EXHIBIT A

CANCEL THE CONTRACT-ANTELOPE VALLEY v. ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT
Case Number: 23STCP01869
Hearing Date: March 15, 2024

FILED
Superior Court of California
County of Los Angeles

MAR 18 2024

David W. Slayton, Executive Officer/Clerk of Court
By: F. Becerra, Deputy

ORDER ON PETITION FOR WRIT OF MANDATE

Petitioners, Cancel the Contract-Antelope Valley, B.Y., C.Y., V.X., T.X., H.N., J.N., K.D., and A.D., seek a writ of ordinary mandate directing Respondents, Antelope Valley Union High School District (the District); Greg Nehen, in his official capacity as Superintendent; and Charles Hughes, Jill McGrady, Donita Winn, Carla Corona, and Miguel Sanchez IV, in their official capacities as members of the Board of Trustees (collectively, Respondents) to, among other things: (1) modify, alter, or eliminate District policies, procedures, and practices that result in the disproportionate suspension, expulsion, and transfer of Black students and students with disabilities; (2) end the suspension, expulsion, and transfer of such students without following mandatory due process and procedural protections; (3) end the disproportionate use of restraints against and placement in segregated school settings of Black students with disabilities; (4) end the use of a Discipline Matrix that "is outdated and contributes to racially disparate discipline"; and (5) "end the use of what should be voluntary transfers as an instrument of exclusionary discipline." (See Opening Brief 1-2 and 24-25; Proposed Order.)

The petition is granted in part.

The matter is transferred to Department 1 for reassignment to a general civil courtroom for adjudication of Petitioners' first cause of action (violation of equal protection), second cause of action (violation of 42 U.S.C. section 2000d), eleventh cause of action (violation of the Americans with Disabilities Act), twelfth cause of action (violations of the rehabilitation act), thirteenth cause of action (violation of Government Code section 11135), fourteenth cause of action (illegal expenditure of tax payer funds) or fifteenth cause of action (a derivative declaratory relief claim for those causes of action pending).

EVIDENTIARY OBJECTIONS

The court rules as follows on Respondents' amended written objections to Petitioners' evidence:

Declaration of Kerry Agomo: Objections 6, 7 and 10 are sustained.

Declaration of Jaime E. Hernandez, Exhibit B and Appendices 1 through 7, 9 through 11: The objections are overruled except as to reported statements from families and parents included in the report. Respondents' generalized hearsay objections are overbroad. The *entire*

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investigation report and its appendices are not hearsay. (See *Fibreboard Paper Products Corp. v. East Bay Union of Machinists, Local 1304, United Steelworkers* (1964) 227 Cal.App.2d 675, 712.)

In their Opposition, Respondents also object on hearsay grounds to Petitioners' reliance on "Dr. Hernandez's survey of Antelope Valley families during the 2022-2023 school year" and statements from the surveyed parents. (Opposition 27:18-24 [citing Opening Brief 9:3-17].) The objection is sustained in part, as discussed herein.

Declaration of Chelsea Helena: All objections are overruled.

Declaration of H.N: All objections are overruled. (See *Fibreboard Paper Products Corp. v. East Bay Union of Machinists, Local 1304, United Steelworkers, supra*, 227 Cal.App.2d at 712.)

Declaration of A.D: All objections are overruled. (See *Fibreboard Paper Products Corp. v. East Bay Union of Machinists, Local 1304, United Steelworkers, supra*, 227 Cal.App.2d at 712.)

Declaration of B.Y: Objections 48 and 29 are overruled; Objection 50 is sustained.

Declaration of C.Y: Objections 53, 54, 56, 57, 58, 59, 60 and 61 are sustained. The remaining objections are overruled.

Declaration of K.D: The objection is overruled.

Declaration of O.W: The objections are sustained.

Declaration of V.X: Objections 67, 68 and 69 are sustained. The remaining objections are overruled.

BACKGROUND[1]

The District

The District is located 70 miles northeast of the City of Los Angeles and serves the cities of Palmdale, Lancaster and surrounding areas. During the 2021-2022 school year, the District had a student population of approximately 22,000 with a racial makeup of 66.7 percent Hispanic, 16.2 percent Black, 9.8 percent White, 4.4 percent two or more races, and 2.9 percent other

[1] Pursuant to the Los Angeles County Court Rules (Local Rules), the opening and opposition briefs for a petition for writ of mandate "must contain a statement of facts which fairly and comprehensively sets forth the pertinent facts, whether or not beneficial to that party's position." (Local Rules, Rule 3.231, subd. (i)(2).) The parties did not comply with the applicable Local Rule. Like the parties, the court provides a more detailed discussion of the facts in its Analysis section *infra*.

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races. Students with disabilities make up 17.3 percent of the student population. (Hernandez Decl. Exh. B at 3.)

Respondents' Legal Duty to Ensure Equal Education

Title VI of the Civil Rights Act of 1964 provides: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (42 U.S.C. § 2000d; see also 20 U.S.C § 1703.) Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 protect people with disabilities against being excluded from participation, discriminated against, denied the benefits of the services, programs, or activities of a public entity, or being subjected to discrimination by any such entity, because of their disability. (42 U.S.C. § 12132; 29 U.S.C. § 794; 28 C.F.R. § 35.130.)

In California, "the Legislature has enacted a scheme of interrelated statutes, which attempt to protect public school students from discrimination and harassment engendered by race, gender, sexual orientation or disability. (See Gov. Code, § 11135; Ed. Code, §§ 201, 220, 32261, 32280, 32281 & 32282.)" (*Hector F. v. El Centro Elementary School District* (2014) 227 Cal.App.4th 331, 337.) For example, Government Code section 11135, subdivision (a) provides:

> No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

Relevant Proceedings before the California Department of Education

On March 28, 2022, Petitioners filed their Various Compliance Complaint and Request for Direct State Intervention to Investigate Disability Discrimination against Antelope Valley Union High School District with the California Department of Education (CDE). (Rebuttal Helena Decl. ¶¶ 9-10, Exh. E-F.)[2] In their compliance complaint, Petitioners alleged "the District's policies, practices, and procedures regarding discipline, policing, and segregation of students with disabilities violate the Individuals with Disabilities Education Act ('IDEA'), California Education Code Section 56000 et seq., California Education Code Sections 200 and 220, California Government Code Section 11135, Section 504 of the Rehabilitation Act ('Section 504'), and Title II of the Americans with Disabilities Act ('Title II'). They also alleged "the District's entire special education system is punitive, segregated, ableist, and racist." (Rebuttal Helena Decl. Exh. E p.

[2] Hernandez's investigation report includes a copy of Petitioners' complaint and CDE's response as appendices and submitted to the court. (Reply Helena Decl. ¶¶ 9-10, Exh. E-F.)

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4.) The complaint requested CDE order the District to make systemic changes that end racial disparities and transform its special education system into one that honors its students' humanity and potential." (Rebuttal Helena Decl. Exh. E.)

On June 24, 2022, after an investigation that included an onsite visit, CDE declined to issue corrective action in response to Petitioners' compliance complaint. (Reply Helena Decl. ¶ 10, Exh. F.) The CDE issued various findings of fact and conclusions in its response letter. (Rebuttal Helena Decl. ¶ 10, Exh. F.) The CDE denied Petitioners' request for reconsideration. (Rebuttal Helena Decl. ¶¶ 11-12, Exh. G-H.)

On November 28, 2022, Petitioners filed a second various compliance complaint with CDE seeking state intervention to investigate disability discrimination against the District. (Rebuttal Helena Decl. ¶¶ 13-14, Exh. I, J.) Petitioners alleged the District's "special education system creates and contributes to a culture wherein students with disabilities are segregated, disciplined, and discriminated against on the basis of their disabilities, race, and national origin." (Rebuttal Helena Decl. Exh. I p. 2.) On January 25, 2023, CDE notified Petitioners that it declined to issue corrective action; CDE explained Petitioners did not submit evidence supporting their allegations. (Rebuttal Helena Decl. Exh. J.)

Investigation and Report of Dr. Jaime E. Hernandez

In support of their claims before the court, Petitioners submit the expert report of Dr. Jaime E. Hernandez dated May 2023 entitled "Investigation into Various Compliance Complaints Against the Antelope Valley Union High School District." (Hernandez Decl. ¶¶ 6-7, Exh. B and C.) As noted, Respondents have objected to the entire report on hearsay grounds, but not any specific statements therein. The entire expert report is not hearsay. Accordingly, the court overrules Respondents' overbroad general objection to the entirety of the report.

Respondents have not challenged Hernandez's expert qualifications, as demonstrated through his curriculum vitae. (Hernandez Decl. ¶ 5, Exh. A.) The court finds Hernandez is a qualified expert for the matters and opinions stated in his report.[3]

Writ Proceedings

On May 30, 2023, Petitioners filed their petition for writ of mandate and complaint for declaratory and injunctive relief.[4] On September 20, 2023, Respondents answered the petition.

[3] The court refers to Hernandez's report herein as Report.

[4] The petition is not verified. Respondents have not objected to the petition on that basis.

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On November 9, 2023, the court granted the parties' application for leave to file extended page trial briefs. Specifically, the court authorized a 25-page opening brief, a 25-page opposition brief, and a 25-page reply.[5]

STANDARD OF REVIEW

There are two essential requirements to the issuance of an ordinary writ of mandate under Code of Civil Procedure section 1085: (1) a clear, present, and ministerial duty on the part of the respondent, and (2) a clear, present, and beneficial right on the part of the petitioner to the performance of that duty. (*California Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) "Generally, mandamus is available to compel a public agency's performance or to correct an agency's abuse of discretion when the action being compelled or corrected is ministerial." (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700.) "Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in some manner." (*Ibid.*)

However, mandamus "will lie to correct abuses of discretion. In determining whether a public agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld. A court must ask whether the public agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires." (*County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 654.) "To compel the [respondent] to take some action the [petitioner] must plead and prove the [respondent] has failed to act, and its failure to act is arbitrary, beyond the bounds of reason, or in derogation of the applicable legal standards." (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, supra,* 197 Cal.App.4th at 704.)

An agency is presumed to have regularly performed its official duties. (Evid. Code, § 664.) A petitioner "bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085." (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1154.) A reviewing court "will not act as counsel for either party to [a challenge to an agency's action] and will not assume the task of initiating and prosecuting a search of the record for any purpose of discovering errors not pointed out in the briefs." (*Fox v. Erickson* (1950) 99 Cal.App.2d 740, 742 [in context of appeal]; see also *Inyo Citizens for Better Planning v. Inyo County Board of Supervisors* (2009) 180 Cal.App.4th 1, 14. ["We are not

[5] Petitioners' Opening Brief is 25 pages and complies with the court's order. However, Petitioners have attached to their Opening Brief, as Exhibit A, a 10-page table that cites evidence supporting specific allegations and claims in the petition. Exhibit A is effectively 10 pages of additional legal briefing, not authorized by the court's order. The court does not consider Exhibit A as exceeding authorized page limits. (See Cal. Rules of Court, Rule 3.1113, subd. (g).)

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required to search the record to ascertain whether it contains support for [the parties'] contentions."])

" 'On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.' . . . Interpretation of a statute or regulation is a question of law subject to independent review." (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1251.)

ANALYSIS

Threshold Procedural Issues

Respondents contend Petitioners have not proven their standing to proceed by way of a writ petition; they have an adequate remedy at law; they have not exhausted their administrative remedies; and certain claims made are not ripe for decision. Respondents also contend Petitioners forfeited certain causes of action by failing to address them in their Opening Brief. Finally, Respondents contend the District's Superintendent and board members are not proper respondents. The court addresses these threshold issues first.

Standing

To have standing to seek a writ of mandate, a party must be "beneficially interested." (Code Civ. Proc., § 1086.) "A petitioner is beneficially interested if he or she has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal. App. 4th 899, 913; accord *Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796-797.) "This standard . . . is equivalent to the federal 'injury in fact' test, which requires a party to prove by a preponderance of the evidence that it has suffered 'an invasion of a legally protected interest that is '(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.' ' " (*Associated Builders and Contractors, Inc. v. San Francisco* (1999) 21 Cal.4th 352, 361-362.) "One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable." (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.)

"A petitioner who is not beneficially interested in a writ may nevertheless have 'citizen standing' or 'public interest standing' to bring the writ petition under the 'public interest exception' to the beneficial interest requirement. The public interest exception 'applies where the question is one of public right and the object of the action is to enforce a public duty—in which case it is sufficient that the plaintiff be interested as a citizen in having the laws executed and the public duty enforced.' " (*Rialto Citizens for Responsible Growth v. City of Rialto, supra,* 208 Cal. App. 4th at 913-914.) In a citizen standing analysis, "[t]he courts balance the applicant's need for relief (i.e., his beneficial interest) against the public need for enforcement of the official duty. When the duty is sharp and the public need weighty, the courts will grant a mandamus at the behest of an applicant who shows no greater personal interest than that of a

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citizen who wants the law enforced." (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1174.)

The court concludes Petitioners, including Cancel the Contract Antelope Valley, have submitted sufficient evidence to support public interest standing for their writ causes of action. (See generally Declarations of B.Y., C.Y., O.W., L.W., T.X., H.N., A.D., K.D., and Waunette Cullors.)[6] The court finds there is a sharp duty and weighty public need for enforcement of the antidiscrimination laws and Education Code provisions at issue. (See e.g. *Hector F. v. El Centro Elementary School District, supra*, 227 Cal. App. 4th at 341 ["there is a manifest public interest in enforcing the antidiscrimination and antiharassment statutes Hector asserts."])

Moreover, as former students, current students, or parents of former, current, or future students of the District, some of the individual petitioners have a beneficial interest in the requested writs. (See e.g., B.Y. Decl. ¶ 10; T.X. Decl. generally and ¶¶ 1-2, 10; *Collins v. Thurmond* (2019) 41 Cal. App. 5th 879, 917-918.)

Accordingly, the court finds Petitioners have standing to pursue their writ causes of action.[7]

Adequate Remedy at Law

Mandamus relief is available only when "there is not a plain, speedy, and adequate remedy, in the ordinary course of the law." (Code Civ. Proc., § 1086.) "Although the statute does not expressly forbid the issuance of the writ if another adequate remedy exists, it has long been established as a general rule that the writ will not be issued if another such remedy was available to the petitioner. [Citations.]" (*Phelan v. Superior Court* (1950) 35 Cal.2d 363, 366.) "The burden, of course, is on the petitioner to show that he did not have such a remedy." (*Ibid.*)

Based on the parties' briefing, the court concludes Petitioners do not have an adequate remedy at law with respect to alleged unlawful policies or practices of the District. As argued by Petitioners and as shown by their proposed order, "Petitioners seek systemic changes to [the District's] discipline policies and practices." (Reply 11:8-9.) "Where, as here, not money but the

[6] The District requested the opportunity to lodge objections to the late filed Declaration of Waunette Cullors during the hearing. The court finds public interest standing exists here without regard to the declaration. Thus, the declaration is not determinative.

[7] In this writ proceeding, the court has not considered Petitioners' first cause of action (violation of equal protection), second cause of action (violation of 42 U.S.C. section 2000d), eleventh cause of action (violation of the Americans with Disabilities Act), twelfth cause of action (violations of the rehabilitation act), thirteenth cause of action (violation of Government Code section 11135), fourteenth cause of action (illegal expenditure of tax payer funds) or fifteenth cause of action (a derivative declaratory relief claim of all causes of action).

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performance of public acts by public officials is the issue, mandate will lie." (*California Teacher Ass'n v. Nielsen* (1978) 87 Cal. App. 3d 25, 29.)[8]

Exhaustion of Administrative Remedies and Ripeness

Exhaustion of administrative remedies is "a jurisdictional prerequisite to judicial review." (*California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1489.) "The exhaustion requirement applies whether relief is sought by traditional (Code Civ. Proc., § 1085) or administrative (Code Civ. Proc., § 1094.5) mandamus." (*Eight Unnamed Physicians v. Medical Executive Com.* (2007) 150 Cal.App.4th 503, 511.) "Before seeking judicial review a party must show that he has made a full presentation to the administrative agency upon all issues of the case and at all prescribed stages of the administrative proceedings." (*Edgren v. Regents of University of California* (1984) 158 Cal.App.3d 515, 520.) There are exceptions to the exhaustion requirement, including "when the subject of the controversy lies outside the administrative agency's jurisdiction, when pursuit of an administrative remedy would result in irreparable harm, when the administrative agency cannot grant an adequate remedy, and when the aggrieved party can positively state what the administrative agency's decision in his particular case would be." (*Ibid.*) Contrary to Petitioners' position, a "petitioner has the burden of proving timely exhaustion of administrative remedies." (*Muskan Food & Fuel, Inc. v. City of Fresno* (2021) 69 Cal.App.5th 372, 383; see also *Arcadians for Environmental Preservation v. City of Arcadia* (2023) 88 Cal.App.5th 418, 431.) (See Reply 12:25-26 ["*Respondents* have the burden of proof on this issue . . . .])

Relatedly, "'[a] decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses 'no further power to reconsider or rehear the claim.' . . . . Until a public agency makes a 'final' decision, the matter is not ripe for judicial review." (*California Water Impact Network v. Newhall County Water Dist., supra,* 161 Cal.App.4th at 1485.)

Respondents do not demonstrate Petitioners have any further administrative remedy to exhaust as to alleged unlawful policies or practices of District. As discussed, Petitioners filed two compliance complaints and a request for reconsideration with CDE prior to initiating this proceeding. (Rebuttal Helena Decl. Exh. E-J; Hernandez Decl. Exh. C.) During argument, Respondents asserted Petitioners had not raised their race-based discrimination claims with the CDE. Petitioners' complaints made to the CDE demonstrate otherwise.[9] Accordingly,

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[8] The court acknowledges individual students or parents may have an adequate remedy at law based on their own personal claims of discrimination or failure to comply with the Education Code.

[9] Petitioners alleged "the District's entire special education system is punitive, segregated, ableist, and *racist*." (Rebuttal Helena Decl. Exh. E p. 4 [emphasis added].) Petitioners' complaint requested CDE order the District to make systemic changes that *end racial disparities* and transform its special education system into one that honors its students' humanity and potential." (Rebuttal Helena Decl. Exh. E.) Petitioners also alleged the District's "special

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Respondents have not identified any further administrative remedy for Petitioners must exhaust.

Respondents also suggest any petitioners with special needs may have various legal or administrative remedies, and their claims may not be ripe. The court agrees with Respondents that individual students or former students may have adequate administrative or legal remedies for their individual claims of discrimination or statutory violations. Petitioners have not argued or shown to the contrary. Nonetheless, Petitioners advise "[t]he remedies Petitioners seek are entirely systemic" (Reply 13:16), and "Petitioners do not seek to enforce individual or class rights arising from discrete" claims of individual students or former students. (Reply 13:16-17.) They seek to reform the District's education system.

Based on the foregoing, Petitioners' claims alleging systematic practices and policies of the District are ripe. Respondents have not identified any further administrative remedies for Petitioners to exhaust.

Forfeiture of Sixth, Eighth, and Tenth Causes of Action for Writ of Mandate and Stay of Non-Writ Causes of Action (First, Second, Eleventh through Fourteenth)

In the Opening Brief and Reply, Petitioners have not presented any legal argument in support of their sixth, eighth, and tenth causes of action for writ of mandate. Accordingly, Petitioners have forfeited those causes of action. (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862-863. ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."]; *Pfeifer v. Countrywide Home Loans, Inc.* (2012) 211 Cal.App.4th 1250, 1282 [same].)

Petitioners assert the tenth cause of action is not for a writ of mandate and is not properly assigned to this writs and receivers department (Department 86). (Reply 8:18-9:1.) Petitioners are incorrect.[10] The tenth cause of action is for writ of mandate pursuant to Code of Civil Procedure section 1085 and alleges the District has a ministerial duty to maintain Uniform Complaint Procedures. (Pet. ¶¶ 225-231.) That cause of action is properly before this department and should have been addressed in Petitioners' Opening Brief. (See Local Rules, Rule 2.8, subd. (d) and 2.9.) Accordingly, the tenth cause of action is forfeited, and Petitioners are entitled to no relief based upon it.

Petitioners admit the sixth and eight causes of action for a writ of mandate (alleging unlawful student searches and violation of rights of limited English proficient families) "are not in

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education system creates and contributes to a culture wherein students with disabilities are segregated, disciplined, and discriminated against on the basis of their disabilities, *race*, and national origin." (Rebuttal Helena Decl. Exh. I p. 2 [emphasis added].)

[10] Petitioners acknowledge the tenth cause of action is for a writ of mandate. (Reply 8:18.) They contradict themselves later. (Reply 8:22-23.)

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Petitioners' Trial Brief." (Reply 8:26.) Petitioners contend "the underlying allegations are incorporated in and relevant to Petitioners' non-writ claims" and "should be preserved" for purposes of discovery and to prove the non-writ claims. (Reply 8:26-27.) To the extent Petitioners have incorporated the allegations in their non-writ causes of action, they are preserved for adjudication with the non-writ causes of action. However, because Petitioners did not address the sixth or eighth causes of action in their Opening Brief, those causes of action seeking a writ of mandate are forfeited, and Petitioners are entitled to no writ relief through them.

The first, second, and eleventh through fourteenth causes of action are non-writ causes of action and are not properly assigned to Department 86. (See Local Rules, Rule 2.8, subd. (d) and 2.9.) After the court rules on the writ causes of action, the first, second, and eleventh through fourteenth causes of action will be transferred to Department 1 for reassignment to a general civil department.[11]

Individual Respondents

As noted, Petitioners challenge systemwide practices of District. Accordingly, the Individual Respondents have been properly joined in their official capacities as Superintendent and as members of the school board. (See e.g. *Manjares v. Newton* (1966) 64 Cal. 2d 365, 378 [school board members named in writ to resume school bus service to students' homes].)

Third Cause of Action – Alleged Violations of Education and Government Code Procedures Governing Suspensions

Petitioners' third cause of action alleges Respondents "are failing to provide due process protections enshrined in the Education Code[12] with respect to suspensions" and that "[a]s a result of Defendants' failure to comply with their duties, Black students and students with disabilities have been disproportionately denied critical procedural safeguards and equal educational opportunity." (Pet. ¶¶ 167-170.)[13]

Under California law, schools are authorized to suspend students, or recommend them for expulsion, for a limited set of enumerated offenses, including willful use of force or violence on another person, possession of a firearm or other weapon, possession of a controlled substance or alcohol, and other serious acts. (See § 48900.) "Suspension, including supervised suspension as described in Section 48911.1, shall be imposed only when other means of correction fail to

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[11] The fifteenth cause of action for declaratory relief appears to be derivative of both the writ and non-writ causes of action. The court's ruling on the writ petition may partly dispose of the fifteenth cause of action, but the remainder of that cause of action will also be transferred to Department 1 after resolution of the writ petition.

[12] All undesignated statutory references are to this code.

[13] The fourth cause of action makes similar allegations with respect to expulsions. (Id. ¶¶ 174-182.)

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bring about proper conduct. . . . However, a pupil, including an individual with exceptional needs, . . . may be suspended, . . . for any of the reasons enumerated in Section 48900 upon a first offense, if the principal or superintendent of schools determines that the pupil violated subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the pupil's presence causes a danger to persons." (§ 48900.5.)

Section 48900.5 specifies other means of correction include but are not limited to:

> (1) A conference between school personnel, the pupil's parent or guardian, and the pupil.
>
> (2) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling.
>
> (3) Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the pupil and the pupil's parents.
>
> (4) Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program, or a plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)).
>
> (5) Enrollment in a program for teaching prosocial behavior or anger management.
>
> (6) Participation in a restorative justice program.
>
> (7) A positive behavior support approach with tiered interventions that occur during the schoolday on campus.
>
> (8) After school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups.
>
> (9) Any of the alternatives described in Section 48900.6.

Additionally, "[a]teacher may suspend any pupil from class, for any of the acts enumerated in Section 48900, for the day of the suspension and the day following. The teacher shall immediately report the suspension to the principal of the school and send the pupil to the principal or the designee of the principal for appropriate action. . . . The pupil shall not be returned to the class from which he or she was suspended, during the period of the suspension, without the concurrence of the teacher of the class and the principal." (§ 48910, subd. (a).)

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Because suspension is a severe consequence for student behavior and interferes with students' right to a free education, the Education Code also requires school districts to follow a series of procedural protections before imposing suspension. (See generally *Slayton v. Pomona Unified School Dist.* (1984) 161 Cal. App. 3d 538, 550.)

The Discipline Matrix

Petitioners contend the District has violated its mandatory duties by authorizing suspension and expulsion for behaviors not enumerated in the Education Code, as evidenced by a Discipline Matrix allegedly used by school staff. (Pet. ¶¶ 4, 8, 42, 178.) Petitioners refer to a document entitled Antelope Valley Union High School District Behavior Consequences AVUHSD Exhibit 5144.1 dated March 21, 2014 as the Discipline Matrix. (Helena Decl. ¶ 2, Exh. A.)

Petitioners argue "[t]he Discipline Matrix provides no guidance about how to exercise discretion in decisions about discipline, including how to avoid bias, and it directly violates California law restricting suspensions and expulsions to limited and enumerated circumstances." (Opening Brief 7:3-6 [citing Report] at 136-137.) Petitioners also cite evidence that the District reported significant disproportionality in the discipline of Black students with disabilities to the CDE. (See Report at 128-129.)[14]

As a result of the significant disproportionality, CDE required the District to submit yearly Comprehensive Coordinated Early Intervening Services Plans (CCEIS plans) to remedy the issue. (See Report at 128-129.) In its 2020 CCEIS Plan, the District acknowledged that "we continue to suspend African American students at a disproportionate rate" and continued, "[w]e identified that our current discipline policy [the Discipline Matrix] contributes to . . . inequitable campus discipline policies and practices. The current policy is outdated (revised in 2014) and subjectively inconsistent in its implementation from school to school." (Helena Dec. Exh. B at 11.) In its 2021 CCEIS Plan, the District reported the policy, "which was [last] revised in 2014, is outdated and lacks specificity, therefore, discipline practices vary greatly from school to school." (Helena Decl. Exh. C at 12-13.)

The District's Deputy Superintendent, Shandelyn Williams, provides an explanation about the Discipline Matrix and the District's use of it: "[T]he matrix was appended to the Board Policy in 2014. The matrix, however, has not been used in [the District] since 2018. This change of policy and procedure was communicated to all school sites during Annual Trainings and Principal Meetings." (Williams Decl. ¶ 7.)

[14] The Report explains the District has carried a "Significant Disproportionality designation in the area of suspension and expulsion for Black [students with disabilities] since at least the 2015-16 year." (Report 128.) Petitioners represent the District reported the significant disproportionality to CDE in 2018. (Opening Brief 7:7-8.)

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Williams does not submit any written training materials or similar documentation to support her claim the matrix is no longer used in the District's schools. Further, Petitioners cite evidence the Discipline Matrix is *currently posted* on the District's board policy website and attached to each [District] campus's school site safety plans, which were approved by the District's Board of Trustees. (Rebuttal Helena Decl. ¶¶ 2-6, Exhs. A, B, C.) Hernandez also attests the District provided the matrix to him in response to his request for the District's discipline policy. (Rebuttal Hernandez Decl. ¶ 5.) Considering the conclusory nature of Williams' declaration, the lack of written corroboration, and the rebuttal evidence, the court finds the District has not formally rescinded its Discipline Matrix and continues to rely on it.

As a secondary defense, Respondents also contend the "the matrix complies with Section 48900" (Opposition 25:7) and the last column of the matrix "shows that an administrator cannot give more punishment than anticipated by Section 48900, but that the administrator could use his or her discretion to lessen the punishment based on the circumstances of the incident." (Opposition 25:15-17.)

Petitioners, however, are correct. The Discipline Matrix is not consistent with section 48900. For example, offenses 25 through 29 are not offenses listed in section 48900. The infractions listed in offenses 25 through 28 suggest suspension or a recommendation for expulsion might be appropriate. Section 48900 does not authorize suspension for the offenses listed. Further, as argued by Petitioner, minor infractions such as "disrespect" or a "violation of the District Dress Policy" is subject to suspension or a recommendation for expulsion.[15] Further, the Discipline Matrix does not guide staff to first attempt other means of correcting the behavior, as required by section 48911.1.

Williams also attests "the District has a practice of Positive Behavioral Interventions and Support ('PBIS') framework, which seeks to explicitly teach students appropriate behaviors in a multi-tiered system of supports framework that includes working with parents and students to maximize student success." (Williams Decl. ¶ 10.) "As such, administrators can use their discretion, based on the specifics of the underlying incident, to determine punishment for a particular student. Therefore, when the matrix was used, it actually inured to students' benefit." (Williams Decl. ¶ 11.)

As relevant to the Discipline Matrix and third and fourth causes of action, Williams' largely conclusory statements are not persuasive. The District admitted in its 2020 and 2021 CCEIS Plans that the Discipline Matrix "contributes to . . . inequitable campus discipline policies and

[15] Respondents indicated during the hearing section 48900, subdivision (k) authorized suspension for offenses 25 through 28. Subdivision (k) of section 48900 concerns disruption of school activities and willful defiance of school officials. That the District does not provide section 48900, subdivision (k) as the "legal reference" for the suspension authority for items 25 through 28 and (incorrectly) provides a different statutory rationale for the suspension suggests a post-hoc rationalization. Respondents had no explanation during the hearing for its reliance on inapplicable statutory authority for suspensions in the matrix.

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practices" and the significant disproportionality in the suspension and expulsion of Black students with disabilities. (Helena Dec. Exh. B at 11 and Exh. C.) Further, the District's response does not address how it can suspend students for infractions not enumerated in section 48900 and otherwise relied upon in the Discipline Matrix.[16]

Due Process Procedures

Petitioners contend the District "has failed to follow mandatory procedures for suspension by failing to provide written notice and an opportunity for a pre-suspension conference at the time of the suspension (Cal. Educ. Code § 48911); failing to notify students and parents/guardians of the reasons for the suspension and the evidence against the student (*id.*); failing to attempt other means of correction before imposing suspensions (*id.* § 48900.5); and allowing teachers to send students out of the classroom to various forms of in-school suspension, sometimes for days at a time, without following these mandatory procedures (*id.* §§ 48910, 48911.1)." (Opening Brief 8:11-17; see Pet. ¶ 169.)

Petitioners rely on the declarations of L.W., O.W., B.Y., C.Y., V.X., and H.N., as well as Hernandez's "survey of Antelope Valley families during the 2022-2023 school year" to support their claims. (Opening Brief 9:3.)

The out-of-court statements of parents included in the Report are inadmissible hearsay, and Petitioners have not identified any exception that would allow such statements to be considered by this court for their truth.[17] (See Reply 15-16.) As summarized in the Opening Brief, Petitioners rely on the survey results and parents' statements for their truth, i.e., to prove "a systemic pattern by [the District] of suspending students and adding documents to their files without informing their parents." (Opening Brief 9:15-17.) The court sustains Respondents' hearsay objection and does not consider the survey results and parents' statements for that purpose. (See *People v. Veamatahau* (2020) 9 Cal.5th 16, 26 ["an expert may not relate inadmissible '*case-specific* facts about which the expert has no independent knowledge' "].)

Thus, to prove the District *systematically* fails to follow mandatory due process procedures for suspensions Petitioners rely predominately on the declarations of former students and/or their parents (students L.W., B.Y., and parents O.W., C.Y., and H.N.) and a current student and his parent (V.X. and T.X.). The court has reviewed the evidence. These declarations provide some evidence that, in certain instances, the District may have failed to follow the suspension

[16] While the District suggested all of its suspension instruction in the Discipline Matrix could be justified using section 48900, subdivision (k), the District's position is likely inaccurate. For example, the District cites Board Policy 5131 as the "legal reference" for suspension for plagiarism. To use section 48900, subdivision (k) permits suspension for plagiarism, school personnel would have to find the plagiarism was somehow disruptive of "school activities" or constituted willful defiance.

[17] The hearsay within the expert's report is not admissible without those case specific facts having been introduced into evidence. (See *People v. Sanchez* (2016) 63 Cal.4th 665.)

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procedures set forth in sections 48911, 48900.5, 48911.1 and 48910. As an example, former student L.W. attests he was suspended "after some kids started fighting and bullying me, and I defended myself." (L.W. Decl. ¶ 5.) L.W. declares "the school did not let me tell my side of the story and didn't give me or my mom any paperwork about the suspension." (L.W. Decl. ¶ 5.) Although L.W. does not specify the length of the suspension, L.W.'s declaration suggests that L.W. was not given the pre-suspension procedures required by section 48911, subdivision (b). Respondents develop no argument to the contrary. (See Opposition 26-27.)

B.Y., C.Y., V.X., and T.X. provide some evidence that B.Y. and V.X. were subject to "in-school suspensions" or were sent to the Student Support Center (SSC) without *written* documentation to the students or parents. As discussed during the hearing, however, such "in-school suspension" or "teacher suspensions" merely require the teacher notify the student's parent "as soon as possible" in an effort to schedule a parent-teacher conference.[18] (§ 48910, subd. (a). See C.Y. Decl. ¶ 6; B.Y. Decl. ¶ 6; T.X. Decl. ¶¶ 4-6.)

Williams, the Deputy Superintendent, explains the District's use of SSCs:

> The Student Support Centers are used proactively to address need[s] of students from a whole child approach which includes academics, social emotional and behavior. They are designed to be a hub of resources to support the needs of students and their families. . . . Contrary to the allegations in the Trial Brief, SSCs are not detention or discipline centers. They are a place of refuge for students who need additional support. It is true that some students who are having disciplinary issues are sent to an SSC. However, students who are having emotional issues, or creating minor disruptions in class, may also be sent to the SSC. . . . For the students who are having disciplinary issues, the purpose is not to create a secret detention system to hide the District's discipline numbers. As indicated, the District's policy is to focus on ways to correct behavior without having to implement full discipline. Students who are sent to an SSC that are having such problems are sent to obtain support and respite from their challenging environment. . . . Indeed, the SSC contains general education teachers, special education teachers and aides, nurses, social workers and counselors on any given campus. . . . In addition, students are sent to SSCs as other means of correction to receive mentorship and support from a certificated teacher. . . . It is true that the District does not count SSC referral as discipline, because it is not. However, referral to SSC is documented in each student's pupil file. . . . While at

[18] The court notes Petitioners contend a suspension by a teacher for a day or two pursuant to section 48910 requires the due process procedures of 48911. (See Opening Brief 6:20-23.) Petitioners cite no support for their position. Teacher suspensions through section 48910 require the teacher to contact the student's parent "[a]s soon as possible" for a "parent-teacher conference regarding the suspension." (§ 48910, subd. (a).) The statute is otherwise silent about procedure. While it is not entirely clear, some of B.Y's discussion relates to the SSC. (B.Y. Decl. ¶ 7.) For V.X., much of the discussion is about SSC. (T.X. Decl. ¶ 4.)

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the SSC, students are to complete their work. In fact, teachers send a referred student's classwork to the SSC for completion by that student. (Williams Decl. ¶¶ 12-18.)

While somewhat conclusory, Williams' declaration provides evidence the SSCs "are not detention or discipline centers" and referrals to the SSCs are not necessarily suspensions requiring compliance with due process procedures. Petitioners' cited evidence does not provide a sufficient reason for the court to disbelieve Williams on this point. Hernandez opines referrals to the SSCs are often a "punitive measure," but he also acknowledges a "lack of reliable data" and SSCs are "designated spaces on a campus with various supports for students" and that are managed by a credentialed teacher. (Report at 190-191.) Although Petitioners cite evidence that "Black students with and without disabilities are overrepresented" in referrals to SSCs, that evidence does not prove the cause of the overrepresentation, that the referrals are suspensions, or that the District has a policy or practice of suspending students without complying with due process procedures. (Opening Brief 10:13-11:7 [citing Report 191-198].)

In reply, Petitioners highlight evidence from the Report that "only 32% of referrals to SSCs and OCD [on-campus detention] rooms were non-disciplinary." (Reply 4:2-3 [citing Report at 170].)[19] Petitioners cite a section of the Report entitled Review of Quantitative In-School Suspension Data for the 2021-22 School Year. Petitioners' brief discussion of this detailed evidence, including in reply, is not particularly persuasive or helpful to the court. While it is true the Report found 2,195 of the 6,876 referrals to SSC (31.9 percent) were "non-disciplinary," that does not, in itself, demonstrate the other referrals to the SSC failed to comply with the law.

The court also notes Petitioners contend a suspension by a teacher for a day or two pursuant to section 48910 requires the due process procedures of 48911. (See Opening Brief 6:20-23.) Petitioners cite no support for their position. As discussed, teacher suspensions through section 48910 require the teacher to contact the student's parent "[a]s soon as possible" for a "parent-teacher conference regarding the suspension." (§ 48910, subd. (a).) The statute is otherwise silent about procedure.

Based on the court's review of the record, the court is unable to find Respondents have a *systematic* practice or policy—which could be enjoined by mandate—of failing to follow mandatory due process procedures for suspensions. The declarations of L.W., O.W., B.Y., C.Y., V.X., and H.N. provide a small sample size; the exact circumstances of those alleged suspensions are not fully explained by the record; and whether and to what extent, if at all, procedures

[19] In reply, Petitioners also submit additional opinion evidence from Hernandez regarding SSCs. (Reply 4 [citing Rebuttal Hernandez Decl. ¶ 8].) "The salutary rule is that points raised in a reply brief for the first time will not be considered unless good cause is shown for the failure to present them before." (*Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010.) Given the length and level of detail in the Report, Petitioners arguably do not have good cause to cite new evidence from the Report for the first time in reply or submit additional opinion evidence in reply. The court nonetheless has considered this evidence as rebuttal to Williams' declaration.

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were not followed. Further, the particular impacted students or former students have adequate remedies at law to address any past instances of discrimination or equal protection violations. The cited evidence from the Report is either hearsay (see Opening Brief 9:3-17) or has not been shown by Petitioners' briefing to support a finding of a *systematic* practice or policy of failing to follow due process procedures with respect to suspensions, including referrals to SSCs.

Disparate Impact of Suspension Practices on Black Students and Students with Disabilities

Petitioners contend the District's suspension practices have a disparate impact on Black students and students with disabilities. (Opening Brief 9:21-11:7.) As an illustration, Hernandez reports "Black students represent 17.0% of the District's enrollment yet comprise 44.0% of all suspensions"; students with disabilities are more than twice as likely to be suspended as their nondisabled peers; and Black students with disabilities make up 52.8 percent of all special education students suspended. (Report 138-139.)

In addition to evidence from the Report, the District admitted in its 2020 and 2021 CCEIS Plans that the Discipline Matrix "contributes to . . . inequitable campus discipline policies and practices" and the significant disproportionality in the suspension and expulsion of Black students with disabilities. (Helena Dec. Exh. B at 11 and Exh. C.)

In opposition, Williams attests:

> [S]uspensions and expulsions are governed by Section 48900, and without regard to race. The District does not intentionally target students by race for punishment. Students are only punished when they commit a violation that requires punishment, such as acts identified in Section 48900. I am unaware of any circumstance where any student, based on their race, was baited into committing a violation of school policy – the Trial Brief does not cite to any such situation either. . . . Assuming that there is a disproportionality in race as alleged by the plaintiffs – more African-American students receive suspensions and expulsions compared to other races, and out of proportion to their numbers in the District – each student who is punished is done so in compliance with Section 48900, and that student had to have committed a policy violation prior to receiving such punishment. (Williams Decl. ¶¶ 22-24.)

Thus, Respondents do not affirmatively dispute the evidence that Black students and Black students with disabilities are suspended disproportionately compared to other student groups. Further, *Respondents have previously admitted the Discipline Matrix could contribute to inequitable suspension policies and practices*. Respondents claim the Discipline Matrix is no longer used, but they fail to explain why it still appears on the District's website and is attached to the District campus's school site safety plans. Further, Respondents submit no evidence the District rescinded the Discipline Matrix.

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Under the circumstances, Petitioners have sufficiently demonstrated, with respect to the Discipline Matrix and its contribution to inequitable suspension policies and practices, the District "has failed to act, and its failure to act is arbitrary, beyond the bounds of reason, or in derogation of the applicable legal standards." (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, supra,* 197 Cal.App.4th at 704.) The court will issue a writ directing Respondents to "prohibit the use" of the Discipline Matrix as it is currently crafted.[20] (See Proposed Order ¶ 4.)

In all other respects, however, Petitioners have not shown they are entitled to writ relief for the third cause of action. Except as to the Discipline Matrix, Petitioners have not proven Respondents have a *systematic* practice or policy—which could be enjoined by mandate—of failing to follow mandatory due process procedures for suspensions. Further, on this record, Petitioners have not shown the manner in which Respondents address disproportionality in the suspension of students is *ministerial* in nature. Petitioners also have not shown Respondents are failing to exercise their discretion in some manner to address disproportionality in suspensions in the District. The 2020 and 2021 CCEIS Plans cited by Petitioners evidence Respondents' exercise of discretion to address this serious public welfare issue. "Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in some manner." (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, supra,* 197 Cal.App.4th at 700.)

Writ relief is limited. Certainly, disproportionality in suspensions—as to race or disability—must be remedied. That the District is admittedly exercising its discretion to address the issue precludes *writ relief.* Petitioners may have legal options—other than writ relief—available to them to as a remedy.

Based on the foregoing, the court grants the writ relief (as stated above) on Petitioners' third cause of action.

Fourth Cause of Action – Alleged Violations of Education and Government Code Procedures Governing Expulsions

The Education Code restricts the conduct for which a student can be recommended for expulsion. (See §§ 48900, 48900.2, 48900.3, 48900.4, 48900.7.) Prior to a school district expelling a student, the district must give the student various procedural protections, including a hearing within 30 school days unless the student requests postponement; written notice of various procedural rights; and the ability to inspect all documents, to question all witnesses and other evidence, and to present oral and documentary evidence in the pupil's behalf. (§§ 48915, 48918.) For students who are expelled, school districts are required to provide an adequate education program; for students with disabilities, the education program must comply with their Individual Education Plans (IEP). (20 U.S.C. §§ 1412, subd. (a)(1), 1415, subd. (k)(1)(D); 34 C.F.R. § 300.530, subd. (d); §§ 48916.1, 48916.)

[20] As noted, the Discipline Matrix is, to some extent, inconsistent with section 48900.

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Discipline Matrix

Petitioners contend a writ should issue prohibiting the District from applying the Discipline Matrix because it "authorizes expulsion for even the most minor of behavioral infractions," in violation of the statutory limits on expulsion. (Opening Brief 12:3-4.) For those reasons discussed concerning suspensions, the court agrees as to expulsions.

Due Process Procedures

Petitioners contend, as a matter of practice and policy, the District fails to follow the statutory due process procedures for expulsions. As support, Petitioners rely heavily on Hernandez's review of the school files for 20 expulsion packets. (Report 271-272.) Hernandez reviewed the expulsion packets for 20 expulsions of students with disabilities from the 2021-2022 school year. (See Report 241-242.) The District expelled 54 students with or without disabilities in the 2021-2022 school year. (See Report 241-242.)

Petitioners note Hernandez found a " 'notable variability in the contents and documentation within each file.' " (Opening Brief 12:11-12 [citing Report 271].) Hernandez also determined none of the files included an expulsion order and that only 40 percent (8 students) were expelled for "one of the top five offenses pursuant to EC 48915(c)." (Report 271-272.) In addition, 75 percent of the students (16 out of 20) "elected to forgo the panel hearing and opted for a stipulated expulsion." (Report 272.)

While the District's policies and the Education Code require an expulsion order (see Helena Decl. Exh. Z), Petitioners do not explain why an expulsion order would be necessary in the event of a stipulated expulsion. As Petitioners note, 75 percent of the students in Hernandez's file review stipulated to an expulsion. Importantly, Hernandez acknowledged "the inconsistent documentation and number of students with stipulated expulsions limited the ability to conduct a file review to gauge compliance with the education code regulations and District policies that govern expulsions." (Report at 271.) Given the limitations in Hernandez's case file review, and that the file review concerned only 20 expulsions from a single year, Petitioners do not demonstrate, from the evidence, the District fails to follow the statutory due process procedures for expulsions.

Petitioners also contend "[t]o skirt their statutory obligations, [the District] **persuades** parents to waive their rights and stipulate to expulsion – a procedure which carries no benefit for the student." (Opening Brief 12:18-19 [emphasis added].) As support, Petitioners rely on Hernandez's opinion that, while stipulated expulsions are not prohibited by the State, they serve as a "waiver" system that causes students and parents to relinquish due process protections with little or no incentive for doing so, as the consequences remain the same. (See Opening Brief 12:18-25 [citing Report 271-272, 290-291].)

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Petitioners also cite the declaration of parent H.N., who concludes she was "pressured" into signing a stipulated expulsion after school administrators recommended expulsion following a fight involving her daughter, J.N. (H.N. Decl. ¶¶ 6, 8.)[21] Neither Hernandez nor H.N. offer any solid support for the assertion the District pressures or persuades students to enter stipulated expulsions as part of a pattern or practice to avoid mandatory due process expulsion procedures. The court finds Petitioners' evidence inconclusive and cannot find the District has a policy or practice of failing to comply with due process expulsion procedures.

Disparate Impact of Expulsion Practices on Black Students and Students with Disabilities

Petitioners cite evidence from the Report demonstrating 60 percent of the students expelled from the District in 2021-2022 were Black. Also, Black students with disabilities comprised 25.3 percent of the special education population but comprised 65.2 percent of all expulsions issued to students with disabilities. This data is concerning and problematic. Nonetheless, except with respect to the Discipline Matrix, Petitioners have not shown the District has any *systemic* practice or procedure related to expulsions that are causing these disproportionalities *and that can be corrected by a writ of mandate*. The court cannot compel the District to exercise its discretion in any specific way to address these serious concerns by way of a writ of mandate.

Based on the foregoing, the court grants the writ relief (as stated above) on Petitioners' fourth cause of action.

Fifth Cause of Action – Due Process Protections in Voluntary and Involuntary Transfers and Independent Study

Petitioners contend the District "evades the procedural requirements for expulsion by employing voluntary and involuntary transfers" (Opening Brief 13:24-25); the "District's unlawful transfer policy fall most heavily on Black students and students with disabilities" (Opening Brief 15:25-26); and such policy is arbitrary and capricious. (Opening Brief 16:9-10; see Pet. ¶¶ 186-191.) Also in the fifth cause of action, Petitioners allege the District "violates its mandatory duties regarding placement of students with disabilities in 'independent study,' " (Opening Brief 16:15-16) because, among other reasons, the District's policy "gives principals broad discretion to place students in independent study as a matter of discipline." (Opening Brief 16:22-23; see Pet. ¶ 191.)

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[21] H.N. asserts J.N. was bullied and defended herself in the fight. J.N. has not submitted a declaration explaining what occurred, and Petitioners do not submit any evidence corroborating H.N.'s declaration. In opposition, Respondents suggest H.N. testified at deposition that J.N. started the fight. (See Opposition 33 [citing Exh. 4].) However, at the cited pages, H.N. testified that J.N. was bullied, not that J.N. started the fight. The exact circumstances of the fight and J.N.'s expulsion are not fully explained by the record.

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Voluntary and Involuntary Transfers

Voluntary transfers and involuntary transfers are governed by two different sections of the Education Code. Both statutes require school boards to adopt rules and procedures to govern transfer of students from comprehensive to continuation schools. (§§ 48432.3, subd. (a), 48432.5, subd. (a).)

Section 48432.3, subdivision (a) governs *voluntary transfers*. The statute provides:

> these policies and procedures shall ensure that there is a clear criterion for determining which pupils may voluntarily transfer or be recommended for a transfer to a continuation school and that this criterion is not applied arbitrarily, but is consistently applied on a districtwide basis. Approval for the voluntary transfer of a pupil to a continuation school shall be based on a finding that the voluntary placement will promote the educational interests of the pupil.

Section 48432.5 governs *involuntary transfers*. The statute provides:

> [a] decision to transfer the pupil involuntarily shall be based on a finding that the pupil committed an act enumerated in Section 48900, or has been habitually truant or irregular in attendance from instruction upon which the pupil is lawfully required to attend. (§ 48432.5(d).)

The *involuntary transfer* statute also states:

> Involuntary transfer to a continuation school shall be imposed only when other means fail to bring about pupil improvement; provided that a pupil may be involuntarily transferred the first time the pupil commits an act enumerated in Section 48900 if the principal determines that the pupil's presence causes a danger to persons or property or threatens to disrupt the instructional process. (§ 48432.5, subd. (h).)

Petitioners contend the District's policy fails to distinguish between voluntary and involuntary transfers. As support, Petitioners cite a document entitled Implementation of Education Code 48432.5 Voluntary/Involuntary Transfers (included in Appendix 11 to the Report). (Helena Decl. ¶ 5, Exh. D.) Although Respondents have objected to the document on foundational grounds, they have not objected to Exhibit D to Helena's declaration. Further, in her declaration, Williams attests "Exhibit D appears to be an altered version of the District's AR which was last revised in February 2001." (Williams Decl. ¶ 36.) Williams does not explain how Exhibit D was altered compared to the District's Administrative Regulation 6184. (Williams Decl. ¶ 33 and Exh. 1.) Further, despite having the opportunity to do so, Respondents have not disputed the authenticity of Petitioners' Exhibit D. Thus, the court concludes Petitioners' Exhibit D is a true

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and correct copy of a written District policy. Respondents do not claim that this policy has been rescinded.[22]

As argued by Petitioners, and not rebutted by Respondents, Petitioners' Exhibit D clearly conflicts with sections 48432.3 and 48432.5 because it applies regulations that apply to involuntary transfers to voluntary transfers. Thus, Petitioners' Exhibit D incorrectly states section 48432.5 applies to *involuntary transfers*, even though that section only applies to *voluntary transfers*. Further, Exhibit D omits various requirements from section 48432.3 for voluntary transfers, including the requirements that the District's policies and procedures shall ensure that "voluntary placement in a continuation school shall not be used as an alternative to expulsion unless alternative means of correction have been attempted pursuant to Section 48900.5," and "the transfer is voluntary and the pupil has a right to return to his or her previous school."[23] (§ 48432.3, subd. (b)(1) and (4).)

In opposition, Respondents assert "[t]he only involuntary transfers of which the District is aware are governed by District Administrative Regulation 6184, ... involv[ing] transfers to continuation schools." (Opposition 33:22-23; see Williams Decl. ¶ 33.) However, as noted, Respondents have not disputed Petitioners' Exhibit D is a true and correct copy of a written District policy, and Respondents do not demonstrate Exhibit D has been rescinded. Respondents do not develop an argument that the policy submitted as Exhibit D actually complies with sections 48432.3 and 48432.5. (Opposition 33:21-34:24.) Accordingly, Respondents have a ministerial duty to refrain from applying this policy and its related contract inaccurately blurring the requirements of voluntary and involuntary transfers to any students and their parents.

The court finds Petitioners are entitled to relief through their fifth cause of action to the extent it challenges the District's written policy entitled Implementation of Education Code 48432.5 Voluntary/Involuntary Transfers and corresponding contract. (See Helena Decl. Exh. D.)[24]

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[22] During the hearing, Respondents suggested there was no evidence to support a finding the District created or uses Implementation of Education Code 48432.5 Voluntary/Involuntary Transfers. The evidence belies Respondents' assertion. First, Williams did not disavow such a document; instead she suggested it appeared altered. Second, at the hearing, the court noted—like the form—the District's placement contract blurs the statutory process for voluntary and involuntary transfers. Finally, there is evidence a principal in the District responded (apparently to Hernandez) he "did not know what an involuntary transfer meant and that 'whoever said there's a difference between voluntary and involuntary transfer doesn't understand the process.' " (Report 281.)

[23] During argument Respondents suggested the placement contract and section 48432.3 do not conflict. While there may be no direct conflict, the contract does appear to place limitations on a voluntary transfer student's ability "to return to his or her previous school." (Compare § 48432.3, subd. (b)(4) with contract requirements.)

[24] While the court agrees with Petitioners that the District's written policy conflicts with the Education Code, the court is not persuaded that any inference need be made that this policy, in

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Independent Study

Petitioners argue the District's guidelines for placing special education students into independent study programs conflict with various federal and state laws and regulations. (See Opening Brief 16-17 [citing Cal. Code Regs., tit. 5, § 11700, subds. (c) and (d); 34 C.F.R. § 300.116; Ed. Code § 51745, subd. (c); 42 U.S.C. § 12132; 29 U.S.C. 794; 28 C.F.R. § 35.130.) Specifically, Petitioners assert "[t]he District's policy on placing students with disabilities in independent study imposes an administrative approval process that can overturn the IEP team's decision." (Opening Brief 16:19-20.) In addition, Petitioners contend "the District's policy unlawfully and discriminatorily disqualifies students with disabilities from independent study on the basis of their disability status." (Opening Brief 16:26-27.)

The District's guidelines Petitioners cite provide:

> Alternatives to comprehensive high school programs are in existence to meet the needs of students who do not experience success in a traditional school setting. Students receiving special education services are not denied access to alternative education programs based solely on their disability. Once enrolled in an alternative education program, they continue to receive the appropriate special education and related services as stipulated in their Individual Education Program (IEP). **An IEP team meeting must be convened, anytime an individual with exceptional needs is referred for placement in an alternative education setting to determine if such placement can appropriately meet the needs of that student.**
>
> As with other program placements, when a student is placed in an alternative education program, the decision to discontinue special education services is made only by the IEP team. This decision is reached only after determining that the student's problems have been remedied to such a degree that the student is capable of functioning satisfactorily in general education programs without special education assistance.
>
> In general, the IEP team may recommend the placement of a student in an alternative education program, but the final decision is made by District

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itself, caused Black students or students with disabilities to suffer disproportionate amounts of disciplinary transfers. Further, assuming the disproportionality exists, Petitioners do not prove, with the exception of this written policy, Respondents have any *systemic* policies or practices to violate the Education Code's rules governing voluntary and involuntary transfers. Notably, Petitioners do not assert the District's Administrative Regulation 6184, submitted by Williams, fails to comply with the Education Code. The court cannot by mandate compel the District to exercise its discretion in any specific way to address disproportionality in disciplinary transfers.

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administration (Program Advisory, CA State Dept. of Education, March 30, 1990; EC Sect. 48432).

(Helena Decl. Exh. E [bold in original].)

Petitioners have not demonstrated with any analysis that the District's guidelines *necessarily conflict* in practice with the regulations and statutes cited by Petitioners. Further, even if there a conflict has the potential to arise in a specific case, such possibility does not justify a writ of ordinary mandate directing Respondents not to enforce the guidelines in all cases. (See Proposed Order ¶ 7.) Special education students to which the guidelines are applied also have adequate remedies at law and/or administrative remedies to challenge the District's decisions and actions with respect to independent study.

Based on the foregoing, the court grants the writ relief (as stated above) on Petitioners' fifth cause of action. The court will grant a writ directing Respondents to discontinue the District's written policy entitled Implementation of Education Code 48432.5 Voluntary/Involuntary Transfers and its related contract. (See Helena Decl. Exh. D and Proposed Order ¶ 5.a.)

Seventh Cause of Action – Protections for Students With Disabilities

Pursuant to federal and state law, school districts are required to provide a free and appropriate public education to students with disabilities in the least restrictive environment possible. School districts must also implement procedural safeguards that ensure parents are informed participants in the process and students with disabilities receive appropriate education programs. (See 20 U.S.C. § 1412, subd. (a)(5)(A); 34 C.F.R. § 300.114; §§ 56040.1, 56342, subd. (b).)[25]

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[25] Accordingly, section 56040.1 provides:

> In accordance with Section 1412(a)(5) of Title 20 of the United States Code and Section 300.114 of Title 34 of the Code of Federal Regulations, each public agency shall ensure the following to address the least restrictive environment for individuals with exceptional needs: (a) To the maximum extent appropriate, individuals with exceptional needs, including children in public or private institutions or other care facilities, are educated with children who are nondisabled. (b) Special classes, separate schooling, or other removal of individuals with exceptional needs from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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Restrictive Placements

Petitioners argue the District "relegates a disproportionate number of students with disabilities, particularly Black students, into separate classrooms on otherwise integrated campuses for a majority of the school day or removes them to entirely segregated campuses without first trying to increase their IEP services and supports in less restrictive settings." (Opening Brief 18:8-11 [citing Report at 29, 59-68; Helena Decl. Exh. F; B.Y. Decl. ¶ 5; and K.D. Decl. ¶¶ 10-11.)

As support, Petitioners cite a discussion from the Report wherein Hernandez analyzes allegations that the District segregates students with disabilities from nondisabled peers at rates far exceeding the targets set by the State. (Report at 66.) As Petitioners advise, Hernandez found evidence (for the year studied) that Black students represented 39.1 percent of students in Special Day Class-behavioral (SDC-B) program classes even though Black students account for only 25 percent of the special education population. (Report at 64, 67.) Based on the data, Hernandez opined Black students "are three times more likely to be placed in a SDC-B program than students from all other racial/ethnic groups." (Report 67.) He explained the ratio "exceeds the CDE's 3.0 threshold for significant disproportionality." (Report at 67.)

Hernandez's expert opinion about the existence of significant disproportionality does not, in itself, provide a basis for *writ relief*. Notably, Petitioners do not provide a comprehensive discussion of their own evidence, as required for this proceeding. (Local Rules, Rule 3.231, subd. (i)(2).) For instance, in the same section cited by Petitioners, Hernandez acknowledged "the low enrollments in the most segregated placements, such as Desert Pathways and NPS, make determining the inappropriateness of these placements difficult without examining students' IEPs." (Report at 67.) While Hernandez opined generally that placement of Black students in more restrictive settings "is indicative of systemic and structural problems," he does not identify a specific policy or practice he believes is causing the overrepresentation. (Report at 65.) Further, in the context of *writ proceedings* the remedies Hernandez proposes are inherently discretionary: "The overall high rate of segregation . . . will require extensive training and capacity building . . . . Although the investigation did not examine this in depth, it would be prudent to conduct an analysis of the referral, identification, and placement processes to ensure that students are receiving the appropriate general education supports and interventions prior to a referral . . . ." (Report at 65-66.)

Petitioners also contend "the SDC-B program imposes a problematic behavior management tool known as the 'Level System' under which students who have not met 'behavioral expectations' must remain in the classroom during lunch, passing periods, and other school activities, further punishing students for disability-related behaviors and decreasing their access to less restrictive settings." (Opening Brief 18:22-26 [citing Report at 59-60, 67-68 and Helena Decl. Exh. F].) Again, Petitioners do not provide a comprehensive and completely accurate discussion of their own evidence. In the cited section, Hernandez also acknowledged his "investigation did not collect enough information to establish a sense of the effectiveness of the level system for managing student conduct." (Report at 68.) Further, Petitioners do not

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demonstrate the District's alleged use of the Level System violates any laws or regulations or is not based on an exercise of its discretion.

Finally, Petitioners contend "students with disabilities placed in the District's restrictive placements receive limited direct instruction in favor of independent packet or computer work." (Opening Brief 18:27-19:1 [citing Report at 58, 68-69 and B.Y. Decl. ¶ 5 and K.D. Decl. ¶¶ 10-11.) The cited evidence does not demonstrate any systemic practice or policy. Further, while Petitioners disagree with the District's discretionary decisions as to SDC-Bs and restrictive placements, the disagreement is not as basis for *writ relief*.

Restraint Policies

The Education Code prohibits various behavioral interventions on students with exceptional needs, including interventions that inflict physical harm or pain. (§ 56521.2, subd. (a).) "An educational provider may use seclusion or a behavioral restraint only to control behavior that poses a clear and present danger of serious physical harm to the pupil or others that cannot be immediately prevented by a response that is less restrictive." (§ 49005.4.)

"Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior." (§ 56521.1, subd. (a).) "To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, shall be notified within one schoolday if an emergency intervention is used or serious property damage occurs. A behavioral emergency report shall immediately be completed and maintained in the file of the individual with exceptional needs." (§ 56521.1, subd. (e).)

Petitioners contend "District data shows that Black students with disabilities experience restraints at much higher rates than students with disabilities of all other races/ethnicities," in violation of a statute that prohibits behavioral interventions that inflict physical harm, pain, or other abuse. (Opening Brief 19:17-18.) Petitioners argue:

> District data shows that Black students with disabilities experience restraints at much higher rates than students with disabilities of all other races/ethnicities. Hernandez Rep. at 359. More than three-fourths of restraints reported were committed on Black students with disabilities, a gross overrepresentation. *Id.* An analysis of BERs and related forms found "questionable uses of physical interventions," with only a small fraction of forms including a description of risk behavior that could be deemed an emergency. *Id.* The poor documentation of these traumatic events and uses of physical interventions "is indicative of poor training and oversight by school administrators for ensuring the use of restraints, including handcuffing of students, only occurs during emergency situations or

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when students pose a significant risk to themselves or others." *Id.* at 360. (Opening Brief 19:17-26 [citing Report at 359-360].)

In response, Williams declares:

> The District abides by [section 49005.4] and uses restraints on a case-by-case basis based on the circumstances at hand and the student's disability. . . . The District teaches its staff that interacts with special needs students appropriate restraint techniques. . . . Whenever a student with disabilities is restrained, school officials must complete a Behavior Emergency Report ("BER"). . . . If the "Behavioral Emergency Report" was written regarding a student who does not have a behavioral intervention plan, the designated responsible administrator shall, within two days, schedule an IEP to determine whether an FBA should be conducted and/or an interim behavior intervention plan developed. . . . However, If the "Behavioral Emergency Report" was written regarding a student who has a behavioral intervention plan, any incident involving a previously unseen serious behavior problem or where a previously designed intervention is not effective should be referred to the IEP team to review and determine if the incident constitutes a need to modify the plan. The District complies with these guidelines and procedures. (Williams Decl. ¶¶ 43-47.)

Hernandez found (in the studied year) three out of four restraints were carried out on Black students with disabilities "which is indicative of a clear overrepresentation of Black [students with disabilities]." He opined "these numbers warrant elevated concerns and awareness of the problem throughout all levels of the organization" and "serve as a clear call for action to remedy these inequities." (Report at 359.)

Hernandez's opinion highlights evidence of disproportionality in the use of restraints at a generalized level. Petitioners do not cite evidence concerning the specific circumstances in which restraints are used. Respondents submit evidence "[t]he District abides by [section 49005.4] and uses restraints on a case-by-case basis based on the circumstances at hand and the student's disability. . . ." (Williams Decl. ¶¶ 43-47.) The court does not find on this record Respondents have any policy or practice of using restraints in a manner that fails to comply with the law.

The court agrees with Petitioners and Hernandez that the data suggesting disproportionate use of restraints for Black students with disabilities is cause for concern and warrants an assessment of any underlying reasons for such disproportionality. However, Petitioners have not cited evidence supporting a finding the District has a systemic and illegal policy or practice—*correctable by mandate*—that is causing this overrepresentation. Petitioners also have not shown Respondents are failing to exercise their discretion in some manner to address disproportionality in use of restraints. "Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion

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in some manner." (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, supra*, 197 Cal.App.4th at 700.)

Petitioners argue "District policy on law enforcement referrals makes no reference to the Education Code requirement that school officials provide copies of special education and disciplinary records to law enforcement when a student has been referred for a suspected criminal act." (Opening Brief 20:1-4 [citing Helena Decl. Exh. H].) Petitioners do not, however, develop an argument that this District policy fails to comply with any specific statute or regulation.

Petitioners also assert "one school official noted that IEPs are never provided to school-based law enforcement." (Opening Brief 20:4-5 [citing Report at 354].) This anecdotal evidence from "one school official" does not demonstrate any systematic practice or policy that could be enjoined by mandate.

Policies for Manifestation Determination Reviews

For students with disabilities, districts must convene a Manifestation Determination Review (MDR) within ten school days of a decision to recommend the student for expulsion or after 10 days of disciplinary exclusions in a single school year. (See 34 C.F.R. § 300.530, subds. (b), (e).) Hernandez explains the MDR is a procedural protection to ensure that students with disabilities are not discriminatorily disciplined for disability-related behaviors. (Report at 286.) MDRs must afford parents the opportunity to participate and require District participants to "review all relevant information in the student's file." (34 C.F.R. §§ 300.322, subd. (a)(1), 300.327, 300.501, subd. (c)(1), 300.530, subd. (e).)

Petitioners argue the District's policies for MDR do not comply with applicable law. (See Opening Brief 20:9-22-14.)

To evaluate the District's compliance with the MDR requirement, Hernandez reviewed 101 MDRs from school year 2021-2022. (Report at 287.) He determined, among other things, that Black students made up nearly three-quarters of the MDRs. (Report at 287.) Petitioners cite various other findings made by Hernandez based on his review of 101 MDRs, including "in 12% of cases reviewed, the MDRs reviewed were held outside of the required 10-day timeframe and 28% were held after a student had been removed for more than ten cumulative days." (Opening Brief 21:6-8 [citing 287].)[26]

In response, Williams summarizes the District's policies regarding MDRs and attests:

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[26] As Petitioners point out, Hernandez also found interviews with parents "did not reveal any indications parents are informed of their right to bring professionals or representatives to the MDR," nor that "parents are informed of their right to due process" when they disagree with the findings. (Report at 287.) To the extent Petitioners rely on parents' interview statements for their truth, this evidence has been excluded as inadmissible hearsay.

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> The District abides by the aforementioned policies relating to manifestation determination and forming IEP teams. . . . As to the procedure for manifestation determination, the District convenes a Manifestation Determination Review ("MDR") within ten school days of a decision to recommend the student for expulsion or after 10 days of disciplinary exclusions in a single school year. The District abides by these rules as policy and practice. (Williams Decl. ¶¶ 28-29.)

Petitioners do not show with evidence that the District has a systemic policy or practice with respect to MDRs that fails to comply with the law and *that could be enjoined by mandate*. Hernandez's expert opinions, based on his review of 101 MDRs, is not sufficient to support such a finding.[27] Petitioners also have not shown with evidence that Respondents are failing to exercise their discretion in some manner to comply with the laws and regulations governing MDRs. (See *AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, supra,* 197 Cal.App.4th at 700.)

Petitioners contend the District's "clear breaches of statutory and regulatory mandates that protect students with disabilities require writ relief." (Opening Brief 22:12-13.) However, as discussed above, Petitioners have not proven their claim or demonstrated that *writ relief* is appropriate in the circumstances discussed above.

Based on the foregoing, Petitioner's are not entitled to relief through their seventh cause of action.

Ninth Cause of Action – Duty to Maintain Complete and Accurate Student Records

Petitioners argue Respondents are failing to meet their mandatory reporting requirements for CDE's data collection pursuant to section 60900. They also allege Respondents do not "maintain complete and accurate student records and . . . to provide parents access to students' cumulative files." (Opening Brief 23:23-24.)

As noted, Petitioners bear the burden of proof and persuasion on their claims. (See *California Correctional Peace Officers Assn. v. State Personnel Bd., supra,* 10 Cal.4th at 1154.) To meet their burden, Petitioners must "cite to specific pages of the record . . . and avoid block cites." (Local Rule, Rule 3.231, subd. (i)(2).) The court is "not required to search the record to ascertain whether it contains support for [the parties'] contentions. . . . [The court does] not serve as 'backup appellate counsel,' or make the parties' arguments for them." (*Inyo Citizens for Better Planning v. Inyo County Board of Supervisors, supra,* 180 Cal.App.4th at 14.)

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[27] While conclusory, Williams' declaration on this point is consistent with a finding that Petitioners have **not** proven an illegal practice or policy that could be enjoined by mandate. (Williams Decl. ¶¶ 28-29.)

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Petitioners do not meet their initial burden on the ninth cause of action. While Petitioners suggest Respondents have not complied with ministerial data collection and reporting duties in section 60900, Petitioners do not identify any provision in section 60900 they contend Respondents have violated. (Opening Brief 22:19-28.) Rather, Petitioners cite to CDE's Data Guide "a guide for program staff" for CDE's California Longitudinal Pupil Achievement Data System (CALPADS Data Guide). (Helena Decl. Exh. J.)

Assuming without deciding the CALPADS Data Guide creates mandatory duties for Respondents (a position Petitioners do not explain),[28] Petitioners have not sufficiently supported their contention that Respondents fail to meet their reporting requirements. Petitioners report "Hernandez found that the data [the District] reports to the state is conflicting, inconsistent, and unreliable. See, e.g., Hernandez [Report] at 111, 141-142, 178, 182, 184, 197-198, 202, 296, 315, 326, 357."[29] (Opening Brief 23:5-7.) The block citation is not persuasive. (See Local Rule, Rule 3.231, subd. (i)(2).) From Petitioner's block citation, the court cannot discern the specific evidence from the Report upon which Petitioners rely and section 60900.

Further, the court has reviewed Petitioners' specific record citations and has not found sufficient evidence that would support the requested writ. For example, Petitioners argue "[s]chool administrators at [the District's] school sites use a variety of different Google Forms to record discipline data, referrals to police, referrals to security, referrals to on-campus detention, referrals to Student Support Centers, referrals to administrators, instances of restraint, and for completion of BERs [Behavior Emergency Report]." (Opening Brief 23:7-11, [citing Report at 356].) Relatedly, Petitioners contend "Different school sites have inconsistent policies for how this data is recorded and reported." (Opening Brief 23:11-12 [citing Report at 360.) Petitioners cite no statute or regulation requiring each school site within the District to use identical methods of recording student data. Moreover, Hernandez's opinion that individual school sites have "inconsistent policies" for recording and reporting data does not demonstrate the District has a *systematic* practice or policy of failing to comply with District's data collecting and reporting duties.

Petitioners contend the District's schools "use various forms of in-school suspension and also pervasively rely on 'off-the-books' suspensions . . . as an informal disciplinary removal." (Opening Brief 23:17-19 [citing Report at 128].) Petitioners also argue the District "does not require schools to report these in-school and informal suspensions, and there is no consistent policy or practice among [the District's] campuses as to whether in-school and informal suspensions are reported . . . ." (Opening Brief 23:20-22 [citing Report at 141].) The arguments are insufficiently supported by the evidence relied upon by Petitioners. Here, Petitioners

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[28] Petitioners' reliance on *Galzinski v. Somers* (2016) 2 Cal.App.5hh 1164, 1170-1171 by analogy is not particularly persuasive. There the police department established and published a citizen complaint investigation procedure. The police department created its own "ministerial duty arising from the mandatory terms of its own published procedure . . . ." (*Id.* at 1173 [citation omitted].)

[29] There is no evidence CDE has adopted the same view.

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appear to rely on Hernandez's statement that a high number of families "reported the use of informal suspensions," but the evidence has been objected to and excluded as inadmissible hearsay; it cannot be admitted for its truth. (Report at 128.) Petitioners do not quote or specify the opinion they rely on from the Report at page 141. The court does not find the cited material persuasive evidence of a *systematic* practice or policy of failing to comply with District's data collecting and reporting duties.

Petitioners also cite statements from Kerry Agomo, a former District student, and T.X., a mother of a current student, reporting they have been denied student records requested from the District. (Opening Brief 23:23-24:10; Agomo Decl. ¶¶ 11-13; T.X. Decl. ¶ 5.) Even if true, however, such anecdotal evidence does not prove a *systematic* practice or policy of failing to maintain complete and accurate student records and failing to provide parents access to student files. (See §§ 49061, subd. (b), 49069.7, subd. (b).)

The court finds Petitioners have failed to meet their burden on their claims related to section 60900. Accordingly, they are not entitled to relief through their ninth cause of action.

CONCLUSION

The sixth, eighth, and tenth causes of action are forfeited by Petitioners, and Petitioners are entitled to no relief through them.

The third, fourth and fifth causes of action are granted in part as described. The court will issue a writ directing Respondents to "prohibit the use" of the Discipline Matrix and the use of the form Implementation of Education Code 48432.5 Voluntary/Involuntary Transfers. (See Proposed Order ¶¶ 4, 5 a.) The remaining relief sought through the causes of action is denied.

The petition is otherwise denied.

The matter is transferred to Department 1 for reassignment to a general civil courtroom for adjudication of Petitioners' first cause of action (violation of equal protection), second cause of action (violation of 42 U.S.C. section 2000d), eleventh cause of action (violation of the Americans with Disabilities Act), twelfth cause of action (violations of the rehabilitation act), thirteenth cause of action (violation of Government Code section 11135), fourteenth cause of action (illegal expenditure of tax payer funds) or fifteenth cause of action (a derivative declaratory relief claim for those causes of action pending).

IT IS SO ORDERED.

March 18, 2024

Hon. Mitchell Beckloff
Judge of the Superior Court

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