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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 G.F., by and through her guardian ad litem,
17 Gail F.; W.B., by and through his guardian ad
litem, CiCi C.; Q.G., by and through his
18 guardian ad litem, Barbara C.; and on behalf of
themselves and a class of those similarly
19 situated,

20 Plaintiffs,

21 v.

22 CONTRA COSTA COUNTY; CONTRA
COSTA COUNTY OFFICE OF
23 EDUCATION.

24 Defendants.
25
26
27
28

Case No. C 13-3667-SBA

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

1 Plaintiffs G.F., W.B., and Q.G.¹ (collectively, “Plaintiffs”), by and through their counsel,
2 Disability Rights Advocates, Public Counsel and Paul Hastings LLP, bring this First Amended
3 Complaint against Defendants Contra Costa County and Contra Costa County Office of
4 Education (collectively, the “Defendants”).

5 INTRODUCTION

6 1. Contra Costa County Juvenile Hall, like all juvenile halls in the State, exists
7 “solely for the purpose of rehabilitation and not punishment”² for young people who have gotten
8 off track. Indeed, juvenile hall “shall not be deemed to be, nor be treated as, a penal institution.
9 It shall be a safe and supportive homelike environment.” Cal. Welf. & Inst. Code § 851. Instead
10 of following these statutory mandates, Defendants (1) are subjecting youth with disabilities to
11 unconscionable conditions of solitary confinement based on their disability-related behavior—
12 sometimes for weeks or months at a time—while watching them deteriorate mentally because of
13 their disabilities; (2) are denying youth with disabilities educational and rehabilitative services
14 when they are in solitary confinement; and (3) are failing to provide youth with disabilities the
15 required special education and related services even when they are not in solitary confinement,
16 all in violation of federal and state anti-discrimination laws.

17 2. At Contra Costa County Juvenile Hall (“Juvenile Hall”), young people with
18 disabilities become trapped in a cruel cycle of discrimination: Defendants fail to provide
19 disabled youth with critical special educational and related services to which they are entitled
20 under federal and state laws. Lacking such supports, the youth are punished for a variety of
21 infractions and are locked away in solitary confinement. In solitary confinement, they are denied
22 educational and rehabilitative services and, because of their disabilities, their mental health
23 worsens, they are not effectively deterred from future misconduct, and they fall further behind in
24 their education and rehabilitation. It is thus more likely that they will commit further infractions

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26 ¹ Plaintiffs are redacting plaintiffs’ names pursuant to Federal Rule of Civil Procedure 5.2(a) (“in
27 an electronic or paper filing with the court that contains . . . the name of an individual known to
28 be a minor, . . . a party or nonparty making the filing may include only: (3) the minor's
initials[.]”) Plaintiffs filed a motion to proceed under fictitious names and motion to seal for the
guardians ad litem for named plaintiffs. The Court granted the motion.

² *People v. Olivas*, 17 Cal. 3d 236, 254 (1976).

1 upon their release from solitary confinement and will once again be placed in solitary
2 confinement and subject to further exclusions from and denials of education and rehabilitation,
3 perpetuating the cycle of discrimination.

4 3. Specifically, due to their illegal and deficient systemic policies and practices,
5 Defendants fail to provide the legally-required special education and related services to youth
6 with disabilities such that they are denied a free appropriate public education, also known as
7 “FAPE,” while in Juvenile Hall. Defendants also deny youth with disabilities, because of their
8 disabilities, the opportunity to equally, effectively and meaningfully participate in and benefit
9 from the educational and rehabilitative services and programs offered by Defendants in Juvenile
10 Hall.

11 4. When youth with disabilities commit infractions in Juvenile Hall that result in
12 their being locked in solitary confinement, Defendants fail to inquire into whether the youth have
13 disabilities and fail to make the legally mandated determination or inquiry as to whether the
14 infractions were disability-related, disciplining them regardless.

15 5. Instead of addressing the youths’ disabilities and making reasonable
16 modifications and accommodations, Defendants classify them as “dangerous” and lock them in
17 solitary confinement, where they deny them educational and rehabilitative services.

18 6. As a result, youth with disabilities are frequently placed on “Program,” “Risk” or
19 “Max” – three levels of solitary confinement. On Program, youth are generally kept in their cells
20 for 22-1/2 hours a day, and on Risk and Max, youth are in their cells for 23 hours a day.

21 7. Youth in solitary confinement cannot attend school. While on “Risk” and “Max,”
22 youth are outright denied both general and special education entirely. Even while on “Program,”
23 Juvenile Hall policies illegally permit Defendants to withhold education as a punishment or for
24 no reason at all. If “educational services” are provided on Program, generally it is an aide that
25 visits only sporadically (not every day) and for approximately five to 30 minutes each time.

26 8. Youth with disabilities who are locked in solitary confinement are also excluded
27 from and denied participation in rehabilitative services—such as counseling, vocational training,
28

1 and mental health treatment—offered at the Juvenile Hall. They are not permitted to attend
2 classes such as anger management or group counseling sessions.

3 9. Denial of education and rehabilitation as a form of punishment disproportionately
4 burdens youth with disabilities who, because of their disabilities, require additional assistance to
5 access the general education curriculum and rehabilitative programs. Without such assistance,
6 youth with disabilities fall even further behind in education and rehabilitation than their non-
7 disabled peers.

8 10. Youth with disabilities are further disproportionately burdened because of their
9 disabilities when locked in solitary confinement. Solitary confinement severely exacerbates
10 previously existing mental conditions (including attention deficit disorder, personality and
11 cognitive disorders and other mental and emotional vulnerabilities). Moreover, solitary
12 confinement is not an effective deterrent for future misconduct. As such, with their conditions
13 worsened and no deterrent effect realized, youth with disabilities are more likely to be locked in
14 solitary confinement again and effectively further excluded from and denied Defendants'
15 educational and rehabilitative services at Juvenile Hall. That is, for youth with disabilities,
16 solitary confinement makes further solitary confinement more likely—such that youth with
17 disabilities are denied educational and rehabilitative services as a disciplinary measure more than
18 their non-disabled peers.

19 11. This cycle of discrimination could be stopped if Defendants provided the legally-
20 mandated special education and related services in the classroom, before youth with disabilities
21 even end up in solitary confinement, and if Defendants made reasonable modifications to their
22 policies, procedures, and practices such that youth with disabilities could receive the
23 accommodations—both in and out of the classroom—to which they are legally entitled.

24 12. Detained youth with disabilities are legally entitled under the Individuals with
25 Disabilities Education Act, 20 U.S.C. § 1400 *et. seq.* (“IDEA”), Title II of the Americans with
26 Disabilities Act, 42 U.S.C. § 12101 *et. seq.* (“ADA”), Section 504 of the Rehabilitation Act, 29
27 U.S.C. *et. seq.* (“Section 504”) and the California Education and Government Codes, Cal. Educ.
28

1 Code § 5600 *et. seq.* and Cal. Gov't Code § 11135 *et. seq.*, to receive a free appropriate public
2 education, which includes special education and related services.

3 13. Youth with disabilities are also legally entitled under Title II of the ADA, Section
4 504, and Government Code sections 11135 *et seq.* to equally, effectively and meaningfully
5 participate in and benefit from Defendants' educational and rehabilitative services and programs.
6 To satisfy this legal mandate, Defendants must make reasonable modifications to policies,
7 practices and procedures in order to meet the specific needs of youth with disabilities.

8 14. Despite these obligations, Defendants have abdicated their core responsibility of
9 providing education and rehabilitation—not punishment—to youth with disabilities who are
10 detained at Juvenile Hall. The violations of detained youth's rights and illegal deprivations of
11 educational and rehabilitative services at Juvenile Hall are rampant and widespread, yet
12 Defendants have allowed these violations to persist.

13 15. Plaintiffs seek declaratory and injunctive relief on behalf of themselves and a
14 class of similarly situated youth ("Plaintiff Class") in the form of an order finding Defendants
15 out of compliance with relevant laws and directing Defendants to comply with all relevant laws
16 by, *inter alia*, providing: (1) a free appropriate public education and meaningful access to
17 education for all students with disabilities and compliance with all special education laws that
18 protect such students; (2) educational and rehabilitative services to all youth with disabilities
19 who are subject to disciplinary measures for any amount of time; (3) compensatory education to
20 youth with disabilities who have served and are currently serving time in Juvenile Hall; (4)
21 reasonable modifications to policies, practices, and procedures to ensure that youth with
22 disabilities do not suffer discrimination because of their disability, including through placement
23 in solitary confinement; (5) an award of reasonable attorneys' fees and costs under applicable
24 law; and (6) any other relief the Court deems appropriate.

25 16. Plaintiffs have suffered and continue to suffer irreparable harm as a result of
26 Defendants' ongoing refusal to meet the needs of youth with disabilities in the Contra Costa
27 County Juvenile Hall, and will continue to suffer further irreparable harm unless and until the
28 Court grants declaratory and injunctive relief against Defendants to remedy the ongoing illegal

1 treatment of and discrimination against youth with disabilities at Juvenile Hall, and to ensure
2 that the rights of youth with disabilities are not violated.

3 **JURISDICTION**

4 17. This court has jurisdiction over Plaintiffs' federal claims that arise under the
5 IDEA, Title II of the ADA, and Section 504 of the Rehabilitation Act and the regulations
6 promulgated thereunder. The jurisdiction of this Court is invoked (1) pursuant to 28 U.S.C. §
7 1331, because Plaintiffs' and the Plaintiff Class' claims arise under 28 U.S.C. § 1343(a)(3), in
8 that those claims seek to redress deprivations, under color of state authority, of rights, privileges
9 and immunities secured by the United States Constitution and any Act of Congress providing for
10 equal rights of citizens or of all persons; and (2) under 28 U.S.C. § 1343(a)(4), because
11 Plaintiffs' and the Plaintiff Class' claims seek to secure equitable relief under an Act of Congress
12 providing for the protection of civil rights.

13 18. Through the same acts and omissions that form the basis for Plaintiffs' federal
14 claims, Defendants have also violated Plaintiffs' rights under state law, over which this Court has
15 supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

16 19. Pursuant to the Court's jurisdiction over this matter, Plaintiffs G.F., by and
17 through her guardian ad litem, Gail F.; W.B., by and through his guardian ad litem, CiCi C.; and
18 Q.G., by and through his guardian ad litem, Barbara C., bring this action on behalf of themselves
19 and on behalf of all other persons similarly situated.

20 20. This Court has jurisdiction over Plaintiffs' claims for declaratory and injunctive
21 relief pursuant to 28 U.S.C. § 2201 and Federal Rules of Civil Procedure 57(d) and 65. This
22 Court also has authority pursuant to 42 U.S.C. § 1415(i)(3) under IDEA, 42 U.S.C. § 12205
23 under the ADA, and 29 U.S.C. § 794a(b) under Section 504 to award Plaintiffs' reasonable
24 attorneys' fees and costs.

25 **VENUE**

26 21. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(b)
27 because Defendants are located in this District and all of the acts and/or omissions complained of
28 herein have occurred, are occurring, or will occur in the District.

1 **PARTIES**

2 ***Plaintiffs***

3 22. Plaintiff G.F. is a 15-year-old citizen of the United States and a resident of Contra
4 Costa County, California.

5 23. At the time of the filing of the original Complaint on August 8, 2013 (the
6 “original Complaint”), G.F. had been detained at Juvenile Hall in Martinez since the summer of
7 2012 (at which time she was 13). At the time of the filing of the original Complaint, she was a
8 part of the Girls in Motion Program, which is housed at Juvenile Hall. G.F. was released from
9 Juvenile Hall on October 16, 2013. G.F. returned to Juvenile Hall on December 13, 2013 and
10 remains at Juvenile Hall currently.

11 24. G.F. has been diagnosed with attention deficit and hyperactivity disorder, bipolar
12 affective disorder, and intermittent explosive disorder. These impairments substantially limit
13 one or more major life activities of G.F., making her an individual with a disability. At the time
14 of the filing of the original Complaint, she was a resident of Juvenile Hall and, as such, was
15 qualified to participate in the programs, services and activities of Juvenile Hall.

16 25. G.F.’s guardian filed a petition under seal with this Court to act as her guardian ad
17 litem, which the Court granted.

18 26. Plaintiff W.B. is an 18-year-old citizen of the United States and resident of Contra
19 Costa County, California.

20 27. At the time of the filing of the original Complaint, W.B. had been detained in
21 Juvenile Hall since May 2012. W.B. was declared incompetent by the Juvenile Court and was
22 detained in Juvenile Hall for competency training and possible placement. W.B. was released
23 from Juvenile Hall on August 9, 2013.

24 28. W.B. has been diagnosed with psychosis and schizophrenia. These impairments
25 substantially limit one or more major life activities of W.B., making him an individual with a
26 disability. At the time of the filing of the original Complaint, he was a resident of Juvenile Hall
27 and, as such, was qualified to participate in the programs, services and activities of Juvenile Hall.
28

1 29. W.B.'s parent filed a petition under seal with this Court to act as his guardian ad
2 litem, which the Court granted.

3 30. Plaintiff Q.G. is a 17-year-old citizen of the United States and resident of Contra
4 Costa County, California.

5 31. Q.G. has been detained in Juvenile Hall since November of 2010. He is currently
6 a part of the Youthful Offender Treatment Program, which is housed at Juvenile Hall.

7 32. Q.G. has been diagnosed with attention deficit and hyperactivity disorder and
8 oppositional defiance disorder. These impairments substantially limit one or more major life
9 activities of Q.G., making him an individual with a disability. He is a resident of Juvenile Hall
10 and, as such, is qualified to participate in the programs, services and activities of Juvenile Hall.

11 33. Q.G.'s parent filed a petition under seal with this Court to act as his guardian ad
12 litem, which this Court granted.

13 ***Defendant Contra Costa County***

14 34. Defendant Contra Costa County (the "County") is responsible for providing and
15 maintaining the juvenile facilities in Contra Costa County and for meeting minimum standards
16 promulgated by the California Board of Corrections for these facilities. 15 Cal. Code Regs. §
17 1310.

18 35. The County, through its Probation Department, is responsible for the care of
19 youth detained in the Juvenile Hall. California law provides that each county probation
20 department shall manage and control that county's juvenile hall. Cal. Welf. & Inst. Code § 852.
21 However, California law is clear: "the juvenile hall shall not be in, or connected with, any jail or
22 prison, and shall not be deemed to be, nor be treated as, a penal institution. It shall be a safe and
23 supportive homelike environment." Cal. Welf. & Inst. Code § 851.

24 36. The Chief Probation Officer is also legally required to work with Contra Costa
25 Office of Education to provide for the administration and operation of juvenile court schools. 15
26 Cal. Code Regs. § 1370(a). Together, the County Office of Education and the Probation
27 Department must "develop written policy and procedures to ensure communication and
28 coordination between educators and probation staff." *Id.*

1 37. Among other things, the Juvenile Hall school programs must provide a quality
2 educational program that includes instructional strategies designed to respond to the different
3 learning styles and abilities of students. 15 Cal. Code Regs. § 1370(b). This means that
4 “education instruction shall be provided to minors restricted to high security or other special
5 units” and that “state and federal laws shall be observed for individuals with special education
6 needs.” 15 Cal. Code Regs. § 1370(d). Moreover, “expulsion/suspension from school shall
7 follow the appropriate due process safeguards . . . including the rights of students with special
8 needs.” 15 Cal. Code Regs. § 1370(c)(3). Disciplinary actions taken at juvenile detention
9 facilities must not deprive a youth of education. 15 Cal. Code Regs. § 1390(j) (emphasis added).
10 Indeed, any disciplinary actions must follow clear due process procedures including right to a
11 hearing and to present evidence. 15 Cal. Code Regs. § 1391.

12 38. In short, the Probation Department and thus, the County, must ensure that youth
13 detained at the Juvenile Hall have access to legally adequate and appropriate educational services
14 during the youth’s term of commitment.

15 39. In addition, the County must ensure that detained youth have access to the
16 educational and rehabilitative services offered at Juvenile Hall and that, if necessary, youth with
17 disabilities receive reasonable modifications to policies, practices, and procedures to ensure that
18 they are not discriminated against based on their disabilities.

19 40. Furthermore, the Probation Department, and thus, the County, is also responsible
20 for ensuring that the Contra Costa County Office of Education does not discriminate against
21 youth. By allowing Contra Costa County Office of Education’s discrimination to continue
22 unchecked, the Probation Department both aids and perpetuates discrimination against youth
23 with disabilities at Juvenile Hall. For instance, the County allows the Office of Education to
24 defer all disciplinary matters to the Probation Department and to ignore all required procedural
25 safeguards in disciplining Plaintiffs and the Plaintiff Class.

26 41. Because it is “involved in any decisions regarding a pupil,” the Probation
27 Department, and thus, the County is “a responsible public agency” (Cal. Educ. Code § 56501(a))
28 and subject to the California Education Code. For instance, the Probation Department, and thus,

1 the County can change disabled students' educational placements by removing them from school
2 and placing them in solitary confinement. When the student is in solitary confinement, Juvenile
3 Hall policies provide that it is the Probation Department that decides whether or not to provide
4 FAPE to that student.

5 42. The Probation Department, and thus, the County, is a public agency, pursuant to
6 federal regulations and subject to IDEA, because it runs a correctional facility "involved in the
7 education of children with disabilities." 34 C.F.R. § 300.2(b). For example, Probation has the
8 authority to deny students with disabilities any access to education, to impact the continuum of
9 placements offered at the Contra Costa County Juvenile Hall, and to identify youth with
10 disabilities who require special education and related services.

11 43. The Probation Department, and thus, the County, is also a public agency, pursuant
12 to federal regulations and subject to IDEA, because it is an educational services agency with
13 "administrative control and direction" over Mt. McKinley School. 34 C.F.R. § 300.33. The
14 Probation Department has such control and direction, given that it establishes and enforces
15 system-wide policies that affect all students with disabilities at Mt. McKinley, in the ways
16 described above.

17 44. Further, the Probation Department, and thus, the County, is a public agency,
18 pursuant to federal regulations and subject to IDEA, because it is a "political subdivision[] of the
19 State that [is] responsible for providing education to children with disabilities." 34 C.F.R. §
20 300.33. Title 15 of the California Code of Regulations demonstrates that the Probation
21 Department is responsible for providing education to children with disabilities and also that the
22 Probation Department is bound by state regulation to do so as a public agency. *See* 20 U.S.C.
23 § 1412(a)(12)(C).

24 45. As a local government, the County, and its Probation Department, is a "public
25 entity" as defined by the ADA. 42 U.S.C § 12131(1)(B).

26 46. As a public entity receiving federal funds, the County, and its Probation
27 Department, is subject to Section 504 and may not discriminate against people with disabilities
28 in violation of Section 504.

Defendant Contra Costa County Office of Education

1
2 47. Contra Costa County Office of Education (the “Office of Education”) is one of
3 the State of California’s County Offices of Education. County Offices of Education are charged
4 with providing for the administration and operation of juvenile court schools. Cal. Educ. Code §
5 48645.2. The Office of Education operates the court school at Juvenile Hall, Mt. McKinley
6 School.

7 48. The Office of Education receives federal financial assistance under IDEA. It is
8 therefore responsible for providing all school-eligible persons with disabilities who reside in the
9 County with special education programs administered in compliance with federal and state laws
10 and regulations. 20 U.S.C. § 1413(a).

11 49. The Office of Education must ensure that youth detained at the Juvenile Hall
12 receive a free appropriate public education and have meaningful access to educational services.

13 50. The Office of Education is also responsible for ensuring that youth with
14 disabilities receive reasonable modifications to policies, practices, and procedures to ensure that
15 they are not discriminated against based on their disabilities.

16 51. In addition, the Office of Education is also responsible for the violations
17 committed by the County in that, by allowing the County’s discrimination to continue
18 unchecked, the Office of Education both aids and perpetuates discrimination against youth with
19 disabilities at Juvenile Hall. For instance, the Office of Education allows the County to prohibit
20 FAPE while Plaintiffs and members of the Plaintiff Class are in solitary confinement.

21 52. Because it is “involved in any decisions regarding a pupil,” the Office of
22 Education is “a responsible public agency” (Cal. Educ. Code § 56501(a)) and subject to the
23 California Education Code. For instance, the Office of Education is involved in the decisions
24 that affect the development and revision of IEPs for individual students.

25 53. Moreover, the Office of Education is a public agency pursuant to federal
26 regulations and subject to IDEA because it is a “political subdivision[] of the State that [is]
27 responsible for providing education to children with disabilities.” 34 C.F.R. § 300.33.
28

1 54. The Office of Education is also a public agency pursuant to federal regulations
2 and subject to IDEA because it is a local education agency (“LEA”), which is defined as a
3 “public authority legally constituted within a State for either administrative control or direction
4 of, or to perform a service function for, public elementary schools or secondary schools in a city,
5 county, township, school district, or other political subdivision of a State.” 20 U.S.C. §
6 1401(19); 34 C.F.R. § 300.328(a). The California Education Code charges the Office of
7 Education with providing for the administration and operation of juvenile court schools, making
8 it an LEA and giving it responsibility for providing education to children with disabilities. Cal.
9 Educ. Code § 48645.2.

10 55. As a department or agency of a local government, the Office of Education is a
11 “public entity” as defined by the ADA. 42 U.S.C § 12131(1)(B).

12 56. As a public entity receiving federal funds, the Office of Education is subject to
13 Section 504 and may not violate Section 504 by discriminating against people with disabilities.

14 CLASS ALLEGATIONS

15 57. Plaintiffs bring this action on behalf of themselves and all other persons similarly
16 situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2).

17 58. The class consists of all youth with disabilities, as defined by the Americans with
18 Disabilities Act and Section 504 of the Rehabilitation Act, who are currently detained or who
19 will be detained at the Contra Costa County Juvenile Hall.

20 59. The compensatory education class consists of all youth who are or were detained
21 at the Contra Costa County Juvenile Hall and are or were eligible for special education since
22 August 8, 2011—two years prior to the filing of the original Complaint in this action.

23 60. Class action status for this litigation is proper because:

- 24 (a) The class of students is so numerous that joinder of all members is
25 impractical. Plaintiffs maintain that the class of persons consists of hundreds
26 if not thousands of youth. For instance, from January 2013 to April 2013,
27 approximately 32.7% of the student population at Mt. McKinley School had a
28 disability that required an IEP or a 504 plan. Given that approximately 1,300

1 students pass through Mt. McKinley each year, in a single year, approximately
2 425 students who have a disability that requires either an IEP or 504 Plan pass
3 through Mt. McKinley. Moreover, the juvenile population within Juvenile
4 Hall changes constantly, and not all class members can be specifically
5 identified. In addition, many detained youth who have a disability are not
6 identified as such because of Defendants' failure to fulfill their obligations
7 under federal and state laws to locate, identify, and assess youth suspected of
8 having a disability.

9 (b) There are questions of law and fact common to the class.

10 (c) The claims of Plaintiffs are typical of the claims of the class. Plaintiffs are
11 being and were denied their legal entitlement to a free appropriate public
12 education and meaningful access to educational services and were denied their
13 right to be free from discrimination because of their disabilities and to receive
14 reasonable modifications to Defendants' policies and practices to
15 accommodate their disabilities.

16 (d) Plaintiffs will fairly and adequately protect the interests of the class as there is
17 no conflict between Plaintiffs and the other class members and Plaintiffs have
18 retained counsel experienced in class action litigation relating to education,
19 special education, and the civil rights of persons with disabilities.

20 (e) Defendants have acted and/or refused to act on grounds generally applicable
21 to the class, thereby making appropriate final declaratory and injunctive relief
22 with respect to the class as a whole.

23 **FACTUAL ALLEGATIONS**

24 ***Contra Costa County Juvenile Hall***

25 61. Defendant Contra Costa County, through its Probation Department, operates the
26 Contra Costa County Juvenile Hall in Martinez, California. Juvenile Hall is a 290-bed,
27 maximum-security detention facility, for youth up to age 18.
28

1 62. Juvenile Hall is generally not the final sentencing disposition for youth, except for
2 those young people in the Youthful Offender Treatment Program and for the Girls in Motion
3 Program. Generally, Juvenile Hall provides temporary detention for pre-adjudicated youth
4 awaiting hearings or sentencing, and adjudicated youth who are sentenced to a treatment or
5 rehabilitation program that has a waiting list. No treatment or rehabilitative programs are offered
6 at the Juvenile Hall for those awaiting hearings, sentencing, or placement.

7 63. In addition, those youth found to be incompetent under the law also remain at
8 Juvenile Hall and are supposed to receive competency training until they either become
9 competent or are released. Such detentions can last for years.

10 64. The Youthful Offender Treatment Program (“YOTP”) is a 30-bed boys’ program
11 located inside Juvenile Hall. YOTP is designed for youth generally between 16 and 19 years of
12 age. There are four phases to YOTP plus an orientation, and the length of the placement in
13 YOTP is determined by the successful completion of each phase. On average, YOTP can be
14 completed in approximately fourteen months.

15 65. Juvenile Hall has one girls’ housing unit. Within that unit, in 2010, Juvenile Hall
16 staff developed the Girls in Motion Program. The Court has the option of ordering female
17 offenders into Girls in Motion. There are four phases to Girls in Motion, and the length of
18 placement in Girls in Motion is determined by the successful completion of each phase. On
19 average, Girls in Motion can be completed in approximately four months.

20 ***Solitary Confinement Policies and Practices in Juvenile Hall***

21 66. Cells in Contra Costa County Juvenile Hall are prison-like. They are extremely
22 small without even enough room to exercise. There is a toilet, sink, and bed. The bed is a
23 cement block with a pad on it. The cell does not have bars but rather a solid door with a small
24 window in it. The window is about as wide as a hand and long as an arm.

25 67. Youth who look out their window while in their cell are subject to discipline by
26 the probation staff.

27 68. Much like the cells, the solitary confinement policies of Contra Costa County
28 Juvenile Hall are like those of an adult detention facility.

1 69. There are various levels of solitary confinement known as “Security Programs.”
2 According to the Probation Department, these are used as “a disciplinary measure for those
3 residents who have violated Major Rules, demonstrate a pattern of repetitious Minor Rule
4 violations, or who present an immediate physical threat to another person.”

5 70. There are three basic levels of solitary confinement: maximum security, security
6 risk and special program.

7 71. Maximum security or “Max” is the most restrictive program at Juvenile Hall. On
8 Max, a youth is confined to his/her cell, and is prohibited from participating in any unit activity
9 with the group. Youth on Max are allowed out of their cell for only one hour per 24-hour period,
10 i.e., 30 minutes on the morning shift and 30 minutes on the afternoon/evening shift. During
11 these times, they cannot leave their unit.

12 72. When a youth is on Max, visits with the Juvenile Hall chaplain, mental health
13 therapists, or Probation Officers are permitted only with supervisory approval. Such visits are
14 conducted in the youth’s cell or in the unit’s interview room. If the visit takes place in the
15 youth’s cell, the door to the cell must remain open with three probation counselors present on the
16 unit.

17 73. Whenever the cell door is opened for a youth on Max, or when the youth is out of
18 his or her cell, a minimum of three Probation Counselors must be on the housing unit.

19 74. Juvenile Hall’s policy lacks any mention of the provision of educational services
20 for young people on Max and, indeed, youth are prohibited from attending school and are
21 outright denied general education or special education services while on Max.

22 75. Youth on Max are also not permitted to participate in Juvenile Hall’s
23 rehabilitative programs such as anger management classes or group counseling sessions.

24 76. “Security risk” or “Risk” is only slightly less restrictive than Max. Youth on Risk
25 are confined to their cells and are prohibited from participating in any unit activity with the
26 group. Young people on Risk are allowed out of their cell for one hour during a 24-hour period,
27 30 minutes on the morning shift and 30 minutes on the afternoon/evening shift.
28

1 77. The visitation policy for the Juvenile Hall chaplain, mental health therapists, or
2 Probation Officers when on Risk is the same as when on Max except that only two probation
3 counselors are needed.

4 78. When a youth is on Risk, a minimum of two Probation Counselors must be on the
5 housing unit whenever the youth’s cell door is opened, or when he or she is out of the cell.

6 79. Juvenile Hall’s policy lacks any mention of the provision of educational services
7 for young people on Risk and, indeed, youth are prohibited from attending school and are
8 outright denied general education or special education services while on Risk.

9 80. Youth on Risk are also not permitted to participate in Juvenile Hall’s
10 rehabilitative programs such as anger management classes or group counseling sessions.

11 81. Special Program or “Program” is generally assigned as a reduction from Risk
12 status but is also “used when a resident is habitually violating minor rule infractions.” On
13 Program, the supervisor can determine “the amount of exercise time the resident will be allotted,
14 number of meal trays, . . . contact with the group, and other limitations.” Generally, while on
15 Program, youth are allowed out of their cells for 45 minutes in the morning shift and 45 minutes
16 in the afternoon/evening shift during a 24-hour period.

17 82. Furthermore, the Probation Department’s written policy gives supervisors the
18 authority to impose “restrictions on school attendance” when the youth is on Program.

19 83. While students are on Program, a “tutor” may visit youth for anywhere from five
20 to 30 minutes to provide school work on some days, but only if the Probation Department
21 authorizes it. Tutors rarely provide actual instruction; rather, they bring worksheets for the youth
22 to complete.

23 84. While youth are on Program, they are also not permitted to participate in Juvenile
24 Hall’s rehabilitative programs, such as anger management classes or group counseling sessions.

25 85. There are other security restrictions that subject youth to more time in their cells
26 than usual such as “Security Suspect,” or “Suspect.” Youth may be placed on Suspect when it is
27 believed that they could be a serious threat to the community, or when they exhibit bizarre or
28 suspicious behaviors which would lead one to believe that they may be a danger to themselves or

1 others. On Suspect, a youth is not allowed to attend any off-unit activity in the assessment
2 center, overflow classroom, or other location where the youth may come into contact with youth
3 from other housing units. Whenever the unit is engaged in one of these off-unit activities in
4 which the youth on Suspect is prohibited from participating, the youth may be confined to his/her
5 cell.

6 86. There is also a disciplinary measure that is employed by the Office of Education
7 teachers, known euphemistically as “room time,” which results in youth spending more time in
8 their cell that would otherwise be required. If a teacher believes that a student has not completed
9 sufficient work while in the classroom or has committed some other infraction, the teacher may
10 request that the student be placed on “room time” and confined to their cell. At the teacher’s
11 discretion, this “room time” discipline may occur during school hours, in which case the student
12 is sent to his/her cell instead of attending school. It may also occur when a student might
13 normally be allowed out of his/her cell (e.g., after dinner). Regardless of when this
14 punishment occurs, the student is not given any school work to complete and is confined to his or
15 her cell.

16 87. With the exception of “room time,” the Office of Education chooses to defer all
17 discipline for misconduct during school hours to the Probation Department. This means that
18 teachers call the Probation Department when a student engages in misconduct in the classroom,
19 and then leave the decision as to the appropriate disciplinary measures for that student to the
20 Probation Department. Thus, the Office of Education chooses to abdicate all its responsibility
21 for procedural safeguards required for school discipline—including but not limited to
22 manifestation determinations and due process for suspensions—and its discretion to determine a
23 fitting punishment. The Office of Education is fully aware that the punishment that Probation
24 imposes may be solitary confinement without special education and related services. By
25 knowingly allowing Probation to impose such punishment, the Office of Education aids and
26 perpetuates the Probation Department in carrying out that punishment.

27 88. Youth are never given any guidance, written or verbal, as to what infractions will
28 result in their being locked in solitary confinement or put on “room time.” Indeed, under the

1 County’s practice, placement in solitary confinement is highly subjective. Youth can be locked
2 in solitary confinement for anything, including behavior caused by their disabilities.

3 89. When a youth is locked in solitary confinement, there should be an “incident
4 report.” However, the youth do not get to see it. Rather, they are given a “due process” form
5 which says that they are being put on Program, Risk or Max, but does not explain why. The
6 youth is given no choice but to sign it.

7 90. While there is a place on the due process form to write down the youth’s side of
8 the story and a staff member is supposed to meet with the youth to discuss, this rarely occurs,
9 and the process never results in any outcome other than solitary confinement. Moreover, the due
10 process form is not always provided to the youth and, thus, they do not have an opportunity to
11 tell their side of the story.

12 ***The Illegality of Juvenile Hall’s Solitary Confinement Policies and Practices***

13 91. Juvenile Hall’s solitary confinement policies and practices violate education laws
14 and anti-discrimination laws in numerous ways.

15 92. Pursuant to IDEA, Title II of the ADA, Section 504, California Education Code
16 sections 56000 *et seq.* and California Government Code sections 11135 *et seq.*, all students with
17 disabilities are entitled to receive a free appropriate public education (“FAPE”) tailored to meet
18 their individual needs. 20 U.S.C. § 1400(d)(1)(A); 34 C.F.R. § 300.101; Cal. Educ. Code §
19 56040(a); 45 C.F.R. § 84.33. There is no exception to the requirement that a FAPE be provided,
20 even when students are removed from school for disciplinary reasons.

21 93. Federal and state laws require that if behavior leads to removal from school for
22 more than 10 days, or if the child is removed for less than 10 days but the removal is based on
23 behavior that constitutes a pattern, a child must “continue to receive educational services...so as
24 to enable the child to continue to participate in the general education curriculum, although in
25 another setting, and to progress toward meeting the goals set out in the child’s IEP.” 34 C.F.R. §
26 300.530(d)(1)(i).

27 94. However, Defendants fail to ensure educational services when students with
28 disabilities are locked in solitary confinement.

1 95. On Max and Risk, youth with disabilities, pursuant to Juvenile Hall policies and
2 practices, receive no educational services at all, regardless if they are removed from school for
3 more than 10 days or are removed based on behavior that constitutes a pattern.

4 96. On Program, youth with disabilities, pursuant to Juvenile Hall policies and
5 practices, may receive tutoring only if the Probation Department permits it.

6 97. Tutoring provided to youths on Program lasts 5 to 30 minutes per day and consists
7 mostly of worksheets. Such tutoring is not sufficient to enable the youth to continue to
8 participate in the general education curriculum and to progress toward meeting the goals set out
9 in the youth's IEP.

10 98. In addition, if behavior leads to removal from school for more than 10 days or to
11 removal for less than 10 days based on behavior that constitutes a pattern, an immediate IEP
12 meeting is required. During this meeting (also known as a "manifestation determination"), the
13 IEP team must determine if the behavior is a manifestation of the student's disability. 34 C.F.R.
14 § 300.530(e); 34 C.F.R. § 300.536(a)(2); 20 USC § 1415(k); Cal. Educ. Code § 48915.5.

15 99. Defendants fail to conduct manifestation determinations when behavior leads to
16 removal from school and placement in solitary confinement for more than 10 days or for
17 behavior that constitutes a pattern. Indeed, Defendants held no manifestation determinations at
18 Mt. McKinley School from July 2012 to June 2013.

19 100. Because they fail to hold manifestation determinations, Defendants never inquire
20 into whether the behavior that leads to these students' removal from school is disability-related.
21 As a result, students whose behavior was disability-related and who should be allowed to return
22 to school are denied that opportunity.

23 101. Instead, regardless of whether the behavior is disability-related, students are
24 locked in solitary confinement and, pursuant to Defendants' policies, can be denied all education.

25 102. If the behavior was a manifestation of disability, there must be (1) a functional
26 behavior/analysis assessment and a behavioral intervention plan; or (2) if there is an existing
27 behavioral intervention plan, it must be reviewed and modified; and (3) the student must be
28 returned to the placement from which he or she was removed, unless it involved weapons, drug

1 possession, or serious bodily injury (at which time the student is required to be placed in an
2 interim alternative educational setting for not more than 45 school days). 20 USC § 1415(k); 34
3 C.F.R. § 300.530(f)&(g).

4 103. Defendants fail to develop behavioral intervention plans as they are required to do
5 for students engaging in behavior that impedes learning. In particular, from July 2012 to June
6 2013, Defendants developed no Behavior Intervention Plans at Mt. McKinley School.

7 104. Positive behavioral interventions and supports to counter behavior that impedes
8 learning must also be considered, separate from the manifestation determination and the
9 requirements it triggers, when behavior impedes learning. 20 U.S.C. § 1401(c)(5)(F).

10 105. Juvenile Hall has no such policies in place pertaining to the implementation of
11 positive behavioral interventions and supports. Rather, Defendants rely on disciplinary measures
12 such as solitary confinement to counter behavior that impedes learning.

13 106. If, on the other hand, the behavior was not a manifestation of disability, the
14 student is subject to the regular disciplinary process but is entitled to receive FAPE and services
15 no later than the 11th cumulative day of removal. 20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. §
16 300.530(c); Cal. Educ. Code § 48915.5.

17 107. Defendants fail to provide FAPE to students in solitary confinement.

18 108. On Max and Risk, Defendants provide no educational services to students.

19 109. On Program, the tutoring provided does not meet the standards for FAPE.

20 110. Juvenile Hall's solitary confinement policies and practices also independently
21 violate Title II of the ADA, Section 504, and California Government Code sections 11135 *et seq.*

22 111. Defendants permit youth with disabilities to be locked in solitary confinement for
23 misconduct that is a direct result of their disability.

24 112. Defendants also lock away youth with disabilities in solitary confinement for
25 days, weeks, or even months and, in so doing, deny educational and rehabilitative services to
26 youth with disabilities. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a); 29 U.S.C. § 794(a); 28 C.F.R.
27 § 39.130(a); Cal. Gov't Code § 11135(a).

1 113. Specifically, solitary confinement for youth with disabilities only worsens these
2 youths' disabilities and does not to provide an effective deterrent because of their disabilities. As
3 a result, youth with disabilities often end up in solitary confinement more frequently because of
4 their disabilities, resulting in far greater exclusions and denials of educational and rehabilitative
5 services than their non-disabled peers.

6 114. When Plaintiffs and members of the Plaintiff Class are locked in solitary
7 confinement, Defendants' policies and practices deny them equal opportunity to benefit from
8 Defendants' educational and rehabilitative programs, services, and activities and/or provide
9 Plaintiffs and members of the Plaintiff Class with a benefit that is not as effective in affording
10 equal opportunity. 28 C.F.R. § 35.130(b)(ii)-(iii). This denial leaves youth with disabilities,
11 because of their disabilities, further behind in their education and rehabilitation than their non-
12 disabled peers.

13 115. Specifically, Defendants' solitary confinement policies and practices use
14 deprivation of education and rehabilitation as a form of punishment. This deprivation mean that
15 youth with disabilities who, because of their disabilities, require additional assistance to access
16 the general education curriculum and rehabilitative programs, fall even further behind in
17 education and rehabilitation than their non-disabled peers.

18 116. Furthermore, Defendants fail to provide reasonable modifications to policies,
19 procedures and practices in Juvenile Hall as they are legally required to do. 28 C.F.R. §
20 35.130(b)(7).

21 117. For example, Defendants fail to identify and track all youth with disabilities and
22 the accommodations they require.

23 118. For instance, Defendants also fail to inquire into whether misconduct is caused by
24 disability before disciplining youth with disabilities.

25 119. For example, Defendants fail to modify school disciplinary policies and practices
26 to ensure that school officials are responsible for disciplinary decisions such that procedural
27 safeguards for youth with disabilities are met and a fitting punishment implemented.
28

1 128. To ensure the provision of FAPE, a local education agency (“LEA”) has what are
2 called “Child Find” obligations, which means it must have procedures to identify, locate and
3 evaluate “[a]ll children with disabilities...who are in need of special education and related
4 services[.]” 20 U.S.C. § 1412(a)(1)(A); Cal. Educ. Code § 56301(a); *see also* 45 C.F.R. §
5 84.32(a). When a LEA identifies a student suspected of having a disability, an initial assessment
6 must be conducted by qualified persons in all areas of suspected disability. Cal. Educ. Code §
7 56320.

8 129. The initial assessment determines whether a student is eligible for special
9 education and related services. Eligibility is based on having been diagnosed with one of the
10 following conditions: “mental retardation, hearing impairments (including deafness), speech or
11 language impairments, visual impairments (including blindness), serious emotional disturbance .
12 . . . , orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific
13 learning disabilities” which, by reason thereof, requires special education and related services. 20
14 U.S.C. § 1401(3).

15 130. Students receive an individualized education program, or IEP, if they are
16 considered “eligible.” An IEP is a document developed by an IEP team which includes the
17 parents, a general education teacher, a special education teacher, a representative from the LEA
18 and someone to interpret the results of the assessment. 20 U.S.C. § 1414(d)(1)(B); Cal. Educ.
19 Code § 56341(c). This team must meet at least once annually, and a new assessment of the
20 student must be conducted every three years. 20 U.S.C § 1414(d)(4)(A)(i); 20 U.S.C.§
21 1414(a)(2)(B)(ii); Cal. Educ. Code § 56043(j), (k).

22 131. Providing FAPE also requires providing “related services” that a child with a
23 disability may need in order to benefit from his or her education. The term “related services”
24 means “transportation, and such developmental, corrective, and other supportive services
25 (including speech-language pathology and audiology services, interpreting services,
26 psychological services, physical and occupational therapy, recreation, including therapeutic
27 recreation, social work services, school nurse services designed to enable a child with a disability
28 to receive a free appropriate public education as described in the individualized education

1 program of the child, counseling services, including rehabilitation counseling, orientation and
2 mobility services, and medical services, except that such medical services shall be for diagnostic
3 and evaluation purposes only)[.]” 20 U.S.C. § 1401(26)(A).

4 132. Once a student is deemed eligible for special education under the IDEA,
5 Defendants are charged with assembling an IEP team to determine what combination of
6 instruction, services, and placement is needed to meet that child’s unique needs.

7 133. Each public agency must ensure that a continuum of alternative placements is
8 available to meet the needs of children with disabilities for special education and related
9 services. The continuum must include options ranging from instruction in regular classes,
10 special classes, special schools, home instruction, and instruction in hospitals and institutions. 34
11 C.F.R. § 300.115; Cal. Educ. Code § 56360.

12 134. Individualized Education Programs (IEPs) are supposed to be, as the name
13 suggests, specifically tailored to meet the unique needs of each disabled student. 20 U.S.C. §
14 1414(d)(1)(A). IEPs must be “designed to meet individual educational needs of handicapped
15 persons as adequately as the needs of non-handicapped persons are met.” 34 C.F.R. § 104.33(b).

16 135. Once an IEP has been developed, it must be implemented fully. 20 U.S.C. §
17 1414(d)(2)(A); Cal. Educ. Code § 56345(c).

18 136. In addition, when students with IEPs enter a new school district, they must be
19 provided with “comparable” services to their previous IEPs for the next 30 days, at which point,
20 the new school district must either adopt the prior IEP or develop, adopt, and implement a new
21 IEP. 20 U.S.C. § 1414(d)(2)(c); 34 C.F.R. § 300.323(e); Cal. Educ. Code § 56043(m)(1).

22 137. Defendants must meet all of the above special education requirements for students
23 with disabilities, even when students are locked in solitary confinement. *See* 15 Cal. Code Regs.
24 § 1370(d).

25 138. In addition, Title II of the ADA, Section 504, and Government Code sections
26 11135 *et seq.*, require more than the FAPE requirements discussed above. These laws require
27 “meaningful access” to education. The relevant regulations interpreting Title II are used in
28 considering Title II’s “meaningful access” requirement.

1 139. Under these regulations, a public entity may not “[a]fford a qualified individual
2 with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is
3 not equal to that afforded others. . .” (28 C.F.R. § 35.130(b)(ii)) and may not “[p]rovide a
4 qualified individual with a disability with an aid, benefit, or service that is not as effective in
5 affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the
6 same level of achievement as that provided to others. . .” 28 C.F.R. § 35.130(b)(iii)

7 ***The Illegality of Juvenile Hall’s Educational Policies and Practices.***

8 140. According to Defendant Office of Education, from July 2011 to June 2012,
9 approximately 23% of the student population at Mt. McKinley had a disability that required
10 either an IEP or 504 Plan. From January 2013 to April 2013, approximately 32.7% of the
11 student population at Mt. McKinley School had a disability that required either an IEP or 504
12 Plan.

13 141. Mt. McKinley’s disabled student population figures are actually quite low, given
14 that estimates of the percentage of youth in juvenile detention facilities who require either an IEP
15 or 504 Plan can be as high as 70%.

16 142. Mt. McKinley’s figures are low because Defendants fail to identify students with
17 disabilities who enter Mt. McKinley School but may not yet have been identified as having a
18 disability, as is required by federal and state law.

19 143. Defendants have no actual policies specific to Juvenile Hall to identify students
20 who may have a disability (i.e. “Child Find” policies). Rather Defendants’ policy is to offer
21 special education only to those students *already identified* as having a disability.

22 144. When a student is identified for the first time as having a possible disability, the
23 school must conduct an assessment. However, from September 2012 to April 2013, Defendants
24 conducted only one initial IEP assessment. This again indicates that Defendants fail to identify
25 students as having disabilities where those students have not been identified as having
26 disabilities before coming to Juvenile Hall.

27 145. Defendants also fail to provide the continuum of placements at Juvenile Hall.
28

1 146. There is only one placement option for students with disabilities in Juvenile Hall:
2 the general education classroom setting (i.e., the regular classroom).

3 147. There is no special day class that would provide full-time (or even part-time)
4 special education instruction.

5 148. Defendants have an across-the-board policy to justify their practice, which
6 provides that special day classes and resource specialist programs are to be considered “services”
7 and not “placements.” Under this policy, Defendants replace special day classes and resource
8 specialist programs—where 100% of the time (roughly 240 minutes per day) is spent receiving
9 instruction from a special education teacher in a class with other disabled peers—with
10 “specialized academic instruction” for 45 to 90 minutes in the general education classroom
11 setting. Specialized academic instruction, however, is a delivery method for special education
12 and not a program—such as a special day class or resource specialist—so, it cannot replace such
13 programs.

14 149. Consistent with the failure to provide a continuum of placements, Defendants
15 have a practice of never providing non-public school or residential treatment center placements
16 as required by 34 C.F.R. § 300.115(b)(1), regardless of need or court order.

17 150. While IEPs are required to be individualized, Defendants have an established
18 policy of simply disregarding those requirements. Because there is no continuum of placements,
19 the IEPs in Juvenile Hall are strikingly similar regardless of the students’ varying disabilities,
20 needs, and previous IEPs.

21 151. These “cookie-cutter” IEPs are not individualized to meet an individual student’s
22 unique needs.

23 152. All IEPs place students in a general education setting, and most offer the same
24 instructional services—namely, 45 to 90 minutes of “specialized academic instruction” three to
25 five times a week.

26 153. The specialized academic instruction provided by Defendants is not designed to
27 meet the unique needs of the students. Students with disabilities who come from special day
28 classes or non-public schools that provide full-time special education instruction and related

1 services usually have been receiving approximately 300 minutes of specialized academic
2 instruction in those settings. However, when they arrive at Juvenile Hall, Defendants offer
3 anywhere between 45 to 90 minutes per day of such instruction.

4 154. Once Defendants have assigned a disabled student the standard “cookie-cutter”
5 IEP, Defendants then compound the violation by failing to provide even the “specialized
6 academic instruction” required by the “cookie-cutter” IEP.

7 155. Defendants are not providing specialized academic instruction to the Plaintiffs
8 and other disabled students at Mt. McKinley for the required amount of time called for in those
9 students’ IEPs.

10 156. Staff members at Mt. McKinley often are not in the classroom for sufficient time
11 to provide individualized instruction to each child with a disability and routinely do not assist
12 disabled students. At most, the staff will assist with a specific question or issue a student with a
13 disability may have.

14 157. Defendants have no records to establish that they are complying with their legal
15 obligations. Defendants do not track whether the required minutes are provided to each student
16 who is entitled to specialized academic instruction.

17 158. Defendants’ logs do not record who provided the specialized academic
18 instruction.

19 159. Most of the staff members providing specialized academic instruction are aides
20 and not qualified special education teachers. Aides cannot provide specialized academic
21 instruction unless they are “paraprofessionals.” To be a paraprofessional, an individual must
22 have a high school diploma and two years of college or must have an A.A. degree or pass an
23 assessment of knowledge and skills in assisting in instruction.

24 160. Even if these aides are “paraprofessionals,” there are legal requirements for
25 allowing paraprofessionals to provide such instruction. If a paraprofessional provides such
26 instruction, he or she must be under *direct* supervision of a special education teacher. 20 U.S.C.
27 § 6319(g)(3)(a). Moreover, a paraprofessional may only provide one-on-one tutoring if the
28 tutoring is scheduled at a time when a student would not otherwise receive instruction from a

1 qualified teacher. 20 U.S.C. § 6319(g)(2)(a).

2 161. At Mt. McKinley, aides usually are in the classrooms alone, without special
3 education teachers to directly supervise them.

4 162. Mt. McKinley uses a “push-in model,” meaning specialized academic instruction
5 is provided in the general education classroom (not in a separate class). As such, only special
6 education teachers would be allowed to provide instruction simultaneously when a general
7 education teacher is teaching the entire class. However, Mt. McKinley admits that special
8 education teachers do not always provide the specialized academic instruction required by the
9 cookie-cutter IEPs.

10 163. As discussed above, Defendants also fail to provide the required specialized
11 academic instruction when students with disabilities are in solitary confinement.

12 164. Defendants deny students with disabilities on Risk and Max any education, let
13 alone specialized academic instruction.

14 165. Any “tutoring” that Defendants provide and allow for students with disabilities on
15 Program does not constitute specialized academic instruction, as it is not consistent with the
16 students’ IEP goals and does not allow disabled students to continue to participate in the general
17 education curriculum.

18 166. The IEPs in Juvenile Hall also do not consider disability-related behaviors that
19 may impact education.

20 167. Mental health services are rarely included in a student’s IEP, even though mental
21 health services are considered a related service to which students may be entitled if it would
22 assist in their education.

23 168. Even when mental health counseling is provided in an IEP, it is usually for an
24 amount of time which is insufficient for the serious nature of the psychological and/or
25 psychiatric disabilities that some youth have (e.g., bipolar disorder, schizophrenia).

26 169. Defendants do not rely on positive behavioral interventions and supports to
27 counter behavior that impedes learning.

1 170. Defendants also fail to provide comparable services before the cookie-cutter IEP
2 is developed and implemented. Because of the lack of placements at Juvenile Hall, students
3 coming from a non-general education setting cannot possibly receive comparable services,
4 because putting such a student in a general education setting after he or she was previously
5 placed in a non-public school with full-time special education instruction is not “comparable.”

6 171. Under Title II of the ADA, Section 504, and Government Code Section 11135—
7 and independent from IDEA and California Education Code sections 56000 *et seq.*—Defendants
8 fail to provide “meaningful access” to education.

9 172. Defendants fail to provide youth with disabilities the special education and related
10 services they require, because of their disabilities, to equally access education in Juvenile Hall.
11 28 C.F.R. § 35.130(b)(ii).

12 173. For instance, Defendants not only fail to meet the minimum FAPE standards
13 which require the provision of FAPE on the 11th day of a student’s removal from school for
14 behavioral reasons, but also fail to meet the meaningful access standards which require the
15 provision of equal access to education in Juvenile Hall at all times.

16 174. Defendants fail to provide disabled youth with the educational services that they
17 require, because of their disabilities, that are as effective in affording youth with disabilities
18 equal opportunity to obtain the same result, to gain the same benefit, and to reach the same level
19 of achievement as their non-disabled peers. 28 C.F.R. § 35.130(b)(iii).

20 175. For instance, Defendants not only fail to meet the FAPE standards—which
21 require the provision of educational services consistent with a student’s IEP when the student is
22 in solitary confinement—but also fail to meet the meaningful access standards—which require
23 educational services that will provide equal opportunity to education for youth with disabilities
24 in solitary confinement.

25 ***General Education for Youth Detained at Juvenile Hall***

26 176. The California Legislature has set forth basic minimum requirements for
27 education for all students, regardless of disability or circumstances. These requirements include:
28 240 minutes of instruction minimum for each school day (Cal. Educ. Code § 48645.3); 400

1 minutes of physical education each 10 school days for an average of 40 minutes of physical
2 education per day (Cal Educ. Code §§ 51220(d) and 51222); and provision of state-approved
3 textbooks and instructional materials so that each student has a textbook or instructional material
4 to use in class and to take home (Cal. Educ. Code § 35186(f)(1)). Moreover, any removal from
5 school (e.g., suspension or expulsion) requires due process including providing notice to parents,
6 ensuring the student is informed of the reason for the disciplinary action and the evidence against
7 him or her, and providing the opportunity for the student to present his or her version and
8 evidence in his or her defense. Cal. Educ. Code § 48911(b), (d).

9 177. Defendants must meet these basic minimum requirements for education for all
10 students, regardless of disability, even when students are in Juvenile Hall or locked in solitary
11 confinement. 15 Cal. Code Regs. § 1370(d).

12 178. Nonetheless, Defendants fail to meet these basic minimum requirements for
13 education.

14 179. Youth in Juvenile Hall do not get physical education every day. Physical
15 education is treated as a privilege that can be taken away as punishment.

16 180. Youth in Juvenile Hall cannot take textbooks or instructional materials to their
17 cells.

18 181. Use of the library, computer lab, and courtyard are privileges which can be taken
19 away by Defendants for no explicitly defined reason.

20 182. When youth are in solitary confinement, Defendants do not provide the legally
21 required 240 minutes of instruction.

22 183. In solitary confinement, a student may not attend school and does not receive
23 tutoring, homework, or school work, unless the Probation Department permits it when a student
24 is on “Program.”

25 184. Similarly, in solitary confinement, youth receive no physical education. Rather,
26 youth are restricted to 30 to 45 minutes outside their small cells twice a day.

27 185. Instructional materials, including textbooks, are denied to youth in solitary
28 confinement.

1 186. The computer lab, library and gym are “off unit,” so students on Suspect,
2 Program, Risk or Max cannot access these facilities.

3 187. Administrators at the Office of Education admit that they have “difficulty
4 providing appropriate educational access to students on special program.”

5 188. Defendants remove students from school and instruction without any due process
6 procedures, which are in addition to the special education requirements for a manifestation
7 determination. For instance, Juvenile Hall does not contact the parents or guardians of students
8 who are removed from class.

9 **PLAINTIFFS’ INDIVIDUAL ALLEGATIONS**

10 **G.F.**

11 189. Plaintiff G.F. is 15 years old and first arrived in Juvenile Hall in 2012 when she
12 was just 13. At the time of the filing of the original Complaint, she had been in Juvenile Hall for
13 over a year. At that time, she was in the Girls in Motion program that requires making progress
14 through four “motions” before being released.

15 190. G.F. returned to Juvenile Hall on December 13, 2013 and remains in Juvenile Hall
16 currently. She is subject to the Defendants’ same policies and practices that are discussed herein.

17 191. G.F. has been diagnosed with attention deficit and hyperactivity disorder, bipolar
18 affective disorder and intermittent explosive disorder. As a result of her bipolar affective
19 disorder, G.F. has experienced suicidal ideation and has been involuntarily committed to a
20 hospital to receive psychiatric care on at least three occasions. G.F. is on medication for her
21 psychiatric disability. G.F. has received special education and related services since 2011.

22 192. G.F. is an individual with a disability as she has an impairment that substantially
23 limits one or more major life activities, including learning.

24 193. G.F. is a resident of Juvenile Hall and, as such, is qualified to participate in the
25 programs, services and activities of Juvenile Hall.

26 194. G.F. arrived at Juvenile Hall in 2012 with an IEP that made her eligible for
27 special education and related services under the category of “emotional disturbance.”
28

1 195. G.F.'s IEP prior to her arrival at Juvenile Hall in 2012 (1) provided for full-time
2 special education instruction and placed her in a non-public school so she could receive intensive
3 behavioral and mental health interventions and support, and (2) had a Behavioral Support Plan,
4 because it was determined that her behavior impeded her learning.

5 196. When G.F. entered Juvenile Hall in 2012, Defendants changed her eligibility to
6 the category of "other health impairment," decreased her special education instruction from 314
7 minutes per day (100% of the time) to 45 minutes a day, placed her in a general education setting
8 (because they provide no other placement option), eliminated all mental health-related services,
9 and also eliminated her Behavioral Support Plan. In short, Defendants made G.F.'s IEP look
10 almost the same as every other IEP at Mt. McKinley School.

11 197. Even the implementation of G.F.'s wholly deficient IEP was problematic.
12 Although, at the time of the filing of the original Complaint, she was supposed to receive
13 specialized instruction for 45 minutes a day, G.F. did not receive it. Generally there was an aide,
14 or sometimes a special education teacher, in the room, but the aide did not seek out G.F. to
15 provide instruction as required by G.F.'s IEP. Instead the aide remained in the room only to
16 answer specific questions that any student, regardless of disability, may have had. No one
17 proactively sought out G.F. to provide instruction.

18 198. At the time of filing the original Complaint, G.F. had been frequently locked in
19 solitary confinement. Indeed, G.F. had been in solitary confinement for over 100 days in the
20 year she had been in Juvenile Hall.

21 199. G.F. was disciplined and locked in solitary confinement due to her disabilities.
22 Her bipolar disorder, attention deficit and hyperactivity disorder, and explosive intermittent
23 disorder caused her to violate certain of Juvenile Hall's rules and thus be subject to discipline.

24 200. Defendants, however, never attempted or made reasonable accommodations for
25 G.F. Defendants did not attempt accommodations such as a cooling-down period outside of
26 G.F.'s cell, increased mental health counseling, or the legal requirements under IDEA—
27 including but not limited to a behavioral improvement plan, a functional analysis assessment, or
28 positive behavioral intervention and supports.

1 201. G.F. is not allowed to attend school while locked in solitary confinement.

2 202. As of the time of the filing of the original Complaint, the school had counted each
3 of the days G.F. was locked away as an unexcused absence. As a result, G.F. received partial
4 credit for the classes she was taking and failed to progress from grade to grade on schedule due
5 to an academic credit deficiency.

6 203. Academic tests indicate G.F. is performing well below grade level in all subjects.

7 204. As of the time of the filing of the original Complaint, while she was locked in
8 solitary confinement, G.F. had received no educational services at all, except when she was on
9 Program. Even then, she did not even receive the minimal levels of special education required
10 by the inadequate IEP that Defendants developed for her; all she received was a tutor showing up
11 some days but not others for about 5 to 30 minutes to give her some worksheets (sometimes ones
12 she had already completed).

13 205. As of the time of the filing of the original Complaint, while locked in solitary
14 confinement, G.F.'s progress in the Girls in Motion program had been placed "on pause,"
15 meaning the time served did not count toward her sentence. Because of these "pauses," it took
16 G.F. five months to get through orientation when it is supposed to take two weeks, lengthening
17 her amount of detention time.

18 206. Solitary confinement worsened G.F.'s disabilities, made her fall further behind in
19 her education and Girls in Motion program, and was not an effective deterrent against further
20 misconduct. As a result, as of the time of the filing of the original Complaint, G.F. had been
21 frequently returned to solitary confinement. While in solitary confinement, G.F. was—because
22 of her disabilities—further excluded from and denied educational and rehabilitative services.

23 207. Despite G.F.'s frequent placements on solitary confinement, Defendants did not
24 make any reasonable modifications to their policies, and they never once inquired into whether
25 her misconduct was disability-related.

26 208. Defendants also failed to modify school disciplinary policies and practices to
27 ensure that school officials, not Probation officers, were responsible for disciplinary decisions
28 related to G.F.'s behavior in school.

1 209. Defendants failed to modify solitary confinement policies and practices to avoid
2 any disproportionate burden on G.F. because of her disabilities.

3 **W.B.**

4 210. Plaintiff W. B. was 17 years old at the time the original Complaint was filed. By
5 that time, W.B. had been in Juvenile Hall for over a year. The Juvenile Court had found him
6 incompetent to participate in his own defense because of his severe mental health disability.

7 211. At the time of the filing of the original Complaint, W.B. had recently been
8 diagnosed with psychosis and possible schizophrenia (notably, after Defendants had locked W.B.
9 in solitary confinement for approximately 60 days from February to May). W.B. has since been
10 formally diagnosed with schizophrenia.

11 212. At the time that Defendants locked him away in solitary confinement, W.B. was
12 spitting, hearing voices, and talking to himself, and he believed his medications and food were
13 being used to poison him.

14 213. Finally, after W.B. had a complete psychotic break, Defendants involuntarily
15 committed him to an inpatient psychiatric hospital where he remained for three weeks.

16 214. W.B. is an individual with a disability as he has an impairment that substantially
17 limits one or more major life activities, including learning.

18 215. At the time of the filing of the original Complaint, W.B. was a resident of
19 Juvenile Hall and, as such, was qualified to participate in the programs, services and activities of
20 Juvenile Hall.

21 216. W.B. did not have an IEP before coming to Juvenile Hall, but he had a 504 Plan
22 before arriving at Juvenile Hall. Even though W.B. had a 504 Plan before coming to Juvenile
23 Hall, the Juvenile Court had found W.B. incompetent, W.B.'s mental health assessment
24 recommended a highly structured environment, the Probation Department itself suggested a non-
25 public school placement, and W.B. was routinely and frequently placed in solitary confinement,
26 Defendants never inquired into whether he might need special education and related services.

27 217. Only after W.B. had been in Juvenile Hall for eight months and only because
28 W.B.'s mother formally requested that he be assessed for special education did Defendants take

1 any action.

2 218. Defendants found W.B. eligible for special education under the category of
3 “emotional disturbance.” In accordance with their standard practice, Defendants offered W.B.
4 only a minimal amount of “specialized academic instruction” per day (90 minutes) in the general
5 education classroom (again their only placement) and 30 minutes of mental health counseling
6 once a week. Defendants did not provide a Behavioral Intervention Plan. In sum, W.B. received
7 an IEP similar to other young people with disabilities at Mt. McKinley.

8 219. At the request of W.B.’s mother, W.B.’s IEP was revisited by Defendants in July
9 of 2013. However, even after the psychiatric hospitalization, Defendants made only minor
10 amendments to W.B.’s IEP. Specifically, Defendants amended W.B.’s IEP to provide an 30
11 additional minutes of mental health counseling per week and to add a behavior support plan that
12 itself admits that W.B. does not do well in the general education setting.

13 220. At the time of the filing of the original Complaint, the implementation of W.B.’s
14 wholly deficient IEP was also problematic. For instance, although he was supposed to receive
15 specialized instruction for 90 minutes a day, W.B. did not receive it. The special education
16 teachers in the room did not seek out W.B. to provide instruction as required by his IEP but
17 instead only occasionally helped him with logistical things like finding the right place on the
18 page.

19 221. W.B.’s IEP states that he had “deteriorated” since coming to Juvenile Hall, but
20 Defendants offered only minimal services and a general education placement and still denied
21 him education while locked in solitary confinement.

22 222. At the time of the filing of the original Complaint, W.B. had frequently been
23 placed in solitary confinement. Indeed, W.B. spent approximately 90 days in solitary
24 confinement.

25 223. W.B. was disciplined and locked in solitary confinement due to his disabilities.
26 His psychosis and ADHD caused him to violate certain of Juvenile Hall’s rules and thus be
27 subject to discipline.

1 224. Defendants, however, never attempted or made reasonable accommodations for
2 W.B. Defendants did not attempt accommodations such as a cooling-down period outside of
3 W.B.'s cell, increased mental health counseling, earlier psychiatric hospitalization instead of
4 solitary confinement, or the legal requirements under IDEA—including but not limited to a
5 behavioral improvement plan, a functional analysis assessment, or positive behavioral
6 intervention and supports.

7 225. At the time of the filing of the original Complaint, while locked in solitary
8 confinement, W.B. was not allowed to attend school. The school counted each of the days W.B.
9 was locked away as an unexcused absence. As a result, W.B. received only partial credit for the
10 classes he was taking and failed to progress from grade to grade on schedule due to an academic
11 credit deficiency.

12 226. Academic tests indicate W.B. is performing well-below grade level in all subjects.

13 227. At the time of the filing of the original Complaint, while locked in solitary
14 confinement, W.B. received no educational services at all, except when he was on Program.
15 Even then, he did not even receive the minimal levels of special education required by the
16 inadequate IEP that Defendants developed for him. All he received was a tutor showing up some
17 days but not others.

18 228. Solitary confinement worsened W.B.'s disabilities, made him fall further behind
19 in his education, and was not an effective deterrent against further misconduct. As a result, W.B.
20 was frequently returned to solitary confinement because of his disabilities to the further
21 exclusion and denial of educational services.

22 229. Despite W.B.'s frequent placement on solitary confinement, Defendants did not
23 make any reasonable modifications to their policies. Defendants did not determine what
24 reasonable accommodations W.B. might need, and they never once inquired into whether his
25 misconduct was disability-related.

26 230. Defendants also failed to modify school disciplinary policies and practices to
27 ensure that school officials, not Probation officers, were responsible for disciplinary decisions
28 related to W.B.'s behavior in school.

1 238. Q.G. is disciplined and locked in solitary confinement due to his disabilities. His
2 attention deficit and hyperactivity disorder and oppositional defiance disorder cause him to
3 violate certain of Juvenile Hall’s rules and thus subject him to discipline.

4 239. Defendants, however, never attempt or make reasonable accommodations for
5 Q.G. Defendants do not attempt accommodations such as a cooling-down period outside of
6 Q.G.’s cell, increased mental health counseling, or the legal requirements under IDEA—
7 including but not limited to a behavioral improvement plan, a functional analysis assessment, or
8 positive behavioral intervention and supports.

9 240. While on Max and Risk, Q.G. is not allowed to attend school. Because the school
10 counts each of the days Q.G. was locked away as an unexcused absence. Q.G. receives only
11 partial credit for the classes he was taking and has failed to progress from grade to grade on
12 schedule due to an academic credit deficiency.

13 241. Academic tests indicate Q.G. is performing well-below grade level in all subjects.

14 242. While locked in solitary confinement, Q.G.s progress in the YOTP program is
15 placed “on pause,” meaning the time served does not count toward his sentence, lengthening his
16 amount of detention time.

17 243. Solitary confinement worsened Q.G.’s disabilities, made him fall further behind
18 in his education and YOTP program, and is not an effective deterrent against further misconduct.
19 As a result, Q.G. frequently returns to solitary confinement because of his disabilities, and when
20 he is in solitary confinement, he is further excluded from and denied educational and
21 rehabilitative services.

22 244. Despite Q.G.’s frequent placement on solitary confinement, Defendants have not
23 made any reasonable modifications to their policies. Defendants have not determined what
24 reasonable accommodations Q.G. might need, and they have never once inquired into whether
25 his misconduct is disability-related.

26 245. Defendants also have failed to modify school disciplinary policies and practices to
27 ensure that school officials, not Probation officers, are responsible for disciplinary decisions
28 regarding Q.G.’s behavior in school.

1 246. Defendants fail to modify solitary confinement policies and practices to avoid any
2 disproportionate burden on Q.G. because of his disabilities.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **Violation of Individuals with Disabilities Education Improvement Act**

6 **Against Both Defendants**

7 *(20 U.S.C. § 1400 et. seq.)*

8 247. Plaintiffs incorporate by reference each and every allegation contained in the
9 foregoing paragraphs as if specifically alleged herein.

10 248. Under the federal Individuals with Disabilities Education Act (IDEA), students
11 with disabilities are entitled to receive a free appropriate public education also known as
12 “FAPE.” 20 U.S.C. § 1400(d)(1)(a).

13 249. IDEA defines a child with a disability as a child “with mental retardation, hearing
14 impairments (including deafness), speech or language impairments, visual impairments
15 (including blindness), serious emotional disturbance . . ., orthopedic impairments, autism,
16 traumatic brain injury, other health impairments, or specific learning disabilities” “who, by
17 reason thereof, needs special education and related services.” 20 U.S.C. § 1401(3).

18 250. Plaintiffs and the Plaintiff Class are all youth with disabilities as defined by the
19 ADA and Section 504. Many of these youth are currently eligible or should be eligible for
20 special education and related services under IDEA. Therefore, Plaintiffs and the Plaintiff Class
21 qualify as children with disabilities for the purposes of IDEA.

22 251. The Office of Education is a public agency because it is a “political subdivision[]
23 of the State that [is] responsible for providing education to children with disabilities” (34 C.F.R.
24 § 300.33) and because it is a local education agency (“LEA”) which is defined as a “public
25 authority legally constituted within a State for either administrative control or direction of, or to
26 perform a service function for, public elementary schools or secondary schools in a city, county,
27 township, school district, or other political subdivision of a State.” 20 U.S.C. § 1401(19); 34
28 C.F.R. § 300.328(a). As a result, the Office of Education has the duty to provide a FAPE to all

1 students with disabilities, including those who have been suspended or expelled from school. 20
2 U.S.C. §§ 1412(a)(1), 1413(a). This duty extends to school-eligible persons with disabilities
3 who are incarcerated in juvenile and adult correctional facilities. 34 C.F.R. § 300.2(b)(iv).

4 252. The Probation Department, and thus, the County, is a public agency because it
5 runs a correctional facility “involved in the education of children with disabilities” (34 C.F.R. §
6 300.2(b)). The Probation Department, and thus, the County, is an educational services agency
7 with “administrative control and direction” over Mt. McKinley School (34 C.F.R. § 300.33), and
8 it is a “political subdivision[] of the State that [is] responsible for providing education to children
9 with disabilities.” 34 C.F.R. § 300.33. As such, the Probation Department, and thus the County,
10 has the same duties as the Office of Education. 34 C.F.R. § 300.2(b)

11 253. IDEA requires Defendants to meet certain obligations including, but not limited
12 to:

- 13 a) Providing a free appropriate public education to all students with disabilities
14 (20 U.S.C. § 1400(d)(1)(a));
- 15 b) Identifying, locating and evaluating “[a]ll children with disabilities residing in
16 the State...who are in need of special education and related services” (20
17 U.S.C. § 1412(a)(1)(A)) and having in effect policies and procedures to ensure
18 this happens (34 C.F.R. § 300.111(a));
- 19 c) Upon identification, conducting a full and individual initial evaluation before
20 the initial provision of special education and related services to a child with a
21 disability in all areas of suspected disability and thereafter a re-evaluation
22 every three years (20 U.S.C. § 1414(a)(1)(A), (2)(B)) or whenever educational
23 or related services needs, including improved academic achievement and
24 functional performance, if the child warrants a reevaluation (34 C.F.R. §
25 300.303(a));
- 26 d) Developing and implementing an appropriate Individualized Education
27 Program (IEP) for each child with a disability, defined as a written statement
28

1 that is developed, reviewed, and revised in accordance with 210 U.S.C. §
2 1414(d), which must include, but is not limited to including:

- 3 i. a statement of the child's present levels of academic
4 achievement and functional performance (20 U.S.C. §
5 1414(d)(1)(A)(i));
- 6 ii. a statement of measurable annual goals, including academic
7 and functional goals (20 U.S.C. § 1414(d)(1)(A)(ii));
- 8 iii. a description of the measurement of the annual goals and the
9 reporting of these goals (20 U.S.C. § 1414(d)(1)(A)(III));
- 10 iv. for children over 16 years of age, annually updated appropriate
11 measurable postsecondary goals based upon age appropriate
12 transition assessments related to training, education,
13 employment, and, where appropriate, independent living skills
14 (20 U.S.C. § 1414(d)(1)(A)(VIII)(aa)); and
- 15 v. in the case of a child whose behavior impedes the child's
16 learning or that of others, consideration of the use of positive
17 behavioral interventions and supports, and other strategies, to
18 address that behavior (20 USC § 1414(d)(3)(B)(i)).
- 19 e) Holding an IEP team meeting at least annually (20 U.S.C. § 1414(d)(4)(A)(i));
- 20 f) When students with an IEP enter a new school district, providing "comparable"
21 services to their previous IEP for the next 30 days at which point, either
22 adopting the prior IEP or developing, adopting and implementing a new IEP
23 (20 U.S.C. § 1414(d)(2)(C); 34 C.F.R. § 300.323(e));
- 24 g) If behavior leads to removal from school for more than 10 days or to removal
25 for less than 10 days but is based on behavior that constitutes a pattern,
26 continuing to provide educational services so as to enable the child to continue
27 to participate in the general education curriculum (34 C.F.R. § 300.530(d));
- 28

- 1 h) If behavior leads to removal from school for more than ten days or to removal
2 for less than 10 days but is based on behavior that constitutes a pattern,
3 convening an immediate IEP meeting to determine if the behavior is a
4 manifestation of the student's disability (20 USC § 1415(k); 34 C.F.R. §
5 300.530(e); 34 C.F.R. § 300.536(a)(2); Cal. Educ. Code § 48915.5);
- 6 i) If the behavior is a manifestation of disability, (1) conducting a functional
7 behavior/analysis assessment and implement a behavioral intervention plan; or
8 (2) reviewing and modifying existing behavioral intervention plan; and (3)
9 returning student to placement from which he or she was removed, unless it
10 involved weapons, drug possession, or serious bodily injury (at which time
11 student would be placed in an interim alternative educational setting for not
12 more than 45 school days) (20 USC § 1415(k); 34 C.F.R. § 300.530(f)&(g));
- 13 j) If, on the other hand, the behavior was not a manifestation of disability,
14 providing FAPE and services to the student no later than the 11th cumulative
15 day of removal (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c)); and
- 16 k) Implementing procedural safeguards for children with disabilities, consisting,
17 at a minimum, of notice to parents or guardians of their procedural rights
18 regarding the identification, evaluation, or education placement of their child
19 or the provision of a FAPE to their child, and the right to present complaints
20 and to an impartial due process hearing on such complaints (20 U.S.C. §§
21 1412(a)(6), 1415).

22 254. By failing to identify, evaluate, recommend, and then provide a FAPE (including
23 appropriate IEPs, special education, and related services to eligible students in Juvenile Hall),
24 and by failing to provide procedural safeguards specified in the statute implementing the IDEA
25 (including manifestation determinations), Defendants have impeded students' rights to a free
26 appropriate public education, have significantly impeded the parents' opportunity to participate
27 in the decision-making process regarding the provision of a free appropriate public education to
28 their students, and/or have deprived students of educational benefits.

1 255. Similarly, by failing to provide any of the IDEA requirements, including FAPE,
2 to students with disabilities who are locked in solitary confinement, Defendants have impeded
3 students' rights to a free appropriate public education, have significantly impeded the parents'
4 opportunity to participate in the decision-making process regarding the provision of a free
5 appropriate public education to their students, and/or have deprived students of educational
6 benefits.

7 256. As a result, Defendants have violated and continue to violate rights secured by 20
8 U.S.C. §§ 1400 *et seq.*, and its implementing regulations at 34 C.F.R. §§ 300 *et seq.*

9 257. Because Defendants' discriminatory and wrongful conduct is ongoing,
10 declaratory and injunctive relief are appropriate remedies. Further, as a direct result of
11 Defendants' actions, Plaintiffs and members of the Class are suffering irreparable harm,
12 including lost education opportunities. Therefore, speedy and immediate relief is appropriate.

13 258. Plaintiffs are entitled to declaratory and injunctive relief as well as reasonable
14 attorneys' fees and costs incurred in bringing this action under 20 U.S.C. § 1415(i)(3).

15 **SECOND CAUSE OF ACTION**

16 **Violation of Americans with Disabilities Act**

17 **Against Both Defendants**

18 **(42 U.S.C. § 12101, et. seq.)**

19 259. Plaintiffs incorporate by reference each and every allegation contained in the
20 foregoing paragraphs as if specifically alleged herein.

21 260. Title II of the ADA states, in pertinent part:

22 [N]o qualified individual with a disability shall, by reason of such
23 disability, be excluded from participation in or be denied the
24 benefits of the services, programs, or activities of a public entity,
or subjected to discrimination by any such entity. 42 U.S.C. §
12132.

25 261. Defendants were, at all times relevant to this action, and are currently "public
26 entities" within the meaning of Title II of the ADA and provided and provide a "program,
27 service or activity" including educational and rehabilitative programs, services and activities in
28 the Juvenile Hall.

1 262. Plaintiffs and the Plaintiff Class were, at all times relevant to this action, and are
2 currently “qualified individuals with disabilities” within the meaning of Title II of the ADA.
3 They all have impairments that substantially limit a major life activity, and they were and/or are
4 all residents of Juvenile Hall qualified—with or without reasonable accommodation—to
5 participate in the programs, services, and activities of Juvenile Hall.

6 263. Congress directed the Department of Justice (“DOJ”) to write regulations
7 implementing Title II’s prohibition against discrimination. 42 U.S.C. § 12134. Pursuant to this
8 mandate, the DOJ has issued regulations defining the forms of discrimination prohibited by Title
9 II of the ADA. 28 C.F.R. § 35.101 *et. seq.*

10 264. In providing any aid, benefit, or service, a public entity “may not ... [d]eny a
11 qualified individual with a disability the opportunity to participate in or benefit from the aid,
12 benefit or service,” “[a]fford a qualified individual with a disability an opportunity to participate
13 in or benefit from the aid, benefit, or service that is not equal to that afforded others,” “[p]rovide
14 a qualified individual with a disability with an aid, benefit, or service that is not as effective in
15 affording equal opportunity ... as that provided to others,” or “[o]therwise limit a qualified
16 individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity
17 enjoyed by others[.]” 28 C.F.R. § 35.130(b)(1)(i), (ii), (iii), and (vii).

18 265. A public entity “*shall* make reasonable modifications in policies, practices, or
19 procedures when the modifications are necessary to avoid discrimination on the basis of
20 disability[.]” 28 C.F.R. § 35.130(b)(7) (emphasis added).

21 266. Nor may a public entity (1) “impose or apply eligibility criteria that screen out or
22 tend to screen out an individual with a disability or any class of individuals with disabilities from
23 fully and equally enjoying any service, program, or activity, unless such criteria can be shown to
24 be necessary[.]” 28 C.F.R. § 35.130(b)(8); or (2) “utilize criteria or methods of administration ...
25 that have the effect of subjecting qualified individuals with disabilities to discrimination on the
26 basis of disability ... or the purpose or effect of defeating or substantially impairing
27 accomplishment of the objectives of the public entity’s program with respect to individuals with
28 disabilities[.]” 28 C.F.R. § 35.130(b)(3)(i)(ii).

1 267. A public entity is also prohibited from aiding and perpetuating discrimination
2 against persons with disabilities in the programs, services, or activities it provides. 28 C.F.R. §
3 35.130(b)(1)(v).

4 268. Defendants have violated the rights of Plaintiffs and members of the Plaintiff
5 Class secured by Title II of the ADA and its implementing regulations.

6 269. When Plaintiffs and members of the Plaintiff Class are locked in solitary
7 confinement, Defendants exclude them from participating in and deny them the benefits of
8 Defendants' educational and rehabilitative programs, services, and activities by reason of their
9 disabilities. Specifically, Plaintiffs and the Plaintiff Class are excluded by reason of their
10 disabilities in that the behaviors that lead to their being placed in solitary confinement are a
11 direct result of their disability.

12 270. Solitary confinement has a disproportionate burden on Plaintiffs and members of
13 the Plaintiff Class by reason of their disabilities that results in further solitary confinement and
14 further denial of educational and rehabilitative programs, services, and activities than their non-
15 disabled peers. As such, when Plaintiffs and members of the Plaintiff Class are locked in solitary
16 confinement, Defendants exclude them from participation in and deny them the benefits of
17 Defendants' educational and rehabilitative programs, services, and activities by reason of their
18 disabilities.

19 271. The denial of education and rehabilitative services during solitary confinement
20 leaves Plaintiffs and the Plaintiff Class further behind in their education and rehabilitation than
21 their non-disabled peers because, by reason of their disabilities, disabled youth require additional
22 assistance to access the general education curriculum and rehabilitative programs.
23 Consequently, when Plaintiffs and members of the Plaintiff Class are locked in solitary
24 confinement, Defendants deny them equal opportunity to benefit from Defendants' educational
25 and rehabilitative programs, services, and activities and/or provide Plaintiffs and members of the
26 Plaintiff Class with a benefit that is not as effective in affording equal opportunity as the benefits
27 offered to their non-disabled peers.

28 272. Defendants also fail to make reasonable modifications to their policies, practices,

1 and procedures even though such modifications are necessary to avoid discriminating against
2 Plaintiffs and members of the Plaintiff Class by, *inter alia*, not identifying and tracking Plaintiffs
3 and member of the Plaintiff Class who require reasonable accommodations, not inquiring into
4 whether behaviors of Plaintiffs or members of the Plaintiff Class leading to disciplinary
5 measures are disability-related, not modifying school disciplinary policies and practices to ensure
6 that school officials have responsibility for discipline during school hours, and not modifying
7 solitary confinement policies and practices to ensure that Plaintiffs and members of the Plaintiff
8 Class are not disproportionately burdened by such policies and practices by reason of their
9 disabilities.

10 273. Defendants have adopted and implemented policies and practices with regard to
11 solitary confinement that have a disparate impact on youth with disabilities. Specifically,
12 Defendants impose and apply eligibility criteria—i.e., requirements that youth not be in solitary
13 confinement in order to receive educational and rehabilitative services—that screen out or tend
14 to screen out Plaintiffs and members of the Plaintiff Class from fully and equally enjoying, by
15 reason of their disabilities, any of Defendants’ educational and rehabilitative programs, services
16 or activities.

17 274. By denying educational and rehabilitative programs, services, and activities while
18 youth with disabilities are locked in solitary confinement and by using solitary confinement for
19 youth with disabilities, Defendants utilize methods of administration that have the effect of
20 subjecting Plaintiffs and members of the Plaintiff Class to discrimination by reason of their
21 disabilities. These methods of administration also have the purpose and effect of defeating or
22 substantially impairing accomplishments of the objectives of Defendants’ educational and
23 rehabilitative programs, services, and activities with respect to Plaintiffs and members of the
24 Plaintiff Class.

25 275. Defendants also aid and perpetuate discrimination against persons with
26 disabilities in Defendants’ programs, services or activities by, *inter alia*, maintaining policies and
27 practices that allow for discrimination by each Defendant and that permit the discrimination of
28 the other co-Defendant to continue unchecked.

1 276. When Plaintiffs and members of the Plaintiff Class are in school, Defendants
2 deny them “meaningful access” to education by violating the relevant regulations.

3 277. Pursuant to 28 C.F.R. § 35. 130(b)(ii), a public entity may not “[a]fford a
4 qualified individual with a disability an opportunity to participate in or benefit from the aid,
5 benefit, or service that is not equal to that afforded others. . .”

6 278. Defendants fail to provide youth with disabilities the special education and related
7 services they require, by reason of their disabilities, to equally access education in Juvenile Hall.

8 279. Pursuant to 28 C.F.R. § 35.130(b)(iii), a public entity may not “[p]rovide a
9 qualified individual with a disability with an aid, benefit, or service that is not as effective in
10 affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the
11 same level of achievement as that provided to others. . .”

12 280. Defendants fail to provide disabled youth with educational services that they
13 require—because of their disabilities—that are as effective in affording youth with disabilities
14 equal opportunity to obtain the same result, to gain the same benefit, and to reach the same level
15 of achievement as provided to others.

16 281. Because Defendants’ discriminatory and wrongful conduct is ongoing,
17 declaratory and injunctive relief are appropriate remedies. Further, as a direct result of
18 Defendants’ actions, Plaintiffs and members of the Plaintiff Class are suffering irreparable harm,
19 including lost education opportunities. Therefore, speedy and immediate relief is appropriate.

20 282. Pursuant to 42 U.S.C. § 12133, Plaintiffs are entitled to declaratory and injunctive
21 relief as well as reasonable attorneys’ fees and costs incurred in bringing this action under 42
22 U.S.C. § 12205.

23 **THIRD CAUSE OF ACTION**

24 **Violation of Section 504 of the Rehabilitation Act**

25 **Against Both Defendants**

26 *(29 U.S.C. § 794, et. seq.)*

27 283. Plaintiffs incorporate by reference each and every allegation contained in the
28 foregoing paragraphs as if specifically alleged herein.

1 284. Section 504 provides, in pertinent part:

2 No otherwise qualified individual with a disability in the United
3 States . . . shall, solely by reason of his or her disability, be
4 excluded from the participation in, be denied the benefits of, or be
 subjected to discrimination under any program or activity receiving
 federal financial assistance[.] 29 U.S.C. § 794(a).

5 285. Each Defendant was, at all times relevant to this action, and is currently a
6 recipient of federal financial assistance within the meaning of Section 504 of the Rehabilitation
7 Act and provided and provides a “program or activity” where “program or activity” is described
8 as “all the operations of” the recipient which includes the educational and rehabilitative
9 programs and activities in Juvenile Hall. 29 U.S.C. § 794(b).

10 286. Plaintiffs and the Plaintiff Class were, at all times relevant to this action, and are
11 currently “otherwise qualified individuals with disabilities” within the meaning of Section 504 as
12 they all have impairments that substantially limit a major life activity, and they were and/or are
13 all residents of Juvenile Hall qualified—with or without reasonable accommodation—to
14 participate in the programs, services, and activities of Juvenile Hall.

15 287. The Department of Justice is charged under Executive Order 12250 with
16 coordinating the implementation of Section 504 of the Rehabilitation Act of 1973. 28 CFR §
17 41.1.

18 288. In providing any aid, benefit, or service, a recipient of federal financial assistance
19 “may not ... [d]eny a qualified handicapped person the opportunity to participate in or benefit
20 from the aid, benefit or service,” “[a]fford a qualified handicapped person an opportunity to
21 participate in or benefit from the aid, benefit, or service that is not equal to that afforded others,”
22 “[p]rovide a qualified handicapped person with an aid, benefit, or service that is not as effective
23 in affording equal opportunity ... as that provided to others,” or “[o]therwise limit a qualified
24 handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed
25 by others[.]” 45 C.F.R. § 84.4(b)(i), (ii), (iii), and (vii).

26 289. A recipient of federal financial assistance *shall* make reasonable modifications in
27 policies, practices, or procedures when the modifications are necessary to avoid discrimination
28 on the basis of disability.

1 290. Nor may a recipient of federal financial assistance “utilize criteria or methods of
2 administration (i) that have the effect of subjecting qualified handicapped persons to
3 discrimination on the basis of handicap and/or (ii) that have the purpose or effect of defeating or
4 substantially impairing accomplishment of the objectives of the recipient’s program or activity
5 with respect to handicapped persons...” 45 C.F.R. § 84.4(b)(4)(i), (ii);

6 291. A recipient of federal financial assistance is also prohibited from aiding and
7 perpetuating discrimination against a qualified handicapped person by providing significant
8 assistance to an agency, organization, or person that discriminates on the basis of handicap. 45
9 C.F.R. § 84.4(b)(v).

10 292. Defendants have violated the rights of Plaintiffs and members of the Plaintiff
11 Class secured by Section 504 and its implementing regulations.

12 293. When Plaintiffs and members of the Plaintiffs Class are locked in solitary
13 confinement, Defendants exclude them from participating in and deny them the benefits of
14 Defendants’ educational and rehabilitative programs, services, and activities solely by reason of
15 their disabilities. Specifically, Plaintiffs and the Plaintiff Class are excluded by reason of their
16 disabilities in that the behaviors that lead to their being placed in solitary confinement are a
17 direct result of their disability.

18 294. Solitary confinement has a disproportionate burden on Plaintiffs and members of
19 the Plaintiff Class solely by reason of their disabilities that results in further solitary confinement
20 and further denial of educational and rehabilitative programs, services, and activities than their
21 non-disabled peers. As such, when Plaintiffs and members of the Plaintiff Class are locked in
22 solitary confinement, Defendants exclude them from participation in and deny them the benefits
23 of Defendants’ educational and rehabilitative programs, services, and activities solely by reason
24 of their disabilities.

25 295. The denial of education and rehabilitative services during solitary confinement
26 leaves Plaintiffs and the Plaintiff Class further behind in their education and rehabilitation than
27 their non-disabled peers because, solely by reason of their disabilities, disabled youth require
28 additional assistance to access the general education curriculum and rehabilitative programs.

1 Consequently, when Plaintiffs and members of the Plaintiff Class are locked in solitary
2 confinement, Defendants deny them equal opportunity to benefit from Defendants' educational
3 and rehabilitative programs, services, and activities and/or provide Plaintiffs and members of the
4 Plaintiff Class with a benefit that is not as effective in affording equal opportunity as the benefits
5 offered to their non-disabled peers.

6 296. Defendants also fail to make reasonable modifications to their policies, practices,
7 and procedures even though such modifications are necessary to avoid discriminating against
8 Plaintiffs and members of the Plaintiff Class by, *inter alia*, not identifying and tracking Plaintiffs
9 and member of the Plaintiff Class who require reasonable accommodations, not inquiring into
10 whether behaviors of Plaintiffs or members of the Plaintiff Class leading to disciplinary
11 measures are disability-related, not modifying school disciplinary policies and practices to ensure
12 that school officials have responsibility for discipline during school hours, and not modifying
13 solitary confinement policies and practices to ensure that Plaintiffs and members of the Plaintiff
14 Class are not disproportionately burdened by such policies and practices by reason of their
15 disabilities.

16 297. Defendants have adopted and implemented policies and practices with regard to
17 solitary confinement that have a disparate impact on youth with disabilities. Specifically,
18 Defendants impose and apply eligibility criteria—i.e., requirements that youth not be in solitary
19 confinement in order to receive educational and rehabilitative services—that screen out or tend
20 to screen out Plaintiffs and members of the Plaintiff Class from fully and equally enjoying, solely
21 by reason of their disabilities, any of Defendants' educational and rehabilitative programs,
22 services or activities.

23 298. By denying educational and rehabilitative programs, services, and activities while
24 youth with disabilities are locked in solitary confinement and by using solitary confinement for
25 youth with disabilities, Defendants utilize methods of administration that have the effect of
26 subjecting Plaintiffs and members of the Plaintiff Class to discrimination solely by reason of
27 their disabilities. These methods of administration also have the purpose and effect of defeating
28 or substantially impairing accomplishments of the objectives of Defendants' educational and

1 rehabilitative programs, services, and activities with respect to Plaintiffs and members of the
2 Plaintiff Class.

3 299. Defendants also aid and perpetuate discrimination against persons with
4 disabilities in Defendants’ programs, services or activities by, *inter alia*, maintaining policies and
5 practices that allow for discrimination and that permit the discrimination of each co-Defendant to
6 continue unchecked.

7 300. When Plaintiffs and members of the Plaintiff Class are in school, Defendants
8 deny them “meaningful access” to education by violating the relevant regulations.

9 301. Pursuant to 45 C.F.R. § 84.4(b)(ii), a public entity may not “[a]fford a qualified
10 individual with a disability an opportunity to participate in or benefit from the aid, benefit, or
11 service that is not equal to that afforded others. . .”

12 302. However, Defendants fail to provide youth with disabilities the special education
13 and related services they require—solely by reason of their disabilities—to equally access
14 education in Juvenile Hall.

15 303. Pursuant to 45 C.F.R. § 84.4(b)(iii), a public entity may not “[p]rovide a qualified
16 individual with a disability with an aid, benefit, or service that is not as effective in affording
17 equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of
18 achievement as that provided to others. . .”

19 304. Defendants fail to provide disabled youth with educational services that they
20 require—solely by reason of their disabilities—that are as effective in affording youth with
21 disabilities equal opportunity to obtain the same result, to gain the same benefit, and to reach the
22 same level of achievement as provided to others.

23 305. Moreover, when Plaintiffs and members of the Plaintiff Class are in school,
24 Defendants deny them FAPE as secured by Section 504’s regulations by *inter alia*:

- 25 a) Failing to provide a free appropriate public education to each qualified
26 handicapped person who is in Defendants’ jurisdiction (45 C.F.R. § 84.33(a));
- 27 b) Failing to provide special education and related aids and services that are
28 designed to meet individual educational needs of handicapped persons as

1 adequately as the needs of non-handicapped persons are met (45 C.F.R. §
2 84.33(b)).

3 306. Because Defendants' discriminatory conduct is ongoing, declaratory relief and
4 injunctive relief are appropriate remedies. Further, as a direct result of Defendants' actions,
5 Plaintiffs and members of the Plaintiff Class are suffering irreparable harm, including lost
6 educational opportunities. Therefore, speedy and immediate relief is appropriate.

7 307. Pursuant to 29 U.S.C. § 794a, Plaintiffs are entitled to declaratory and injunctive
8 relief and to recover from Defendants the reasonable attorneys' fees and costs incurred in
9 bringing this action.

10 **FOURTH CAUSE OF ACTION**

11 **Violation of California Government Code § 11135**

12 **Against Both Defendants**

13 *(Cal. Gov't Code § 11135 et seq.)*

14 308. Plaintiffs incorporate by reference each and every allegation contained in the
15 foregoing paragraphs as if specifically alleged herein.

16 309. California Government Code section 11135 sets forth a nondiscrimination policy
17 for state programs. It provides, in pertinent part, that:

18 [n]o person in the State of California shall, on the basis of race,
19 national origin, ethnic group identification, religion, age, sex,
20 sexual orientation, color, genetic information or disability, be
21 unlawfully denied full and equal access to the benefits of, or be
22 unlawfully subjected to discrimination under, any program or
23 activity that is conducted, operated, or administered by the state or
24 by any state agency, is funded directly by the state, or receives any
25 financial assistance from the state. Cal. Gov't Code § 11135(a).

26 310. Each Defendant was, at all times relevant to this action, and is currently operating
27 or administering a program or activity that receives state financial assistance, within the meaning
28 of Section 11135 including educational and rehabilitative programs and activities in the Juvenile
Hall.

311. Plaintiffs and the Plaintiff Class were, at all times relevant to this action, and are
currently "persons in the State of California" within the meaning of California Government Code

1 section 11135. Plaintiffs and the Plaintiff Class all have disabilities as defined by California
2 Government Code section 12926, and they were and/or are all residents of Juvenile Hall
3 qualified to participate in the programs, services and activities of Juvenile Hall.

4 312. It is a discriminatory practice for a recipient of state financial assistance, in
5 carrying out any program or activity, on the basis of disability, (a) to deny a person the
6 opportunity to participate in, or benefit from an aid, benefit or service; (b) to afford a person the
7 opportunity to participate in or benefit from an aid, benefit or service that is not equal to that
8 afforded others; (c) to provide a person with an aid, benefit or service that is not as effective in
9 affording an equal opportunity to obtain the same result, to gain the same benefit, or to reach the
10 same level of achievement as that provided to others . . . (g) to otherwise limit a person in the
11 enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving any aid,
12 benefit or service resulting from the program or activity.” 22 Cal. Code Regs. § 98101 (a), (b),
13 (c), (g).

14 313. It is also discrimination for a recipient of state financial assistance to utilize
15 criteria or methods of administration that: (1) have the purpose or effect of subjecting a person to
16 discrimination on the basis of disability; (2) have the purpose or effect of defeating or
17 substantially impairing the accomplishment of the objectives of the recipient’s program with
18 respect to a person with a disability. 22 Cal. Code Regs. § 98101(i).

19 314. Defendants have violated the rights of Plaintiffs and members of the Plaintiff
20 Class secured by Section 11135 *et seq.* and the regulations promulgated thereunder, 22 Cal. Code
21 Regs. § 98100, *et seq.*

22 315. When Plaintiffs and members of the Plaintiffs Class are locked in solitary
23 confinement, Defendants deny them full and equal access to Defendants’ educational and
24 rehabilitative programs, services, and activities on the basis of their disabilities. Specifically,
25 Plaintiffs and the Plaintiff Class are excluded by reason of their disabilities in that the behaviors
26 that lead to their being placed in solitary confinement are a direct result of their disability.

27 316. Solitary confinement has a disproportionate burden on Plaintiffs and members of
28 the Plaintiff Class on the basis of their disabilities that results in further solitary confinement and

1 further denial of educational and rehabilitative programs, services, and activities than their non-
2 disabled peers. As such, when Plaintiffs and members of the Plaintiff Class are locked in solitary
3 confinement, Defendants exclude them from participation in and deny them the benefits of
4 Defendants' educational and rehabilitative programs, services, and activities on the basis of their
5 disabilities.

6 317. Solitary confinement leaves Plaintiffs and the Plaintiff Class further behind in
7 their education and rehabilitation than their non-disabled peers because, on the basis of their
8 disabilities, disabled youth require additional assistance to access the general curriculum and
9 rehabilitative programs. Consequently, when Plaintiffs and members of the Plaintiff Class are
10 locked in solitary confinement, Defendants deny them equal opportunity to benefit from
11 Defendants' educational and rehabilitative programs, services, and activities and/or provide
12 Plaintiffs and members of the Plaintiff Class with a benefit that is not as effective in affording
13 equal opportunity as the benefits offered to their non-disabled peers.

14 318. Defendants have adopted and implemented policies and practices with regard to
15 solitary confinement that have a disparate impact on youth with disabilities. Specifically,
16 Defendants impose and apply eligibility criteria—i.e., requirements that youth not be in solitary
17 confinement in order to receive educational and rehabilitative services—that screen out or tend
18 to screen out Plaintiffs and members of the Plaintiff Class from fully and equally enjoying, on
19 the basis of their disabilities, any of Defendants' educational and rehabilitative programs,
20 services, or activities.

21 319. By denying educational and rehabilitative programs, services, and activities while
22 youth with disabilities are locked in solitary confinement and by using solitary confinement for
23 youth with disabilities, Defendants utilize methods of administration that have the effect of
24 subjecting Plaintiffs and members of the Plaintiff Class to discrimination on the basis of their
25 disabilities. These methods of administration also have the purpose and effect of defeating or
26 substantially impairing accomplishments of the objectives of Defendants' educational and
27 rehabilitative programs, services, and activities with respect to Plaintiffs and members of the
28 Plaintiff Class.

1 320. California Government Code section 11135 further requires that the programs and
2 activities that receive financial assistance from the state “shall meet the protections and
3 prohibitions contained in Section 202 of the federal Americans with Disabilities Act . . . except
4 that if the laws of this state prescribe stronger protections and prohibitions, the programs and
5 activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.”
6 Cal. Gov’t Code § 11135(b). Here, because Defendants are violating Title II of the ADA, they
7 also are violating California Government Code section 11135.

8 321. Because Defendants’ discriminatory and wrongful conduct is ongoing,
9 declaratory and injunctive relief are appropriate remedies. Further, as a direct result of
10 Defendants’ actions, Plaintiffs and members of the Plaintiff Class are suffering irreparable harm,
11 including lost education opportunities. Therefore, speedy and immediate relief is appropriate.

12 322. Pursuant to California Code of Civil Procedure sections 526(a) and 1021.5,
13 Plaintiffs are entitled to declaratory and injunctive relief as well as reasonable attorneys’ fees and
14 costs incurred in bringing this action.

15 FIFTH CAUSE OF ACTION

16 Violation of California Education Code for Special Education Requirements

17 Against Both Defendants

18 (*Cal. Educ. Code §§ 56000, et seq.*)

19 323. Plaintiffs incorporate by reference each and every allegation contained in the
20 foregoing paragraphs as if specifically alleged herein.

21 324. Individuals with exceptional needs are entitled to receive a free appropriate public
22 education in accordance with IDEA and its implementing regulations. Cal. Educ. Code § 56040.

23 325. A student may qualify as an individual with exceptional needs under one of the
24 following: Hearing Impairment, Hearing and Visual Impairment, Language or Speech Disorder,
25 Visual Impairment, Severe Orthopedic Impairment, Other Health Impairments, Autistic-Like
26 Behaviors, Mental Retardation, Serious Emotional Disturbance, Specific Learning Disability. 5
27 Cal. Code Regs. § 3030.

1 326. Because it is “involved in any decisions regarding a pupil,” the Probation
2 Department, and thus, the County is “a responsible public agency” pursuant to California
3 Education Code, section 56501, subdivision (a). The Probation Department, and thus, the
4 County, also qualifies as a public agency pursuant to IDEA, as previously alleged.

5 327. Because it is “involved in any decisions regarding a pupil,” the Office of
6 Education is “a responsible public agency” pursuant to California Education Code, section
7 56501, subdivision (a). The Office of Education also qualifies as a public agency pursuant to
8 IDEA, as previously alleged.

9 328. As responsible public agencies under California Education Code section 56000 *et*
10 *seq.*, Defendants are required to meet certain conditions, including, but not limited to:

- 11 a) Providing FAPE to individuals with exceptional needs in accordance with
12 IDEA and its implementing regulations (Cal. Educ. Code § 56040);
- 13 b) Identifying, locating, and assessing all children with disabilities, who are in
14 need of special education and related services, and establishing written policies
15 and procedures to do so (Cal. Educ. Code § 56301(a), (d)(1));
- 16 c) Conducting individual assessments by qualified persons knowledgeable about
17 the suspected disability before an initial placement in special education and
18 related services (Cal. Educ. Code § 56320) and conducting reassessments
19 every three years (Cal Educ. Code § 56381(a)(2));
- 20 d) When a student transfers, providing FAPE, including services comparable to
21 previous IEP, for a time not to exceed 30 days by which time the new
22 placement shall adopt the previous IEP or develop, adopt, and implement a
23 new IEP (Cal. Educ. Code § 56043(m)(l) and Cal. Educ. Code § 56325);
- 24 e) For each student with a disability, developing and implementing appropriate
25 Individualized Education Programs (IEPs), defined as a written statement that
26 is developed, reviewed, and revised which must include, but is not limited to:
 - 27 (i) Present levels of academic achievement and functional performance (Cal.
28 Educ. Code § 56345(a)(1));

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- (ii) Measurable annual goals (Cal. Educ. Code § 56345(a)(2));
 - (iii) Criteria for determining whether annual goals are being achieved (Cal. Educ. Code § 56345(a)(3));
 - (iv) Specific special educational instruction, related services, supplementary aids and services to be provided, based on peer-reviewed research to the extent possible (Cal. Educ. Code § 56345(a)(4));
 - (v) Explanation of the extent, if any, to which the pupil will not participate with non-disabled pupils in their regular class and activities (Cal. Educ. Code § 56345(a)(5));
 - (vi) Individual appropriate accommodations in the administration of state-wide or district-wide assessments (Cal. Educ. Code § 56345(a)(6)); and
 - (vii) Projected date for the beginning of services and modifications, and anticipated frequency, location, and duration of services and accommodations (Cal. Educ. Code § 56345(a)(7))
-
- f) Implementing the IEP and related services (Cal. Educ. Code § 56345(c);
 - g) Holding annual IEP team meetings to review the student’s progress and create/revise the IEP document (Cal. Educ. Code § 56043(j));
 - h) If the IEP team finds that instructional/behavioral approaches specified in the student’s IEP have been ineffective, conducting a functional analysis assessment (FAA) and developing a behavioral intervention plan (BIP) (5 Cal. Code Regs. § 3052(b), (c));
 - i) If behavior leads to removal from school for more than ten days, conducting a manifestation determination IEP meeting to determine if the behavior is a manifestation of the student’s disability (Cal. Educ. Code § 48915.5);
 - j) Implementing procedural safeguards for children with disabilities, consisting, at a minimum, of notice to parents or guardians of their procedural rights regarding the identification, evaluation, or education placement of a child or

1 the provision of a FAPE to a child, and the right to present complaints and to
2 an impartial due process hearing on such complaints (Cal. Educ. Code §
3 56301(d)(2)).

4 329. By failing to identify, locate, assess and then provide a FAPE (including
5 appropriate IEPs, special education, and related services to eligible students within the custody
6 of the Probation Department), and by failing to provide procedural safeguards specified in the
7 statute implementing the IDEA (including manifestation determinations), Defendants have
8 violated and continue to violate rights secured by California Education Code sections 56000 *et*
9 *seq.*, and its implementing regulations.

10 330. By failing to provide any of the California Education Code section 56000 *et seq.*
11 requirements, including FAPE, to students with disabilities who are locked in solitary
12 confinement, Defendants have similarly violated and continue to violate rights secured by
13 California Education Code sections 56000 *et seq.*, and its implementing regulations.

14 331. As a direct and proximate result of the aforementioned acts, Plaintiffs and
15 members of the Plaintiff Class have suffered, and continue to suffer, irreparable harm, including
16 lost educational opportunities, based on their disabilities.

17 332. Because Defendants' discriminatory and wrongful conduct is ongoing,
18 declaratory and injunctive relief are appropriate remedies. Further, as a direct result of
19 Defendants' actions, Plaintiffs and members of the Plaintiff Class are suffering irreparable harm,
20 including lost education opportunities. Therefore, speedy and immediate relief is appropriate.

21 333. Pursuant to California Code of Civil Procedure sections 526(a) and 1021.5,
22 Plaintiffs are entitled to declaratory and injunctive relief as well as reasonable attorneys' fees and
23 costs incurred in bringing this action.

24 **SIXTH CAUSE OF ACTION**
25 **Violation of California Education Code for General Education Requirements**
26 **Against Both Defendants**

27 334. Plaintiffs incorporate by reference each and every allegation contained in the
28 foregoing paragraphs as if specifically alleged herein.

1 335. Pursuant to California law, students are entitled to 240 minutes of instruction
2 minimum for each school day (Cal. Educ. Code § 48645.3); 400 minutes of physical education
3 each 10 school days for an average of 40 minutes of physical education per day (Cal. Educ. Code
4 §§ 51220(d) and 51222); and, provision of state approved textbooks and instructional materials
5 so that each student has a textbook or instructional material to use in class and to take home (Cal.
6 Educ. Code § 35186(f)(1)). Moreover, suspension of a student requires certain due process
7 protections including notice to the student and parents and an opportunity to respond. Cal. Educ.
8 Code § 48911(b), (d). Furthermore, suspending students in excess of five consecutive
9 schooldays and/or allowing students to be suspended for more than 20 schooldays within a
10 school year is prohibited. Cal. Educ. Code § 48911 and Cal. Educ. Code § 48903 respectively.

11 336. Defendants, who are charged with providing 240 minutes of instruction each
12 school day, have failed to provide and continue to fail to provide such instruction time to
13 Plaintiffs and members of the Plaintiff Class in solitary confinement.

14 337. Defendants, who are charged with providing on average 40 minutes of physical
15 education per day, have failed to provide and continue to fail to provide such physical education
16 to Plaintiffs and members of the Plaintiff Class, particularly those in solitary confinement.

17 338. Defendants, who are charged with providing educational services to Plaintiffs and
18 members of the Plaintiff Class, have failed to provide and continue to fail to provide Plaintiffs
19 and members of the Plaintiff Class with state approved textbooks and instructional materials so
20 that each student has a textbook or instructional materials, or both, to use in class and to take into
21 their cells.

22 339. Defendants, who are charged with providing educational services to Plaintiffs and
23 members of the Plaintiff Class, have suspended and continue to suspend Plaintiffs and members
24 of the Plaintiff Class without due process protections.

25 340. Defendants, who are charged with providing educational services to Plaintiffs and
26 members of the Plaintiff Class, have allowed and continue to allow Plaintiffs and members of the
27 Plaintiff Class to be suspended from school for more than 20 schooldays within a school year.
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1 341. Because Defendants' discriminatory and wrongful conduct is ongoing,
2 declaratory and injunctive relief are appropriate remedies. Further, as a direct result of
3 Defendants' actions, Plaintiffs and members of the Class are suffering irreparable harm,
4 including lost education opportunities. Therefore, speedy and immediate relief is appropriate.

5 342. Plaintiffs are entitled to declaratory and injunctive relief as well as reasonable
6 attorneys' fees and costs incurred in bringing this action. Cal. Civ. Proc. Code §§ 526(a),
7 1021.5.

8 **REQUEST FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for the following relief:

10 1. Order that Plaintiffs may maintain this action as a class action pursuant to Rule
11 23(b)(2) of the Federal Rules of Civil Procedure;

12 2. Order and declare that the Defendants' conduct as alleged herein has violated, and
13 continues to violate, IDEA, 20 U.S.C. §§ 1400 *et seq.*, and accompanying regulations, the ADA,
14 42 U.S.C. §§ 12101 *et seq.*, and accompanying regulations, Section 504 of the Rehabilitation
15 Act, 29 U.S.C. § 794, and accompanying regulations, California Education Code sections 56000
16 *et seq.*, and accompanying regulations, and California Government Code sections 11135, *et seq.*
17 and accompanying regulations.

18 3. Preliminarily and permanently enjoin Defendants from violating IDEA, 20 U.S.C.
19 §§ 1400 *et seq.*, and accompanying regulations, the ADA, 42 U.S.C. §§ 12101 *et seq.*, and
20 accompanying regulations, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and
21 accompanying regulations, California Education Code sections 56000 *et seq.*, and accompanying
22 regulations, and California Government Code sections 11135, *et seq.* and accompanying
23 regulations.

24 4. Order Defendants to provide Plaintiffs and the members of the Plaintiff Class:

25 a. a free appropriate public education and meaningful access to education for all
26 students with disabilities and compliance with all special education laws that
27 protect such students;

28 b. educational and rehabilitative services to all youth with disabilities in solitary

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confinement who are subject to disciplinary measures in any of its forms for any amount of time;

- c. compensatory education to youth with disabilities who have served and are currently serving time in Juvenile Hall;
- d. reasonable modifications to policies, practices, and procedures to ensure that youth with disabilities do not suffer discrimination because of their disabilities, including through placement in solitary confinement;

5. Order the appointment of a special master to oversee the implementation of the above-listed systems, processes, and mechanisms, and grant the special master legal authority to administer specific programs and activities of Defendants as may be necessary to ensure the provision of educational and rehabilitative services to Plaintiffs and members of the Plaintiff Class;

6. Retain jurisdiction of this case until Defendants have complied with the orders of this Court, and there is a reasonable assurance that Defendants will continue to comply in the future, absent continuing jurisdiction;

7. Award Plaintiffs' attorneys' fees and costs, as provided by statute and law; and

8. Any such other relief as the Court finds just and proper.

DATED: December 19, 2013

Respectfully submitted,
MARY-LEE K. SMITH
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DISABILITY RIGHTS ADVOCATES



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