

S266055

Case No.: _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Alliance for Children's Rights and Learning Rights Law Center,

Petitioners,

v.

Los Angeles Unified School District and Austin Beutner,
in his official capacity as Superintendent of the Los Angeles Unified
School District,

Respondents.

**PETITION FOR EXTRAORDINARY RELIEF, INCLUDING
WRIT OF MANDATE AND REQUEST FOR IMMEDIATE
INJUNCTIVE RELIEF;
MEMORANDUM OF POINTS AND AUTHORITIES**

IMMEDIATE STAY OR INJUNCTIVE RELIEF REQUESTED

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Petitioners hereby certify that they are not aware of any person or entity that must be listed under the provisions of California Rule of Court 8.208(e).

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**PETITION FOR WRIT OF MANDATE AND REQUEST FOR
IMMEDIATE STAY OR INJUNCTIVE RELIEF**

**TO THE HONORABLE JUSTICES OF THE SUPREME
COURT OF CALIFORNIA:**

PRELIMINARY AND JURISDICTIONAL STATEMENT

By this original Verified Petition for Writ of Mandate, Petitioners the Alliance for Children’s Rights (“Alliance”) and the Learning Rights Law Center (“Learning Rights”) hereby seek a writ of mandate pursuant to California Constitution article VI, section 10 and California Code of Civil Procedure Section 1085, requiring Respondents Los Angeles Unified School District (“LAUSD” or “the District”) and Austin Beutner, in his official capacity as the Superintendent of LAUSD, to (i) implement small-cohort in-person instruction to the maximum extent possible (up to 25% of campus capacity), consistent with cohorting guidance issued by the Los Angeles County Department of Public Health on September 2, 2020 and as required by CAL. EDUC. CODE Sections 43509(f)(1)(A) and 43504(b); (ii) resume in-person assessments and Individualized Educational Program (“IEP”) services, with accommodations necessary to ensure that students’ IEPs can be executed in a distance learning environment, as required by CAL. EDUC. CODE Section 43503(b)(4) (which mandates continued compliance with CAL. EDUC. CODE Sections 56341 and 56345(a)(9)(A) during school closures); and (iii) arrange for non-public agencies (“NPAs”) and non-public schools (“NPSs”) to provide in-person

special education, related services, and assessments to LAUSD students who need it, consistent with cohorting guidance issued by the Los Angeles County Department of Public Health on September 2, 2020, whenever LAUSD is either unable or unwilling to provide such education, services, and assessments.

This Petition is brought on the grounds that Respondents are failing to meet their procedural obligations under California law to provide in-person instruction for those who cannot access the education curriculum through distance learning and to provide special education assessments and services to qualified students.

Petitioners respectfully invoke the original jurisdiction of this Court pursuant to California Constitution article VI, section 10; California Code of Civil Procedure Section 1085; and Rule 8.490 of the California Rules of Court. Petitioners invoke that jurisdiction because the issues presented here are of great public importance and should be resolved promptly. It is in the public interest to resolve the questions presented in this Petition and to provide students with special needs in California with the appropriate resources to avoid learning loss, prevent behavioral regression, and protect students' mental health and wellbeing.

This Petition presents no questions of fact for the Court to resolve in order to issue the relief sought.

THE PARTIES

Petitioner the Alliance for Children’s Rights is a non-profit organization formed and existing under the laws of the State of California, with its principal office presently located at 3333 Wilshire Boulevard #550, Los Angeles, California 90010. Alliance provides free legal services and advocacy for caregivers, adoptive parents, and children and teens in Los Angeles County’s foster system. Alliance advocates for thousands of clients each year—including abused, neglected, and vulnerable children and teens in the foster care system, runaway and emancipating youth, children who need guardians, and the families who step up to care for them. In 2019, Alliance provided more than 6,400 children and young adults with critical legal advocacy and social services, trained over 5,000 partners with timely information, and advanced tremendous policy victories that have changed lives for youth and families in the child welfare system.

Petitioner the Learning Rights Law Center is a non-profit organization formed and existing under the laws of the State of California, with its principal office presently located at 1625 West Olympic Boulevard, Suite 500, Los Angeles, California 90015. Learning Rights provides legal services to disadvantaged students not receiving an equitable public education and advocates for those who have been denied equal access to a public education because of disability or discrimination. In 2019, Learning Rights served more than 6,400 individuals including students, parents, and stakeholders. Among these, 1,600 low-income children with education-access issues, their parents, and

other family members were served through its Education Rights Clinic.

Petitioners Alliance and Learning Rights are non-profit organizations committed to advocacy for vulnerable children and educational equity, and they are interested in the enforcement of Respondents' procedural duties, given the devastating impact the COVID-19 pandemic has had on hundreds of thousands of students who attend schools within LAUSD and the 80,000 LAUSD students with disabilities and who need special education.

Respondent LAUSD is a public-school district organized and existing under the laws of the State of California. The second largest school district in the nation, LAUSD enrolls more than 600,000 students in kindergarten through 12th grade, at over 1,413 schools, including 231 independent charter schools. *See Ex. 44, "Fingertip Facts 2020-21) at 1, 2.* As a local educational agency ("LEA"), LAUSD is responsible for all obligations under the California Education Code, Section 56000 *et seq.*

Respondent Austin Beutner is the Superintendent of LAUSD. As LAUSD's highest administrative officer, Respondent Beutner shares responsibility with LAUSD to ensure that LAUSD complies with all laws, including the California Education Code. Respondent Beutner is sued in his official capacity only.

FACTS

COVID-19 Pandemic and State Response

On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency in response to the COVID-19 pandemic. Nine days later, he signed Executive Order N-26-20, which permitted California’s local school districts to initiate school closures. Ex. 6 (Executive Order N-26-20) at 1. That executive order directed that California school districts would continue to receive state funding if they “deliver[ed] high-quality educational opportunities to students to the extent feasible through, **among other options**, distance learning and/or independent study.” *Id.* at 1 (emphasis added). On the same day, Respondent LAUSD Superintendent Austin Beutner directed that all LAUSD public schools would be closed—at that point, for two weeks. Ex. 7 (March 13, 2020 Press Release) at 1. This closure included all of the special education centers. *Id.*

On March 19, 2020, Governor Newsom signed Executive Order N-33-20, which directed all Californians to stay at home, “except as needed to maintain continuity of operations of the federal critical infrastructure sectors” as identified by the U.S. Department of Homeland Security. Ex. 8 (Executive Order N-33-20) at 1. Among the employees deemed critical to maintain continuity of operations “vital to the United States” were “[w]orkers who support the education of pre-school, K-12, college, university, career and technical education, and adult education students, **including . . . special education and special needs teachers. . .** [,] [w]orkers who provide services necessary to support educators and students . . . [,] **school psychologists and**

other mental health professionals, school nurses and other health professionals, and school safety personnel.” *Id.* (emphases added).

In April 2020, Respondent Beutner extended the LAUSD school closures through the summer of 2020 and transitioned all LAUSD students to distance learning for a period of approximately three months to close the 2019 – 2020 school year. Ex. 9 (*LA School Campuses Will Remain Shuttered*, Los Angeles Times) at 2.

Passage and Provisions of Senate Bill 98

To ensure the continuity of education during the COVID-19 pandemic following the end of the 2019-2020 school year, the California Legislature passed Senate Bill 98 (“SB 98”). On June 29, 2020, Governor Newsom signed SB 98 into law. Ex. 10 (SB 98) at 1. Senate Bill 98 amended and added various provisions to the California Education Code (“Education Code”) to clarify the obligations of LEAs, such as public-school districts, during the COVID-19 pandemic.

Senate Bill 98 directed LEAs in California to develop new Learning Continuity and Attendance Plans (“LCPs”) for the 2020-2021 school year. Ex. 10 (SB 98) at 95. The Bill provided that the LCPs should address three key issues:

- (i) how the district would address the impact of COVID-19 and provide continuity of learning, including addressing the needs of students with disabilities and the provision of in-person instruction, *see* EDUC. CODE § 43509(f)(1);

- (ii) the use of federal and state funding included in the budget to support the efforts in the LCP, *id.* § 43509(f)(2); and
- (iii) how the district would increase or improve services in proportion to funds generated based on the number and concentration of unduplicated pupils under the local control funding formula, *id.* § 43509(f)(3).

Senate Bill 98 also required school districts to develop a plan that includes in-person instructional offerings and addresses the actions they would take to “offer classroom-based instruction whenever possible, particularly for pupils who have experienced significant learning loss due to school closures. . . .” *See* EDUC. CODE § 43509(f)(1)(A). The Legislature noted that a “local educational agency shall offer in-person instruction to the greatest extent possible.” *Id.* § 43504(b).

The Legislature specified that distance learning may be offered in only two circumstances: “(A) On a local educational agency or schoolwide level as a result of an order or guidance from a state public health officer or a local public health officer;” or “(B) For pupils who are medically fragile or would be put at risk by in-person instruction, or who are self-quarantining because of exposure to COVID-19.” EDUC. CODE § 43503(a)(2).

Senate Bill 98 provides further that “[f]or the 2020-21 school year, LEAs that offer distance learning shall comply with the requirements of subdivision (b),” which mandate that distance learning fulfill all “special education, related services, and any other services required by a pupil’s individualized education programs . . . with accommodations necessary to

ensure that individualized education programs can be executed in a distance learning environment.” EDUC. CODE § 43503(b)(4).

Budget Allocation for School Districts Regarding COVID-19 Response

California’s state budget this year includes a one-time investment of \$5.3 billion intended to assist LEAs in “address[ing] learning loss related to COVID-19 school closures, especially for students most heavily impacted by those closures.” The funds are to be allocated to LEAs “on an *equity basis*, with an *emphasis on ensuring the greatest resources are available to local educational agencies serving students with the greatest needs.*” Ex. 11 (CA State Budget K-12 Education) at 32 (emphasis added). The funds may be used for, inter alia, “[p]roviding additional academic services for pupils, including diagnostic assessments of student learning needs . . .”. *Id.* at 33. Specifically, the Legislature committed \$4.4 billion from the federal Coronavirus Relief Fund, \$539.9 million from the Proposition 98 General Fund, and \$355.2 million from the federal Governor's Emergency Education Relief Fund for these express purposes. *Id.* at 32. LAUSD specifically has received a total of \$540,519,500 from the combination of these fund allocations. Ex. 10 (SB 98) at 218.

Use of Non-Public Agencies and Non-Public Schools

California state regulations permit a school district to “use federal, state, local and private sources of support” in order to help students with special needs services. 5 C.C.R. § 3000(b).

Accordingly, “[s]tudents with special needs may enroll in both public and nonpublic school programs to meet their educational needs, and [LAUSD] will reimburse the nonpublic school or nonpublic agency for those services.” *Id.* § 3062(e).

As described in more detail below, the Los Angeles County Department of Public Health has maintained a consistent stance that 12-person small cohorts can be conducted safely. LAUSD’s LCP, which was required to address how it would provide in-person instructional offerings whenever possible, and especially for those experiencing learning loss, Educ. Code 43509(f)(1)(A), only included aspirational and unspecific language about its plans for returning students to campus. It committed merely to “[c]onsideration of a Hybrid Learning Model” which was “only a proposal” at the time of the LCP. Ex. 12 (LAUSD Sept. LCP) at 16. For students experiencing learning loss, the LCP only provided for cycles of one-on-one in-person “tutoring”, which is not a substitute for “instruction.” Ex. 12 (LAUSD Sept. LCP) at 18. The LCP acknowledged that public health officials had approved small cohorts of students for specialized services, as outlined below, but said only that they were “currently considering this possibility in consultation with our labor partners.” *Id.* at 17¹.

¹ LAUSD’s LCP is deficient on its face in that it does not specify what concrete *actions* LAUSD will take to offer classroom-based instruction to students who have experienced significant learning loss, as required by CAL. EDUC. CODE § 43509(f)(1)(A). But

Department of Public Health Guidance on Safe Small Cohorts and LAUSD's Response

On July 17, 2020, the California Health and Human Services Agency, through the California Department of Public Health (“CDPH”), issued a framework “to support school communities as they decide[d] when and how to implement in-person instruction for the 2020-2021 school year.” Ex. 13 (CDPH Reopening In-Person Learning Framework) at 1. That framework provided that schools could reopen for in-person instruction subject to conditions outlined by the local public health department. *Id.*

To prepare for safe school re-openings, the CDPH issued its “Guidance Related to Cohorts” on August 25, 2020 (later updated on September 4, 2020). This guidance provided for “***necessary in-person child supervision and limited instruction,*** targeted support services, and facilitation of distance learning in small group environments for a specified subset of children and youth.” Ex. 14 (CDPH Guidance Related to Cohorts) at 1. The CDPH authorized small cohorts of up to 14 children or youth and up to 2 supervising adults, or any configuration of 16 total individuals in the cohort. *Id.* Among other requirements for these

Petitioners do not seek to challenge or modify LAUSD's LCP. Rather, Petitioners request this Court's immediate intervention to compel the District to provide students with disabilities and other vulnerable groups meaningful access to education during the pandemic, consistent with local public health guidance.

small cohorts, adults had to maintain the appropriate physical distance between themselves, to the extent possible, and all adults and students had to wear masks at all times.

On September 30, 2020, the CDPH issued further guidance in response to frequently asked questions regarding special education during the COVID-19 pandemic. In response to whether a local educational agency is permitted to offer in-person supports and services to small groups of students with disabilities, CDPH replied: “**Yes.** The [CDPH] released guidance on August 25, 2020, permitting the provision of in-person targeted, specialized support and services in stable cohorts when the school is able to satisfy all of the conditions detailed in CDPH’s guidance related to cohorts.” Ex. 15 (CDPH Special Education Guidance for COVID-19) at 1. And in response to whether local education agencies must continue to conduct special education assessments while providing distance learning, CDPH replied: “**Yes.** The U.S. Department of Education (USDOE) has not waived the requirement for LEAs to conduct a full and individual initial evaluation for a student suspected of having a disability, nor has the USDOE waived requirements relating to triennial assessments.” *Id.* at 2. Further, in response to whether special education assessments can be conducted in-person, CDPH makes clear that: “**Yes.** Current guidance from the California Department of Public Health and the California Department of Education *does not expressly prohibit in-person assessments,*” and in certain cases, “service providers may be considered ‘Essential

Critical Infrastructure Workers’ under Executive Order N-33-20.”
Id. at 5.

The Los Angeles County Department of Public Health (“LADPH”) issued its own, similar guidance permitting “limited, on-campus operation for schools in L.A. County,” beginning on September 14, 2020. That guidance stated that “[b]eginning Monday, September 14, schools K-12 may offer in-school services for small cohorts of students with Individualized Education Plans (IEP), students requiring instruction for English as a Second Language (ESL) or *students needing assessments or specialized in-school services*, as long as the school is able to fully implement the Health Officer’s re-opening protocols.” Ex. 16 (LADPH Revises Health Officer Order) at 1 (emphasis added). The LADPH’s guidance for small cohorts recommended a maximum of 12 students, with 2 adults.

With guidance from the CDPH, California has devised a Blueprint for a Safer Economy (“the Blueprint”) to usher in safe re-openings for counties across the State. The Blueprint established a framework that considers reliable data from the CDPH and recommends specific restrictions to address COVID-19 surges. The Blueprint permits K-12 schools to allow up to 25% of enrolled students to return to campus “to serve students . . . who have other special needs.” Ex. 17 (Blueprint for a Safer Economy) at 1.

Despite unwavering public health guidance, since August 2020, that providing in-person instruction to small cohorts of students with exceptional needs is both safe and feasible (when

conducted with specific safety protocols), LAUSD has cited public health guidance to justify a policy of denying assessments and in-person instruction for those who simply cannot access the educational curriculum through distance learning. Ex. 18 (LAUSD SPED August/September Newsletter) at 1.

In its August/September 2020 newsletter, LAUSD's Division of Special Education reiterated its policy to not conduct assessments, despite guidance by public health officials permitting them to do so safely. That newsletter acknowledges that "[t]he LAUSD is aware of the recently issued LADPH order indicating schools may allow for specialized in-school services for small cohorts of specific populations of students. . . . However, first and foremost, safety of our staff and students is our priority. Plans for in-school services will move forward once we ensure appropriate safety measures. . . are in place." Ex. 18 (LAUSD SPED August/September Newsletter) at 1. The newsletter offered no basis to dispute the judgment of the LADPH regarding the safety and feasibility of in-person instruction in small cohorts.

After the LADPH released its guidance allowing limited return, Respondent Beutner nevertheless declined to modify his position to be responsive to public health guidance and the mandate in the law that in-person instruction be offered "whenever possible." In a September 14, 2020 press release, Beutner said: "Changing guidelines and rules aren't something we can respond to on a daily basis. . . . We start with the overall state framework. Los Angeles is purple on the state dashboard, the highest risk category, defined as widespread COVID-19

transmission in the area. That means it's not appropriate for students to be back in classrooms." Ex. 19 (A. Beutner Sept. Press Release) at 5. Superintendent Beutner does not have the discretion to determine what is an "appropriate" public health guideline.

LAUSD Side Letter Agreements with United Teachers Los Angeles (UTLA)

On October 7 and 8, 2020, LAUSD entered into two "sideletter agreements" with its teachers' union, the United Teachers Los Angeles ("UTLA"), regarding (i) voluntary in-person tutoring services and (ii) voluntary in-person student assessment services. Ex. 20 (UTLA Oct. 7, 2020 Sideletter) at 1; Ex. 21 (UTLA Oct. 8, 2020 Sideletter) at 1. The October 7 sideletter agreement provided for, among other things, one-on-one tutoring sessions for 50 minutes per week at a school site. Ex. 20 at 1. The October 8 sideletter agreement provided for, among other things, in-person assessments in a classroom, subject to social distancing protocols and adequate air circulation. Ex. 21 at 1. Both sideletter agreements provide that "[p]articipation by UTLA bargaining members shall be voluntary." Ex 20 at 1; Ex. 21 at 1.

Providing limited in-person instruction to vulnerable students in small cohorts does not mean that students, teachers, and/or staff who have high-risk, or live with someone who is high-risk, will be required to participate in or provide in-person instruction. *See* Ex. 22 (April 8, 2020 Side Agreement Between LAUSD and UTLA) at 1 (providing that "[u]nit members who are age 60 or older, have underlying medical conditions, or are caring

for a family member in a high-risk group may be assigned to work from home during the period of school closure. If work from home is not possible, as determined by the supervisor, the employee is not expected to report to work.”).

LAUSD Begins *De Minimis* Effort to Provide In-Person Instruction and Assessments

On October 20, 2020, LAUSD sent a letter to all principals regarding special education assessments. That letter noted that “[d]ue to the COVID-19 pandemic, the Division of Special Education will be utilizing the following methods of assessing students, as appropriate: 1) Assessments during remote learning that do not require in-person interactions, and 2) Voluntary, in-person, one to one assessments (UTLA side letter of 10/08/20).” Ex. 23 (LAUSD Oct. 2, 2020 Letter to Principals) at 1.

Almost two weeks later, on November 2, 2020, Respondent Beutner announced that LAUSD would begin to provide “additional support for students at schools.” Ex. 24 (A. Beutner Nov. Press Release) at 2. Beutner acknowledged that “[w]hile educators in schools are trying their best to help students continue to learn online, we know the best learning takes place at schools. And for certain types of students – early learners, students learning English, students with differences and disabilities and those who were struggling before school facilities closed – the absence from school has made the challenges even greater.” *Id.* at 2.

Beutner noted further that “the struggle to cope with COVID-19 and online learning for children and their families is

very real. The struggle to get by and the resulting attendance and academic challenges are even greater in high-needs communities.” *Id.* at 3. Accordingly, Beutner directed that, beginning on November 9, 2020: “The one-on-one instructional efforts at schools will also include small groups of students, with up to three students in each group”; “Special education professionals will conduct assessments for students, as well as in-person instruction in small groups”; “Coaches will lead athletic conditioning on school fields outside and students will be kept in small, consistent cohorts.” *Id.* at 2.

In tandem with these new directions from Beutner, LAUSD and UTLA entered into two new side agreements. The agreement dated October 29, 2020 provided for one-on-one instructional services to students with disabilities who are having difficulty accessing virtual services or learning. Ex. 25 (UTLA Oct. 29, 2020 Sideletter) at 1. The agreement dated November 2, 2020 modified the previous one-on-one tutoring agreement to allow for tutoring in groups of one-to-six (one employee and six students). Ex. 26 (UTLA Nov. 2, 2020 Sideletter) at 1.

LAUSD has over 600,000 students and approximately 64,772 students in special education. As defined by the National Association of Special Education Teachers, “[a]n assessment in special education is the process used to determine a child’s specific learning strengths and needs, and to determine whether or not a child is eligible for special education services.” Ex. 27 (NASSET Assessment in Special Education) at 1. Between November 9 and December 2, 2020, however, LAUSD provided

few assessments and little in-person instruction for those who cannot access the educational curriculum through distance learning. The Los Angeles Times has reported that “[s]o far, few people have been on any L.A. Unified campus. The vast majority of teachers are working from home, and **only 2,275 students — fewer than one half of 1% —** are coming to campus periodically for individual or small-group tutoring, and that effort began only recently.” Ex. 28 (*When Schools Reopen Will You Send Your Child Back?*, Los Angeles Times) at 5-6 (emphasis added).

Current School Shutdown Orders

On December 2, 2020, Los Angeles Mayor Eric Garcetti issued a new “Targeted Safer at Home Order” asserting that the City “must resume some of the more restrictive measures [it] instituted in the Spring.” Ex. 29 (Targeted Safer At Home Order) at 1. The Order requires Los Angeles residents to stay home and businesses to close apart from specially designated services. *Id.* at 2. But the Order lists numerous activities that are exempt from its restrictions, including educational institutions, which “[s]ince September 14, 2020, K-12 schools may offer in-school services for a small, stable cohort of students with Individualized Education Programs (IEPs) or English Learners (ELs) needing assessments and/or specialized in-school services, with priority given to students with disabilities.” *Id.* at 4. This Order also provides that ***indoor malls or shopping centers may reopen*** at up to 20% of overall mall or shopping center capacity. *Id.* at 7.

On December 3, 2020, the CDPH also issued a Regional Stay at Home Order in response to the increase in COVID-19

cases, hospitalizations, and test positivity rates across California. Ex. 30 (CDPH Dec. Regional Stay At Home Order) at 1. In this Order, too, the California Department of Public Health noted that **“Guidance related to schools remain in effect and unchanged.** Accordingly, when this Order takes effect in a Region, schools that have previously reopened for ***in-person instruction may remain open, and schools may continue to bring students back for in-person instruction*** under the Elementary School Waiver Process or Cohorting Guidance.” *Id.* at 2. In line with this order, the LADPH made clear on December 7, 2020 that **“[s]chools that have previously reopened for either high-need students or through the waiver program can remain open.”** Ex. 31 (LADPH Public Health Officials Urge Full Compliance) at 1.

Notwithstanding the requirement in statute for LAUSD to offer in-person instruction “whenever possible” and guidance from the California Department of Public Health and the Mayor of Los Angeles that educational institutions could safely provide in-person instruction to small groups of students with special needs, on December 7, 2020, Respondent Beutner announced that special education assessments and in-person instruction would be ceased and “shift to online.” Ex. 32 (A. Beutner Suspends School-Based Instruction) at 1. These changes went into effect on December 10, 2020. *Id.* LAUSD has also informed independent educational evaluators that (i) only the portions of an Independent Educational Evaluation (“IEE”) that can be completed remotely can be conducted until LAUSD schools are

opened to in-person instruction; (ii) IEE reports will not be accepted until in-person observation at the school can be completed; and (iii) virtual test administration will not be accepted because of the likelihood of invalidating the test results. Ex. 3 (Fernandez Declaration) at 2.

In this Order, too, the California Department of Public Health noted that “***Guidance related to schools remain in effect and unchanged.*** Accordingly, when this Order takes effect in a Region, schools that have previously reopened for ***in-person instruction may remain open, and schools may continue to bring students back for in-person instruction*** under the Elementary School Waiver Process or Cohorting Guidance. Ex. 30 (CDPH Regional Stay at Home Order) at 2.

In December 2020, LAUSD conducted a survey of its LAUSD families. Ex. 33 (LAUSD Preliminary Survey Results) at 1. The preliminary results indicated that 70% of LAUSD families would prefer to close malls and to reopen schools. *Id.*

CLAIMS ASSERTED

If the Court does not issue a writ requiring Respondents to comply with the law by making in-person instruction available in accordance with the requirements of Senate Bill 98, and requiring that Respondents comply with their duties to provide in-person assessments, then students will suffer potentially irreparable harm.

LAUSD is under an obligation to utilize all available resources to fulfil these procedural duties created by Senate Bill

98. *See* 5 C.C.R. § 3000(b); 5 C.C.R. § 3062(e). LAUSD also has a procedural duty to use private sources of support to meet the needs of its special education students, as well as to reimburse students who seek private entity support.

Petitioners believe that there is no requirement in this circumstance to exhaust administrative remedies.

RELIEF SOUGHT

Wherefore, Petitioners request the following relief:

That this Court forthwith issue a writ of mandate directing Respondents to:

1. implement small-cohort in-person instruction to the maximum extent possible (up to 25% of campus capacity), consistent with cohorting guidance issued by the Los Angeles County Department of Public Health on September 2, 2020 and as required by Cal. Educ. Code Sections 43509(f)(1)(A) and 43504(b);
2. resume in-person assessments and Individualized Educational Program (IEP) services, with accommodations necessary to ensure that students' IEPs can be executed in a distance learning environment, as required by Cal. Educ. Code Section 43503(b)(4) (which mandates continued compliance with Cal. Educ. Code Sections 56341 and 56345(a)(9)(A) during school closures); and
3. arrange for non-public agencies (NPAs) and non-public schools (NPSs) to provide in-person special education, related services, and assessments to LAUSD students who need it, consistent with cohorting guidance issued by the Los Angeles County Department of Public Health on September 2, 2020, whenever LAUSD is either unable or unwilling to provide such education, services, and assessments;

That, upon Respondent's return to the alternative writ, a hearing be held before this Court at the earliest practicable time so that the issues involved in this Petition may be adjudicated promptly, and if this Court deems appropriate, pursuant to an expedited briefing and hearing schedule;

That, pending such return and hearing, the Court grant an immediate injunction or order requiring Respondents to: (i) implement small-cohort in-person instruction to the maximum extent possible (up to 25% of campus capacity), consistent with cohorting guidance issued by the Los Angeles County Department of Public Health on September 2, 2020; (ii) resume in-person assessments and Individualized Educational Program (IEP) services, with accommodations necessary to ensure that students' IEPs can be executed in a distance learning environment; and (iii) arrange for non-public agencies (NPAs) and non-public schools (NPSs) to provide in-person special education, related services, and assessments to LAUSD students who need it, consistent with cohorting guidance issued by the Los Angeles County Department of Public Health on September 2, 2020, whenever LAUSD is either unable or unwilling to provide such education, services, and assessments;

That, following the hearing upon this Petition, the Court issue a peremptory writ of mandate directing Respondents to take the measures outlined above;

That Petitioners be awarded their attorneys' fees and costs of suit; and

For such other and further relief as the Court may deem just and equitable.

VERIFICATION

I, Jennifer L. Braun, declare:

I am the CEO of Petitioner the Alliance for Children's Rights in the above-entitled action. I have read the foregoing Petition for Writ of Mandate and know the contents thereof. I am informed and believe and based on said information and relief allege that the contents are true.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Los Angeles, California on December 10, 2020.



Jennifer L. Braun
CEO of Alliance for Children's Rights

**MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF PETITION OF EXTRAORDINARY RELIEF,
INCLUDING WRIT OF MANDATE AND REQUEST FOR
IMMEDIATE STAY OR INJUNCTIVE RELIEF**

Introduction

In Los Angeles County today, shopping malls and retail stores are open, at up to 20% of their capacities. But for students in the Los Angeles Unified School District, their schools – *all of them* – are closed. This blanket policy, in effect as of December 10, 2020, violates the mandates of Senate Bill 98 and will irreparably harm thousands of LAUSD students who simply cannot access the educational curriculum through distance learning. It also ignores the relevant public health guidance: since September 2, 2020, the Los Angeles County Department of Public Health has consistently maintained that for those who need it, in-person instruction and services can be provided safely, in small cohorts, following the Department’s safety protocols.

To be clear, this petition does not seek to compel any student, teacher, or staff with high-risk factors—or who lives with someone with high-risk factors—to participate in or provide in-person instruction or services. Instead, the Petitioners seek to enjoin the District from denying these services to those who want it and for whom it is an essential service.

Senate Bill 98, the emergency legislation enacted on June 29, 2020 in response to COVID-19, aimed to ensure that K-12 education would not become another casualty of the pandemic. Specifically, the Legislature required LEAs such as LAUSD “to offer *classroom-based instruction whenever possible*,

particularly for pupils who have experienced significant learning loss due to school closures.” CAL. EDUC. CODE § 43509(f)(1)(A) (emphasis added). It was “the intent of the Legislature that LEAs offer in-person instruction in 2020–21 to the greatest extent possible.” Ex. 34 (June 26, 2020 California Assembly Daily Journal, 196th Session Day) at 31. With respect to special education students, the Legislature required LEAs to provide the accommodations necessary to ensure their individualized education programs can be executed during the period of school closures.

There is no question that severe learning loss has already occurred, is ongoing, and will lead to irreparable harm for these students. This slow-motion catastrophe—with potentially irreversible and life-long negative consequences for students—can and should be immediately addressed, consistent with state and local public health guidelines which (as of early September 2020) allow for in-person instruction and related services in small cohorts of 12 (with 2 adults) and up to 25% of school campus capacity.

LAUSD itself identified vulnerable student populations who have experienced significant learning loss and acknowledged that in-person instruction and other in-person interventions are critical for these student populations. On June 15, 2020, LAUSD Superintendent Beutner stated: “We do know with certainty” that “those who may have been less prepared to learn independently – elementary students, English Learners, students with learning differences and disabilities, and those who were struggling before

school facilities closed – will need more, not less” support. Ex. 35 (A. Beutner June Press Release) at 2. To date, LAUSD has not lived up to this commitment, and instead has now *suspended* its already limited on-campus programs which served fewer than one-half of 1 percent of the District’s students.

Because LAUSD has failed to comply with its obligations under Senate Bill 98, Petitioners respectfully request that this Court exercise its original jurisdiction to issue a writ of mandamus to compel the District to perform its statutory duties.

I. Petitioners Have Standing to Enforce Respondents’ Statutory Duties.

A. Petitioners Have a Beneficial Interest in Securing Statutorily-Mandated Services for LAUSD’s Students with Disabilities

Petitioners Alliance and Learning Rights are not-for-profit organizations seeking to enjoin LAUSD from abandoning its public duty to comply with the mandates of Senate Bill 98 and to provide assessments and in-person instruction to those students who are experiencing the greatest learning loss because they cannot access distance learning. The Alliance provides free legal services and advocacy for caregivers, adoptive parents, and children and teens in Los Angeles County’s foster system, and advocates for policy change to help vulnerable children, many of whom have been abused or neglected. Learning Rights provides legal services to students who have been denied equal access to a public education due to disability or discrimination. As nonprofit organizations whose core missions are to enforce the rights of special needs students every day, Petitioners have a beneficial

interest distinct from the public at large in ensuring that LAUSD is meeting its legal obligations under the Education Code.

B. Petitioners Have Public Interest Standing in Securing Statutorily Mandated Services for LAUSD’s Students with Disabilities

Moreover, Petitioners are also interested as citizens in ensuring that LAUSD abide by the Education Code. Courts have found standing for citizens to enforce compliance with public duties when the writ petition is a matter of public interest. *See Bd. of Soc. Welfare v. County of Los Angeles*, 27 Cal. 2d 98, 100-01 (1945). The California Supreme Court has explained that “where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.” *Id.* at 100-01. This public interest exception “promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right.” *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 52 Cal. 4th 155, 166 (2011) (quoting *Green v. Obledo*, 29 Cal. 3d 126, 145 (1981)). There is substantial public interest in ensuring that LAUSD meets its obligations to its most vulnerable students and those who would suffer the most learning loss as a result of virtual learning.

II. A Writ Should Issue Requiring LAUSD to Comply with the Legislative Mandate to Provide In-Person Instruction “Whenever Possible” During the Pandemic.

A writ of mandate must be issued where the petitioner demonstrates: “(1) that no plain, speedy, and adequate alternative remedy exists []; (2) a clear, present . . . ministerial duty on the part of the respondent; and (3) a correlative clear, present and beneficial right in the petitioner to the performance of that duty.” *People v. Picklesimer* 48 Cal. 4th 330, 339-40 (2010) (internal quotations and citations omitted); Civ. Proc. Code, §§ 1085, 1086. This Court has original jurisdiction over this proceeding for extraordinary relief because “the issues presented are of great public importance and must be resolved promptly.” *Wenke v. Hitchcock*, 6 Cal. 3d 746, 750-751 (1972); *California Redevelopment Assn. v. Matosantos*, 153 Cal. 4th 231, 252 (2011). The *status quo*—where every LAUSD student is in distance learning, regardless of the child’s ability to access the educational curriculum in that manner—violates the law (Senate Bill 98) and is not tenable.

A. Classroom-Based Instruction in Small Cohorts Has Been “Possible” Since September of 2020 When Public Health Authorities Deemed it Safe If/Where Conducted in Accordance With Safety Protocols

This Court has declared that, “[t]he public schools of this state are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the Constitution and the state Legislature is given

comprehensive powers in relation thereto.” *Hall v. City of Taft*, 47 Cal. 2d 177, 179, (1956). Accordingly, public education is a matter of statewide concern and school districts must act in accordance with the California Education Code and other state laws. Importantly, this also means that local municipalities may not create ordinances or laws that bind school districts in ways that conflict with existing state law. *See City & Cty. of San Francisco v. Patterson*, 202 Cal. App. 3d 95, 101-102 (Ct. App. 1988); Cal. Const. art. IX, § 14.

Senate Bill 98 requires LEAs to take “actions . . . to offer classroom-based instruction *whenever possible*” to address the educational needs of students “who have experienced significant learning loss.” CAL. EDUC. CODE § 43509(f)(1)(A); *see also* CAL. EDUC. CODE § 43504(b) (LEAs “*shall* offer in-person instruction to the *greatest extent possible*.”) (emphasis added). The authority to determine when, to what extent, and under what conditions in-person instruction is “possible” during a pandemic rests, properly, with state and local public health officials, not with individual school districts, such as LAUSD.

In the months following the passage of SB 98, public health authorities for the State of California and Los Angeles County determined that in-person instruction in small stable cohorts is safe when conducted according to safety protocols articulated by the Department of Public Health. Ex. 16 (LADPH Revises Health Officer Order) at 1; Ex. 14 (CDPH Guidance Related to Cohorts) at 1. Such in-person instruction is therefore “possible” and so LAUSD has a statutory duty to “offer” such instruction to those

who need it, pursuant to Education Code Sections 43504 and 43509. To begin, on August 25, 2020, CDPH issued “Guidance Related to Cohorts,” which it updated on September 4, 2020. CDPH authorized cohorts of up to 14 children or youth and up to two supervising adults, or any configuration of 16 total individuals in the cohort, if participants maintained physical distance to the extent possible and wore masks at all times. *Id.* at 1. CDPH has made it clear its guidance with respect to small cohorts applied to in-person instruction. Responding to a question on its website about whether an LEA was permitted to offer in-person supports and services to small groups of students with disabilities, the California Department of Public Health (CDPH) answered unequivocally: “**Yes.** The [CDPH] released guidance on August 25, 2020, permitting the provision of in-person targeted, specialized support and services in stable cohorts when the school is able to satisfy all of the conditions detailed in CDPH’s guidance related to cohorts.” Ex. 15 (CDPH Special Education Guidance for COVID-19) at 1. CDPH’s August 25, 2020 guidance was intended to provide for “necessary in-person child supervision and limited instruction, targeted support services, and facilitation of distance learning in small group environments for a specified subset of children and youth,” namely, students with disabilities. Ex. 14 (CDPH Guidance Related to Cohorts) at 1.

On September 2, 2020, Los Angeles County Department of Public Health (LADPH) followed suit and issued similar cohorting guidance which expressly authorized, among other

things, “limited, on-campus operation for schools in L.A. county.” Ex. 16 (LADPH Revises Health Officer Order) at 1. Specifically, LADPH guidance provided for in-person instruction in small cohorts of up to 12 students, so long as the overall number of students on campus does not exceed 25% of the total student body at any one time. This stated purpose of the guidance issued by the LADPH in September was to ensure that “students most in need of in-person learning”— specifically, students with disabilities and English language learners—would receive it. *Id.* at 1.

This position is shared by the Los Angeles County Board of Supervisors. On October 21, 2020, Kathryn Barger, Chair of the Los Angeles County Board of Supervisors, announced that schools in L.A. County could open up to 25% capacity for high-needs students, explaining that the decision would give more students access to the “on-site support systems that are so critical for their growth and for their education.” She further noted that “we have prioritized children with special needs, and the English learners as the most in need of in-person teaching.” Moreover, Barger acknowledged that young children are “unable to learn online” and also qualify as “high need students” who would benefit from the updated policy allowing more students back to school. Ex. 36 (K. Barger Press Conference Tweet) at 1. Once LADPH issued guidance in early September allowing limited on-campus operations to resume, LAUSD had a duty to offer classroom-based instruction “to the greatest extent possible,” meaning up to 25% of campus capacity, prioritizing high-needs

students who experienced significant learning loss. LAUSD refused to perform this duty. Two months elapsed before LAUSD announced on October 20, 2020 that the District would *begin* in-person instruction. Ex. 23 (LAUSD Oct. 2, 2020 Letter to Principals) at 2. Two weeks later, Superintendent Beutner said that LAUSD would begin, as of November 9, to offer small cohorts in groups of *three* students (although the guidance permitted groups of *twelve* students). Ex. 24 (A. Beutner Nov. Press Release) at 2.

Importantly, the local and state public health authorities have maintained their directive that small cohort in-person instruction and services can be conducted safely and, therefore, remain “possible,” notwithstanding the recent surge in COVID-19 cases in California. And as previously noted, teachers and staff with risk factors or who live with people who have risk factors, or who are age 60 or older, would not be needed to serve these students. The stay-at-home orders issued recently by CDPH and Los Angeles Mayor Eric Garcetti *specifically exempted* schools, in recognition of the importance of educating vulnerable groups of children in-person during the pandemic. Ex. 29 (Targeted Safer At Home Order) at 4. To counter rising cases of COVID-19 in Los Angeles County, on December 2, 2020, Mayor Garcetti issued a “Targeted Safer at Home Order” requiring residents to stay home and non-essential businesses to close. But the Order reaffirms that “[s]ince September 14, 2020, K-12 schools may offer in-school services for a small, stable cohort of students with Individualized Education Programs (IEPs) or English Learners (ELs) needing

assessments and/or specialized in-school services, with priority given to students with disabilities.” Such “in-person specialized services” remain “permissible” with “maximum stable cohort size [of] twelve (12) students and two (2) staff (not including aides assigned to children with special needs),” and “schools must limit the number of students . . . allowed at any one time on campus for essential assessments and/or specialized in-school services to 25% or less of the total student body.” *Id.* at 4-5.

Similarly, California’s December 3, 2020 Regional Stay at Home Order provides that “[g]uidance related to schools *remain in effect and unchanged.*” Ex. 30 (CDPH Dec. Regional Stay At Home Order) at 2. Even when “this Order takes effect in a Region, schools that have previously reopened for in-person instruction may remain open, and *schools may continue to bring students back for in-person instruction under the Elementary School Waiver Process or Cohorting Guidance.*” *Id.* at 2. And on December 9, 2020, CDPH clarified in the FAQ section of its website that the Regional Stay At Home Order “*does not modify* existing state guidance regarding K-12 schools.” CDPH confirmed that the Order did not require a freeze of existing (“previously reopened”) in-person programs, and that LEAs can continue to expand such programs consistent with the school guidance issued by the CDPH: “[a]ll schools that *have not yet reopened for in-person instruction* are able to continue to serve small cohorts of students (e.g., students with disabilities) following CDPH Guidance.” Ex. 37 (CDPH FAQ Section) at 1 (emphasis added).

Even so, Superintendent Beutner used the recent surge as an opportunity to shut down the minimal in-person services that

LAUSD was providing. As of December 7, 2020, when Superintendent Beutner abruptly announced the indefinite suspension of the District’s in-person programs for high-needs students, fewer than *one percent* of LAUSD’s total student population were receiving any classroom-based instruction or other services—nowhere near the 25 percent capacity authorized by local health directives.² LAUSD’s effort, which would be generously characterized as *de minimis*, did not satisfy LAUSD’s duty to provide in-person instruction “to the greatest extent possible.” § 43504(b). And today, LAUSD school campuses are closed to *all* students.

LAUSD has therefore failed to comply with the requirements of 43509(f)(1)(A) because it has been possible to offer in-person instruction for months, and LAUSD has all but refused to implement it.

B. LAUSD Has a Duty and Must Be Compelled to Offer Classroom-Based Instruction to High-Needs Students, Consistent with Public Health Guidance.

Throughout the fall semester, LAUSD has largely disregarded cohorting guidance issued by state and local DPH and impermissibly substituted its own public health judgments

² The Los Angeles Times reported that there are no known cases of COVID-19 transmission among the 4,000 students who had participated in LAUSD’s short-lived in-person instruction. Ex. 38 (*Schools Are At Least As Important As Shopping Malls. Keep What’s Open, Open*, Los Angeles Times) at 2.

without having the necessary authority or expertise to make such judgments. LAUSD’s posture has had the (predictable) effect of denying the benefit of education to the District’s most vulnerable students and creating what has been decried as a “lost generation” of youngsters.³ On August 17, 2020, Superintendent Beutner updated the LAUSD community on the District’s plans for the 2020-2021 school year, stating that “health factors in the community don’t allow us to bring students back to school at this time.” Ex. 39 (A. Beutner Aug. Press Release) at 1. Even after CDPH and LADPH released cohorting guidance in late August and early September allowing the District to resume in-person instruction and related educational services for high-needs students, Superintendent Beutner declined to modify his position. In a September 14, 2020 press release, Beutner responded to the LADPH cohorting guidance by saying that “[c]hanging guidelines and rules aren’t something we can respond to on a daily basis” Ex. 19 (A. Beutner Sept. Press Release) at 5. But as previously noted, the public health guidance has been consistent since September 2020.

³ See Ex. 40 (*A Lost Generation*, Washington Post) at 1; see also Ex. 38 (*Schools Are At Least As Important As Shopping Malls. Keep What’s Open, Open*, Los Angeles Times) at 4 (“Without the commitment to keeping the most vulnerable, high-poverty and disabled students in school, the state’s current situation will worsen”).

Between March and September 2020, LAUSD expressly based its school closures on the public health guidance provided by local and public health officials. Those officials have not lost their authority (or expertise) to determine when and how in-person instruction can be offered safely. LAUSD cannot have it both ways—refusing to implement existing public health guidelines for small cohort in-person instruction, while invoking public health concerns to justify shutting school doors to *all* of its students, including “pupils who have experienced significant learning loss due to school closures.” CAL. EDUC. CODE § 43509(f)(1)(A).

The phrases “whenever possible” and “to the greatest extent possible” in SB 98 do not absolve LAUSD of its obligation to make classroom-based instruction a priority and to offer such instruction to students who cannot learn remotely in a manner authorized by public health guidelines (such as in small cohorts). When it used the word “possible,” the Legislature recognized that in-person instruction may have to be limited to certain categories of students, such as, for example, students with disabilities who are more at risk of experiencing significant learning loss than their typical peers. The Legislature did not, however, grant LAUSD the discretion to deny *any* in-person instruction to all students. The ruling in *Venice Town Council, Inc. v. City of Los Angeles*, 47 Cal. App. 4th 1547 (1996) is instructive. There, petitioners argued that the Mello Act (Gov. Code §§ 65590) imposed a ministerial duty on the City of Venice, California, to replace residential units or to pay an in-lieu fee whenever it

demolished or converted low-to-moderate-income coastal residential units. *Id.* at 1552. The act provided, in relevant part, that “[t]he conversion or demolition of any residential structure for purposes of a nonresidential use . . . shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location.” *Id.* at 1553; Gov. Code § 65590(b). The city argued that the “no longer feasible” requirement meant that the act did not impose a ministerial duty, and that the city had discretion to replace the residential units. *Id.* at 1552. The court disagreed, holding that the plain language of the statute did impose a ministerial duty. *Id.* at 1559.

LAUSD has a duty to offer in-person instruction during the pandemic to the maximum extent authorized by public health officials, with priority given to students experiencing significant learning loss. If school districts such as LAUSD could simply decide (for whatever reason, however noble) not to offer any classroom-based instruction even when such instruction is *expressly authorized as safe* by state and local health guidelines, the provisions requiring LEAs to do so would become a nullity. In-person instruction in small cohorts is “possible” as long as it is safe from a public health perspective. LAUSD therefore has a clear duty to provide such instruction.

Nor is it sufficient compliance with Senate Bill 98 for the District to make vague, aspirational statements about its professed desire and inchoate plans to provide in-person instruction at some yet-to-be-determined date in the future, or to

impose additional conditions (not specified by the Legislature) before it would be willing to consider offering such instruction. In *Modesto City Schools v. Education*, 123 Cal. App. 4th 1365 (2004) the district filed a petition for writ of mandamus to overturn an administrative finding that it had failed to comply with CAL. EDUC. CODE § 51747(c), which sets forth requirements relating to independent study such as distance learning. The court rejected the district’s position, finding that “[s]ection 51747 does not merely refer to general policies of student accountability; it prescribes the content and form of such policies.” *Id.* Thus “[i]t cannot plausibly be argued that [the district] has ‘put into effect’ the policy required by section 51747 when all that it does is express approval in principle *without implementing the requirements set forth in the statute.*” *Id.* at 1375 (emphasis added). The court further noted that it was the “unequivocal legislative intent to require districts to include the specific elements enumerated in section 51747, subdivision (c) in each and every written [independent study] agreement,” and that the “fundamental purpose behind [section 51747 is] to ensure that independent study agreements contain specific elements *and to prevent students participating in such programs from falling behind their peers.*” *Id.* at 1377 (emphasis added).

Here, LAUSD has repeatedly acknowledged the importance of returning special education and other high-needs students to the classroom, including most recently in its response to Petitioners’ counsel. Ex. 41 (LAUSD Nov. 12 Letter to A. Romain) at 1 (expressing concern “about the impact that COVID-19 has had on the delivery of instruction to our most vulnerable

students” and “agree[ing] that it would be ideal if we could swiftly resume in-person instruction for all students with exceptional needs”). But the District has adamantly refused to take the actions necessary to make in-person instruction mandated by SB 98 a reality for high-needs students. Instead, the District keeps coming up with a slew of reasons about why in-person instruction on any scale cannot be provided at this time (notwithstanding public health guidance to the contrary).

C. LAUSD Has Failed to Ensure that Special Education Programs (Including Assessments) Could Be Executed in a Distance Learning Environment

Education Code Section 43503(b)(4), enacted as part of SB 98, requires school districts to make “accommodations necessary to ensure that individualized education programs can be executed in a distance learning environment.” CAL. EDUC. CODE § 43503(b)(4). The Legislature made clear that LEAs must continue to provide “[s]pecial education, related services, and any other services required by a pupil’s individualized education program pursuant to [California Education Code] Section 56341” during school closures. *Id.* Section 56341 requires LEAs to hold “meeting[s] to develop, review, or revise individualized education program of an individual with exceptional needs” and also to assess students to determine whether they are eligible for special education services and, if so, what services they require to address their learning disabilities. *Id.* (requiring participation of “at least one member . . . qualified to conduct individual diagnostic examinations of children, such as a school

psychologist” and that “at least one [IEP] team member *shall observe* the pupil’s academic performance and behavior in the areas of difficulty in the pupil’s learning environment, including in the regular classroom setting”). Section 43503(b)(4) also requires compliance during school closures with Section 56345(a)(9)(A), which provides that a student’s IEP must include “[a] description of the means by which the individualized education program will be provided under emergency conditions . . . in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days.” CAL. EDUC. CODE § 56345(a)(9)(A). The Legislature therefore recognized that special education assessments and services cannot be disrupted or suspended during the pandemic.

But LAUSD has violated its duties under these provisions by, among other things, failing to provide initial assessments to students suspected of having learning disabilities, as well as periodic assessments required thereafter. There is no public health justification for the District’s failures. As with small cohort in-person instruction, assessments are allowed under public health guidelines. The CDPH has made this clear on their website. For example, in response to a question as to whether LEAs must continue to conduct special education assessments, the CDPH answered unequivocally: “**Yes.** The U.S. Department of Education (USDOE) has not waived the requirement for LEAs to conduct a full and individual initial evaluation for a student suspected of having a disability, nor has the USDOE waived requirements relating to triennial assessments.” Ex. 15 (CDPH

Special Education Guidance for COVID-19) at 2. And in response to whether those assessments can be done in-person, the CDPH made clear that “[c]urrent guidance from the [CDPH] and the CDE does not expressly prohibit in-person assessments.” *Id* at 2. Special education assessments and services are therefore “possible,” and this Court should compel the District to provide them.

Since the start of the pandemic, LAUSD has repeatedly denied assessments in a systematic fashion and as a matter of policy to children who are by law entitled to them. In its August/September 2020 newsletter, LAUSD’s Division of Special Education reiterated its policy of refusing to conduct assessments notwithstanding guidance and protocols issued by public health officials permitting the District to do so safely. The District’s newsletter stated, in relevant part, that “[t]he LAUSD is aware of the recently issued Los Angeles County Department of Public Health order indicating schools may allow for specialized in-school services for small cohorts of specific populations of students However, first and foremost, safety of our staff and students is our priority. Plans for in-school services will move forward once we ensure appropriate safety measures . . . are in place.” Ex. 18 (LAUSD SPED August/September Newsletter) at 1.

LAUSD has also failed to ensure that the special education services required by students’ IEPs can be provided during school closures. LAUSD’s failure to provide, and/or delays in providing, assessments and special education services is causing significant

and irreparable harm to high-needs students, including students with disabilities. Ex. 1 (Whitbread Letter) at 2; Ex. 2 (Falvey Letter) at 2.

D. LAUSD Has Failed to Meet its Procedural Duty to Ensure that NPAs and NPSs Can Provide In-Person Instruction and Services

SB 98 imposes a procedural duty on LAUSD to ensure that all special education services and IEPs be delivered during the COVID-19 pandemic. CAL. EDUC. CODE § 43503(b)(4). LAUSD is under an obligation to utilize all available resources to fulfil this duty under Senate Bill 98. *See* 5 C.C.R. § 3000(b) (“[LEAs] . . . shall use federal, state, local, and private sources of support which are available to provide services as specified in an individualized education program (IEP)”) (emphasis added); *see also* 5 C.C.R. § 3062(e) (“Services may be provided through dual enrollment in public and nonpublic school or nonpublic agency programs to meet the educational requirements specified in the IEP The nonpublic school or nonpublic agency shall be reimbursed by the LEA for services [provided].”). LAUSD has a duty to use private sources of support to meet the needs of its special education students, as well as to reimburse students who seek private entity support.

LAUSD has ceased in-person educational resources and has instituted a *de facto* policy of discouraging parents and guardians of special needs students from seeking any third-party services. Ex. 32 (Superintendent A. Beutner Suspends School-Based Instruction) at 1. As one example, Petitioners have attached the declaration of Vindia G. Fernández, Ph.D., who founded the

Center for Pediatric Neuropsychology, a private practice located in Los Angeles. Much of their work involves conducting Independent Educational Evaluations (IEEs) for students with Individualized Education Programs (IEPs). When the COVID-19 pandemic began they quickly adapted their assessment practices to include both remote testing, and in-person with a multitude of safety protocols (including health screenings the day before testing, temperature checks on arrival, medical-grade air purifiers, touch-less hand sanitizing stations, Personal Protective Equipment (PPE) worn by all clients and staff at all times, test materials and surfaces being disinfected between visits, parent interviews are being conducted via Zoom in advance of the face-to-face testing, no eating in the office or waiting area, and no additional family members permitted to wait in the waiting room). Despite these measures “LAUSD informed [Fernández] that: (i) only the portions of the IEE that can be completed remotely (i.e., document review and parent/teacher questionnaires) can be conducted until ‘Safer at Home orders and/or school closures are lifted or amended’; (ii) IEE reports would not be accepted until [an] in-person observation at the student’s school—which typically takes approximately 90 minutes—is completed; and (iii) that LAUSD would not accept the results of any virtual assessments.” Fernández states that “[i]n other words, LAUSD has prohibited me from testing children either in-person or remotely.” Ex. 3 (Fernandez Declaration) at 2; *see also* Ex. 5 (Heimov Declaration).

This Court should enjoin LAUSD’s actions because they violate LAUSD’s duty to ensure that special education requirements are met during the pandemic under Senate Bill 98.

III. It is Necessary and Proper for this Court to Exercise its Inherent Authority to Provide Extraordinary Relief in this Situation

Article VI, section 10 of the California Constitution grants the Supreme Court of California “original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.” CAL. CONST. ART. VI, § 10; *Matosantos*, 53 Cal. 4th at 252. The Supreme Court of California “will invoke [its] original jurisdiction where the matters to be decided are of sufficiently great importance and require immediate resolution.” *Matosantos*, 53 Cal. 4th at 253.

This Court should exercise its inherent authority in this case because if this Petition is not granted, LAUSD will continue to fail to provide the services that they are required to provide under the law and prohibit thousands of students’ from accessing in-person education and resources that they desperately need. This will cause irreparable harm to these students, including to their mental health and physical wellbeing.

A. This Petition Presents a Matter of Sufficiently Great Importance to the People of the State of California

Governor Newsom has acknowledged that “schools are critical to the daily lives of many Californians.” Ex. 6 (Executive Order N-26-20) at 1. LAUSD has over 600,000 students, including 13.2 percent of students with IEPs, and about 23,000

disabled students in special day classes. Ex. 432 (Superintendent’s Final Budget 2019-2020) at 2, 5. Thousands of students across LAUSD are currently not receiving the in-person instruction or services or assessments that they need and that Senate Bill 98 directs that they must receive. This ongoing failure is of great importance because it damages tens of thousands of California students and their families.

B. A Speedy Determination on this Petition is Necessary Because Children Are Suffering Irreparable Harm

LAUSD’s indiscriminate closure of schools for all students, regardless of ability and need, and of all in-person assessments and services is causing irreparable harm to tens of thousands of LAUSD students and their families. This harm requires that there be no delay in addressing the matters in this Petition.⁴

Currently, more than 75% of California parents with disabled children report that their school failed to provide them with instructional materials to support their child’s remote learning. Ex. 1 (Whitbread Letter) at 2. Leslie Heimov, the Executive Director of Children’s Law Center of California (“CLC”), notes that this directly “limit[s] [student’s] ability to meaningfully participate in their education.” Ex. 5 (Heimov

⁴ Although LAUSD had been doing the bare minimum (since the end of October 2020) to meet its obligations under the law, only this week did LAUSD expressly announce that it would cease all in-person instruction and assessments.

Declaration) at 2. Megan Stanton-Trehan, Director of the Youth Justice Education Clinic at Loyola Law School, notes that even where students are provided with remote educational materials, students with certain individual disability-related needs “have trouble logging on to the online classes and maintaining focus consistently, understanding the material as delivered virtually, and connecting with service providers to receive regular related services such as educationally related intensive counseling services (“ERICS”), speech and language services, and behavioral intervention implementation (“BII”) services.” Ex. 4 (Stanton-Trehan Declaration) at 1.

Challenging behaviors that are manageable with gentle, natural approaches, and in inclusive settings, for small children, become far more stigmatizing and risk wholly segregated educational environments, restraints and seclusion if they persist in older, bigger, stronger children. *See T.H. v. Bd. of Educ. of Palatine*, 55 F. Supp. 2d 830, (N.D. Ill. 1999) (ordering intensive ABA noting potential to develop skills for future access to general education settings). *See also* Ex. 44 (Fenske, et al., “Age at Intervention and Treatment Outcome for Autistic Children in a Comprehensive Intervention Program,” *Analysis and Intervention in Developmental Disabilities*, Vol. 5, pp. 49-58 (1985)) (noting that positive outcomes diminish sharply when intensive, high-quality services are not begun before age five). As one prominent U.S. public health expert recently observed:

We must recognize that schools fill essential functions in our society . . . [W]e must ensure that schools remain able to serve, at all times, those

students who need in-person instruction . . .
Pandemic resilience means in-person learning is available to all students who need it throughout the whole course of the pandemic. ***Just as hospitals never close, schools should never close to some students***

Ex. 45 (*We've Figured Out It's Safe To Have Schools Open, Let's Keep Them Way*, Washington Post) at 2.⁵ Relatedly, the CDPH has concluded that in certain cases, service providers may be considered “essential” workers under Governor Newsom’s executive order N-33-20.

Mary A. Falvey, Ph.D., a retired California State University, Los Angeles (Cal State LA) Special Education professor of thirty-eight years, notes that “[t]his shutdown has resulted in limited to no learning for so many students with disabilities. . . . Every additional day that students with disabilities are denied access to face-to-face direct instruction by being kept out of classrooms is having a debilitating effect on them as learners. . . . The longer that students with disabilities are denied access to an individualized education, the more dire the situation becomes.” Ex. 2 (Falvey Letter) at 1-2. Similarly, Kathleen Whitbread, Ph.D., the research and training coordinator for the Literacy and Education Center at Down Syndrome Association of Connecticut, notes that “[r]esearchers

⁵ See also Ex. 46 (Joint Statement of Governors from Northeastern States) at 1.

have projected that the average student will fall more than seven months behind academically as a result of pandemic-related school closures (Dorn et al. 2020). For students with disabilities, the learning losses will be devastating, long lasting and in many cases, irreparable.” Ex. 1 (Whitbread Letter) at 2 (emphasis added).

While LAUSD’s failure to provide the required in-person education to these students undoubtably leads to education loss and regression, it is also detrimental to these students’ behavioral advancement and health, and that of their family members and guardians. The caregivers of students with specialized educational needs “struggle to monitor the daily online lessons of the youth in their care given their work obligations and the high needs of these students. The caregivers note that they are experiencing the emotional and physical toll of taking on the additional role of educator, behavioral aide, or therapist when those services providers cannot connect with their child.” Ex. 4 (Stanton-Trehan Declaration) at 2. These students face emotional and behavioral harms as well “often suffer[ing] from emotional outbursts and challenging behaviors in the home due to low frustration tolerance or the effects of social isolation.” *Id.* at 1. One subset of these students, children with autism, demonstrate the dire behavioral consequences of LAUSD’s policies. “Abrupt changes in routine are extremely difficult for [students with autism] and the stress caused by these changes can lead to severe and devastating regression, an increase in

problem behavior, and disrupted sleep (Clopton, 2020).” Ex. 1 (Whitbread Letter) at 3.

Students who require individualized educational support are not the only students harmed. As Leslie Heimov noted, “[s]ince distance learning began in March 2020, there have been significant delays in assessments for establishing eligibility for IEP services for our LAUSD clients. These delays are causing direct harm to our clients and impacting their ability to access their educational curriculum.” While a lack of in-person education and resources affects thousands of students’ educational and behavioral progression, thousands more students are falling through the cracks without ever even being assessed by LAUSD. If these students or their parents attempt to acquire an assessment from non-public agencies or non-public schools, “LAUSD has refused to validate these assessments without their assessors first completing an assessment to confirm or deny the findings of the independent assessors,” leaving these students who desperately need individualized or specialized educational or behavioral resources with nothing. Ex 5 (Heimov Declaration) at 2.

A client of the Youth Justice Education Clinic at Loyola Law School (referred to by his initials, “C.A.”) demonstrate the drastic effect this lack of assessments causes. “[C.A.] should have received a functional behavioral assessment in the spring 2020 semester. This assessment was *postponed indefinitely* and his behavioral concerns of inattention and trouble with work completion persist. This student has ADHD-like characteristics,

but also performs at the 1st percentile in reading, writing, and math. He is currently failing classes, which could harm his ability to graduate on time. Without the much-needed FBA, C.A.'s focus and attention concerns will not be meaningfully addressed through a data-driven approach." Ex. 4 (Stanton-Trehan Declaration) at 3-4 (emphasis added). C.A. is just one example of thousands of similar students left in limbo by LAUSD's failure to provide assessments.

A speedy determination of this case is necessary because with each passing day, the harm that these high-needs students experience becomes more severe and irreparable.

IV. Petitioners' Claims Are Not Subject to or Are Otherwise Exempt From Administrative Remedies

A. Exhaustion is Not Required

In their requests for relief, Petitioners seek LAUSD's compliance with its mandatory procedural obligations regarding assessments and in-person instruction for selected students. Specifically, Petitioners request that this Court enjoin LAUSD from denying requests to conduct assessments that are otherwise procedurally required by law for students with disabilities (a) who are transitioning out of early intervention (and develop IEPs) and (b) who had not received an initial assessment or an updated assessment (and convene IEP meetings to discuss). In addition, Petitioners request that this Court enjoin LAUSD from refusing to permit in-person instruction for those students who cannot access the educational curriculum through distance learning. This suit, therefore, is not of the type that requires the

exhaustion of any administrative remedies. *See Fry v. Napoleon Cmty. Sch.*, 37 S. Ct. 743, 752 (2017). Specifically, exhaustion is required when the petitioner seeks: (i) “an IDEA remedy or its functional equivalent”; (ii) to enforce rights arising as a result of a denial of FAPE; or (iii) “seeks prospective injunctive relief to alter an IEP or educational placement of a disabled student.” *Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 875 (9th Cir. 2011). “What matters is the crux—or, in legal-speak, the gravamen—of the plaintiff’s complaint, setting aside any attempts at artful pleading.” *Fry*, 137 S. Ct. at 755.

Fry enumerates two factors to guide this inquiry: (i) whether the plaintiff could have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school, and (ii) whether an adult could have pressed the same grievance. *Id.* at 756. If the answer to both questions is yes—as in this case—then free and appropriate public education (FAPE) is likely not the gravamen of the complaint. *Id.* First, a disabled student could seek in-person services from a public facility other than a school, as many essential public facilities (including medical treatment centers) remain open, or partially open. Second, a disabled adult employee could seek to work on site as a reasonable accommodation, given that LAUSD will keep portions of school buildings open for food programs and COVID-19 testing. *See, e.g., McIntyre v. Eugene Sch. Dist. 4j*, 976 F.3d 902, 914-16 (9th Cir. 2020) (holding the accommodations of a quiet location to take exams, extra time to complete exams, and

compliance with an emergency health protocol did not constitute FAPE)

Moreover, while *Fry* and its progeny weigh disability-specific laws (*i.e.*, the IDEA and the ADA/Section 504), the provisions on which Petitioners rely in Senate Bill 98 are *not* disability-specific but focus instead on those students who have experienced “learning loss” and are specifically intended to maintain continuity of learning during the pandemic. For example, Section 43509 references “pupils who have experienced significant learning loss due to school closures in the 2019–20 school year or are at greater risk of experiencing learning loss due to future school closures.” CAL. EDUC. CODE § 43509(f)(1)(A).⁶ It is therefore both possible and likely that a non-disabled student facing actual or threatened learning loss (such as a foster child who is the client of Petitioner the Alliance) could seek to enforce this provision. Accordingly, this petition does not require the exhaustion of any administrative remedies.

⁶ Notably, the statute goes on to discuss, with regard to the distance learning plans, “pupils with unique needs,” “English learners, pupils with exceptional needs served across the full continuum of placements, pupils in foster care, and pupils who are experiencing homelessness during the period in which distance learning is provided,” *id.* at § 43509(f)(1)(B)(vi), and, with regard to addressing learning loss, “pupils who are classified as English learners, are eligible for a free or reduced-price meal, or are foster youth, ..., individuals with exceptional needs, pupils in foster care, and pupils who are experiencing homelessness,” *id.* at § 43509(f)(C)(ii).

B. Exhaustion is Excused Because This Petition Seeks Systemic Relief That Cannot be Addressed by Administrative Remedies.

As described in this Petition, there is a systemic flaw in LAUSD's policies and practices concerning the provision of in-person instruction and assessments in LAUSD. The claim here is not about any specific student, but LAUSD's facially unlawful policy of not providing for any in-person instruction or provision of in-person assessments. And as explained in more detail below, the IDEA's administrative process does not offer a remedy for the claims made in this petition.

Under the IDEA, where a parent disagrees with an offer of FAPE, the parent has the right to initiate an administrative due process hearing in order to have the state educational agency determine whether the offer of FAPE is appropriate. 20 U.S.C. § 1313(b)(6); CAL. EDUC. CODE § 56501. In California, the agency responsible for conducting special education due process hearings is the Office of Administrative Hearings, Special Education Division ("OAH"). Pursuant to Education Code Section 56504.5, the California Department of Education has an interagency agreement with OAH to facilitate due process hearings. If the parent disagrees with the determination of OAH, the matter may be appealed to a state court or to the federal district court. CAL. EDUC. CODE § 56505(i); 34 C.F.R. § 300.512.

But the jurisdiction of the OAH is *expressly limited* to the following circumstances, none of which entails the systemic claims brought here:

- (1) There is a proposal to initiate or change the identification, assessment, or educational

placement of the child or the provision of a free appropriate public education to the child.

- (2) There is a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate public education to the child.
- (3) The parent or guardian refuses to consent to an assessment of the child.
- (4) There is a disagreement between a parent or guardian and a local educational agency regarding the availability of a program appropriate for the child, including the question of financial responsibility, as specified in Section 300.148 of Title 34 of the Code of Federal Regulations.

CAL. EDUC. CODE § 56501(a); *see also* 20 U.S.C. § 1415(b)(6). Each of these provisions contemplates that there is a specific child, parent, or caregiver, with a specific request, disagreement, or issue. That framework does not encompass the facts of Petitioners' claims. Here, the Petitioners are two organizations, the Alliance and Learning Rights, not individual parents or students who have been denied any specific service or are challenging one of LAUSD's decisions or a child's placement. *See, e.g., Everett H v. Dry Creek Joint Elem. Sch. Dist.*, No. 2:13-cv-00889-MCE-DB, 2016 U.S. Dist. LEXIS 136270, at *31 (E.D. Cal. Sep. 29, 2016) (“[The complaint’s] allegations clearly go beyond the scope of student-specific due process charges over which the OAH could preside. While the Court recognizes that merely labeling claims as systemic as a way of circumventing the administrative process could make the requirement to exhaust

meaningless . . . it cannot summarily discount the allegations of the Complaint at this time.”).

California courts have made clear that plaintiffs need not seek an administrative remedy when doing so would be futile. In *Knoff v. City etc. of San Francisco*, 1 Cal. App.3d 184 (1999), taxpayers sought a writ of mandate to require San Francisco to address systemic deficiencies in property tax assessments caused by corruption uncovered by a grand jury proceeding. *Id.* at 190, 199. The California Court of Appeal held that the petitioners were not required to exhaust their remedies because the available administrative body, the board of equalization, was empowered only to correct individual assessments. *Id.* at 198. The petition’s purpose was not to have particular assessments changed but to “bring about examination and correction of wholesale deficiencies in the San Francisco assessment situation which reasonably require, not the adjustment of some specific assessments or the recovery of taxes paid upon them, but the examination of all assessments and the adjustment of those which require such action and can legally be reached.” *Id.* at 199. Because “the local equalization procedure would not reach the real problem with the assessor,” no prior administrative remedy was provided by law for this purpose. *Id.* See also *Venice Town Council, Inc.* 47 Cal. App. 4th at 1547 (1996); *Action Apartment Ass’n v. Santa Monica Rent Control Bd.*, 94 Cal. App. 4th 587, 615 (2001); *Reidy v. City & Cnty. of San Francisco*, 123 Cal. App. 4th 580, 594 (2004).

Administrative law judges from the OAH have routinely dismissed claims that allege system-wide deficiencies raised in a due process complaint because they lack jurisdiction to hear systemic claims. *See, e.g., In the Matter of Parent on Behalf of Student v. Placentia-Yorba Linda Unified Sch. Dist.*, OAH Case No. 2014061022 (2014) (“[S]ystemic claims on behalf of other students are not only outside of OAH’s jurisdiction, but run contrary to the express purpose of a due process proceeding to focus on the individual child and his or her unique educational needs.”). Due process hearings, thus, are not designed to adjudicate systemic cases, and ALJs cannot order systemic relief on behalf of similarly situated students.

C. Exhaustion is Excused Because LAUSD has Adopted a Policy of General Applicability That is Contrary to the Law.

The administrative exhaustion requirement is also excused where the district “has adopted a policy or pursued a practice of general applicability that is contrary to the law.” *N.D. et al. v. State of Haw. Dep’t of Educ.*, 600 F.3d 1104 at 1110 (9th Cir. 2010). This exception requires that: (i) the challenge of an unlawful policy involves a question of law; and (ii) a due process hearing would not have furthered the general purpose of exhaustion and the congressional intent behind the IDEA administrative scheme. *Hoelt v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1305 (9th Cir. 1991). This exception applies when the plaintiff challenges an “agency decision, regulation, or other binding policy” that would not be corrected through administrative hearings. *Doe By and Through Brockhuis v. Ariz.*

Dep't of Educ., 111 F.3d 678, 684 (9th Cir. 1997). The exception can also apply when the complaint alleges systemic violations of laws. *See Hoeft*, 967 F.2d at 1304-05. Here, the disabled students who cannot access distance learning are excluded from education entirely. *Cf. id.* at 1304 (complaint seeking access to component of special education program was not systemic challenge).

In *Christopher S. v. Stanislaus County*, 384 F.3d 1205 (9th Cir. 2005), three autistic students filed an action against the county and local educational authorities alleging that the policy of providing a shorter school day to autistic students constitutes discrimination in violation of the ADA and Section 504. *Id.* at 1213. The Court held that exhaustion was not required because the County Office of Education's decisions to have shorter school days for autistic students "were blanket policies that had nothing to do with the content of individual IEPs—no individualized decisions were made on a case-by-case basis." *Id.* at 1211.⁷ *See also Student A v. Berkeley Unified Sch. Dist.*, No. 17-cv-02510-JST, 2017 WL 4551514 (N.D. Cal. 2017) (holding that exhaustion was excused because the complaint clearly raised issues with systemic policies and procedures applicable to all students with

⁷ Numerous appellate court cases have held that plaintiffs alleging systemic failures to follow the IDEA's mandates need not exhaust administrative remedies. *See e.g., J.S. ex rel. N.S. v. Attica Cent. Sch.*, 386 F.3d 107, 115 (2d Cir. 2004); *J.G. v. Bd. of Educ. of Rochester City Sch. Dist.*, 830 F.2d 444 (2d Cir. 1987); *Jose P. v. Ambach*, 669 F.2d 865, 867 (2d Cir. 1982).

reading disorders and the CDE and district failed to remedy the harm after being presented with multiple compliance complaints).

Similarly, in *Hernandez v. Grisham*, No. CIV 20-0942 JB\GBW, 2020 U.S. Dist. LEXIS 191301, 2020 WL 6063799 (D.N.M. Oct. 14, 2020), the district court found that the disabled student plaintiff and her parent were not required to exhaust IDEA remedies because the school's refusal to provide her with in-person instruction during COVID-19 was based on a misinterpretation of state health regulations—a pure question of law. *Id.* at **207-08 (citing *Ass'n for Cmty. Living in Colorado v. Romer*, 992 F.2d 1040, 1044 (10th Cir. 1993) (recognizing an exception to the IDEA's exhaustion requirement where a Plaintiff presents a “purely legal” question)). The court also noted that “the IEP prioritizes the LEA's apparent preference for fully remote instruction over creating a program that will enable Woodworth's daughter to make academic progress,” and found that “[a]dministrative exhaustion therefore would likely be futile and consequently is probably unnecessary.” *Id.* at 209. Similar to *Hernandez*, where the question was whether the district has misinterpreted state health regulations, this petition requires this court to interpret SB 98 and determine whether LAUSD has followed its duty including under SB 98.

This case is not like *Martinez v. Newsom*, 5:20-cv-01796-SVW-AFM (C.D. Cal. Nov. 24, 2020), a recently dismissed putative state-wide class action complaint alleging that CDE guidance during the COVID-19 pandemic that allowed school

sites to remain closed and for districts to not evaluate students violated the mandate to provide a free appropriate public education FAPE to students with IDEA disabilities. This writ seeks compliance with Senate Bill 98 and statutory provisions CAL. EDUC. CODE § 43504(b), (f)(2); CAL. EDUC. CODE § 43509(f)(1)(A). The petition challenges LAUSD’s failure to develop any procedures for timely identification and provision of in-person services to students with disabilities who cannot access distance learning during school closures, despite the direction of Senate Bill 98 to create such a plan. The writ does not require an assessment of whether any individual has been denied a free appropriate public education. Indeed, because LAUSD has issued a district-wide order that does not provide for in-person services for any class of disabled students despite a state-level mandate, “no individualized decisions were made on a case-by-case basis.” *Christopher S.*, 384 F.3d at 1211; *see also id.* (“As the LEAs admit, the school schedule was an across-the-board administrative decision by SCOE, not a decision that resulted from any individual Student’s IEP process.”).

Moreover, for LAUSD students who cannot participate at all in distance learning, LAUSD’s policy is truly one in which the “IDEA’s basic goals are threatened on a system-wide basis.” *See Hoeft*, 967 F.2d at 1305. The failure to provide essential in-person services to disabled students unable to access distance learning is similar to the denial of entire days of instruction in *Christopher S.* and is among the set of issues that requires “immediate court action . . . to prevent an incipient or ongoing

emergency such that exhaustion should be excused.” *Student A. v. SFUSD*, 2020 WL 571052, at *6.

Conclusion

For the reasons stated above, Petitioners respectfully urge this Court to grant the relief sought in the attached Writ Petition.

Dated: December 11, 2020 Respectfully submitted,

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CERTIFICATE OF WORD COUNT
PURSUANT TO RULE 8.204(c)(1)

Pursuant to California Rule of Court 8.204(c)(1), counsel for Petitioners hereby certifies that the number of words contained in this Petition For Extraordinary Relief, Including Writ of Mandate And Request For Immediate Injunctive Relief; Memorandum Of Points And Authorities, including footnotes but excluding the Table of Contents, Table of Authorities, and this Certificate, is 13,878 words as calculated using the word count feature of the computer program used to prepare the brief.

By: /s/ Alex G. Romain