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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

YARMAN SMITH, a Minor, by LAGURTHA
SMITH, his guardian *ad litem*, JUAN MUÑOZ, a
Minor, by MARGARITA CHAVEZ, his guardian
ad litem, SUMMER McNEIL, a Minor, by
SONOBIA AUGUSTINE, her guardian *ad litem*,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

Case No. C 04 3306

**CIVIL RIGHTS COMPLAINT FOR
DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES**

DEMAND FOR JURY TRIAL

(CLASS ACTION)

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NORTHERN DISTRICT OF CALIFORNIA

1 THE BOARD OF EDUCATION OF THE
2 BERKELEY UNIFIED SCHOOL DISTRICT;
3 GERALD HERRICK, Director of the Office of
4 Student Services of the Berkeley Unified School
5 District, and MICHELE LAWRENCE,
6 Superintendent of the Berkeley Unified School
7 District, in their personal and official capacities;
8 JOHN T. SELAWSKY, President of Board of
9 Education of the Berkeley Unified School District;
10 NANCY RIDDLE, Vice President of THE
11 BOARD OF EDUCATION of the Berkeley
12 Unified School District; JOAQUIN J. RIVERA,
13 TERRY S. DORAN, and SHIRLEY ISSEL,
14 Directors of THE BOARD OF EDUCATION of
15 the Berkeley Unified School District, in their
16 official capacities,

17
18 Defendants.

19 I. INTRODUCTION

20 1. This is an action pursuant to 42 U.S.C. §1983 and 28 U.S.C. §§ 2201 and 2202
21 that seeks declaratory relief, injunctive relief and damages against the Berkeley Unified School
22 District (the "District") and its officers and administrators (collectively, "Defendants") for their
23 policy and practice of unlawfully infringing upon the constitutional and statutory rights of
24 Plaintiffs and those similarly situated by wrongfully, arbitrarily and discriminatorily excluding
25 Plaintiffs from school or wrongfully and arbitrarily reassigning Plaintiffs from comprehensive
26 school programs to county community schools, continuation schools and independent study
27 programs for alleged violations of the District's student conduct rules. The Supreme Court in
28 the landmark case of *Goss v. Lopez*, 419 U.S. 565 (1975), held that the Due Process Clause of
the Fourteenth Amendment to the United States Constitution protects public school students'
liberty and property interests in their public education by requiring school officials to provide
sufficient notice and a hearing to students whom the officials want to exclude from school for
disciplinary reasons. Accordingly, the State of California has enacted a comprehensive
statutory scheme that delineates the minimum procedural protections afforded students subject
to disciplinary proceedings. Cal. Educ. Code § 48900, *et seq.* Plaintiffs are African-American

1 and Latino students who have attended comprehensive middle school and/or high school in the
2 Berkeley Unified School District, but have been arbitrarily, without due process of law, and in
3 violation of the California Education Code, excluded from school or assigned by the District
4 and Gerald Herrick, Director of the Office of Student Services for the District, to non-
5 comprehensive community schools, continuation schools and independent study programs
6 (including Home Hospital Instruction) for disciplinary reasons. None of the Plaintiffs was
7 afforded appropriate notice and a hearing prior to his or her involuntary exclusion or transfer to
8 these substandard educational programs. All Plaintiffs have had their rights violated under the
9 Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States
10 Constitution, the Due Process provisions of the Constitution of the State of California, and
11 certain other federal and state laws and regulations.

12 2. Specifically, Defendants systematically failed to provide a proper notice and
13 hearing to Plaintiffs prior to involuntarily excluding them from school and/or involuntarily
14 reassigning them to county and community school or independent study programs. These
15 policies and practices violate Plaintiffs' rights to substantive and procedural due process under
16 the Fourteenth Amendment to the United States Constitution, Article 1, Section 7, of the
17 Constitution of the State of California, and the California Education Code section 48900, *et seq.*

18 3. Defendants' policies have had a disparate negative impact on and have arbitrarily
19 and discriminatorily excluded African-American and Latino students from comprehensive school
20 programs and assigning them to substandard alternative programs. Plaintiffs are informed and
21 believe that Defendants' conduct was undertaken with the intent to discriminate, and has had the
22 effect of discriminating against Plaintiffs because of their race, ethnic group identification or
23 color. Such policies and practices deny Plaintiffs their right to Equal Protection under the
24 Fourteenth Amendment to the United States Constitution, Article 1, section 7, of the California
25 Constitution and California Government Code sections 11135-11139.5 and its implementing
26 regulations at Title 22, section 98000, *et seq.* of the California Code of Regulations.

27 4. Defendants systematically either refused to enroll Plaintiffs in any public school
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1 program or enrolled Plaintiffs in substandard alternative programs, thereby illegally denying
2 Plaintiffs their fundamental right to a public education in violation of Article IX, sections 1 and 5
3 of the Constitution of the State of California and sections 46113 and 46141 of the California
4 Education Code.

5 5. Plaintiffs have sought unsuccessfully to persuade Defendants to discontinue these
6 unconstitutional and unlawful practices and compensate Plaintiffs for the harm these practices
7 have caused. Plaintiffs now require the aid of this Court in securing and enforcing their rights.
8 While Defendants have agreed to offer to the named Plaintiffs enrollment in comprehensive
9 programs, the District continues to refuse to offer such enrollment to those similarly situated.
10 Nor has the District provided compensatory damages and educational services to Plaintiffs and
11 those similarly situated or modified its policies and procedures to ensure that students will not be
12 unlawfully excluded from school in the future. With this Complaint, Plaintiffs seek declaratory
13 and injunctive relief that will require Defendants to bring their policies and practices into
14 compliance with state and federal law. They also seek compensatory relief in the form of
15 monetary damages and compensatory educational services to compensate for and repair the harm
16 visited upon Plaintiffs' education and hopes for future success.

17 II. JURISDICTION AND VENUE

18 6. Plaintiffs' claims for declaratory, injunctive and monetary relief are brought
19 pursuant to the Fourteenth Amendment to the Constitution of the United States; 42 U.S.C. §
20 1983; 28 U.S.C. §§ 2201 and 2202; Article 1, Section 7 of the California Constitution; Article
21 IX, sections 1 and 5 of the California Constitution; and the California Education Code sections
22 46113, 46141, and 48900, *et seq.*

23 7. This being an action for injunctive, declaratory and compensatory relief to
24 redress the deprivation under color of state law of rights, privileges and immunities guaranteed
25 by the United States Constitution, jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331
26 1343, 2201, and 2202. The Court has supplemental jurisdiction over the state law claims
27 alleged in this complaint pursuant to 28 U.S.C. § 1367, as all state and federal law claims arise
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1 from the same nucleus of operative facts.

2 8. All administrative remedies have been exhausted, are inadequate to provide
3 relief to plaintiffs, and/or are rendered futile by the District's policies and practices.

4 9. A substantial part of the events giving rise to the claims alleged in this
5 Complaint arose in the County of Alameda, California. Venue is proper in the Northern
6 District of California.

7 **III. INTRADISTRICT ASSIGNMENT**

8 10. Assignment to the San Francisco Division of the Northern District of California
9 is proper because a substantial part of the events giving rise to the claims alleged in this
10 Complaint arose in the County of Alameda, California.

11 **IV. PARTIES**

12 **A. Plaintiffs**

13 11. Plaintiff Yarman Smith is and was at all relevant times a student at Berkeley
14 High School in Berkeley, California, and intends to continue his attendance in the District at
15 Berkeley High School until he graduates. Plaintiff Yarman Smith, as well as his proposed
16 guardian *ad litem*, is a resident of the County of Alameda, California.

17 12. Lagurtha Smith is Plaintiff Yarman Smith's parent and, by petition to this
18 Court, will request appointment as his guardian *ad litem*.

19 13. Plaintiff Juan Muñoz, although temporarily residing outside of the District, was
20 at all relevant times a student at Berkeley High School in Berkeley, California, and intends to
21 continue his attendance in the District at Berkeley High School until he graduates. Plaintiff
22 Juan Muñoz, as well as his proposed guardian *ad litem*, is a resident of the County of Alameda,
23 California.

24 14. Margarita Chavez is Plaintiff Juan Muñoz's parent and, by petition to this
25 Court, will request appointment as his guardian *ad litem*.

26 15. Plaintiff Summer McNeil is and was at all relevant times a student at Berkeley
27 High School in Berkeley, California, and intends to continue her attendance in the District at
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1 Berkeley High School until she graduates. Plaintiff Summer McNeil, as well as her proposed
2 guardian *ad litem*, is a resident of the County of Alameda, California.

3 16. Sonobia Augustine is Plaintiff Summer McNeil's parent and, by petition to this
4 Court, will request appointment as her guardian *ad litem*.

5 **B. Defendants**

6 17. Defendant Board of Education of the Berkeley Unified School District ("Board
7 of Education") is the elected policy-making body of the approximately 9,000 K-12 student and
8 500 employee Berkeley Unified School District. Under California law, the Board of Education
9 is the governmental body charged with the administration of public schools within the City of
10 Berkeley, California.

11 18. Defendant Gerald Herrick, Director of the Office of Student Services of the
12 Berkeley Unified School District, is an official with the District and, on information and belief,
13 is responsible for the implementation of state and federal law regarding student conduct and
14 discipline in the District, the implementation of student conduct and discipline policies
15 promulgated by the board of Education, and the assignment of students in the District to
16 alternative educational programs. All acts taken by Defendant Herrick were taken in the
17 course and scope of his employment and were taken under color of state law. Defendant
18 Herrick is sued here in his official and individual capacity.

19 19. Defendant Michele Lawrence, Superintendent of the Berkeley Unified School
20 District, is appointed by the Board of Education to implement policies created by the Board of
21 Education or mandated by state and federal law. Defendant Lawrence is ultimately and
22 specifically responsible for the implementation of state and federal law regarding student
23 conduct and discipline in the District, the implementation of student conduct and discipline
24 policies promulgated by the Board of Education, and the assignment of students in the District
25 to alternative educational programs. All acts taken by Defendant Lawrence were taken in the
26 course and scope of her employment and were taken under color of state law. Defendant
27 Lawrence is sued here in her official and individual capacity.

1 20. Defendants John T. Selawsky, President of Board of Education of the Berkeley
2 Unified School District; Nancy Riddle, Vice President of The Board of Education of the
3 Berkeley Unified School District; and Joaquin J. Rivera, Terry S. Doran and Shirley Issel,
4 Directors of the Board of Education of the Berkeley Unified School District, are public
5 officials of the Berkeley Unified School District who are charged with the duty of setting and
6 executing policy for the administration of the District, including policies regarding student
7 conduct and discipline. All acts taken by each of the individual Defendants were taken in the
8 course and scope of their employment and were taken under color of state law. Defendants
9 Selawsky, Riddle, Rivera, Doran and Issel are sued here in their official capacity.

10 **V. THE CONSTITUTIONAL AND STATUTORY FRAMEWORK**

11 **A. Fundamental Right to a Public Education**

12 21. The California Constitution recognizes that “[a] general diffusion of knowledge
13 and intelligence [is] . . . essential to the preservation of the rights and liberties of the people . . .
14 .” Cal. Const., art. IX, § 1. In light of that principle, all minor children in California have the
15 fundamental right to a public education. *Serrano v. Priest (Serrano I)*, 5 Cal. 3d 584, 608-09, 96
16 Cal. Rptr. 601, 487 P.2d 1241 (1971); *Serrano v. Priest (Serrano II)*, 18 Cal. 3d 728, 765-66, 135
17 Cal. Rptr. 345, 557 P.2d 929 (1976). This right is guaranteed by Article IX, section 5 of the
18 California Constitution, which requires the Legislature to “provide for a system of common
19 schools by which a free school shall be kept up and support in each district . . .” The Supreme
20 Court of California in *Serrano I* explained that a public education is a fundamental interest
21 because (1) it is essential to “preserving an individual’s opportunity to compete successfully in
22 the economic marketplace, despite a disadvantaged background,” *id.* at 609; (2) it is “universally
23 relevant” to the lives of all citizens, *id.*; (3) public education is one of the few government
24 services that has a “sustained, intensive contact with the recipient,” *id.*; (4) “education is
25 unmatched in the extent to which it molds the personality of the youth of society,” *id.* at 609-10;
26 and (5) “education is so important that the state has made it compulsory—not only in the
27 requirement of attendance but also by assignment to a particular district and school,” *Id.* at 610.

1 Indeed, California law subjects all persons between the ages of 6 and 18 years old to compulsory
2 full-time education at a public school within their school district of residence. Cal. Educ. Code
3 § 48200.

4 **B. Right to Due Process**

5 22. The Fourteenth Amendment to the United States Constitution, and Article I of the
6 California Constitution, provide that no state shall make or enforce any law which shall abridge
7 the privileges or immunities of the citizens of the United States; nor shall any state deprive any
8 person of life, liberty or property without due process of law, or deny to any person the equal
9 protection of the laws.

10 23. As affirmed in *Goss v. Lopez*, 419 U.S. 565 (1975), all public school students
11 have liberty and property interests in public education that are protected under the Fourteenth
12 Amendment. Accordingly, public school students cannot be excluded from or denied such
13 education, even for a brief disciplinary suspension, without prior notice of the reason for such
14 action and an opportunity to respond to the charges in a hearing.

15 24. In 1976, the California Legislature adopted a statute, Cal. Stats. 1976, Ch. 1010,
16 codified at Cal. Educ. Code §§ 48900 *et seq.*, as amended, incorporating the constitutional
17 safeguards for students facing suspension or expulsion, and providing certain procedural
18 protections for students for whom expulsion is recommended. This statutory scheme—which
19 provides the minimal procedural due process required by law to students who are subject to
20 school discipline proceedings—is described below.

21 25. Under California law, a student may only be denied the right to a public school
22 education during a short period of “suspension.” “Suspension” is the “removal of a pupil from
23 ongoing instruction for adjustment purposes.” Cal. Educ. Code § 48925. A single suspension
24 may be no longer than five days (*see* Cal. Educ. Code § 48911(a)), while a student generally may
25 not be suspended for more than a total of 20 days in a school year (Cal. Educ. Code § 48903(a)).
26 Any longer involuntary removal of a student from the comprehensive educational program for
27 disciplinary reasons requires the District to comply with the process for “expelling” a student
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1 from school.

2 26. “Expulsion” is the removal of a student from either the immediate supervision
3 and control or the general supervision of school personnel. Cal. Educ. Code § 48925(b). In
4 effect, an expelled student is barred from attending any school within the regular school district
5 during the term of expulsion and is instead assigned to an alternative school program, most
6 commonly a county community school. Cal. Educ. Code § 48916.1. Education Code section
7 48900, *et seq.*, detail the circumstances under which a student may be referred for expulsion as
8 well as the student’s right to due process under the law in such an instance. Upon determining
9 that a student has committed one of 20 offenses enumerated in sections 48900 through 48900.4,
10 a principal may refer a student for expulsion. Under Education Code section 48918, a student
11 facing expulsion must, at a minimum, be afforded the following due process rights: (1) the right
12 to a hearing before the board of education (or an administrative hearing panel or officer) within
13 30 schooldays of the date the principal or superintendent determined that the pupil had
14 committed an expellable offense; (2) at least 10 days prior to the date of the hearing, written
15 notice of the hearing, including the date and place of the hearing, a statement of specific facts
16 and the charges upon which the proposed expulsion is based, a copy of the disciplinary rules of
17 the district that relate to the alleged violation, notice of the opportunity for the pupil and/or
18 pupil’s parent or guardian to appear in person or to be represented by a nonattorney advisor, to
19 inspect and obtain all documents to be used at the hearing, to confront and question all witnesses
20 who testify at the hearing, to question all other evidence presented, and to present oral or
21 documentary evidence on the pupil’s behalf, including witnesses. Cal. Educ. Code § 48918(b). A
22 decision to expel must be supported by a finding that the student committed an expellable
23 offense and, in all cases except those involving the “zero tolerance” offenses enumerated in
24 section 48915(c) of the California Education Code, a finding that either other means of
25 correction are not feasible or have repeatedly failed to bring about proper conduct, or due to the
26 nature of the act, the presence of the pupil causes a continuing danger to the physical safety of
27 the pupil or others. Cal. Educ. Code § 48915. These required findings must further be based upon
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1 substantial evidence relevant to the charges adduced at the expulsion hearing and may not be
2 based solely upon hearsay evidence. Cal. Educ. Code § 48918(f).

3 27. If, following an expulsion hearing, the student is not ordered expelled, the board
4 must immediately reinstate and permit the pupil to a classroom program, any other instructional
5 program, a rehabilitation program, or any combination of these programs. Cal. Educ. Code
6 § 48918(e). Thus, while not expelled, a student may be ordered to attend an educational program
7 at a district school other than the one he or she attended when referred for expulsion. This
8 placement decision is to be made by the superintendent or designee after consultation with
9 school district personnel, including the pupil's teachers and the pupil's parent or guardian.

10 28. If a student is ordered expelled, the board of education may refer the student to a
11 county community school program or, with the exception of those students found to have
12 committed a "zero tolerance" offense, may refer the expelled student to another comprehensive
13 or alternative school program within the district. Cal. Educ. Code § 48915.

14 29. Thus, after an expulsion hearing, through which the student has been afforded
15 significant due process rights, the board of education may impose the involuntary transfer of a
16 student to a county community or continuation school.

17 **C. The State Legislative Preference for a Comprehensive School Program and**
18 **Alternatives to Comprehensive School Programs**

19 30. Most children in California attend "comprehensive schools"—full-day programs
20 of general education for students of all abilities within the school district. Sections 46113 and
21 46141 of the California Education Code mandate that the minimum school day for
22 comprehensive middle and high schools shall be 240 minutes in length. The California
23 Legislature, however, has authorized several alternatives to a comprehensive school program,
24 including "continuation schools," "county community schools" and programs of "independent
25 study." Students may not be involuntarily assigned to such non-comprehensive school programs
26 for disciplinary reasons unless those students receive the requisite due process of law.

1 **1. Continuation Schools**

2 31. Continuation education is a high school diploma program designed to meet the
3 needs of students 16 through 18 years old who have not graduated from high school, are not
4 exempt from compulsory school attendance, and have been deemed at risk of not completing
5 high school. Students enrolled in continuation education programs are often credit deficient.
6 Others need a flexible education environment because they are employed or having adjustment
7 problems. Continuation schools do not offer the same comprehensive curriculum and
8 educational opportunities as comprehensive schools, and no student may be involuntarily
9 assigned to such a school without due process of law. *See <http://www.cde.ca.gov/sp/eo/ce>.*

10 **2. County Community Schools**

11 32. Community Schools are operated by county offices of education to serve students
12 in four categories: (1) students who are expelled from a school district; (2) students referred by a
13 school district, as a result of the recommendation by a school attendance review board (SARB)
14 or students whose school districts of attendance, have at the request of the pupil's parent or
15 guardian approved the pupil's enrollment in a county community school; (3) students referred by
16 Probation pursuant to sections 300, 601, 602, and 654 of the Welfare and Institutions Code or
17 students on probation or parole and not in attendance at any school; and (4) homeless children.
18 Cal. Educ. Code § 1981. Thus, excluding homeless children, a student may not be placed at a
19 county community school without the consent of either his or her parent or probation officer,
20 unless he or she has received due process under the law via an expulsion hearing or an
21 appearance before a school attendance review board. Although students may graduate from
22 County Community Schools, the programs are designed to transition students to appropriate
23 educational, training or employment opportunities following the term of expulsion or
24 termination of court jurisdiction. County community schools do not offer the same
25 comprehensive curriculum and educational opportunities as comprehensive schools, and no
26 student may be involuntarily assigned to such a school without due process of law.

1 **3. Independent Study**

2 33. “Independent Study is an optional educational alternative, available to students
3 from kindergarten through high school, that is meant to respond to the student’s specific
4 educational needs, interests, aptitudes, and abilities within the confines of school board
5 policy.” Cal. Dep’t of Educ., *Independent Study Operations Manual* at 1-1 (2002 ed.). The
6 California Education Code provides that independent study “shall not be provided as an
7 alternative curriculum” (Cal. Educ. Code § 51745(a)(2)), and that “independent study is an
8 optional educational alternative in which no pupil may be required to participate” (Cal. Educ.
9 Code § 51747(c)(7)). Furthermore, state law makes clear that independent study is not to be
10 imposed as an educational program for expelled students. Rather, a student who is referred to or
11 assigned to any school, class or program as the result of an expulsion order may be instructed
12 through independent study only if the pupil is offered the alternative of classroom instruction.
13 Cal. Educ. Code § 51747(c)(7). Finally, in order to ensure that participation in a program of
14 independent study is a voluntary and viable method of instruction, districts must execute a
15 written contract detailing the individual terms of the pupil’s program of study among the student,
16 the student’s parent or guardian (unless the pupil is 18 or older), the certificated employee
17 supervising the independent study and all persons providing direct assistance to the pupil. Cal.
18 Educ. Code § 51747(c)(8).

19 **VI. FACTS**

20 Allegations Common to All Plaintiffs

21 34. Plaintiffs are African-American or Latino students in the Berkeley Unified
22 School District.

23 35. Each Plaintiff was allegedly involved in an incident in which the Plaintiff was
24 alleged to have violated the District’s student conduct rules.

25 36. As a result of being involved in the alleged disciplinary incident, each Plaintiff
26 was excluded indefinitely from the District’s comprehensive educational programs and was
27 either provided no educational services or provided substandard educational services through a
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1 county community school, continuation school or independent study.

2 37. At no time did any of the Plaintiffs receive a notice of any expulsion
3 proceedings, nor did they ever receive any notice of the reasons for which each was being
4 indefinitely excluded from comprehensive school. At no time were any of the Plaintiffs
5 provided with any hearing, any opportunity to present evidence, or any opportunity to contest
6 the reasons for which each was being excluded from comprehensive school.

7 Allegations of Yarman Smith

8 38. Plaintiff Yarman Smith was a ninth-grade student at Berkeley High School
9 ("BHS") in the District during the 2003-2004 school year. Yarman is African-American.

10 39. On January 12, 2004, Yarman was involved in a disciplinary incident with a
11 BHS teacher. In response to this incident, a representative from BHS suspended Yarman. A
12 suspension notice was issued to Yarman on February 5, 2004.

13 40. Beginning on January 14, 2004, Mrs. Lagurtha Smith, Yarman's mother, made
14 several attempts to contact the District.

15 41. At no time did the District or any of its employees invite Mrs. Smith or Yarman
16 to a meeting with the Principal or a representative of the Principal to extend Yarman's
17 suspension pending any expulsion proceedings. At no time did Mrs. Smith or Yarman receive
18 a notice of any expulsion proceedings, nor did they ever receive any notice of the reasons for
19 which Yarman was being indefinitely excluded from comprehensive school. At no time was
20 Yarman provided with any hearing, any opportunity to present evidence, or a chance to tell his
21 side of the story prior to being indefinitely excluded from comprehensive school.

22 42. On January 21, 2004, Mrs. Smith met with Mr. Gerald Herrick of the District.
23 During this meeting, Mrs. Smith inquired when Yarman could return to school. Mr. Herrick
24 informed Mrs. Smith he would meet with BHS Dean, Denise Brown, on January 22, 2004 and
25 notify her as to when Yarman could return to BHS. Mr. Herrick never mentioned that BUSD
26 was planning to pursue an "extended suspension."

27 43. On or around January 28, 2004, Mrs. Smith attempted to contact BHS to
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1 get Yarman's work from his teachers. Mrs. Werd, a BHS counselor, informed Mrs. Smith that she
2 could not issue homework to Yarman because she had been notified that Yarman was not returning
3 to BHS due to "an alleged assault in his file." Mrs. Smith never received notification regarding
4 this alleged assault. No documentation was provided by BHS regarding this alleged assault.

5 44. On February 3, 2004, Mrs. Smith spoke to Mr. Herrick by telephone regarding the
6 date on which Yarman could return to school. Mr. Herrick told Mrs. Smith to contact him on
7 February 4, 2004 if she did not hear from him before that date.

8 45. On February 4, 2004, Mrs. Smith left a message with Mr. Herrick, again attempting
9 to find out when Yarman could return to BHS. Mrs. Smith did not receive a reply.

10 46. On February 5, 2004, the District issued Yarman a Notice of Suspension,
11 suspending him for five days as a result of the alleged incident on January 12, 2004. The notice
12 said that the suspension was to start on January 13. The return date was specified as "pending
13 expulsion."

14 47. On February 12, 2004, Mrs. Smith again contacted Mr. Herrick regarding a return
15 date for Yarman. Mr. Herrick again failed to contact Mrs. Smith to let her know when Yarman
16 could return to school.

17 48. On February 23, 2004, Mrs. Smith contacted Legal Services for Children. At this
18 point, Yarman had been excluded from BHS for approximately one-and-a-half months, and the
19 District had not provided a return date for Yarman.

20 49. On or about March 3, 2004, Yarman was presented with a "Student Behavior
21 Success Contract Rehabilitation Plan" ("Behavior Contract") to sign in order to re-enroll at
22 BHS. Yarman, upon the advice of legal counsel, did not sign the Behavior Contract.

23 50. On March 3, 2004, Mrs. Smith met with Denise Brown, BHS Dean, and another
24 administrator to discuss Yarman's return to BHS.

25 51. Yarman returned to BHS classes on March 5, 2004.

26 52. After Mrs. Smith sought legal assistance to get Yarman re-enrolled in BHS and
27 after Mrs. Smith's legal representatives met with the District Superintendent, Michele
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1 Lawrence, the District offered to enroll Yarman in summer school at BHS. The District has
2 not provided any form of compensatory damages or educational services to Yarman.

3 53. As a result of being excluded from school, Yarman has fallen very far behind
4 academically. Yarman wants the opportunity to make up the units he missed during his
5 exclusion from BHS and graduate from high school on time.

6 Allegations of Juan Muñoz

7 54. Plaintiff Juan Muñoz was a ninth-grade student at Berkley High School in the
8 District during the 2002-2003 school year. Juan is Latino.

9 55. On or about September 9, 2002, Juan was allegedly involved in a disciplinary
10 incident at school. In response to that incident, a representative of Berkeley High School
11 suspended Juan for five days.

12 56. Although he was only suspended for five days, a representative of Berkeley
13 High School told Juan he could not return to school for three weeks.

14 57. After three weeks, Juan returned to school for a few days. A few days after his
15 return, a representative of Berkeley High School took him out of class and told him to go
16 home.

17 58. As a result of this incident, Juan's father, Juan Muñoz, Sr., attended a meeting
18 with Juan and Mr. Gerald Herrick. Mr. Herrick told Juan and his father that he could not
19 return to Berkeley High School because he wore red clothing to school.

20 59. At no time did the District or any of its employees invite Mr. Muñoz or Juan to
21 a meeting with the Principal or a representative of the Principal to extend Juan's suspension
22 pending any expulsion proceedings. At no time did Mr. Muñoz or Juan receive a notice of any
23 expulsion proceedings, nor did they ever receive any notice of the reasons for which Juan was
24 being indefinitely excluded from comprehensive school. At no time was Juan provided with
25 any hearing, any opportunity to present evidence, or a chance to tell his side of the story prior
26 to being indefinitely excluded from comprehensive school.

27 60. Juan and his father telephoned Mr. Herrick during the next few weeks to try to
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1 get another school placement.

2 61. In November 2002, Mr. Herrick told Juan he would place him at Berkeley
3 Alternative School. However, Juan was never actually given an educational placement
4 anywhere in the District.

5 62. Juan did not have any school placement for the remainder of the 2002-2003
6 school year.

7 63. In September 2003, Juan enrolled at Berkeley High School and obtained a class
8 schedule. However, Mr. Herrick called BHS and told them to disenroll Juan.

9 64. Since Juan was not allowed to enroll at BHS, he requested that Mr. Herrick
10 offer him another placement, either at Academy Quest or Berkeley Alternative School. Mr.
11 Herrick rejected both requests because these campuses are near BHS, and Mr. Herrick did not
12 want Juan near the BHS campus.

13 65. At this time, Mr. Herrick told Juan he would have to enroll at a non-
14 comprehensive school, county community school called Rock LaFleche. Although Juan did
15 not want to attend Rock LaFleche, he agreed to accept the placement in order to attend school.
16 However, Juan was never placed at Rock LaFleche or in any other educational program. He
17 was excluded from BUSD from the Fall of 2002 to the Summer of 2004.

18 66. The District has not provided Juan with any form of compensatory damages or
19 educational services.

20 67. As a result of being excluded from comprehensive school, Juan has fallen very
21 far behind academically and has been overwhelmed by feelings of hopelessness and rejection.

22 Allegations of Summer McNeil

23 68. Plaintiff Summer McNeil was an eleventh-grade student at Berkeley High
24 School (BHS) in the District during the 2003-04 school year. Summer is African-American.

25 69. On November 7, 2003, Summer was allegedly involved in a disciplinary
26 incident in class. In response to that incident, a representative of BHS suspended Summer for
27 five days.

1 70. At the end of the five-day suspension period Summer returned to school. At
2 BHS she was told by a BHS representative that she could not attend class. She was told to go
3 home and wait for a phone call.

4 71. At no time did the District or any of its employees invite Summer or her mother,
5 Ms. Sonobia Augustine, to a meeting with the Principal or a representative of the Principal to
6 extend Summer's suspension pending any expulsion proceedings. At no time did Ms.
7 Augustine or Summer receive a notice of any expulsion proceedings, nor did they ever receive
8 any notice of the reasons for which Summer was being indefinitely excluded from
9 comprehensive school. At no time was Summer provided with any hearing, any opportunity to
10 present evidence, or a chance to tell her side of the story prior to being indefinitely excluded
11 from comprehensive school.

12 72. In December 2003, Ms. Augustine received a phone call from Mr. Gerald
13 Herrick, the District's Director of Student Services, telling her that Summer could attend
14 Berkeley Alternative School two hours per week. However, Summer was not given a date on
15 which she could begin attending Berkeley Alternative. Summer remained at home.

16 73. During Mr. Herrick's phone call, Ms. Augustine was also told that Summer
17 must attend an Aggressive Offender's Program. Ms. Augustine paid \$30 for the session.
18 Summer attended the one-day program and received a certificate of completion on March 27,
19 2004.

20 74. In late January 2004, Ms. Augustine began calling the superintendent's offices
21 demanding information about the status of Summer's attendance at BHS and that Summer be
22 enrolled in school immediately.

23 75. In May 2004, a teacher began providing Summer with a form of independent
24 study called "Home Hospital Instruction." Home Hospital Instruction is provided for students
25 suffering from a "temporary disability." Cal. Educ. Code § 48206.3. Summer was neither ill
26 nor incapacitated, and thus there was no medical need for Home Hospital Instruction. The
27 teacher conducted an interview before beginning instruction, but did not provide any contract
28

1 or paperwork to indicate the amount and length of home instruction to be provided. The
2 teacher taught Summer at home three days a week for two hours of instruction per day.
3 Summer was given and completed two to three hours of homework per day.

4 76. The home instructor told Ms. Augustine that Summer would receive some
5 credits for the period of missed instruction. Summer did not receive any compensatory credits
6 for missed instruction.

7 77. After Ms. Augustine sought legal assistance to get Summer enrolled in a
8 comprehensive school and after Ms. Augustine's legal representatives met with the District
9 Superintendent, Michele Lawrence, the District offered to enroll Summer in summer school at
10 Berkeley High. The District has not provided any form of compensatory damages or
11 educational services to Summer.

12 78. As a result of being excluded from comprehensive school, Summer has fallen
13 very far behind academically and has become anxious about graduating on time in Spring
14 2005. Summer would like to graduate with the rest of her class at BHS but is afraid that she
15 will not have enough credits as a result of the time she has been away from school.

16 **VII. CLASS ACTION ALLEGATIONS**

17 79. Plaintiffs bring this action as a class action under Federal Rules of Civil
18 Procedure 23(b)(1) and (2) on behalf of themselves and all other persons similarly situated.

19 80. The class which Plaintiffs represent is composed of all African-American and
20 Latino students who have been or in the future will be students in the Berkeley Unified School
21 District and who have been or in the future will be involuntarily excluded from school or
22 involuntarily reassigned from comprehensive school programs to county community schools,
23 continuation schools and independent study programs for alleged violations of the District's
24 student conduct rules without having received due process of law. Specifically, each Class
25 Member was allegedly involved in an incident in which the Class Member was alleged to have
26 violated the District's student conduct rules. As a result of being involved in the alleged
27 disciplinary incident, each Class Member was excluded indefinitely from the District's
28

1 comprehensive educational programs and was either provided no educational services or
2 provided substandard educational services through a county community school, continuation
3 school or independent study. At no time did any of the Class Members receive a notice of any
4 expulsion proceedings nor did they ever receive any notice of the reasons for which each was
5 being indefinitely excluded from comprehensive school. At no time were any of the Class
6 Members provided with any hearing, any opportunity to present evidence, or any opportunity
7 to contest the reasons for which each was being excluded from comprehensive school.

8 81. Plaintiffs are informed and believe that this Class is so numerous that joinder of
9 all members is impracticable, and that the disposition of their claims in a class action will
10 benefit the parties and the Court. Data provided by the District suggest that, during the 2002-
11 2003 academic year, some 55 students who were recommended for expulsion were not
12 formally expelled after an expulsion hearing and were likely excluded from comprehensive
13 school without a hearing. Plaintiffs are informed and believe that a similar number of students
14 were unlawfully excluded during the 2003-04 academic year.

15 82. There are questions of law and fact common to the entire Class. Such questions
16 include, *inter alia*: (1) whether the District's policy and practice of excluding students from
17 school or reassigning students from comprehensive school programs to county community
18 schools, continuation schools and independent study programs for alleged violations of the
19 District's student conduct rules without sufficient notice and a hearing infringes upon the
20 students' due process rights under the United States and California Constitutions; (2) whether
21 the District's policy and practice of excluding students from school or reassigning students
22 from comprehensive school programs to county community schools, continuation schools and
23 independent study programs for alleged violations of the District's student conduct rules
24 without sufficient notice and a hearing had the purpose and effect of discriminating against the
25 students on the basis of their race, national origin or color under the United States and
26 California Constitutions and California antidiscrimination statutes; (3) whether the District's
27 policy and practice of excluding students from school or reassigning students from
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1 comprehensive school programs to county community schools, continuation schools and
2 independent study programs for alleged violations of the District's student conduct rules
3 without sufficient notice and a hearing infringes upon the students' fundamental right to an
4 education under the California Constitution; and (4) whether the District's policy and practice
5 of excluding students from school or reassigning students from comprehensive school
6 programs to county community schools, continuation schools and independent study programs
7 for alleged violations of the District's student conduct rules without sufficient notice and a
8 hearing infringes upon the students' rights under the California Code of Education.

9 83. The claims or defenses of the Class representatives are typical of the claims of
10 the Class as a whole. The claims of the Class representatives arise from the same policies and
11 practices engaged in by Defendants that give rise to the claims of all members of the Class.
12 The claims of the Class representatives are based on the same legal theories as the claims of all
13 members of the Class.

14 84. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs
15 are represented by Pillsbury Winthrop, LLP, Legal Services for Children and the Youth and
16 Education Law Clinic. These are organizations with substantial resources and are experienced
17 in constitutional and education law and complex and class action litigation. Plaintiffs' counsel
18 will adequately represent the interests of the Class.

19 85. Defendants, and each one of them, have acted and refused to act on grounds
20 applicable to the entire Class, thereby making it appropriate that final injunctive relief or
21 corresponding declarative relief be with respect to the Class as a whole.

22 **VIII. REQUISITES FOR RELIEF**

23 86. As a direct and proximate result of the conduct of Defendants described above,
24 Plaintiffs have been denied their constitutional and statutory rights as stated below and have
25 been damaged in an amount which is not yet known. Plaintiffs will seek leave of Court to
26 amend this Complaint to conform to proof at the time of trial. Plaintiffs have suffered and
27 continue to suffer mental and emotional distress, humiliation, embarrassment, discomfort and
28

1 anxiety.

2 87. Defendants' policies, practices and conduct and acts alleged here have resulted
3 and will continue to result in irreparable injury to Plaintiffs, including, but not limited to,
4 further violations of their statutory and constitutional rights. Plaintiffs have no plain, adequate
5 or complete remedy at law to address the wrongs described here. Plaintiffs therefore seek
6 injunctive relief restraining Defendants from continuing to engage in and enforce the
7 unconstitutional and illegal policies, practices, conduct and acts described here.

8 88. Defendants acted in violation of Plaintiffs' legal and constitutional rights and
9 have directly and proximately caused Plaintiffs' mental and emotional pain, humiliation and
10 suffering. As a direct, legal and proximate result of Defendants' violations of Plaintiffs'
11 statutory and constitutional rights, Plaintiffs have been damaged in an amount which is not yet
12 known. Plaintiffs will seek leave of Court to amend this complaint to conform to proof at time
13 of trial.

14 89. Defendants in various personal and official capacities acting under color of law,
15 instituted, authorized, tolerated, ratified, permitted and acquiesced in policies, practices and
16 customs of unlawfully excluding Plaintiffs from school or unlawfully reassigning students
17 from comprehensive educational programs to substandard, noncomprehensive educational
18 programs without due process of law.

19 IX. CAUSES OF ACTION

20 FIRST CAUSE OF ACTION

21 *Infringement of Procedural Due Process Rights*
22 *Violation of the 14th Amendment to the United States Constitution, 42 U.S.C. § 1983, and*
23 *Article I, Section 7 of the California Constitution*

23 90. Plaintiffs reallege and incorporate by reference paragraphs 1 through 89 above.

24 91. By their policies and practices of excluding Plaintiffs and those similarly situated
25 to Plaintiffs from comprehensive school programs without providing sufficient notice and a
26 hearing, Defendants, acting under color of law, have violated and continue to violate Plaintiffs'
27 rights to procedural due process under the Fourteenth Amendment to the United States

1 Constitution (giving rise to Plaintiffs' claims under 42 U.S.C. § 1983) and under Article 1, § 7 of
2 the California Constitution.

3 92. As a direct and proximate result of Defendants' violations of students' procedural
4 due process rights, Plaintiffs and those similarly situated to Plaintiffs have been damaged in an
5 amount subject to proof at trial and will continue to be injured by Defendants' unlawful policies
6 and practices. Unless Defendants are enjoined, Plaintiffs and those similarly situated to Plaintiffs
7 will be irreparably harmed.

8 **SECOND CAUSE OF ACTION**

Infringement of Substantive Due Process Rights

9 *Violation of the 14th Amendment to the United States Constitution, 42 U.S.C. § 1983*

10 93. Plaintiffs reallege and incorporate by reference paragraphs 1 through 92 above.

11 94. By their policies and practices of, *inter alia*, (1) completely excluding Plaintiffs
12 and those similarly situated to Plaintiffs from school for alleged infractions of the District's
13 student conduct rules, irrespective of the nature of the alleged behavior; (2) reassigning Plaintiffs
14 and those similarly situated to Plaintiffs to county community schools and continuation schools
15 that do not offer the same comprehensive curriculum and educational opportunities as
16 comprehensive schools for alleged infractions of the District's student conduct rules, irrespective
17 of the alleged behavior; and (3) reassigning Plaintiffs and those similarly situated to Plaintiffs to
18 isolated, understaffed independent study programs that do not offer the same comprehensive
19 curriculum and educational opportunities as comprehensive schools for alleged infractions of the
20 District's student conduct rules, irrespective of the alleged behavior, when there exist other
21 reasonable and lawful means to deter such alleged infractions which would be less restrictive of
22 Plaintiffs' public rights and personal liberties, Defendants have violated and continue to violate
23 Plaintiffs' rights to substantive due process under the Fourteenth Amendment to the United
24 States Constitution (giving rise to Plaintiffs' claims under 42 U.S.C. § 1983).

25 95. As a direct and proximate result of Defendants' violations of students'
26 substantive due process rights, Plaintiffs and those similarly situated to Plaintiffs have been
27 damaged in an amount subject to proof at trial and will continue to be injured by Defendants'

1 unlawful policies and practices. Unless Defendants are enjoined, Plaintiffs and those similarly
2 situated to Plaintiffs will be irreparably harmed.

3 **THIRD CAUSE OF ACTION**

4 *Discrimination on Account of Race, Ancestry and National Origin*
Violation of the 14th Amendment to the United States Constitution and 42 U.S.C. § 1983

5 96. Plaintiffs reallege and incorporate by reference paragraphs 1 through 95 above.

6 97. Plaintiffs are informed and believe and therefore allege that Defendants'
7 conduct, in excluding Plaintiffs from comprehensive educational programs as described in this
8 complaint, was undertaken because of their race, ancestry or national origin.

9 98. Defendants have violated Plaintiffs' right to be free from discrimination on
10 account of race, ancestry and national origin as guaranteed by the Fourteenth Amendment to
11 the United States Constitution (giving rise to Plaintiffs' claims under 42 U.S.C. § 1983).

12 **FOURTH CAUSE OF ACTION**

13 *Discrimination on Account of Race, Ancestry and National Origin*
Violation of Article 1, Section 7 of the California Constitution

14
15 99. Plaintiffs reallege and incorporate by reference paragraphs 1 through 98 above.

16 100. Plaintiffs are informed and believe and therefore allege that Defendants'
17 conduct, in excluding Plaintiffs from comprehensive educational programs as described in this
18 complaint, was undertaken because of their race, ancestry or national origin.

19 101. Defendants have violated Plaintiffs' right to be free from discrimination on
20 account of race, ancestry and national origin as guaranteed by Article 1, Section 7(a) of the
21 California Constitution.

22 **FIFTH CAUSE OF ACTION**

23 *Violation of California Government Code §§ 11135 et seq.*

24 102. Plaintiffs reallege and incorporate by reference paragraphs 1 through 101 above.

25 103. Defendants, at all relevant times, have been recipients of financial assistance
26 from the State of California.

27 104. Plaintiffs are informed and believe and therefore allege that Defendants'
28

1 conduct, in excluding Plaintiffs from comprehensive educational programs as described in this
2 complaint, was undertaken because of their ethnic group identification or color and had the
3 effect of discriminating against Plaintiffs because of their ethnic group identification or color.

4 105. Defendants' conduct, as alleged above, violates Plaintiffs' right to be free from
5 discrimination on account of ethnic group identification or color.

6 **SIXTH CAUSE OF ACTION**

7 *Infringement of Rights under Article IX, Sections 1 and 5 of the California Constitution*

8 106. Plaintiffs reallege and incorporate by reference paragraphs 1 through 105 above.

9 107. By their policies and practices of, *inter alia*, (1) completely excluding Plaintiffs
10 and those similarly situated to Plaintiffs from school for alleged infractions of the District's
11 student conduct rules, without requisite notice and a hearing, and irrespective of the nature of the
12 alleged behavior; (2) reassigning Plaintiffs and those similarly situated to Plaintiffs to county
13 community schools and continuation schools that do not offer the same comprehensive
14 curriculum and educational opportunities as comprehensive schools for alleged infractions of
15 the District's student conduct rules, without requisite notice and a hearing, and irrespective of the
16 alleged behavior; and (3) reassigning Plaintiffs and those similarly situated to Plaintiffs to
17 isolated, understaffed, independent study programs that do not offer the same comprehensive
18 curriculum and educational opportunities as comprehensive schools for alleged infractions of the
19 District's student conduct rules, without requisite notice and a hearing, and irrespective of the
20 alleged behavior, Defendants have denied Plaintiffs and those similarly situated to Plaintiffs their
21 fundamental right to an education under Article IX, sections 1 and 5 of the California
22 Constitution.

23 108. As a direct and proximate result of Defendants' violations of students' rights
24 under Article IX, sections 1 and 5 of the California Constitution, Plaintiffs and those similarly
25 situated to Plaintiffs have been damaged in an amount subject to proof at trial and will continue
26 to be injured by Defendants' unlawful policies and practices. Unless Defendants are enjoined,
27 Plaintiffs and those similarly situated to Plaintiffs will be irreparably harmed.

1 **SEVENTH CAUSE OF ACTION**

2 *Infringement of Rights under California Education Code Sections 48900 et seq.*

3 109. Plaintiffs reallege and incorporate by reference paragraphs 1 through 108 above.

4 110. By their policies and practices of, *inter alia*, (1) completely excluding Plaintiffs
5 and those similarly situated to Plaintiffs from school for alleged infractions of the District's
6 student conduct rules, without requisite notice and a hearing, and irrespective of the nature of the
7 alleged behavior; (2) reassigning Plaintiffs and those similarly situated to Plaintiffs to county
8 community schools and continuation schools that do not offer the same comprehensive
9 curriculum and educational opportunities as comprehensive schools for alleged infractions of
10 the District's student conduct rules, without requisite notice and a hearing, and irrespective of the
11 alleged behavior; and (3) reassigning Plaintiffs and those similarly situated to Plaintiffs to
12 isolated, understaffed, independent study programs that do not offer the same comprehensive
13 curriculum and educational opportunities as comprehensive schools for alleged infractions of the
14 District's student conduct rules, without requisite notice and a hearing, and irrespective of the
15 alleged behavior, Defendants have *de facto* expelled Plaintiffs and those similarly situated to
16 Plaintiffs without complying with the statutory procedures mandated by section 48900, *et seq.* of
17 the California Code of Education and thereby violated Plaintiffs' rights under those statutory
18 provisions.

19 111. As a direct and proximate result of Defendants' violations of students' rights
20 under section 48900, *et seq.* of the California Education Code, Plaintiffs and those similarly
21 situated to Plaintiffs have been damaged in an amount subject to proof at trial and will continue
22 to be injured by Defendants' unlawful policies and practices. Unless Defendants are enjoined,
23 Plaintiffs and those similarly situated to Plaintiffs will be irreparably harmed.

24 **EIGHTH CAUSE OF ACTION**

25 *Infringement of Rights under California Education Code Sections 46113 and 46141*

26 112. Plaintiffs reallege and incorporate by reference paragraphs 1 through 111 above.

27 113. By their policies and practices of, *inter alia*, (1) completely excluding Plaintiffs
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1 and those similarly situated to Plaintiffs from school for alleged infractions of the District's
2 student conduct rules, without requisite notice and a hearing, and irrespective of the nature of the
3 alleged behavior; (2) reassigning Plaintiffs and those similarly situated to Plaintiffs to county
4 community schools and continuation schools that do not offer the same comprehensive
5 curriculum and educational opportunities as comprehensive schools for alleged infractions of
6 the District's student conduct rules, without requisite notice and a hearing, and irrespective of the
7 alleged behavior; and (3) reassigning Plaintiffs and those similarly situated to Plaintiffs to
8 isolated, understaffed, independent study programs that do not offer the same comprehensive
9 curriculum and educational opportunities as comprehensive schools for alleged infractions of the
10 District's student conduct rules, without requisite notice and a hearing, and irrespective of the
11 alleged behavior, Defendants have reduced Plaintiffs' instructional time to a level of fewer than
12 240 minutes per day in violation of Plaintiffs' rights under sections 46113 and 46141 of the
13 California Education Code.

14 114. As a direct and proximate result of Defendants' violations of students' rights
15 under sections 46113 and 46141, Plaintiffs and those similarly situated to Plaintiffs have been
16 damaged in an amount subject to proof at trial and will continue to be injured by Defendants'
17 unlawful policies and practices. Unless Defendants are enjoined, Plaintiffs and those similarly
18 situated to Plaintiffs will be irreparably harmed.

19 **NINTH CAUSE OF ACTION**
20 *Declaratory Relief*

21 115. Plaintiffs reallege and incorporate by reference paragraphs 1 through 114 above.

22 116. An actual, present and justiciable controversy has arisen and now exists relating
23 to Defendants' duties and responsibilities under the United States and California Constitutions
24 and provisions of the California Education Code, specifically those statutes and laws governing
25 the school discipline process. Plaintiffs contend that Defendants' policies and practices as
26 described herein violate these statutes and laws, while Defendants, on information and belief,
27 contend that their policies and practices comply with these statutes and laws.

117. A judicial determination concerning Defendants' duties and responsibilities is necessary and desirable, specifically a declaration as to Defendants' duties and responsibilities under the statutes and laws described above. Plaintiffs fear that they will again be subjected to Defendants' unlawful and unconstitutional actions and seek a declaration ensuring that Plaintiffs and those similarly situated to Plaintiffs will receive the full benefits of their rights under law and the educational programs to which they are entitled.

X. REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Declare that this action may proceed as a class action;
2. Declare that Defendants' exclusion of Plaintiffs and those similarly situated to Plaintiffs from school or wrongfully and arbitrarily reassigning Plaintiffs and those similarly situated to Plaintiffs from comprehensive school programs to county community schools, continuation schools and independent study programs for alleged violations of the District's student conduct rules violates Plaintiffs' rights under the United States Constitution, the California Constitution and the laws of the State of California;

3. Preliminarily and permanently enjoin Defendants from authorizing or participating in any practice that excludes Plaintiffs and those similarly situated to Plaintiffs from school or reassigns Plaintiffs and those similarly situated to Plaintiffs from comprehensive school programs to county community schools, continuation schools and independent study programs or reassigns Plaintiffs and those similarly situated to Plaintiffs from comprehensive school programs to any noncomprehensive school programs for alleged violations of the District's student conduct rules, unless Defendants provide proper notice and a hearing pursuant to sections 48900, *et seq.* of the California Education Code.

4. Order Defendants to provide the following remedial measures for all Plaintiffs and those similarly situated to Plaintiffs:

- a. Search for and identify all students who have been excluded from school or reassigned from comprehensive educational programs to county community schools,

1 continuation schools, independent study programs or any other noncomprehensive
2 programs for alleged violations of the District's student conduct rules without having
3 received appropriate notice and a hearing under the United States and California
4 Constitutions and the California Education Code.

5 b. Expunge and/or modify student records to reflect that the exclusion of
6 Plaintiffs and those similarly situated to Plaintiffs from comprehensive school programs
7 and the reassignment of Plaintiffs and those similarly situated to Plaintiffs from
8 comprehensive school programs to county community schools, continuation schools
9 and independent study programs was unlawful and to remove any reference to any
10 student conduct or incident related to the exclusion or reassignment of Plaintiffs and
11 those similarly situated to Plaintiffs;

12 c. Provide an educational assessment conducted by a qualified assessor of
13 the Plaintiffs' choice to determine the extent to which remedial education services
14 should be provided to Plaintiffs for the denial of comprehensive educational programs;

15 d. Provide such remedial educational services as recommended by the
16 qualified assessor and ensure that such services are provided by a fully certified and
17 qualified service provider;

18 5. Monitor the District's implementation of the injunctive and remedial measures
19 ordered by this Court in a manner deemed appropriate by the Court;

20 6. Award compensatory and general damages, in an amount to be proven at trial,
21 against the Defendants to Plaintiffs and those similarly situated to Plaintiffs;

22 7. Award Plaintiffs their costs, expenses and reasonable attorneys' fees pursuant to
23 42 U.S.C. § 1988 and California Code of Civil Procedure section 1021.5; and

24 /-/

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1 8. Grant such other and further relief as this Court deems just and proper.

2 Dated: August 13, 2004

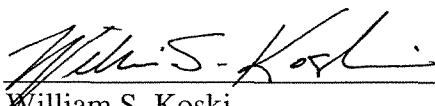
Respectfully submitted,

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YOUTH & EDUCATION LAW CLINIC

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5

6 By 
William S. Koski
Attorneys for Plaintiffs

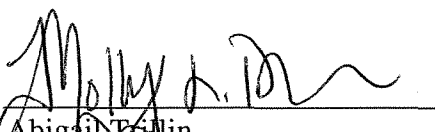
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LEGAL SERVICES FOR CHILDREN

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11 By 
Abigail Trillin
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Attorneys for Plaintiffs

12

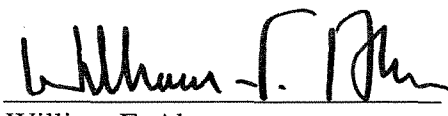
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PILLSBURY WINTHROP LLP

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17 By 
William F. Abrams
Attorneys for Plaintiffs

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Dated: August 13, 2004

By William S. Koski
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