMAN LLP
By: /s/ Christine A. Scheuneman
Christine A. Scheuneman

Dated: July 11, 2016

DISABILITY RIGHTS LEGAL CENTER
By: /s/ Elizabeth Eubanks
Elizabeth Eubanks

ATTESTATION: The filer attests that concurrence in the filing of this document has been obtained from the signatories thereto.