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County of Butte
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Government Code, section 6103*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF BUTTE

**THE PEOPLE OF THE STATE OF
CALIFORNIA, EX. REL. XAVIER
BECERRA, ATTORNEY GENERAL OF
THE STATE OF CALIFORNIA,**

Plaintiff,

v.

**OROVILLE CITY ELEMENTARY
SCHOOL DISTRICT,**

Defendant.

Case No. **20CV01681**

**COMPLAINT FOR INJUNCTIVE
RELIEF**

1 the District is subject to the protections and prohibitions contained in state law. Gov. Code, §
2 11135(b.)

3 **A. Disproportionate and Exclusionary School Discipline are Associated with Negative**
4 **Outcomes.**

5 6. Exclusionary school discipline is ineffective in addressing student behavior, is
6 harmful to students, and often has a disproportionate impact on students of color and students
7 with disabilities. Greater use of exclusionary school punishments does not help to improve
8 student behavior either among the students being punished or among the general school
9 population.¹ Instead, evidence shows that being suspended predicts greater rates of criminal
10 offending among youth years later, even when the initial student behaviors are accounted for.²

11 7. Suspension and expulsion put students at greater risk of a host of negative outcomes,
12 including school failure, grade retention, future unemployment, and future justice system
13 involvement.³ When students miss instructional time for misbehavior, they fall behind
14 academically, and become less engaged in their school and their education.⁴

15 _____
16 ¹ See Kupchik, *The Real School Safety Problem: The long-term consequences of harsh*
17 *school punishment* (2016) pp. 23-27.

18 ² Mowen et al., *The Effect of School Discipline on Offending Across Time* (July 12, 2019)
19 *Justice Quarterly* .

20 ³ Rosenbaum, *Educational and Criminal Justice Outcomes 12 Years After School*
21 *Suspension* (Jan. 17, 2018) *Youth & Soc’y* (finding that suspended youth were less likely to have
22 graduated from college or high school, and were more likely to have been arrested and on
23 probation); Morris & Brea, *The Punishment Gap: School Suspension and Racial Disparities in*
24 *Achievement* (Feb. 1, 2016) 63(1) *J. Soc. Probs.* 1 (in longitudinal study, finding that school
25 suspensions account for approximately one-fifth of black-white differences in school
26 performance, and stating that findings suggest that exclusionary school punishment hinders
27 academic growth and contributes to racial disparities in achievement); Perry & Morris,
28 *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools*
(Nov. 5, 2014) 79 *Am. Soc. Rev.* 1067 (finding that high levels of exclusionary discipline within
schools threaten the academic success of all students, including those who have never been
suspended); The Council on State Gov’t & Pub. Policy Research Inst. at Tex. A&M Univ.,
Breaking Schools’ Rules: A Statewide Study on How School Discipline Relates to Students’
Success and Juvenile Justice Involvement (July 2011), (comprehensive longitudinal study in
Texas showing that even one out of school suspension made it five times as likely for a student to
drop out and three times as likely for the student to enter the juvenile justice system within one
year, when compared to similar students).

⁴ Arcia, *Achievement and Enrollment Status of Suspended Students: Outcomes in a Large*
Multicultural School District (May 1, 2006) 38 *Educ. & Urb. Soc’y* 359 (identifying a correlation
between suspension and school avoidance, diminished educational engagement and decreased
academic achievement).

1 8. The harms of overusing exclusionary school punishment extend beyond the
2 individual students who are punished. Empirical research shows that schools with relatively high
3 rates of suspensions tend to have worse academic scores for other students, even when
4 statistically controlling for other predictors of student achievement.⁵

5 9. Studies consistently find that youth of color, particularly African-American youth, are
6 disproportionately reported for disciplinary incidents and subjected to exclusionary punishments,
7 even when controlling for student misbehavior.⁶ The most substantial racial disparities in school
8 punishment tend to be for more subjectively-defined infractions, such as defiance of authority,
9 disruption, or disorderly conduct, rather than more serious and objectively-defined infractions
10 such as fighting.⁷

11 10. Studies have also shown that students with learning and behavioral disabilities are at
12 greater risk than others of being reported for school discipline.⁸

13 11. Schools throughout California have begun to incorporate positive behavior
14 intervention and supports, restorative justice practices, and other strategies laid out in the State's
15 Education Code to focus on addressing the root causes of student misconduct to keep students in
16 schools and learning and to minimize school removals and involvement with the juvenile justice
17 system. Schools in California have focused on addressing disparities in discipline to ensure that
18 certain groups of students are not subjected to disproportionate disciplinary consequences or
19 treated more harshly as compared to their similarly situated peers.

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22 _____
23 ⁵ Perry & Morris, *supra* n.3.

24 ⁶ U.S. Dep't of Ed. Office for Civil Rights, Civil Rights Data Collection: Data Snapshot
25 (School Discipline), Issue Brief No. 1 (2014); General Accounting Office (2018) *K-12*
26 *Education: Discipline disparities for black students, boys, and students with disabilities* (GAO-
27 18-258); Rocque & Paternoster, Understanding the Antecedents of the 'School-to-Jail' Link: The
28 relationship between race and school discipline (2011) 101 *The J. of Crim. L. & Criminology*
633, 653-54.

⁷ Skiba et al., *Parsing Disciplinary disproportionality: Contributions of infraction,*
student, and school characteristic to out-of-school suspension and expulsion (2014) 51 *Am. Ed.*
R. J. 640.

⁸ Krezmien et al., *Suspension, Race, and Disability: Analysis of statewide practices and*
reporting (2006) 14 *J. of Emotional and Behavioral Disorders* 217.

1 **B. District Discipline Policies and Practices Result in Different Treatment and**
2 **Disproportionate Impact.**

3 12. In May 2019, the Attorney General's office began an investigation to determine
4 whether the District's policies, procedures, and practices with respect to discipline violated any
5 California laws, specifically those laws protecting students from discrimination based on a
6 protected characteristic and other laws that provide for a state constitutional right to education,
7 other means of correction prior to school removal, and due process protections for students.

8 13. After a comprehensive investigation of the District's policies, procedures, and
9 practices focusing on the 2016-2017 school year through the first semester of the 2019-2020
10 school year, the Attorney General's office found in March 2020 that the District's policies,
11 procedures, and practices with respect to discipline over-rely on punitive, exclusionary out-of-
12 school discipline and discriminate against African-American students and students with
13 disabilities. The investigation also raised significant concerns that the District's discipline
14 policies, procedures, and practices may be subjecting Alaskan Native/Native American students
15 to discrimination.

16 14. In addition, the Attorney General's office concluded that: (a) aspects of the District's
17 discipline policies are inconsistent with state law requiring alternative means of correction prior
18 to issuing suspensions and notice of the same to students; (b) the District has failed to regularly
19 provide a prompt and adequate response consistent with state law requirements for reports and
20 complaints of harassment and discrimination on the basis of race and disability in the District, and
21 some students may have been subjected to a hostile environment as a result; and (c) the District is
22 not consistently and timely identifying and providing sufficient services and positive behavior
23 interventions and supports for some students with disabilities with behavioral issues.

24 15. The Attorney General's investigation also found that the District has already publicly
25 identified the need to focus on disproportionality in discipline for African-American students and
26 has been proactively improving its partnership with local groups focused on bias and cultural
27 competency, obtaining support from the County Office of Education for implementation of
28

1 positive alternatives to address student misbehavior, focusing on reducing punitive, out-of-school
2 discipline, and improving its ability to continuously review data and make adjustments.

3 16. The Parties have worked cooperatively to agree to a remedial plan that includes
4 among other things: (1) a five-year term; (2) changes to school discipline policies and practices to
5 bring them into compliance with state law and to address discrimination and disproportionality in
6 discipline; (3) ongoing analysis of school discipline and achievement data to address root causes
7 of discrimination in discipline; (4) consistent implementation of positive other means of
8 correction and development of individualized behavior support plans; (4) implementation of a
9 system of culturally responsive, multi-tiered supports and interventions; (5) training for staff on
10 manifestation determination meetings, positive behavior intervention plan creation and
11 implementation, and reasonable accommodations; (6) provision of support, training, and
12 assistance to parents of students with disabilities during special education and Section 504
13 processes; and (7) revisions to policies and practices for responding to discrimination and
14 harassment complaints to comply with state law requirements. The District has begun to take
15 positive steps to revise policies and eliminate punitive discipline practices at its school-sites and to
16 work with organizations focused on addressing bias and discrimination in all of its forms.

17 17. The Attorney General's investigation included a review of the District's disciplinary
18 data from the 2016-2017 to 2018-2019 school years—data collected and administered by the
19 District. The Attorney General's review of the data demonstrated that under the District's
20 discipline policies and practices, African-American students in the District are subjected to
21 exclusionary discipline that is at least 18 times the statewide average. African-American students
22 are significantly and substantially more likely than White students with similar disciplinary
23 histories to be reported for an incident, to be punished in school, and to receive more days of
24 punishment for similar offenses. For example, African-American students in the middle school
25 reported for threaten/cause injury faced a 50 percent greater rate of days punished than their
26 White peers reported for the same incident type. Moreover, more than half of African-American
27 middle school students with disabilities were suspended out of school each school year, compared
28 to about one-quarter among other students with disabilities.

1 18. In addition, the Attorney General’s review of the District’s own data demonstrated
2 that African-American students and Alaskan Native/Native American students were substantially
3 more likely to be reported for a discipline incident than similarly situated students.

4 19. Consistent with prior research showing that racial disproportionality in behavioral
5 referrals tends to be greatest among the most subjectively-defined offenses, an analysis of the
6 District’s data also shows that African-American students in the District are overrepresented
7 among subjective offenses. For example, African-American students were at a much higher risk
8 of being reported for subjectively-perceived incidents such as defiance or obscenity.

9 20. An analysis of the District’s data found that even when controlling for other
10 demographic characteristics and type of incident, African-American students were punished for
11 more days than similarly situated White students. Among elementary school students reported
12 for obscenity/disruption incidents, the rate of days punished is 27.3 percent higher for African-
13 American elementary students than for similarly situated White students. For middle schools,
14 African-American students reported for threatening or causing injury receive a statistically
15 significant 49.6 percent greater rate of days punished than similarly situated White students.

16 21. During the investigation, witnesses reported to the Department of Justice that certain
17 staff members at one of the District’s middle schools had targeted or subjected African-American
18 students to harsher discipline consequences than similarly situated White students for similar
19 conduct.

20 22. In addition, witnesses identified use of the N-word and other racial and derogatory
21 slurs as a problem in the District in the schools visited, and troubling incidents involving the use
22 of racial and derogatory slurs were evident in District incident data reviewed. Witnesses stated
23 that students subjected to racial and derogatory slurs were subjected to punishment for defending
24 themselves when the District’s efforts to stop harassing conduct was perceived as ineffective.

25 23. School punishments in the District result in a significant loss of instructional time. In
26 California, on average, about 12 days of instruction are lost to suspension per 100 students
27 enrolled. In contrast, the District suspends the average student at two to three times that rate in
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1 elementary school, nearly ten times that rate in middle school, and nearly fifteen times that rate
2 for African-American middle school students.

3 24. In the District that harm is borne disproportionately by African-American students,
4 but other students in the District also suffer. For example, White elementary school students lost
5 34.6 days to suspension in 2018-2019, compared to African-American elementary school students
6 who lost 53.6 days in 2018-2019. Similarly, White middle school students lost 110.6 days in
7 2018-2019, while African-American students lost 143.4 in 2018-2019.

8 25. School punishments in the District have a quantifiable adverse education impact
9 beyond the loss of instructional time. On average, the state standardized test score performance
10 of a District student receiving an out-of-school suspension in any given school year decreased
11 significantly in the following year. Specifically, while controlling for individual student
12 characteristics and school attended, elementary school students who are suspended in any given
13 year score 33.6 points lower on their math assessment and 22.5 points lower on their English
14 Language Arts (ELA) assessment, on average. Middle school students who are suspended tend to
15 score 28.4 points lower on math and 15.7 points lower on ELA assessment, on average.

16 26. The District's publicly stated education goals include creating a safe school climate
17 and culture and reducing the significant suspension gap for students of color and students with
18 disabilities.

19 27. The Attorney General's investigation found that with respect to creating a safe school
20 climate and culture and reducing the significant suspension gap, the excessive use of school
21 removals is ineffective.

22 28. The District's 2018-2019 California Healthy Kids Survey provides that 61% of 5th
23 graders reported being hit or pushed, and 29% of 7th graders reported being in one or more
24 physical fights in the past year.

25 29. The District's data reviewed for the 2016-2017 through 2018-2019 school years also
26 show that the District's elementary schools reported very high levels of incidences of attempted
27 or caused physical injury, which raised concerns, either that less serious offenses are being
28 incorrectly coded as a higher level offense than disruption or defiance, which would be

1 impermissible under state law prohibiting suspensions in K-3 for these offenses (Ed. Code, §
2 48900, subd. (k).), or that the District has not taken sufficient steps to create a safe campus, or
3 both.

4 30. The District has not implemented sufficient safety procedures to provide safe campus
5 environments, and this failure has resulted in violence on campus. At one elementary school and
6 one middle school, multiple witnesses reported known areas where fights would occur, with
7 students being generally unsupervised. Because certain areas on the campus are not safe but
8 could be safe with adequate staffing plans, prevention, and student and staff support, the District
9 has issued otherwise preventable out-of-school suspensions.

10 31. There are comparable effective alternatives that would meet the District's educational
11 goals with less burden on African-American and Alaskan Native/Native American students and
12 students with disabilities, which are included in the proposed Stipulated Judgment attached
13 hereto, and include incorporating social-emotional learning practices into the middle school
14 curriculum, establishing site- and District-led processes to consistently review the District's
15 disaggregated discipline data to address the root causes of discrimination in discipline,
16 implementing with fidelity culturally-responsive positive behavior interventions and supports,
17 and developing programs for students and adults that proactively and directly counter bias and
18 racism.

19 32. Despite the significant disparities described above and the negative effects thereof,
20 District administrators do not regularly review disciplinary data to identify and ameliorate
21 disparities. Nor are all staff effectively trained on disciplinary policies and procedures or on
22 alternative positive behavioral strategies set forth in state law, resulting in inconsistent
23 implementation of these policies and inadequate tools to address unequal treatment in discipline
24 and improve school climate and cultures.

25 **C. The District Did Not Adequately Respond to Allegations of Harassment on the Basis**
26 **of Race and Disability.**

27 33. The Attorney General's investigation identified that the District's failure to
28 adequately address the use of racial slurs and other bigoted and derogatory insults from students,

1 and sometimes staff, has compromised the safety of the District’s learning environment,
2 contributing to a physically and emotionally unsafe learning environment for some students.
3 Witnesses at one middle school reported that racial slurs were an everyday occurrence, and that
4 adequate intervention from school-site administrators to stop the harassment, prevent recurrence,
5 and address the effects was not provided.

6 34. District data reviewed revealed that racial slurs were the cause for suspension in at
7 least 16 incidents in 2016, 9 incidents in 2017, and 12 incidents in 2018, with students making
8 comments like: “Go back to Africa,” “Go back to India,” “black porch monkey,” “it’s none of
9 your business Mexican,” and “I hate white people.”

10 35. The State’s Uniform Complaint Procedures require an independent investigation, an
11 opportunity for the complainant and respondent to present and respond to evidence, a written
12 decision of finding, and a right to appeal to the California Department of Education. (Ed. Code, §
13 33315; Cal. Code Regs., tit. 5, §§ 4610, et seq.) However, several witnesses reported that the
14 District does not promptly and adequately respond to complaints of bullying, discrimination, and
15 harassment, including on the basis of disability and race, and fails to initiate and provide a state-
16 law compliant Uniform Complaint Procedures response upon receiving notice of potential
17 discrimination, harassment, or retaliation.

18 36. For several cases reviewed, the investigation did not identify evidence that the
19 District had investigated or adequately responded to the racial harassment to prevent, stop, or
20 eliminate further harassment or had utilized the required state law Uniform Complaint Procedures
21 process, which includes a written report of findings and the right to appeal.

22 **D. Important Aspects of the District’s Discipline Policies and Practices Fail to Comply**
23 **with State Law.**

24 37. The Attorney General’s investigation also found that important aspects of District’s
25 disciplinary policies are inconsistent with state law, which may be contributing to high rates of
26 exclusionary punishment. While the District’s school discipline administrative regulation refers
27 to the need to provide other means of correction prior to discipline in response to certain offenses,
28 it fails to specify the other means of correction to utilize and include the requirement to hold a

1 conference prior to suspension where the student is informed of the other means attempted prior
2 to suspension. (Ed. Code, § 48911, subd. (b); Ed. Code, § 48900.5.) The elementary schools'
3 disciplinary flow chart permits school administrators to suspend on a first offense for several
4 offenses, such as taking a picture without consent, for which state law requires exhaustion of
5 alternative means of correction prior to suspension.

6 38. The District's disciplinary policies, procedures, and practices also have a significant
7 disproportionate impact on students with disabilities. The Attorney General's review of
8 disciplinary data demonstrated disproportionate rates of school suspensions and other discipline
9 for District students with disabilities.

10 39. District data showed that students with disabilities were substantially more likely to
11 be reported for a discipline incident and at a greater risk of being suspended out of school than
12 similarly situated students without disabilities. Elementary students with disabilities were nearly
13 twice as likely to be reported for threatening or causing injury as similarly situated elementary
14 school students without a disability, and students with disabilities in middle school were punished
15 for nearly twice as many days as similarly situated students without a disability.

16 40. Disability policy that does not comply with state law and evidence that some students
17 with disabilities are not receiving appropriate supports and interventions to address disability-
18 related misbehavior contribute to this disproportionality. The District's written policy for
19 students with disabilities violates state law because it permits ten days of consecutive suspension
20 for a single incident of misconduct, even though the state law maximum is five days.

21 41. The District's policies, practices, and processes for providing equal access to
22 necessary services for students with disabilities and ensuring that students with disabilities are not
23 denied equal access to education are inadequate. Specifically, student files reviewed revealed that
24 several students, including students who had been suspended, were denied full and equal access
25 to education because of their suspected disabilities or disabilities, including failure to promptly
26 identify, provide procedural protections, reasonable accommodations, and modifications.

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1 **E. Proposed Resolution by the Parties.**

2 42. Since April 2020, the Parties have negotiated in good faith on numerous policy and
3 procedure changes and have come to an agreement to address the findings of the investigation.
4 The District has already begun to make changes to its policies, procedures, and practices and is in
5 the process of implementing several of the terms agreed upon by the parties.

6 43. The District has also begun to make changes to its policies, procedures, and practices
7 to comply with the California Department of Education’s oversight monitoring requirements to
8 address significant disproportionality for students with disabilities.

9 44. Plaintiff now seeks an order requiring the District to implement the agreed-upon
10 reforms and respectfully requests that the Court enter Judgment as set forth in the proposed
11 Stipulated Judgment, concurrently filed with this Complaint.

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Education Code section 200 et seq. and 33315)**

15 45. Plaintiff realleges all paragraphs set forth above and incorporates them by reference
16 as though they were fully set forth in this cause of action.

17 46. Education Code section 220 prohibits discrimination based on race, color, national
18 origin, ethnicity, and disability in state-funded programs and activities.

19 47. When a school district receives notice of an allegation of potential discrimination,
20 harassment, bullying, or retaliation on the basis of a protected characteristic, such as race or
21 disability, Education Code section 33315 requires the District to investigate and provide a timely
22 and effective response to end the discrimination, harassment, or retaliation, prevent its recurrence,
23 and remedy the effects using the Uniform Complaint Procedures.

24 48. The Uniform Complaint Procedures require an independent investigation, an
25 opportunity for the complainant and respondent to present and respond to evidence, a written
26 decision of finding, and a right to appeal to the California Department of Education. (Ed. Code, §
27 33315; Cal. Code Regs., tit. 5, §§ 4610, et seq.)
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1 resulting in other cognizable education harms. Such disproportionate punishments are not
2 necessary to meet an important education goal and other options exist with less of an adverse
3 impact on African-American students.

4 55. Following an investigation carried out pursuant to his discretionary authority as the
5 state's chief law officer, the Attorney General has determined that Defendant has violated the
6 California Constitution, Article 1, section 7 by not satisfying its affirmative obligation to
7 implement programs that avoid discriminatory results through its knowingly subjecting similarly
8 situated African-American students to higher numbers of punishments and harsher punishments
9 than similarly situated students of other races or ethnicities for similar offenses, and without
10 implementing feasible remedies when it should have been aware of and addressed these results.
11 These disproportionate punishments result in changes in classroom settings and substantial denial
12 of classroom access and instructional time, impacting the amount or quality of instruction
13 received by these students and resulting in other cognizable education harms.

14 56. Due to Defendant's violations of the California Constitution, injunctive relief is an
15 appropriate remedy.

16 **THIRD CAUSE OF ACTION**

17 **(Suspensions in Violation of Education Code section 48900 et seq.)**

18 57. Plaintiff realleges all paragraphs set forth above and incorporates them by reference
19 as though they were fully set forth in this cause of action.

20 58. Education Code section 48900.5 requires that other means of correction be attempted
21 prior to suspension of a student and prohibits suspension upon a first offense, except for certain
22 specifically defined offenses or where a student's presence causes a danger to persons.

23 59. Education Code section 48911, subdivision (b) requires the District to hold a
24 conference prior to suspension where the student is informed of the other means of correction
25 attempted prior to suspension.

26 60. Defendant has violated Education Code section 48900 by establishing policies and
27 procedures that permit suspensions upon the first offense for offenses for which suspension upon
28 a first offense is not permitted.

1 220 by failing to actively and systemically seek out individuals with exception needs who reside
2 in the District and to identify, locate, and assess such students in order to plan for an educational
3 program that will meet their unique needs and ensure that such students are receiving the
4 appropriate evaluations, specialized supports, and a determination as to whether behaviors
5 resulting in removals, as specified above, are a manifestation of their disabilities, which has
6 contributed to unequal treatment with respect to imposition of discipline for students with
7 disabilities.

8 71. Defendant has violated Government Code section 11135 and Education Code section
9 220 by failing to consider consistently the use of positive behavioral interventions and supports
10 for students with disabilities to address behavioral issues.

11 72. As a direct and proximate result of Defendants' violations, District students with
12 disabilities have suffered or may suffer irreparable harm.

13 73. Due to Defendant's violations of Government Code section 11135 and California
14 Education Code sections 220 and 48911, injunctive relief is an appropriate remedy.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff respectfully prays for the Court to enter judgment as follows:

17 74. For the Court to issue an order enjoining Defendant from engaging in the unlawful
18 practices challenged in this Complaint, requiring Defendant to implement the injunctive relief
19 provisions as set forth in the proposed Stipulated Judgment, and entering final judgment;

20 75. For the Court to exercise, pursuant to the terms of the Stipulated Judgment,
21 continuing jurisdiction over this action to ensure that Defendant complies with the judgment as
22 set forth in the proposed Stipulated Judgment; and

23 76. For such other and further relief as the Court deems just and proper.

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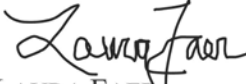
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1 Dated: August 25, 2020

Respectfully Submitted,

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