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12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 SAM DOE by and through his *guardian*
ad litem L.R., DEBORAH DOE by and
17 through her *guardian ad litem* S.H,
TANYA DOE by and through her
18 *guardian ad litem* F.H., ERIC DOE by
and through his *guardian ad litem* G.B.,
19 WALTER DOE by and through his
guardian ad litem M.F., EVAN DOE by
20 and through his *guardian ad litem* C.M.;
and on behalf of themselves and other
21 similarly situated students,,

22 Plaintiffs,

23 v.

24 PASADENA UNIFIED SCHOOL
DISTRICT and BRIAN MCDONALD
25 in his official capacity as Superintendent
of Pasadena Unified School District,
26

27 Defendants.
28

Case No. 2:16-CV-00984

CLASS ACTION COMPLAINT

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Case No.

CLASS ACTION COMPLAINT

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INTRODUCTION

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2 1. Defendants Pasadena Unified School District (“Pasadena USD” or
3 “District”) and Brian McDonald, the Superintendent of Pasadena USD, operate a
4 public school system that discriminates against students with behavior-related
5 disabilities. Pasadena USD sends students with these disabilities and only such
6 students to a segregated school site, Focus Point Academy (“Focus Point”), where
7 they are consigned to an inferior education, denied access to electives and
8 extracurricular activities, isolated from their non-disabled peers, deprived of the
9 benefits of normal socialization, and, in general, suffer the same harms as any other
10 victims of segregation. This practice violates the Americans with Disabilities Act
11 (“ADA”), 42 U.S.C. § 12132 *et seq.*, along with state disability rights laws.
12 Consequently, this court has jurisdiction over this action under Title II of the ADA,
13 42 U.S.C. §§ 12131-12133, and 28 U.S.C. § 1331.

14 2. Although Pasadena USD considers Focus Point a “therapeutic setting,”
15 it is far from being therapeutic. Placement at Focus Point is more likely to
16 exacerbate a child’s mental health condition than improve it. Academic
17 expectations are low, and students make little academic progress there. Rather than
18 fostering learning, the emphasis at Focus Point is on behavior control using drastic
19 methods including dangerous physical restraints, inappropriate forced isolation,
20 threatened and repeated arrests, and suspensions for minor offenses.

21 3. Tragically, most if not all of the children placed at Focus Point do not
22 need to be there. These are children of great promise. They could be educated
23 successfully in classrooms with students without disabilities in Pasadena USD’s
24 neighborhood schools with reasonable modification of Pasadena USD’s programs
25 and services, namely, the provision of school-based behavioral services there.

26 4. The ADA imposes on Defendants the obligation to reasonably modify
27 Pasadena USD’s programs and services to avoid discrimination. Providing children
28 with a behavior-related disability access to school-based behavioral services—to

1 afford them an equal education and to enable them to be educated in neighborhood
2 schools—is a reasonable modification required by the ADA.

3 5. The ADA mandates that Defendants (i) provide children with a
4 behavior-related disability educational opportunities that are equal to and as
5 effective as those provided other students, and (ii) serve students with a behavior-
6 related disability in the most integrated setting appropriate to their needs, that is, the
7 setting in which they interact with their peers without a disability to the fullest
8 extent possible. By warehousing students with behavior-related disabilities at
9 Focus Point, Defendants are violating both of the ADA’s legal mandates.

10 6. Plaintiffs seek injunctive and declaratory relief for ongoing violations
11 of the ADA, including an order that Defendants provide the named Plaintiffs and
12 the Plaintiff class with school-based behavioral services in neighborhood schools to
13 afford them an equal education and enable them to be educated in neighborhood
14 schools with their peers without disabilities.

15 **JURISDICTION AND VENUE**

16 7. This Court has jurisdiction over this action under Title II of the ADA,
17 42 U.S.C. §§ 12131-12133, and 28 U.S.C. § 1331. Declaratory relief is available
18 pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure.
19 Injunctive relief is authorized by 28 U.S.C. § 2202 and Rule 65 of the Federal Rules
20 of Civil Procedure.

21 8. Plaintiffs’ claims for violations of California state law concern the
22 same actions and omissions that form the basis of their claims under federal law
23 because they are all part of the same case or controversy. This court has
24 supplemental jurisdiction over those state law claims pursuant to 28 U.S.C. § 1367,
25 California Government Code § 11139, and California Civil Code § 54.3.

26 9. Venue is proper in the Central District of California pursuant to 28
27 U.S.C. § 1391(b) (2), because all of the acts and omissions giving rise to these
28 claims occurred in the Central District.

PARTIES

A. Plaintiffs

10. The named Plaintiffs, described in more detail in paragraphs 68 through 110 below, all reside in Pasadena and have behavior-related disabilities that impair their ability to learn, read, concentrate, think, and communicate. All are either students at Focus Point or are at serious risk of reassignment to it because Defendants are not providing them the school-based behavioral services they need to be educated in their neighborhood schools.

11. In each case, the student’s guardian *ad litem* brings this action on the student’s behalf.

12. All the named Plaintiffs in this matter are minors and have requested leave to proceed in this matter under fictitious names.

B. Defendants

13. Defendant Pasadena Unified School District (“Pasadena USD”) operates and funds public school programs, services, and activities. Pasadena USD is a public entity as defined by Title II of the ADA. 42 U.S.C. § 12131. Pasadena USD’s offices are located at 351 S. Hudson Ave., Pasadena, California 91101.

14. Defendant Brian McDonald is sued in his official capacity as the Superintendent of Pasadena USD. Defendant McDonald is responsible for the daily operations of Pasadena USD, including its programs and services for students with a disability.

CLASS ACTION ALLEGATIONS

15. Pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, named Plaintiffs bring this suit as a class action on their own behalf and on behalf of the following class: All Pasadena USD students who, now or in the future, are placed at Focus Point or are at serious risk of being placed at Focus Point. A student is at “serious risk” of being placed at Focus Point if the student (a) is being considered for placement at Focus Point, or (b) has recently been

1 transitioned from Focus Point to a neighborhood school and is having behavior
2 problems at that school.

3 16. The class is so numerous that joinder of all members is impracticable.
4 Pasadena USD has reported that, during the 2014-2015 school year, over 80
5 students with a behavior-related disability were enrolled at Focus Point. Joinder is
6 also impracticable because Pasadena USD routinely considers new students for
7 enrollment at Focus Point, and enrolls new children at Focus Point on an ongoing
8 basis. In addition, most class members lack the means to maintain individual
9 actions.

10 17. There are questions of law and fact common to the class, including
11 whether Defendants are discriminating against named Plaintiffs and those similarly
12 situated in violation of the ADA, California Government Code § 11135, and the
13 California Disabled Persons Act, California Civil Code § 54 *et seq.*, by, among
14 other actions, employing policies and practices that:

- 15 a. Deny named Plaintiffs and members of the class an opportunity
16 to participate in and benefit from educational services that are
17 equal to that afforded students without a behavior-related
18 disability;
- 19 b. Deny named Plaintiffs and members of the class educational
20 services that are as effective in affording equal opportunity to
21 obtain the same result, gain the same benefit, or reach the same
22 level of achievement as that provided students without a
23 behavior-related disability;
- 24 c. Fail to provide named Plaintiffs and members of the class
25 educational programs and services in the most integrated setting
26 appropriate, by unnecessarily segregating them at Focus Point;
- 27 d. Fail to reasonably modify Pasadena USD's programs and
28 services as needed to avoid discrimination; and

1 e. Utilize methods of administration that have the effect of
2 defeating or substantially impairing the accomplishment of the
3 objectives of Defendants’ educational programs with respect to
4 students with a behavior-related disability.

5 18. The named Plaintiffs’ claims are typical of the claims of the class.

6 19. The named Plaintiffs will fairly and adequately protect the interests of
7 the class. The named Plaintiffs will vigorously represent the interests of the
8 unnamed class members, and all members of the proposed class will benefit from
9 Plaintiffs’ efforts. There is no conflict between the interests of the named Plaintiffs
10 and the proposed class. Furthermore, Plaintiffs have retained competent counsel
11 experienced in educational and class action litigation.

12 20. Defendants have acted and continue to act on grounds generally
13 applicable to the Plaintiff class, thereby making appropriate injunctive and
14 declaratory relief with respect to the class as a whole.

15 **THE AMERICANS WITH DISABILITIES ACT**

16 21. Congress enacted the Americans with Disabilities Act of 1990, 42
17 U.S.C. § 12101 *et seq.*, to provide a clear and comprehensive national mandate for
18 the elimination of discrimination against individuals with disabilities and to provide
19 strong and enforceable standards for addressing such discrimination. 42 U.S.C.
20 § 12101(b)(1), (2).

21 22. The ADA is based on Congress’s findings that, inter alia,
22 (i) “historically, society has tended to isolate and segregate individuals with
23 disabilities, and, despite some improvements, such forms of discrimination against
24 individuals with disabilities continue to be a serious and pervasive social problem,”
25 42 U.S.C. § 12101(a)(2), and (ii) “discrimination against individuals with
26 disabilities persists in such critical areas as . . . education,” 42 U.S.C.
27 § 12101(a)(3); and (iii) “individuals with disabilities continually encounter various
28 forms of discrimination, including . . . segregation, and relegation to lesser services,

1 programs, activities, benefits, jobs, or other opportunities.” 42 U.S.C.
2 § 12101(a)(5).

3 23. The ADA defines a “disability” as “a physical or mental impairment
4 that substantially limits one or more major life activities.” 42 U.S.C.
5 § 12102(1)(A). The ADA provides that for purposes of this definition, “major life
6 activities” include but are not limited to “learning, reading, concentrating, thinking,
7 [and] communicating.” 42 U.S.C. § 12102(2)(A).

8 24. The ADA defines “qualified individual with a disability” as an
9 “individual with a disability who, with or without reasonable modifications to rules,
10 policies, or practices, . . . meets the essential eligibility requirements for the receipt
11 of services or the participation in programs or activities provided by a public
12 entity.” 42 U.S.C. § 12131(2).

13 25. As school-age residents of Pasadena, all named Plaintiffs are eligible
14 for educational services provided by the Pasadena USD, and, by virtue of their
15 disabilities, all are qualified for the protections of the ADA.

16 26. Title II of the ADA mandates that “no qualified individual with a
17 disability shall, by reason of such disability, be excluded from participation in or be
18 denied the benefits of the services, programs, or activities of a public entity, or be
19 subjected to discrimination by any such entity.” 42 U.S.C. § 12132; *see also* 28
20 C.F.R. § 35.130.

21 27. Title II of the ADA applies to all of the activities of public entities,
22 including providing education. Each Defendant is either a public entity subject to
23 Title II of the ADA or an official responsible for supervising the operations of a
24 public entity subject to Title II of the ADA. 42 U.S.C. § 12131(1).

25 28. The ADA directs the Attorney General to promulgate regulations
26 enforcing Title II of the ADA and provides guidance on their content. The
27 regulations promulgated by the Attorney General require public entities to “make
28

1 reasonable modifications” to their programs and services “when the modifications
2 are necessary to avoid discrimination.” 28 C.F.R. § 35.130(b)(7).

3 29. The regulations also specify that it is unlawful discrimination for a
4 public entity to:

- 5 a. “Afford a qualified individual with a disability an opportunity to
6 participate in or benefit from the aid, benefit, or service that is
7 not equal to that afforded others,” 28 C.F.R. § 35.130(b)(1)(ii);
8 b. “Provide a qualified individual with a disability with an aid,
9 benefit, or service that is not as effective in affording equal
10 opportunity to obtain the same result, to gain the same benefit,
11 or to reach the same level of achievement as that provided to
12 others,” 28 C.F.R. § 35.130(b)(1)(iii);
13 c. Fail to “administer services, programs, and activities in the most
14 integrated setting appropriate to the needs of qualified
15 individuals with disabilities,” 28 C.F.R. § 35.130(d), which the
16 Attorney General has defined as “a setting that enables
17 individuals with disabilities to interact with non-disabled
18 persons to the fullest extent possible,” 28 C.F.R. pt. 35, App. A,
19 p. 450; or
20 d. “[U]tilize criteria or methods of administration ... [t]hat have
21 the purpose or effect of defeating or substantially impairing
22 accomplishment of the objectives of the public entity’s program
23 with respect to individuals with disabilities,” 28 C.F.R.
24 § 35.130(b)(3)(ii).

25 30. The Supreme Court has held that discrimination prohibited under Title
26 II of the ADA includes the needless isolation or segregation of persons with
27 disabilities. *Olmstead v. L.C., ex rel. Zimring*, 527 U.S. 581, 600 (1999)
28 (“unjustified institutional isolation of persons with disabilities is a form of

1 discrimination”); *see also* 2011 Statement of the US Department of Justice on
2 Enforcement of the Integration Mandate of Title II of the ADA and *Olmstead*, June
3 22, 2011.

4 31. As the Supreme Court has held in a different context: “We conclude
5 that in the field of public education the doctrine of ‘separate but equal’ has no
6 place. Separate educational facilities are inherently unequal.” *Brown v. Bd. of Ed.*
7 *of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483, 495 (1954).

8 32. Unjustified isolation of disabled persons who, with reasonable
9 accommodations, could participate in an integrated setting is unlawful
10 discrimination because (1) segregation “perpetuates unwarranted assumptions that
11 persons so isolated are incapable or unworthy of participating in community life,”
12 and (2) segregation “severely diminishes life activities of individuals, including
13 family relations, social contacts, work options, economic independence, educational
14 advancement, and cultural enrichment.” *Olmstead*, 527 U.S. at 600-601.

15 33. Congress specifically provided for a private right of action to enforce
16 Title II. *See* 42 U.S.C. § 12133 (incorporating the remedies and enforcement
17 procedures available under Title VI of the Civil Rights Act, which includes a
18 private right of action).

19 STATEMENT OF FACTS

20 A. The Pasadena Unified School District

21 34. Defendant Pasadena USD is a unified school district that is responsible
22 for the schools in the cities of Pasadena, Sierra Madre and the unincorporated
23 community of Altadena. It has approximately 26 neighborhood schools in which
24 students with and without disabilities are enrolled. Enrollment at Focus Point is
25 limited to students with behavior-related disabilities.

26 35. Defendants have not reasonably modified Pasadena USD
27 neighborhood schools to provide school-based behavioral services for children with
28 a behavior-related disability. The essential components of school-based behavioral

1 services are: (a) a comprehensive assessment, including determination of the
2 purpose and triggers for the child’s behavior; (b) an individualized school-based
3 intervention plan that relies on positive support, social skills training, a care
4 coordinator, and adjustments to curriculum or schedule as needed; (c) training for
5 school staff and parents in implementing the plan; and (d) coordination with non-
6 school providers involved with the child (collectively, “school-based behavioral
7 services”).

8 36. There is a professional consensus that such school-based behavioral
9 services are necessary to afford children like named Plaintiffs and Plaintiff class
10 members an equal opportunity to advance academically and graduate and the
11 opportunity to be educated in neighborhood schools along with their non-disabled
12 peers.

13 37. Instead of providing school-based behavioral services in neighborhood
14 schools, Defendants routinely inform students who need them, and their caregivers,
15 that they are only available at Focus Point. The District then transfers these
16 students to Focus Point.

17 38. In addition, students at Pasadena USD schools other than Focus Point
18 have access to a rich array of educational and extracurricular activities. For high
19 school students, this includes a Regional Occupation Program that offers training in
20 high school for careers in health care, entertainment, computer science and video
21 game development and television and video production classes taught through the
22 District's own cable access station. Pasadena USD also offers ROTC, including
23 Naval Cadet training at one high school. Plaintiffs do not have these opportunities
24 at Focus Point.

25 39. For example, John Muir High School is the neighborhood school that
26 named Plaintiffs Sam Doe and Walter Doe would attend if they were not placed at
27 Focus Point. The Muir campus has a swimming pool, separate sports fields for
28 soccer, baseball and football, an auditorium, little theater, business academy, a large

1 library and computer lab, and a building dedicated to auto shop, art rooms and a
2 career training program. Muir has more than 17 clubs and sports activities for
3 students, such as robotics, band, and the school newspaper. Its school literary
4 magazine is supported by the local Rotary club and publishes student poetry,
5 artwork, and fiction. Muir Ranch is an on-site school garden staffed by student
6 farmers that partners with local restaurants, and sells farm boxes and floral
7 bouquets to fund paid student internships. Neither Sam nor Walter can participate
8 in any of these programs and activities while enrolled at Focus Point.

9 40. Similarly, Sierra Madre Middle School is the neighborhood school that
10 named Plaintiff Deborah Doe would attend if she had not been placed at Focus
11 Point. Sierra Madre is a comprehensive campus with classes not only in traditional
12 academic subjects, but also vocal training, drama and robotics. Every 8th grade
13 student at Sierra Madre Middle School has the opportunity to spend a week at a
14 science camp on Catalina Island. Students at Sierra Madre can participate in an
15 annual talent show, art contest, school dances including a winter formal, and school
16 plays such as “the Music Man.” One school group organizes volunteer
17 opportunities for students, such as food drives, spirit day, and neighborhood
18 improvement. Student athletics include flag football, soccer, and basketball.
19 Deborah cannot participate in any of these activities at Focus Point.

20 **B. Focus Point – Pasadena USD’s Segregated School**

21 41. Focus Point serves first through twelfth grade students (up to age 21)
22 who have behavior-related disabilities. During the 2014-2015 school year,
23 approximately 82 students attended Focus Point, according to Focus Point
24 enrollment logs.

25 42. The students at Focus Point have many talents and strengths. They
26 have the same aspirations as other Pasadena USD students. They have hobbies;
27 enjoy sports, music, and art; and would like to participate in extracurricular
28 activities. After they graduate from high school, they would like to get good jobs.

1 Many would like to go to college. Most have supportive families, guardians, or
2 caregivers.

3 43. The students at Focus Point could be successfully educated in
4 neighborhood schools if provided school-based behavioral services.

5 44. By removing them from neighborhood schools, PUSD needlessly
6 segregates these students from their peers without disabilities

7 45. The isolation of students at Focus Point severely diminishes their
8 educational opportunity. They are denied the same opportunity to learn and
9 graduate that is afforded their peers.

10 46. Their isolation at Focus Point also denies the students opportunities to
11 develop appropriate social skills, including through interacting with their peers
12 without disabilities.

13 47. Moreover, the students at Focus Point are stigmatized as a result of the
14 unwarranted assumption that they are incapable or unworthy of attending their
15 neighborhood schools with their non-disabled peers.

16 48. Once transferred to Focus Point, many students remain there for years
17 even though part of Focus Point's purported mission is to transition students back
18 to neighborhood schools.

19 49. The few Focus Point students whom Defendants do permit to
20 transition to a neighborhood school from Focus Point are at risk of returning to
21 Focus Point because Defendants fail to provide them the school-based behavioral
22 services they need to be successful in a neighborhood school. If a former student
23 has a crisis that requires additional support, Defendants send the student back to
24 Focus Point, instead of providing the school-based behavioral services the student
25 needs.

26 50. Pasadena USD often tells parents, guardians, or other educational
27 rights holders that students with behavior-related disabilities must be placed at
28 Focus Point or they will fail educationally.

Behavior Management

1
2 51. School-based behavioral services are largely unavailable to children at
3 Focus Point, which does not use effective and professionally accepted practices for
4 managing and improving the behavior of its students. Focus Point uses the same
5 ineffective program for managing and improving the behavior of each of its
6 students, consisting primarily of a points system and the use of restraint and
7 seclusion.

8 52. Because they do not receive school-based behavioral services, Focus
9 Point students at times engage in disruptive behavior. Although District mental
10 health staff and personnel from Pacific Clinics, a private mental health services
11 provider, are on Focus Point's campus, deescalating students when they engage in
12 disruptive behavior is not part of their responsibilities. Rather, this is left to Focus
13 Point's inadequately trained school personnel, who often resort to harsh and
14 counterproductive responses, including physical restraints, unnecessary forced
15 isolation, and inappropriate arrests and suspensions for minor offenses. These
16 methods interfere with students' education and their ability to learn, and tend to
17 exacerbate their mental health symptoms.

18 53. Focus Point uses a point system for earning rewards or to qualify for
19 transfer to another school. A student must earn a certain number of points each day
20 to be considered for transfer to another school. If the student does not earn enough
21 points each day over a 30-day period, the calendar is reset to day one.

22 54. The point system used by Focus Point is not an appropriate
23 intervention for students with behavior-related disabilities, including because it is
24 not individualized to students' strengths and needs. It is also implemented
25 arbitrarily. A behavior that on one day is acceptable can result in points being
26 withheld on another day. The inconsistent application of the point system
27 contributes to the environment at Focus Point being unpredictable and unstable.
28

Other Unequal Educational Opportunities

1
2 60. Focus Point has no extracurricular activities or clubs, and does not
3 offer the elective classes available at Pasadena USD neighborhood schools. Middle
4 and high school students at Focus Point cannot take physical education classes.
5 There are no intermural athletics or student sports teams. Students cannot play
6 interscholastic sports against other schools within Pasadena USD or inter-district
7 sports against teams from other school districts. There is no auditorium, no music
8 or band classes or clubs, and no drama or dance program. There are no school
9 dances. There are no vocational programs nor is there a school garden. There is no
10 ROTC. There are no classes in film, video, visual and fine arts, or graphic design.
11 There is no student government. Students do not have the opportunity to participate
12 in Pasadena USD-sponsored college, military, and job informational and
13 recruitment activities available to students in the neighborhood high schools.
14 Students do not even have access to a lunchroom or cafeteria and must eat lunch in
15 their small classrooms.

16 61. Focus Point requires students who want to return to an integrated
17 campus to participate first in “dual enrollment,” a process that is poorly planned
18 and executed, deprives students of valuable instructional time, and hinders their
19 social integration into the new school. Dual enrollment requires the student to
20 attend one or two classes at a neighborhood school, and then be transported by bus
21 to Focus Point, where they spend the remainder of the day. Dual enrollment is
22 often initiated mid-year, so the Focus Point students start off behind other students
23 in their new classes at the neighborhood school. Teachers at the neighborhood
24 school are typically not involved in planning the students’ transition, nor are they
25 adequately trained or supported to respond to disruptive behavior that may occur at
26 the new school.

27 62. Even after Focus Point staff identifies a student as eligible to transfer
28 to a neighborhood school, District staff may wait months or even years before

1 taking steps to return the student to a neighborhood school. No explanation is
2 given for the delay.

3 **C. The Named Plaintiffs**

4 *Allegations Common to All Named Plaintiffs*

5 63. All of the named Plaintiffs attend Focus Point or are at serious risk of
6 attending Focus Point because of Defendants' policy and practice of failing to
7 provide school-based behavioral services at neighborhood schools.

8 64. While at Focus Point, each of the named Plaintiffs was denied equal
9 educational opportunity and the opportunity to be educated in the most integrated
10 setting appropriate to their needs. Each made little or no educational progress, and
11 their behavior and mental health status deteriorated.

12 65. Each of the named Plaintiffs wants to and could be educated in a
13 neighborhood school if Pasadena USD would reasonably modify its programs and
14 services by providing school-based behavioral services to students with behavior-
15 related disabilities. Each of their guardians *ad litem* wants them to attend a
16 neighborhood school, which would be the most integrated setting appropriate for
17 them.

18 66. Defendants placed all of the named Plaintiffs at Focus Point on the
19 grounds that they could not be educated in a neighborhood school because they
20 required services that can only be provided at Focus Point. However, the services
21 the named Plaintiffs required could reasonably be provided to the named Plaintiffs
22 at a neighborhood school.

23 67. Each of the named Plaintiffs has suffered serious harms as a result of
24 his or her placement at Focus Point.

25 *Plaintiff Sam Doe*

26 68. Plaintiff Sam Doe is 14 years old. He is a student in the ninth grade at
27 Focus Point, which he has attended since starting fifth grade in 2011. He lives in
28 Pasadena with his mother, L.R., who is his guardian *ad litem* and brings this action

1 on his behalf. He is interested in learning about computers and designing video
2 games, and likes to entertain people and make them laugh.

3 69. Sam has a behavior-related disability that impairs his ability to learn,
4 read, concentrate, think, communicate, or develop and maintain relationships. He
5 has been diagnosed with attention deficit disorder (ADD) and has problems
6 processing new information. He sometimes is verbally defiant to staff and teachers,
7 is aggressive with peers, leaves campus without permission, and is late to or absent
8 from school.

9 70. He attended neighborhood schools in Pasadena USD from first through
10 fifth grade, before the District transferred him to Focus Point. During this time, the
11 District did not provide school-based behavioral services to Sam, and he has
12 continued to have behavior issues in school.

13 71. Sam spent sixth grade at Focus Point. During his seventh grade year,
14 Sam was permitted to dual enroll at a neighborhood middle school in the morning,
15 returning to Focus Point for the afternoon. The District did not prepare Sam to
16 attend his neighborhood school, and did not provide Sam with school-based
17 behavioral services at that school. After several months, the District ended Sam's
18 dual enrollment, and he returned full-time to Focus Point.

19 72. Sam is now in ninth grade at Focus Point. He has made virtually no
20 academic progress over the last four years. Each year that he is at Focus Point, he
21 falls further behind his non-disabled peers.

22 73. Focus Point has not been successful in improving Sam's behavior,
23 School staff frequently send Sam to the "boring room" as a punishment for
24 disruptive behavior. In one instance he was sent to the "boring room" at the end of
25 the day and was required to return the next day to finish his punishment.

26 74. Sam has told his counselors that he often "acts out" because he has
27 given up hope of ever being able to leave Focus Point and returning to a
28 neighborhood school.

1 aggression toward staff, and tantrums in class. She has difficulty controlling her
2 anger and sadness when she is teased, and has difficulty completing school work.

3 85. Tanya attended neighborhood schools from first through third grade.
4 In January 2013, Tanya moved to the group home where she currently lives and
5 enrolled in a Pasadena USD neighborhood elementary school, where she had
6 serious behavior issues. The District did not provide her with school-based
7 behavioral services at her neighborhood school. Instead, the District reduced her
8 schedule to a half day.

9 86. In June 2013, the District transferred Tanya to Focus Point. At Focus
10 Point, Tanya has had virtually no opportunity to learn or practice social skills. Staff
11 has tried to control her behavior through use of dangerous restraints and placement
12 in the “boring room.” In one instance, Tanya received a black eye while staff
13 restrained her. She feels that people at Focus Point do not listen to her. Tanya
14 made almost no academic progress while at Focus Point.

15 87. Through advocacy by Tanya’s guardian *ad litem*, Tanya finally was
16 able to transfer to McKinley Middle School on October 23, 2015, after attending
17 fourth and fifth grade at Focus Point.

18 88. Tanya is at serious risk of returning to Focus Point. The District did
19 not plan for her transition, and she has not been provided school-based behavioral
20 services at McKinley. As a result, she is having behavior issues at the school.
21 Recently she walked away from the school campus. She was found by group home
22 staff walking around downtown Pasadena. Defendants do not have a plan for
23 responding to her behavior issues at school other than by returning Tanya to Focus
24 Point.

25 89. With school-based behavioral services, Tanya could be educated in a
26 Pasadena USD neighborhood school.

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Plaintiff Eric Doe

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2 90. Plaintiff Eric Doe is 11 years old and in the sixth grade at a
3 neighborhood middle school in Pasadena USD. He attended fifth grade at Focus
4 Point. He lives in Pasadena with his great aunt, G.B., who is his *guardian ad litem*
5 and brings this action on his behalf. Eric is an intelligent and precocious young
6 man. He enjoys learning, reading, and riding his scooter, but his passion is
7 basketball. He is interested in working in the sports industry or in television as a
8 newscaster.

9 91. Eric has a behavior-related disability that impairs his ability to learn,
10 read, concentrate, think, communicate, or develop and maintain relationships. He
11 has been diagnosed with Attention Deficit and Hyperactivity Disorder (ADHD),
12 mood disorder and anxiety disorder among other conditions. He experienced early
13 trauma in his life, and was separated from his siblings. His behaviors include
14 defiance, difficulty controlling his anger, and leaving class when he wants to avoid
15 a task.

16 92. Despite being intellectually capable, Eric has struggled academically
17 because of his disability, particularly with writing. His frustration with writing
18 often leads to behavior outbursts. On occasion, Eric has fought with peers over
19 disagreements or when provoked. Rather than deescalating his behavior or using
20 positive behavior interventions, Focus Point staff restrained Eric and took him to
21 “the boring room.”

22 93. As a result of Eric’s great-aunt and guardian *ad litem*’s persistent
23 advocacy, Eric was allowed to begin dual enrollment, with two class periods at the
24 District’s Marshall Fundamental School and his other classes at Focus Point. Soon
25 after, Eric began full-time enrollment at Marshall, where he has joined the
26 basketball team. He plays basketball at recess and participates in P.E. classes.

27 94. Eric continues to have disability-related behaviors. He is not receiving
28 school-based behavioral services and is at serious risk of returning to Focus Point.

1 Defendants do not have a plan for responding to his disability-related behaviors
2 other than by returning Eric to Focus Point.

3 95. With school-based behavioral services, Eric could be educated in a
4 Pasadena USD neighborhood school.

5 *Plaintiff Walter Doe*

6 96. Plaintiff Walter Doe is seventeen years old and in the twelfth grade at
7 Focus Point. He lives with his parents in Pasadena. His mother, M.F., is his
8 guardian *ad litem* and brings this action on his behalf. Walter is very charismatic.
9 He is also thoughtful, creative and technologically savvy. He frequently uses his
10 cell phone to make videos, and is interested in learning about video production. He
11 aspires to be a stage and concert lighting technician.

12 97. Walter has a behavior-related disability that impairs his ability to learn,
13 read, concentrate, think, communicate, or develop and maintain relationships. He
14 has been diagnosed with depression, a generalized anxiety disorder, and a specific
15 learning disability, among other conditions. He has engaged in self-injurious and
16 disruptive behavior. He has had difficulty completing work, is frequently absent or
17 tardy without excuse, and has been defiant toward teaching staff.

18 98. Walter has struggled academically since kindergarten as a result of his
19 disability. The District never provided him with school-based behavioral services.
20 After repeated problems in neighborhood schools, it transferred Walter to Focus
21 Point for eleventh grade.

22 99. After two years at Focus Point, Walter's behaviors have not improved.
23 He continues to be sent to the "boring room" when he is defiant with staff. At
24 times, being sent there has caused his behavior to escalate. Walter is frustrated and
25 angry about being unable to transfer from Focus Point to a neighborhood high
26 school.

27 100. With school-based behavioral services, Walter could be educated in a
28 Pasadena USD neighborhood school.

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Plaintiff Evan Doe

101. Plaintiff Evan Doe is 14 years old and in the ninth grade at Focus Point, which he has attended since May 2015. He lives with his mother, C.M., who is his guardian *ad litem* and brings this action on his behalf. Evan is close with his family and siblings, and loves sports and athletics. When he attended a neighborhood school, he enjoyed physical education and sports, including playing soccer and basketball at lunch with other students. This helped him to focus in his classes.

102. Evan has a behavior-related disability that impairs his ability to learn, read, concentrate, think, communicate, or develop and maintain relationships. He has been diagnosed with anxiety and ADHD, among other conditions. Evan’s behaviors include talking out of turn in class, using inappropriate language, leaving classes or arriving late to classes that are challenging for him, verbal aggression, and physical aggression to peers.

103. Although Evan is only 14 years old, he is 6’3” tall and over 200 pounds. Evan is able to concentrate better and perform better academically when he has opportunities for physical activity throughout the school day, including P.E. class, recreation at recess and lunch, and organized sports.

104. As a result of Evan’s increasing behavior problems, the District transferred him to Focus Point for the ninth grade.

105. At Focus Point, Evan does not have the opportunity to attend a physical education class. The campus does not have a field or track on which students can run and play to release extra energy and anxiety. Students have limited opportunities to engage in play and recreation. Evan would like to play interscholastic sports, especially basketball, but such activities are not offered at Focus Point.

1 106. Evan has observed other students being restrained and dragged into the
2 the “boring room” at Focus Point, which Evan calls “the padded room.” He is
3 worried about being forced into the “padded room” himself.

4 107. In October 2015, Defendants let Evan participate in Focus Point’s dual
5 enrollment program. He began attending Pasadena High School one month after
6 the classes had begun. He spent mornings at Pasadena High School and afternoons
7 at Focus Point. His mid-day bus trip disrupted his school day.

8 108. Pasadena USD did not provide Evan school-based behavioral services
9 at Pasadena High School and, as a result, he was not successful there. After 10
10 weeks, the District ended Evan’s dual enrollment and sent him back full-time to
11 Focus Point.

12 109. Placement at Focus Point has not been effective in improving Evan’s
13 behavior in school. To the contrary, it has eroded his self-esteem and exacerbated
14 his disability-related behaviors. Evan wants to return to Pasadena High School
15 including because he feels stigmatized at Focus Point.

16 110. With school-based behavioral services, Evan could be educated in a
17 Pasadena USD neighborhood school.

18 **D. The Plaintiff Class**

19 111. These named Plaintiffs are not alone in their experiences in Pasadena
20 USD and at Focus Point. Their experiences are endured by the scores of students
21 with a behavior-related disability in the proposed Plaintiff class. These students
22 suffer the same injuries and require the same relief as the named Plaintiffs.

23 112. The proposed class consists of: “All Pasadena USD students who,
24 now or in the future, are placed at Focus Point or are at serious risk of being placed
25 at Focus Point.” A student is at “serious risk” of being placed at Focus Point if the
26 student (a) is being considered for placement at Focus Point, or (b) has been
27 recently transitioned from Focus Point to a neighborhood school and is having
28 behavior problems at school.

1 113. Defendants have failed to reasonably modify Pasadena USD's
2 programs and services to provide the named Plaintiffs and the Plaintiff class with
3 the school-based behavioral services they need to enjoy an equal education and to
4 be educated in Pasadena USD neighborhood schools.

5 **COUNT I**
6 **VIOLATION OF**
7 **AMERICANS WITH DISABILITIES ACT**
8 **42 U.S.C. § 12132**

9 114. Plaintiffs re-allege the allegations in all preceding paragraphs as
10 though fully set forth herein.

11 115. Named Plaintiffs and members of the Plaintiff class are individuals
12 with a disability within the meaning of the ADA. Their disabilities substantially
13 limit one or more major life activities, including learning, reading, concentrating,
14 thinking, communicating, or developing and maintaining relationships.

15 116. As school-age children who live in the District, they are qualified to
16 participate in Defendants' educational programs and services. 42 U.S.C.
17 § 12131(2).

18 117. Defendant Pasadena USD is a public entity within the meaning of the
19 ADA. Defendant MacDonald is an official responsible for running this public
20 entity and supervising its operations. 42 U.S.C. § 12131(1).

21 118. Through the acts and omissions described above, Defendants are
22 violating the ADA, 42 U.S.C. § 12132, by:

- 23 a. Denying named Plaintiffs and the Plaintiff class an opportunity
24 to participate in and benefit from educational services that is
25 equal to that afforded other students;
- 26 b. Denying named Plaintiffs and the Plaintiff class educational
27 services that are as effective in affording equal opportunity to
28 obtain the same result, gain the same benefit, or reach the same
level of achievement as that provided other students;

- 1 c. Denying named Plaintiffs and the Plaintiff class the opportunity
- 2 to receive educational programs and services in the most
- 3 integrated setting appropriate to their needs;
- 4 d. Failing to reasonably modify Pasadena USD's programs and
- 5 services as needed to avoid discrimination against named
- 6 Plaintiffs and the Plaintiff class; and
- 7 e. Utilizing methods of administration that have the effect of
- 8 defeating or substantially impairing the accomplishment of the
- 9 objectives of Defendants' educational programs with respect to
- 10 named Plaintiffs and the Plaintiff class.

11 119. Granting relief to Plaintiffs would not fundamentally alter Defendants'
12 programs, services, and activities.

13 120. The acts and omissions of Defendants have caused and will continue to
14 cause named Plaintiffs and the Plaintiff class to suffer irreparable harm, and they
15 have no adequate remedy at law.

16 121. Under the ADA, Plaintiffs are entitled to attorneys' fees and costs as
17 appropriate and permitted by law, pursuant to 42 U.S.C. § 12205.

18 **COUNT II**
19 **VIOLATION OF**
20 **CALIFORNIA GOVERNMENT CODE § 11135**

21 122. Plaintiffs incorporate by reference each and every allegation contained
22 in the foregoing paragraphs.

23 123. Section 11135(a) of the California Government Code provides in
24 pertinent part: "No person in the State of California shall, on the basis of . . .
25 disability, be unlawfully denied the benefits of, or be unlawfully subjected to
26 discrimination under, any program or activity that is funded directly by the state or
27 receives any financial assistance from the state."
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1 124. Pasadena USD is a public agency that receives financial assistance
2 from the State of California.

3 125. Through their acts and omissions described herein, Defendants are
4 violating California Government Code § 11135 by unlawfully denying Plaintiffs
5 and the Plaintiff class the benefits of, and unlawfully subjecting them to
6 discrimination under, Defendants' educational programs and activities.

7 126. Defendants' actions have caused and will continue to cause named
8 Plaintiffs and the Plaintiff class to suffer irreparable harm, and they have no
9 adequate remedy at law. Because Defendants' discriminatory conduct is ongoing,
10 declaratory and injunctive relief are appropriate remedies.

11 127. Plaintiffs and Class Members are also entitled to reasonable attorneys'
12 fees and costs in filing this action.

13 **COUNT III**
14 **VIOLATION OF DISABLED PERSONS ACT,**
15 **CALIFORNIA CIVIL CODE § 54 ET SEQ.**

16 128. Plaintiffs incorporate by reference each and every allegation contained
17 in the foregoing paragraphs.

18 129. Through the acts and omissions described herein, Defendants are
19 violating California Civil Code § 54, which provides that "[i]ndividuals with
20 disabilities or medical conditions have the same rights as the general public to the
21 full and free use of . . . public facilities."

22 130. Under California Civil Code § 54(c), a violation of the ADA also
23 constitutes a violation of California Civil Code §§ 54 *et seq.*

24 131. Plaintiffs and Class Members are persons with disabilities within the
25 meaning of California Civil Code § 54(b)(1).

26 132. Pasadena USD provides public facilities, within the meaning of
27 California Civil Code §§ 54 *et seq.*
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1 133. By the acts and omissions described herein, Defendants are violating
2 California Civil Code § 54.

3 134. Plaintiffs and the Plaintiff Class are entitled to recover reasonable
4 attorneys' fees and costs in an action to enforce California Civil Code §§ 54.3(a),
5 55.

6 135. Defendants' actions have caused and will continue to cause named
7 Plaintiffs and the Plaintiff class to suffer irreparable harm, and they have no
8 adequate remedy at law. Because Defendants' discriminatory conduct is ongoing,
9 declaratory and injunctive reliefs are appropriate remedies.

10 **RELIEF REQUESTED**

11 WHEREFORE, Plaintiffs pray that the Court grant the following relief:

12 A. Order that Plaintiffs may maintain this action as a class action pursuant
13 to Rule 23(b) (2) of the Federal Rules of Civil Procedure.

14 B. Order and declare that Defendants are violating the rights of the named
15 Plaintiffs and the Plaintiff class under the ADA, 42 U.S.C. §§ 12101, *et seq.*,
16 California Government Code § 11135, and California Civil Code §§ 54 *et seq.*

17 C. Preliminarily and permanently enjoin Defendants, their successors in
18 office, agents, employees and assigns, and all persons acting in concert with them
19 to provide named Plaintiffs and the Plaintiff class with the school-based behavioral
20 services they need to enjoy an equal education and to receive educational programs
21 and services in the most integrated setting, as required by Title II of the ADA.

22 D. Award Plaintiffs' attorneys' fees and costs as appropriate and
23 permitted by law, including pursuant to 42 U.S.C. § 12205.

24 E. Any other relief as this Court finds just and proper.
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Dated: February 11, 2016

MORRISON & FOERSTER LLP

By: /s/ Robert S. Stern

Robert S. Stern

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