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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHAYA LOFFMAN and JONATHAN
LOFFMAN, on their own behalf and on behalf of
their minor child M.L.; FEDORA NICK and
MORRIS TAXON, on their own behalf and on
behalf of their minor child K.T.; SARAH
PERETS and ARIEL PERETS, on their own
behalf and on behalf of their minor child N.P.;
JEAN & JERRY FRIEDMAN SHALHEVET
HIGH SCHOOL; and SAMUEL A. FRYER
YAVNEH HEBREW ACADEMY,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
EDUCATION; TONY THURMOND, in his
official capacity as Superintendent of Public
Instruction; LOS ANGELES UNIFIED
SCHOOL DISTRICT; and ANTHONY
AGUILAR, in his official capacity as Chief of
Special Education, Equity, and Access,

Defendants.

Case No.:

2:23-cv-01832-JLS-MRW

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION
FOR PRELIMINARY
INJUNCTION**

Date: July 21, 2023

Time: 10:30am

Courtroom: 8A

Judge: Hon. Josephine L. Staton

* Not a member of the D.C. Bar; admitted in
California. Practice limited to cases in federal court.

1 TO DEFENDANTS AND TO THEIR COUNSEL OF RECORD:

2 NOTICE IS HEREBY GIVEN that on July 21, 2023, at 10:30 A.M. in Courtroom
3 8A of the above-entitled court, located at 350 West 1st St., Los Angeles, California,
4 Plaintiffs will move and hereby move this Court to preliminarily enjoin Defendants
5 from enforcing California Education Code sections 56365 and 56366 against them in
6 order to protect Plaintiffs' rights guaranteed by the First Amendment.

7 As described in more detail in the accompanying memorandum, Plaintiffs are
8 Orthodox Jewish parents and their children with disabilities who seek placement of their
9 Plaintiff children with disabilities in Jewish schools and Orthodox Jewish schools who
10 wish to explore becoming certified for such placements. But California law
11 categorically excludes sectarian schools from eligibility from this program, and thereby
12 also categorically prevents Jewish families from advocating for their disabled children
13 to be educated at religious schools.

14 California's law is unconstitutional in multiple respects. The Supreme Court has
15 made clear that governments cannot exclude otherwise eligible individuals and
16 institutions from public benefit programs solely because they are religious unless the
17 law satisfies strict scrutiny. *See, e.g., Carson v. Makin*, 142 S. Ct. 1987, 1996 (2022).
18 Likewise, the Court has recently reaffirmed that if a law contains "a mechanism for
19 individualized exemptions," it violates the First Amendment unless it can satisfy strict
20 scrutiny. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876-77 (2021). California's
21 special-education scheme is infected with both fatal flaws, and binding Supreme Court
22 precedent forecloses any argument that the Defendants possess a sufficiently
23 compelling interest to justify the restriction. *See Carson*, 142 S. Ct. at 1997, 1998. And
at the very least, the nonsectarian restriction imposes an unconstitutional condition on

1 Plaintiffs—forcing them to choose between practicing their faith and participating in a
 2 public benefit program. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595,
 3 604 (2013).

4 **WHEREFORE**, Plaintiffs pray that this Court grant a preliminary injunction in this
 5 action. This request is based on this Notice of Motion and Motion, the accompanying
 6 supporting Memorandum of Points and Authorities, the supporting declarations and
 7 exhibits of Chaya Loffman, Fedora Nick, Sarah Perets, Rabbi David Block, Rabbi
 8 Shlomo Einhorn, Mira Shuchatowitz, and Dr. Ronald Nagel, as well as the papers,
 9 evidence and records on file in this action, and any other written or oral evidence or
 10 argument as may be presented at or before the time this motion is heard by the Court.
 11 A proposed order is filed herewith.

12
 13 Dated: May 22, 2023

Respectfully submitted,

14 /s/ Eric C. Rassbach

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 21 California. Practice limited to cases in federal
 22 court.

23 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

On May 22, 2023, I filed the foregoing document with the Court via ECF. I hereby certify that I have served the document on all counsel by a manner authorized by the Federal Rules of Civil Procedure.

/s/ Eric C. Rassbach
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**PLAINTIFFS'
MEMORANDUM IN
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INTRODUCTION

This case poses a very simple question: May the government exclude religious individuals and institutions from a public benefit for no other reason than that they are religious? The Supreme Court has recently and repeatedly answered that question in the negative, holding in *Carson v. Makin*, *Espinoza v. Montana Department of Revenue*, and *Trinity Lutheran v. Comer* that “the exclusion of [a religious party] from a public benefit for which it is otherwise qualified, solely because it is [religious], is odious to our Constitution.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 467 (2017).

The Supreme Court’s answer is both the beginning and the end of this case. Under California’s implementation of the Individuals with Disabilities Education Act, all private schools who meet certain eligibility criteria may become certified to receive children with disabilities as alternatives to a public school education—but only so long as they are “nonsectarian.” But binding Supreme Court precedent declares such a restriction to be a clear-cut violation of the First Amendment, functioning to coerce religious individuals and schools into choosing between their faith and a public benefit to which they would otherwise be entitled.

This is precisely the effect that California’s “nonsectarian” restriction has had on Plaintiffs. Plaintiffs are Orthodox Jewish parents and their children with disabilities who seek placement in Jewish schools, as well as two Orthodox Jewish schools who wish to explore becoming certified for such placements. Plaintiffs hold the sincere religious conviction that providing a religious education to children with disabilities is imperative, just as it is for nondisabled children. Yet California’s regime forces Jewish

1 parents to the choice of either following their faith or self-funding the often exorbitant
 2 costs of the tools and services needed to allow their children with disabilities to thrive.
 3 If they cannot absorb these costs, day by day and year by year, their children are
 4 irreparably deprived of a religious education. And if they can somehow manage the
 5 burden, they must labor under a unique penalty imposed on them by the government
 6 solely because they have chosen to exercise their faith. Meanwhile, the Orthodox Jewish
 7 schools who feel compelled by faith to explore certification are told in no uncertain
 8 terms by the government that, because they are religious, they need not apply.

9 California's explicit discrimination toward religious families and schools simply
 10 cannot be reconciled with the First Amendment and Supreme Court precedent. This
 11 Court should grant a preliminary injunction against California's constitutional violation,
 12 allowing parent Plaintiffs to obtain the religious education their Plaintiff children with
 13 disabilities deserve, and Plaintiff schools the right to serve them.

14 **FACTUAL AND LEGAL BACKGROUND**

15 **A. The Individuals with Disabilities Education Act**

16 Congress passed the Individuals with Disabilities Education Act (IDEA) in 1990 as
 17 part of our "national policy of ensuring equality of opportunity, full participation,
 18 independent living, and economic self-sufficiency for individuals with disabilities." 20
 19 U.S.C. § 1400(c)(1). Building off the 1975 Education for All Handicapped Children
 20 Act, IDEA served as the latest in a twenty-five-year-long legislative effort to strengthen
 21 programs that would "provide for the education of all children with disabilities" and
 22 eradicate the historical discrimination preventing children with disabilities from
 23 receiving a mainstream education—or any education at all. *See* 20 U.S.C. § 1400(c)(2),

1 (d)(1)(C). To achieve these goals, IDEA offers federal funding to States under the
2 expectation that such funding will be used to “ensure that all children with disabilities
3 have available to them a free appropriate public education that emphasizes special
4 education and related services designed to meet their unique needs and prepare them
5 for further education, employment, and independent living.” *Id.* § 1400(d)(1)(A).

6 Part B of IDEA concerns the provision of this substantive right to a free and
7 appropriate public education (FAPE) to school-aged children with disabilities. The
8 FAPE, in turn, is guaranteed in large part through the provision of an “individualized
9 education program,” 20 U.S.C. § 1401(9)(D), which is called an IEP. A student’s IEP
10 is “a written statement for each child with a disability” that covers, *inter alia*, a “child’s
11 present levels of academic achievement and functional performance,” “a statement of
12 measurable annual goals, including academic and functional goals,” and “a statement
13 of the special education and related services and supplementary aids and services . . . to
14 be provided to the child, or on behalf of the child.” 20 U.S.C. § 1414(d); *see* 20 U.S.C.
15 § 1401(29); 34 C.F.R. § 300.39(a) (2006) (defining “special education”); 20 U.S.C.
16 § 1401(26)(A); 34 C.F.R. § 300.34(a) (2006) (defining “related services”). A student’s
17 IEP is prepared with input by her parents, teachers, and school officials, and has been
18 described by the Supreme Court as “the centerpiece of the statute’s education delivery
19 system for disabled children.” *Honig v. Doe*, 484 U.S. 305, 311 (1988).

20 As the FAPE acronym implies, students typically receive a FAPE (and therefore also
21 an IEP) in a public school. However, IDEA explicitly contemplates instances where a
22 FAPE can—and must—be provided in private schools. Specifically, the statute states:
23 “Children with disabilities in private schools and facilities are provided special

1 education and related services, in accordance with an individualized education program,
2 at no cost to their parents, if such children are placed in, or referred to, such schools or
3 facilities by the State or appropriate local educational agency as the means of carrying
4 out the [statute’s] requirements[.]” 20 U.S.C. § 1412(a)(10)(B)(i). In those instances,
5 IDEA requires the state education agency to ensure such children “ha[ve] all of the
6 rights of a child with a disability who is served by a public agency,” including the
7 provision of an IEP and special education and related services “[a]t no cost to the
8 parents.” 34 C.F.R. § 300.146 (2017).

9 **B. California’s special-education regime**

10 California, like every other State, has chosen to participate in IDEA. It therefore
11 “submit[ted] a plan that provides assurances to the Secretary” that IDEA’s requirements
12 will be met, including the requirement to provide a FAPE to all eligible “children with
13 disabilities residing in the State between the ages of 3 and 21, inclusive.” 20 U.S.C.
14 § 1412(a)(1)(A). IDEA then charges the “state education agency” with ensuring IDEA
15 compliance at the state level, including through assurances that local educational
16 agencies (LEAs) comply with IDEA. *See* 20 U.S.C. §§ 1412(a)(11)(A), 1413(a). In
17 California, that responsibility lies with the California Department of Education (CDE),
18 which also “administer[s] funds to the local [education] agencies.” *L.A. Cnty. Off. of*
19 *Educ. v. C.M.*, 2011 WL 1584314 (C.D. Cal. Apr. 22, 2011). In return for these
20 assurances, California receives millions of dollars in IDEA Part B funding every year
21 to supplement its state special-education funding.

22 Consistent with IDEA’s requirements, California law guarantees the substantive
23 right to a FAPE for all eligible students. Cal. Educ. Code § 56040. And like IDEA, it

1 acknowledges that placement in a “nonpublic school” (NPS) is appropriate “if no
2 appropriate public education program is available.” Cal. Educ. Code § 56365(a). Thus,
3 in appropriate circumstances, students may be placed in an NPS “pursuant to an
4 individualized education program.” Cal. Educ. Code § 56034. Students can be placed
5 in an NPS located either in California or in other States, so long as the NPS meets all
6 state-law requirements. *See* Cal. Educ. Code § 56365(f)-(i).

7 NPS placement is facilitated via a “master contract” between the NPS and a LEA
8 such as LAUSD. Cal. Educ. Code § 56366(a). This master contract governs a host of
9 procedural and substantive requirements to which the NPS and LEA must adhere,
10 including “an individual services agreement for each pupil placed by a local educational
11 agency.” *Id.* § 56366(a)(2)(A). Once placed, and in keeping with IDEA’s clear
12 instruction that students placed in NPS’s receive services “at no cost to their parents,”
13 20 U.S.C. § 1412(a)(10)(B)(i), California requires the LEA to use public funding to
14 reimburse “the full amount of the tuition” for NPS students, as well as the special
15 education and related services covered by the student’s IEP, Cal. Educ. Code
16 § 56365(a), (d); *see also* Cal. Educ. Code § 56031(a) (defining special education); Cal.
17 Educ. Code § 56363(a) (defining related services); Cal. Educ. Code § 56363(b) (listing
18 included services).

19 However, though IDEA places no restriction on the types of private schools in which
20 students may be placed, California’s program categorically deems all religious schools
21 ineligible for such placement. Under California law, students cannot be placed in a NPS
22 “if the school . . . has not been certified” by the CDE and the Superintendent. Cal. Educ.
23 Code § 56505.2(a); *see also* Cal. Educ. Code §§ 56366.1, 56366.8. But California will

1 only consider the certification of schools that are “nonsectarian.” *See, e.g.*, Cal. Educ.
2 Code § 56365. CDE regulations define “nonsectarian” as “a private, nonpublic school
3 . . . that is not owned, operated, controlled by, or formally affiliated with a religious
4 group or sect, whatever might be the actual character of the education program or the
5 primary purpose of the facility and whose articles of incorporation and/or by-laws
6 stipulate that the assets of such agency or corporation will not inure to the benefit of a
7 religious group.” Cal. Code Regs. tit. 5, § 3001(p). Consistent with these regulations,
8 the application to become a “nonpublic, nonsectarian school” requires the applicant to
9 “submit a signed assurance statement that the nonpublic school will maintain
10 compliance with . . . [n]onsectarian status (as defined by 5 CCR § 3001(p)[.]” Ex. 6
11 (Shuchatowitz Decl.), Ex. A at 13; *see also* Cal. Code Regs. tit. 5, § 3060(d)(6)
12 (containing the same requirement). The “Superintendent may revoke or suspend the
13 certification of a nonpublic, nonsectarian school” for failing to meet this requirement.
14 Shuchatowitz Decl. Ex. A at 22; Cal Educ. Code § 56366.4(a)(1). As a result of this
15 “nonsectarian” requirement, private religious schools are wholly excluded from
16 becoming a certified NPS, and children cannot be placed at such schools as a means of
17 receiving a FAPE.

18 An NPS applicant is incapable of petitioning for a waiver of the nonsectarian status.
19 *See* Cal. Educ. Code § 56366.2 (permitting waiver of certain requirements, but not the
20 certification requirements contained in § 56366.1). However, an LEA like LAUSD may
21 do so. Under Section 56366.2(b), certification requirements may be waived if
22 “approved by the board pursuant to Section 56101.” Cal. Educ. Code § 56366.2(b).
23 Section 56101 in turn permits a “public agency” to “request the board to grant a waiver

1 of any provision of this code or regulations adopted pursuant to that provision if the
2 waiver is necessary or beneficial to the content and implementation of the pupil's
3 individualized education program and does not abrogate any right provided individuals
4 with exceptional needs and their parents or guardians under [IDEA].” *Id.* § 56101(a).
5 The definition of “public agency” includes “special education local plan area[s]” like
6 LAUSD. *Id.* § 56028.5.

7 **C. Parent Plaintiffs’ attempts to obtain a religious education for their**
8 **Plaintiff children with disabilities**

9 Civil courts have long recognized that “[r]eligious education is a matter of central
10 importance in Judaism.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct.
11 2049, 2065 (2020). Indeed, “for modern Orthodox Jews, enrolling their children in a
12 dual curriculum Jewish day school is ‘virtually mandatory.’” *Westchester Day Sch. v.*
13 *Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 497 (S.D.N.Y. 2006). This is because the
14 Torah, the Talmud, and the *Shulchan Aruch* (the Jewish Code of Law) repeatedly exhort
15 parents to train their children in Jewish religious belief and practice. Ex. 1 (Loffman
16 Decl.) ¶¶ 5-8; Ex. 2 (Perets Decl.) ¶¶ 5-8; Ex. 3 (Nick Decl.) ¶¶ 5-8; *Our Lady*, 140
17 S. Ct. at 2065.

18 For example, the Torah instructs, “Take to heart these instructions with which I
19 charge you this day. Impress them upon your children. Recite them when you stay at
20 home and when you are away, when you lie down and when you get up.” *Deuteronomy*
21 6:7-8; *see also Deuteronomy* 11:19 (“And you shall teach them to your children—
22 reciting them when you stay at home and when you are away, when you lie down and
23 when you get up.”). The Talmud instructs that parents must teach both Torah and

1 rabbinic writings to their children. *See, e.g.*, Talmud Bavli, *Kiddushin* 29a (“The sages
2 taught a father is obligated . . . to teach his son Torah.”); *id.* at 29b (“From where do we
3 know that a father is obligated to teach his son Torah? As it is written, ‘and you shall
4 teach them to your children’” (quoting (*Deuteronomy* 11:19))); *id.* at 30a (describing the
5 Torah subjects encompassed within this obligation). And the *Shulchan Aruch* explains
6 that “there is an obligation upon each person to teach his son Jewish law; if the father
7 does not teach him, the son is obligated to teach himself.” Rabbi Joseph Caro, *Shulchan*
8 *Aruch, Yoreh De’ah* 245:1.

9 The primary goal of Jewish education is the study of Torah, which is itself a form of
10 religious worship. *See* Ex. 4 (Block Decl.) ¶ 4; Ex. 5 (Einhorn Decl.) ¶ 4. When engaged
11 in study of Torah, students concern themselves with more than the accumulation of
12 knowledge or development of skill; rather, study of Torah is about “live contact with
13 the epiphanous divine will manifested through Torah, and encounter with the divine
14 Presence, which hovers over its student.” Block Decl. ¶ 5; Einhorn Decl. ¶ 5.

15 Parent Plaintiffs Chaya and Jonathan Loffman, Fedora Nick and Morris Taxon, and
16 Sarah and Ariel Perets are Orthodox Jews who sincerely believe that the Torah, Talmud,
17 and the *Shulchan Aruch* obligate them to send their children to Orthodox Jewish
18 schools, where they can receive an education both in secular subjects and in the faith.
19 Loffman Decl. ¶¶ 4-9; Nick Decl. ¶¶ 4-9; Perets Decl. ¶¶ 4-9. Parent Plaintiffs each
20 have multiple children, one of whom has a disability and is a Plaintiff. Loffman Decl.
21 ¶¶ 2, 10; Nick Decl. ¶¶ 2, 12; Perets Decl. ¶¶ 2, 12. But though parent Plaintiffs have
22 been able to fulfill their religious obligation to provide a Jewish education to their
23 nondisabled children, California’s nonsectarian prohibition has forced them to make a

1 choice between exercising their religion and accessing critical funding needed to
2 provide adequate services to their children with disabilities. This Hobson's choice has
3 long-term negative developmental and psychological effects on Jewish children, as well
4 as their families and their community. Ex. 7 (Nagel Decl.) ¶¶ 4-11.

5 *The Loffmans*. The Loffmans have two children, including their four-year-old son
6 Plaintiff M.L., who was diagnosed with autism at age 3. Loffman Decl. ¶¶ 2, 10. M.L.
7 requires many costly services, including speech, occupational, and behavioral therapies.
8 *Id.* ¶ 11. After his diagnosis, the Loffmans enrolled M.L. in an Orthodox Jewish
9 preschool, where they hoped he would receive an education "that nourished his Jewish
10 faith while also providing the support necessary for him to progress developmentally."
11 *Id.* ¶ 12. Soon after, the Loffmans learned that due to California's nonsectarian
12 restriction, they would be responsible for the full cost of M.L.'s services if he remained
13 in an Orthodox Jewish school. *Id.* ¶¶ 13-16. Put to the "stark choice" between exercising
14 their religion and receiving crucial special-education funding, *id.* ¶ 17, the Loffmans
15 made the "difficult decision" to keep M.L. enrolled at an Orthodox Jewish school "at
16 considerable personal cost." *Id.* ¶¶ 10, 18. They are therefore responsible for paying for
17 M.L.'s 25 hours of weekly therapy and were even forced to discontinue his speech
18 therapy "solely due to financial strain." *Id.* ¶ 21.

19 *The Taxons*. The Taxons have three children, including their 14-year-old son
20 Plaintiff K.T., who was diagnosed with autism around age 2. Nick Decl. ¶¶ 2, 12.
21 Consistent with their religious beliefs, the Taxons sent their two nondisabled children
22 exclusively to Orthodox Jewish schools. *Id.* ¶ 10. The Taxons wished for K.T. "to have
23 the same educational and religious opportunities as his brothers," *id.* ¶ 14, but the

1 nonsectarian requirement forced the Taxons not to follow their beliefs as to K.T.
2 because they could not afford to fund all of his services themselves, *id.* ¶¶ 14-18. Thus,
3 unlike their other two children, “who have been educated exclusively at Orthodox
4 Jewish schools, K.T. has been educated exclusively at public schools.” *Id.* ¶ 19.

5 The Taxons do not believe K.T. is receiving a FAPE in public school, but that he
6 would receive one in an Orthodox Jewish school. *Id.* ¶ 21. K.T. misses out on needed
7 special education and related services both for secular and religious holidays and is
8 repeatedly served nonkosher food. *Id.* ¶¶ 21-25. But California’s law prohibits them
9 from advocating for placement in an Orthodox Jewish school, and thus they must
10 continue not to follow their religious beliefs for him to receive needed funding. *Id.* ¶ 25.
11 Every day K.T. spends in public school is a lost opportunity to receive the religious
12 education and disability services his parents believe are necessary to his faith. *Id.* ¶ 26.

13 *The Peretses.* The Peretses have six children, including their 14-year-old son
14 Plaintiff N.P., who was diagnosed with autism at age 3 and a WAC gene mutation at
15 age 6. Perets Decl. ¶¶ 2, 12. Consistent with their religious beliefs, the Peretses sent
16 their five nondisabled children exclusively to Orthodox Jewish schools. *Id.* ¶ 10. But
17 like the Taxons, the Peretses have been prevented from following those beliefs with
18 respect to N.P., because they cannot afford the cost of providing for his special
19 education and related services without California’s funding. *Id.* ¶¶ 13-19. Thus, unlike
20 his five siblings, N.P. has received an education mainly in public school. *Id.* ¶ 19.

21 The Peretses do not believe that N.P. is receiving a FAPE in public school, but that
22 he would receive one in an Orthodox Jewish school. *Id.* ¶ 21. N.P. misses out on special
23 education and related services both for secular and religious holidays and is repeatedly

1 given nonkosher food to eat. *Id.* ¶¶ 22-25. School officials have even explicitly
2 questioned the Peretses’ interpretation of Jewish law, instructing them to send N.P. to
3 school during the Jewish holiday Sukkot. *Id.* ¶¶ 26-28. But like the Taxons, California’s
4 nonsectarian requirement prohibits the Peretses from advocating that N.P. be placed in
5 an Orthodox Jewish school. *Id.* ¶ 30. Instead, he remains in public school, where day
6 by day he loses the opportunity to receive an education crucial to nurturing his faith and
7 supporting his disability. *Id.* ¶ 31.

8 **D. School Plaintiffs’ attempts to support students with disabilities**

9 The Jean & Jerry Friedman Shalhevet High School and the Samuel A. Fryer Yavneh
10 Hebrew Academy are co-educational, dual-curriculum Orthodox Jewish schools
11 located in Los Angeles, California. Block Decl. ¶¶ 2-3; Einhorn Decl. ¶¶ 2-3. They are
12 committed to helping Orthodox Jewish parents fulfill their duty to provide an Orthodox
13 Jewish education to their children. Block Decl. ¶¶ 4-7; Einhorn Decl. ¶ 5. As such,
14 alongside secular studies, Shalhevet and Yavneh emphasize a “deep commitment to
15 Torah.” Block Decl. ¶ 6; *see also* Einhorn Decl. ¶¶ 3-6.

16 Shalhevet and Yavneh both believe it is important to create a learning environment
17 that includes as many in the Jewish community as possible, including students with
18 disabilities. Block Decl. ¶¶ 9-10; Einhorn Decl. ¶ 9. As Shalhevet explains, “the Torah
19 commands members of the Jewish community to care for the most vulnerable, including
20 those with disabilities. The Torah further commands us to go and seek out the most
21 vulnerable among us and to welcome them into our community, rather than waiting for
22 them to approach us.” Block Decl. ¶ 10. However, accommodating the needs of students
23 with disabilities often requires considerable financial resources, which Shalhevet and

1 Yavneh lack. Block Decl. ¶ 12; Einhorn Decl. ¶ 11. To obtain these needed resources,
2 Shalhevet and Yavneh would like to explore NPS certification. But they cannot even
3 begin the process without being put to an “impossible choice”: attest that they are
4 nonsectarian (and so give up their religious identity) or forgo altogether the opportunity
5 to provide these services. Block Decl. ¶¶ 14-15; Einhorn Decl. ¶¶ 13-14. Shalhevet and
6 Yavneh refuse to “disavow [their] religious character as a Jewish educational
7 institution,” and so they are categorically prohibited from exploring NPS certification.
8 Block Decl. ¶¶ 15-16; Einhorn Decl. ¶¶ 14-15.

9 **E. This lawsuit**

10 On March 13, 2023, Plaintiffs filed this lawsuit. Dkt. 1. Plaintiffs now seek
11 preliminary relief on Counts I, III, and V of the Complaint.

12 **STANDARD OF REVIEW**

13 Preliminary injunctions are appropriate where a plaintiff “establish[es] that he is
14 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence
15 of preliminary relief, that the balance of equities tips in his favor, and that an injunction
16 is in the public interest.” *Klein v. City of San Clemente*, 584 F.3d 1196, 1199 (9th Cir.
17 2009). The Ninth Circuit employs a “version of the sliding scale approach” where “a
18 stronger showing of one element may offset a weaker showing of another.” *All. for the*
19 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). In considering the likely
20 success on the merits, “[i]t is well established that trial courts can consider otherwise
21 inadmissible evidence in deciding whether or not to issue a preliminary injunction.”
22 *Rubin ex rel. NLRB v. Vista Del Sol Health Servs. Inc.*, 80 F. Supp. 3d 1058, 1072 (C.D.
23 Cal. 2015); *see Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009). And “a party

1 seeking preliminary injunctive relief in a First Amendment context can establish
2 irreparable injury . . . by demonstrating the existence of a colorable First Amendment
3 claim.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005).

4 ARGUMENT

5 I. California’s nonsectarian requirement violates the First Amendment.

6 The Free Exercise Clause “‘protect[s] religious observers against unequal treatment’
7 and subjects to the strictest scrutiny laws” that disfavor religion. *Trinity Lutheran*
8 *Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017); accord *Calvary Chapel*
9 *Dayton Valley v. Sisolak*, 982 F.3d 1228, 1232 (9th Cir. 2020). To avoid strict scrutiny,
10 “laws burdening religious practice must” be both neutral and generally applicable.
11 *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542 (1993).

12 Here, there is no doubt that California’s nonsectarian requirement burdens the free
13 exercise rights of all Plaintiffs. As the Supreme Court has long held, “condition[ing] the
14 availability of benefits upon [an individual’s] willingness to violate a cardinal principle
15 of her religious faith effectively penalizes the free exercise of her constitutional
16 liberties.” *Sherbert v. Verner*, 374 U.S. 398, 406 (1963). That’s precisely what
17 California’s nonsectarian requirement does. California forces parent Plaintiffs to
18 abandon the “cardinal principle” that obligates them to send their children to Orthodox
19 Jewish schools if they wish to receive necessary funding for that child’s education. *Id.*
20 And it forces Jewish schools like Shalhevet and Yavneh to forgo their religious
21 obligation to welcome all students unless they “disavow [their] religious character.”
22 *Trinity Lutheran*, 582 U.S. at 463.

1 Nor is there any doubt that California’s nonsectarian requirement flunks the
2 neutrality and general applicability tests. It is not neutral because it facially “single[s]
3 out the religious for disfavored treatment” by excluding them from an otherwise
4 generally available public benefit simply because they are religious. *Id.* at 460. And it
5 is not generally applicable because it creates a system of discretionary individualized
6 exemptions. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876-77 (2021). Both flaws
7 are fatal, and Plaintiffs are likely to succeed on the merits of their Free Exercise claims.

8 **A. California’s nonsectarian restriction violates the Free Exercise Clause by**
9 **excluding individuals and institutions from a public benefit solely because**
10 **they are religious.**

11 A trilogy of Supreme Court precedents—*Carson*, *Espinoza*, and *Trinity Lutheran*—
12 places beyond dispute that the Free Exercise Clause prohibits California’s exclusion of
13 religious people and organizations from its disability benefits program. In each, the
14 Supreme Court assessed a law like California’s, which withheld otherwise-available
15 funding from individuals and institutions “solely because of their religious character.”
16 *Carson v. Makin*, 142 S. Ct. 1987, 1996 (2022). And in each, the Supreme Court
17 concluded that the law violated the First Amendment’s most “basic principle” that “the
18 exclusion of [a religious party] from a public benefit for which it is otherwise qualified,
19 solely because it is [religious], is odious to our Constitution.” *Trinity Lutheran*, 582
20 U.S. at 458, 467. *Carson*, *Espinoza*, and *Trinity Lutheran* thus render this an open-and-
21 shut case.

22 In *Carson*, the Supreme Court evaluated the constitutionality of Maine’s
23 educational-assistance program, which allowed a private school to receive tuition
payments as a means of fulfilling the statutory right to “a free public education” in

1 school districts with no public secondary schools. 142 S. Ct. at 1993. But just like
2 California, Maine “approved” only “nonsectarian” private schools for the program. *Id.*
3 at 1993, 1994. Holding the “nonsectarian” restriction unconstitutional, the Supreme
4 Court “deemed it ‘unremarkable’” that the First Amendment prohibits States from
5 “expressly discriminat[ing] against otherwise eligible recipients by disqualifying them
6 from a public benefit solely because of their religious character.” *Id.* at 1996 (quoting
7 *Trinity Lutheran*, 582 U.S. at 462). Under decades-old precedent, a program that
8 “excludes religious observers from otherwise available public benefits” because of their
9 religion amounts to a “indirect coercion or penalt[y] on the free exercise of religion.”
10 *Id.* at 1996; *see, e.g., Lukumi*, 508 U.S. at 533; *McDaniel v. Paty*, 435 U.S. 618, 627
11 (1978) (plurality op.); *Everson v. Bd. of Educ.*, 330 U.S. 1, 16 (1947) (States “cannot
12 exclude” individuals “because of their faith, or lack of it, from receiving the benefits of
13 public welfare legislation”).

14 As this long line of precedent indicates, *Carson*’s holding was hardly novel; indeed,
15 *Carson* itself stated that the Supreme Court has “repeatedly held” the same in recent
16 years. 142 S. Ct. at 1996. And so it has. In *Espinoza v. Montana Department of Revenue*,
17 the Supreme Court struck down as unconstitutional a Montana scholarship program that
18 allowed scholarships to be used at any private school so long as the school was not
19 “owned or controlled in whole or in part by any church, religious sect, or
20 denomination.” 140 S. Ct. 2246, 2252 (2020). Such a law could not stand, the Court
21 explained, because it “impose[d] special disabilities on the basis of religious status” in
22 violation of the Free Exercise Clause. *Id.* at 2254 (quoting *Trinity Lutheran*, 582 U.S.

1 at 461). Because Montana’s “provision plainly exclude[d] schools from government aid
2 solely because of religious status,” it could not survive. *Id.* at 2255.

3 The same was true in *Trinity Lutheran*, where Missouri had “categorically
4 disqualif[ied] . . . religious organizations from receiving grants” to resurface
5 playgrounds. 582 U.S. at 454. Just as in *Carson* and *Espinoza*, the Court noted that
6 “denying a generally available benefit solely on account of religious identity imposes a
7 penalty on the free exercise of religion that can be justified only by a state interest ‘of
8 the highest order,’” a test Missouri failed to meet. *Id.* at 458 (quoting *McDaniel*, 435
9 U.S. at 628). That’s because such a “policy puts [a religious organization] to a choice:
10 It may participate in an otherwise available benefit program or remain a religious
11 institution.” *Id.* at 462. But the First Amendment places such choices beyond States’
12 ability to impose: “when the State conditions a benefit in this way, [precedent] says
13 plainly that the State has punished the free exercise of religion.” *Id.*

14 California’s “rule” that “no [religious organizations] need apply” is
15 indistinguishable from the laws found “odious to our Constitution” in *Carson*,
16 *Espinoza*, and *Trinity Lutheran*. *Id.* at 465, 467. Indeed, California’s law uses nearly
17 identical language to the Montana statute struck down in *Espinoza*. Compare Cal. Code
18 Regs. tit. 5, § 3001(p), with *Espinoza*, 140 S. Ct. at 2252. And as with those laws,
19 California offers “its citizens a benefit” in the form of special-education funding and
20 makes a “wide range of private schools”—including out-of-state schools—eligible to
21 receive that funding. *Carson*, 142 S. Ct. at 1997. And as was the case with those
22 programs, California’s nonsectarian requirement “single[s] out the religious for
23 disfavored treatment” by facially excluding religious private schools from eligibility.

1 *Trinity Lutheran*, 582 U.S. at 460. Just like those laws, California’s restriction fails
2 under the “now-familiar refrain” at play in each case: “The Free Exercise Clause
3 protects against laws that impose special disabilities on the basis of religious status.”
4 *Id.* at 461 (cleaned up).

5 **B. California’s nonsectarian requirement violates the First Amendment**
6 **because it is not generally applicable.**

7 “A government policy will fail the general applicability requirement” if, among
8 other things, “it provides ‘a mechanism for individualized exemptions.’” *Kennedy v.*
9 *Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 (2022) (quoting *Fulton*, 141 S. Ct. at 1877).

10 The Supreme Court’s decision in *Fulton* is controlling and shows that California’s
11 law is not generally applicable. In *Fulton*, Philadelphia argued that a religious foster
12 care agency’s refusal to certify same-sex couples violated a non-discrimination
13 provision in the City’s standard foster care contract with the agency. 141 S. Ct. at 1875.
14 But the City’s contracts incorporated “a system of individual exemptions, made . . . at
15 the ‘sole discretion’ of the Commissioner,” which allowed the Commissioner to exempt
16 agencies from the contract’s non-discrimination requirements. *Id.* at 1878. This “formal
17 system of entirely discretionary exceptions” rendered the “non-discrimination
18 requirement not generally applicable.” *Id.* This was so, the Court reasoned, even though
19 the Commissioner had never granted an exemption under the disputed contractual
20 provision because “[t]he creation of a formal mechanism for granting exceptions . . .
21 ‘invite[s]’ the government to decide which reasons for not complying with the policy
22 are worthy of solicitude.” *Id.* at 1879.
23

1 *Fulton*’s general applicability analysis has deep roots. In reaching its conclusion, the
2 Court pointed to *Sherbert*, where an employee was fired because she refused to work
3 on Saturdays—“the Sabbath Day of her faith.” 374 U.S. at 399. When she applied for
4 unemployment benefits, South Carolina denied her application under a law prohibiting
5 eligibility to claimants who “failed, without good cause . . . to accept available suitable
6 work.” *Id.* at 401. As the Court later explained, South Carolina’s law “was not generally
7 applicable because the ‘good cause’ standard permitted the government to grant
8 exemptions based on the circumstances underlying each application.” *Fulton*, 141 S. Ct.
9 at 1877 (citing *Emp’t Div. v. Smith*, 494 U.S. 872, 884 (1990)). “[W]here the State has
10 in place a system of individual exemptions, it may not refuse to extend that system to
11 cases of ‘religious hardship’ without compelling reason.” *Id.* (quoting *Smith*, 494 U.S.
12 at 884); *see also Dahl v. Bd. of Trs.*, 15 F.4th 728, 733 (6th Cir. 2021) (university policy
13 was “not generally applicable” because the “University retains discretion to extend
14 exemptions in whole or in part”).

15 Here, just like *Fulton* and *Sherbert*, California’s laws governing NPS certification
16 are not generally applicable because they establish a system of individualized
17 exemptions. As explained above, to become a certified NPS, an applicant must satisfy
18 numerous requirements, including attesting to its “nonsectarian status.” *See*
19 Shuchatowitz Decl. Ex. A at 13; Cal. Educ. Code § 56365; Cal. Code Regs. tit. 5,
20 § 3060(d)(6). But similar to the regimes at issue in *Fulton* and *Sherbert*, California law
21 grants discretion to the State Board of Education to waive any NPS certification
22 requirement—or “any provision of this code or regulations adopted pursuant to that
23 provision” more broadly—upon the request of a public agency, provided the waiver is

1 beneficial to implementing a student’s IEP, does not abrogate the rights of parents or
2 their children with disabilities, and is compliant with IDEA. Cal. Educ. Code
3 §§ 56101(a), 56366.2(b). In other words, California has created “a system of individual
4 exemptions, made . . . at the ‘sole discretion’ of the [State Board of Education].” *Fulton*,
5 141 S. Ct. at 1878. It does not matter whether the State Board of Education has ever
6 received a petition to waive the “nonsectarian” requirement; rather, the mere existence
7 of the exemption scheme shows that the State’s law is not generally applicable. *Fulton*,
8 141 S. Ct. at 1879; *Kennedy*, 142 S. Ct. at 2422.

9 **C. California’s restriction fails strict scrutiny.**

10 Because California’s nonsectarian restriction is neither neutral nor generally
11 applicable, it must survive “the strictest scrutiny,” *Trinity Lutheran*, 582 U.S. at 458,
12 which is “the most demanding test known to constitutional law,” *City of Boerne v.*
13 *Flores*, 521 U.S. 507, 534 (1997). Indeed, California has elsewhere “concede[d] that
14 the existence of a ‘system of individual exemptions’” renders the decision “not to
15 expand the . . . exemption framework to [religious entities] to strict scrutiny.” *Foothill*
16 *Church v. Watanabe*, 2022 WL 3684900, at *10 (E.D. Cal. Aug. 25, 2022). To survive,
17 laws must serve “interests of the highest order,” *Fulton*, 141 S. Ct. at 1881, and “must
18 be narrowly tailored” to achieve that interest. *Calvary Chapel*, 982 F.3d at 1234
19 (cleaned up). California’s scheme fails at the outset because it has no compelling
20 interest in discriminating against religious individuals and institutions.

21 Defendants may seek to justify the nonsectarian requirement by arguing that to do
22 otherwise would violate the Establishment Clause of the Federal Constitution. But this
23 argument founders on Supreme Court precedent, which has repeatedly held that “a

1 neutral benefit program in which public funds flow to religious organizations through
2 the independent choices of private benefit recipients does not offend the Establishment
3 Clause.” *Carson*, 142 S. Ct. at 1997 (citing *Zelman v. Simmons-Harris*, 536 U.S. 639,
4 652-53 (2002)). So binding precedent forecloses any argument that California possesses
5 an antiestablishment interest under the Federal Constitution.

6 Nor may California argue that its State constitution requires it to discriminate against
7 religious schools and individuals. The Supreme Court has consistently rejected this
8 precise argument, holding that, as “explained in both *Trinity Lutheran* and *Espinoza*,
9 such an interest in separating church and state more fiercely than the Federal
10 Constitution cannot qualify as compelling in the face of the infringement of free
11 exercise.” *Carson*, 142 S. Ct. at 1998 (quoting *Espinoza*, 140 S. Ct. at 2260 (quoting
12 *Trinity Lutheran*, 582 U.S. at 466)); accord *Kreisner v. City of San Diego*, 1 F.3d 775,
13 778 n.2 (9th Cir. 1993). Any anti-establishment interest cannot “justify [an enactment]
14 that exclude[s] some members of the community from an otherwise generally available
15 public benefit because of their religious exercise.” *Carson*, 142 S. Ct. at 1998. Put
16 differently, California possesses no compelling interest in “discriminat[ing] against
17 religion.” *Id.* at 1998. Defendants therefore fail strict scrutiny, and Plaintiffs have
18 established that they are likely to succeed on the merits of their claims under the Free
19 Exercise Clause.

20 **II. California’s nonsectarian requirement imposes an unconstitutional condition.**

21 California’s nonsectarian requirement also imposes an unconstitutional condition on
22 Plaintiffs’ religious exercise and is therefore an independent violation warranting
23 preliminary relief. The unconstitutional conditions doctrine “vindicates the

1 Constitution’s enumerated rights by preventing the government from coercing people
2 into giving them up.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604
3 (2013). And the “‘unconstitutional conditions’ doctrine . . . limits the government’s
4 ability to exact waivers of rights as a condition of benefits, even when those benefits
5 are fully discretionary.” *United States v. Scott*, 450 F.3d 863, 866 (9th Cir. 2006).

6 Here, private religious schools must obtain certification through the State to access
7 generally available public funding to educate students with disabilities. But California
8 extracts a surrender of Plaintiffs’ First Amendment rights by forcing them to give up
9 their religious identities as a condition of accessing those otherwise generally available
10 public funds. The unconstitutional conditions doctrine squarely forecloses this forced
11 choice. Once California creates a special-education funding scheme, it cannot “abuse
12 its power by attaching strings strategically” to discriminate against religious institutions
13 and individuals. *Id.* Where, as here, the constitutional right of free exercise of religion
14 “functions to preserve spheres of autonomy, [the] unconstitutional conditions doctrine
15 protects that sphere by preventing governmental end-runs around the barriers to direct
16 commands.” *Id.* (cleaned up).

17 In short, this case is a prime example of why the unconstitutional conditions doctrine
18 exists. This Court should grant Plaintiffs’ preliminary injunction and hold that
19 California law violates the unconstitutional conditions doctrine by forcing Plaintiffs to
20 disavow their religious identity as a prerequisite to accessing special-education funding.

21 **III. Plaintiffs easily satisfy the remaining preliminary injunction factors.**

22 Finally, a preliminary injunction is warranted when plaintiffs demonstrate that they
23 are likely to suffer irreparable harm in the absence of a preliminary injunction, and that

1 the balance of equities and the public interest tip in their favor. *Doe v. Harris*, 772 F.3d
2 563, 582 (9th Cir. 2014). Plaintiffs satisfy these remaining factors.

3 ***Irreparable harm.*** “Irreparable harm is relatively easy to establish in a First
4 Amendment case,” *Cal. Chamber of Com. v. Council for Educ. and Rsch. on Toxics*, 29
5 F.4th 468, 482 (9th Cir. 2022) (cleaned up), requiring only a “colorable” showing of a
6 First Amendment infringement, *Warsoldier*, 418 F.3d at 1001. That is because—as both
7 the Supreme Court and this Court have repeatedly emphasized—“[t]he loss of First
8 Amendment freedoms, for even minimal periods of time, unquestionably constitutes
9 irreparable injury.” *See, e.g., Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct.
10 63, 67 (2020) (cleaned up); *Warsoldier*, 418 F.3d at 1002; *Associated Press v. Otter*,
11 682 F.3d 821, 826 (9th Cir. 2012).

12 Here, Plaintiffs more than satisfy this low bar. California categorically excludes
13 religious families and schools from an otherwise-available public benefit solely because
14 they are religious. Under *Trinity Lutheran*, *Espinoza*, and *Carson*, that is a clear-cut
15 First Amendment violation that remains ongoing so long as the nonsectarian
16 requirement exists. Plaintiffs have thus established that they will suffer irreparable
17 harm. *See, e.g., Brown v. Cal. Dep’t of Transp.*, 321 F.3d 1217, 1225 (9th Cir. 2003)
18 (“[Plaintiffs] have not only stated a colorable First Amendment claim, but one that is
19 likely to prevail[.]”).

20 Indeed, the harm to the individual Plaintiffs is “particularly irreparable” because
21 “timing is of the essence.” *Klein*, 584 F.3d at 1208. Every day, every week, and every
22 year California’s unconstitutional restriction is allowed to stand deprives parent
23 Plaintiffs of crucial time to advocate for their children’s education that can never be

1 recovered. And every day their children spend in educational environments that fail to
2 provide a FAPE inflicts lasting harm on their educational and spiritual development.
3 Nick Decl. ¶ 26; Perets Decl. ¶ 31. Similarly, the school Plaintiffs are unable even to
4 explore providing special-education services as long as the nonsectarian requirement is
5 enforced. Block Decl. ¶¶ 12-16; Einhorn Decl. ¶¶ 11-15.

6 ***Balance of equities and public interest:*** “The ‘balance of equities’ concerns the
7 burdens or hardships to [Plaintiffs] compared with the burden on Defendants if an
8 injunction is ordered.” *Porretti v. Dzurenda*, 11 F.4th 1037, 1050 (9th Cir. 2021). “The
9 ‘public interest’ mostly concerns the injunction’s impact on nonparties rather than
10 parties.” *Id.* (cleaned up). When the government is the party opposing a preliminary
11 injunction, these two factors “merge into one inquiry.” *Id.*

12 Here, this inquiry favors the entry of a preliminary injunction. When plaintiffs raise
13 “serious First Amendment questions,” that “compels a finding that . . . the balance of
14 hardships tips sharply in the plaintiffs’ favor.” *Cnty. House, Inc. v. City of Boise*, 490
15 F.3d 1041, 1059 (9th Cir. 2007) (cleaned up). Similarly, “it is always in the public
16 interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*,
17 695 F.3d 990, 1002 (9th Cir. 2012); *accord Doe*, 772 F.3d at 583 (noting the “significant
18 public interest in upholding First Amendment principles”). Accordingly, because
19 California law violates Plaintiffs’ rights under the Free Exercise Clause, the balance of
20 equities and the public interest strongly supports granting a preliminary injunction.

21 ***Bond not required.*** The Court should not require a bond. *See Conn. Gen. Life Ins.*
22 *Co. v. New Images of Beverly Hills*, 321 F.3d 878, 882 (9th Cir. 2003) (court has “wide
23 discretion” in this area). Defendants will suffer no damages even if it were later

determined that they were “wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c).
The relevant “amount” required to preserve Defendants’ interests is thus zero. *Id.*

CONCLUSION

The Court should grant a preliminary injunction barring defendants from enforcing the “nonsectarian” requirement in Cal. Educ. Code §§ 56365 and 56366.

Dated: May 22, 2023

Respectfully submitted,

/s/ Eric C. Rassbach

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CERTIFICATE OF SERVICE

On May 22, 2023, I filed the foregoing document with the Court via ECF. I hereby certify that I have served the document on all counsel by a manner authorized by the Federal Rules of Civil Procedure.

/s/ Eric C. Rassbach

Eric C. Rassbach

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the Plaintiffs, certifies that this brief contains 24 pages, which complies with this Court's 25-page limit for memoranda of points and authorities.

Dated: May 22, 2023

/s/ Eric C. Rassbach

Eric C. Rassbach

Exhibit 1

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHAYA LOFFMAN and JONATHAN
LOFFMAN, on their own behalf and on behalf of
their minor child M.L.; FEDORA NICK and
MORRIS TAXON, on their own behalf and on
behalf of their minor child K.T.; SARAH
PERETS and ARIEL PERETS, on their own
behalf and on behalf of their minor child N.P.;
JEAN & JERRY FRIEDMAN SHALHEVET
HIGH SCHOOL; and SAMUEL A. FRYER
YAVNEH HEBREW ACADEMY,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
EDUCATION; TONY THURMOND, in his
official capacity as Superintendent of Public
Instruction; LOS ANGELES UNIFIED
SCHOOL DISTRICT; and ANTHONY
AGUILAR, in his official capacity as Chief of
Special Education, Equity, and Access,

Defendants.

Case No.:

2:23-cv-01832-JLS-MRW

**DECLARATION OF CHAYA
LOFFMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
A PRELIMINARY
INJUNCTION**

Date: July 21, 2023

Time: 10:30am

Courtroom: 8A

Judge: Hon. Josephine L. Staton

* Not a member of the D.C. Bar; admitted in
California. Practice limited to cases in federal court.

1 I, Chaya Loffman, declare and state as follows:

2 1. My name is Chaya Loffman. I am over the age of 18 and am capable of making
3 this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge of all of
4 the contents of this declaration.

5 2. I live with my husband Jonathan and our two children in Los Angeles,
6 California. My son, M.L., is 4 years old, and my daughter is an infant.

7 3. My family are Orthodox Jews. Among other things, this means that we strive
8 to abide by the laws of *kashrut* (which govern dietary restrictions), observe Jewish
9 holidays, engage in Orthodox Jewish prayers and services, and otherwise carry out
10 the tenets of our faith.

11 4. As Orthodox Jews, we also believe firmly in the importance of sending our
12 children to an Orthodox Jewish school, where they will not only receive an education
13 in secular subjects, but also in the faith.

14 5. This belief flows directly from the Torah, the Talmud, and the Jewish Code
15 of Law, all of which impose on Jewish parents a duty to transmit the faith to their
16 children.

17 6. For example, the Torah instructs, “Take to heart these instructions with which
18 I charge you this day. Impress them upon your children. Recite them when you stay
19 at home and when you are away, when you lie down and when you get up.”
20 *Deuteronomy* 6:7-8; *see also Deuteronomy* 11:19 (“And you shall teach them to your
21 children—reciting them when you stay at home and when you are away, when you
22 lie down and when you get up.”).

1 7. Similarly, the Talmud instructs that parents must teach both Torah and
2 rabbinic writings to their children. *See, e.g.*, Talmud Bavli, *Kiddushin* 29a (“The
3 sages taught a father is obligated . . . to teach his son Torah.”); *id.* at 29b (“From
4 where do we know that a father is obligated to teach his son Torah? As it is written,
5 ‘and you shall teach them to your children’.” (quoting (*Deuteronomy* 11:19))); *id.* at
6 30a (describing the Torah subjects encompassed within this obligation).

7 8. Likewise, the Jewish Code of Law, the Shulchan Aruch, explains that “there
8 is an obligation upon each person to teach his son Jewish law; if the father does not
9 teach him, the son is obligated to teach himself.” Rabbi Joseph Caro, Shulchan
10 Aruch, *Yoreh De’ah* 245:1.

11 9. In keeping with these religious beliefs, my husband and I decided that we
12 would send our children to Orthodox Jewish schools.

13 10. However, this decision has come at considerable personal cost to us with
14 respect to our son M.L., who was diagnosed with autism at age 3.

15 11. Because of his disability, M.L. requires a number of services, including
16 speech, occupational, and behavioral therapies.

17 12. When we first learned of M.L.’s autism, we sought to enroll him in pre-school
18 at Yeshiva Toras Emes, a Jewish school serving children from preschool to eighth
19 grade. Our hope was that M.L. would receive an education there that nourished his
20 Jewish faith while also providing the support necessary for him to progress
21 developmentally.

22 13. However, soon after M.L. enrolled, we learned that we would be responsible
23 for paying the costs of his therapies unless we enrolled M.L. in public school.

1 14. If he attended public school, he could receive a free and appropriate public
2 education (FAPE), including associated special-education and related services, at no
3 cost to us under the Individuals with Disabilities Education Act and California law
4 implementing that Act.

5 15. Likewise, if we wished to send M.L. to a secular private school, we could
6 petition for him to receive a FAPE in that setting at no cost to us.

7 16. But a provision of the California Education Code excludes any funds from
8 being used to reimburse any religious school for the cost of providing a student with
9 a FAPE. Because of that law, we would be responsible for all of M.L.'s services if
10 we chose to send him to an Orthodox Jewish school.

11 17. This information put me and my husband to a stark choice. Though we
12 recognized that M.L. might qualify for services in public school at no cost to us, it
13 is extremely important to us that he be treated the same as his nondisabled sibling
14 and receive a Jewish education.

15 18. We therefore made the difficult decision to keep M.L. enrolled in a Jewish
16 school even though this meant we would need to pay for special-education services
17 out of pocket. M.L. currently receives services at Maor Academy, an Orthodox
18 Jewish learning center dedicated to supporting students with special needs and their
19 families in the Los Angeles Jewish community.

20 19. M.L. has thrived at Maor. He has learned songs that help to explain our
21 Jewish faith and regularly engages in other activities that help to nurture our religious
22 identity.
23

1 20. However, because of California's restriction, we have no ability to advocate
2 that M.L. should be receiving a FAPE including an individualized education plan
3 and special-education and related services, at no cost to us.

4 21. This means that my husband and I are fully responsible for the costs of M.L.'s
5 weekly therapy, including 25 hours of behavior therapy and 1 hour of occupational
6 therapy. It also means that, solely due to financial strain, we had to discontinue his
7 speech therapy.

8 22. Though keeping M.L. enrolled in an Orthodox Jewish educational setting
9 imposes a significant financial burden upon us because of the services required by
10 his disability, we feel that we cannot compromise our religious beliefs concerning
11 the importance of educating M.L. in an Orthodox Jewish setting.

12 23. We firmly intend to send our daughter to Orthodox Jewish schools once she
13 reaches the appropriate age, and we see no reason why M.L. should be treated any
14 differently than his nondisabled sister.

15 24. We want M.L. to have the same opportunities as his sister and to be treated
16 as an equal to her in every respect. This includes giving him the same opportunity
17 as she will have to receive a dual curriculum education. We feel that it is
18 discriminatory for California to deprive us of that opportunity simply because we
19 are religious.
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1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on this 9th day of May, 2023.

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Chaya Loffman

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DECLARATION OF CHAYA LOFFMAN

Exhibit 2

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Daniel L. Chen (CA SBN 312576)
Laura Wolk Slavis (DC Bar No. 1643193)
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHAYA LOFFMAN and JONATHAN
LOFFMAN, on their own behalf and on behalf of
their minor child M.L.; FEDORA NICK and
MORRIS TAXON, on their own behalf and on
behalf of their minor child K.T.; SARAH
PERETS and ARIEL PERETS, on their own
behalf and on behalf of their minor child N.P.;
JEAN & JERRY FRIEDMAN SHALHEVET
HIGH SCHOOL; and SAMUEL A. FRYER
YAVNEH HEBREW ACADEMY,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
EDUCATION; TONY THURMOND, in his
official capacity as Superintendent of Public
Instruction; LOS ANGELES UNIFIED
SCHOOL DISTRICT; and ANTHONY
AGUILAR, in his official capacity as Chief of
Special Education, Equity, and Access,

Defendants.

Case No.:

2:23-cv-01832-JLS-MRW

**DECLARATION OF SARAH
PERETS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
A PRELIMINARY
INJUNCTION**

Date: July 21, 2023

Time: 10:30am

Courtroom: 8A

Judge: Hon. Josephine L. Staton

* Not a member of the D.C. Bar; admitted in
California. Practice limited to cases in federal court.

1 I, Sarah Perets, declare and state as follows:

2 1. My name is Sarah Perets. I am over the age of 18 and am capable of making
3 this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge of all of
4 the contents of this declaration.

5 2. I live with my husband Ariel and our six children in Los Angeles, California.
6 My son, N.P., is 14 years old. My other five children range in age from two to twenty.

7 3. My family are Orthodox Jews. Among other things, this means that we strive
8 to abide by the laws of *kashrut* (which govern dietary restrictions), observe Jewish
9 holidays, engage in Orthodox Jewish prayers and services, and otherwise carry out
10 the tenets of our faith.

11 4. As Orthodox Jews, we also believe firmly in the importance of sending our
12 children to an Orthodox Jewish school, where they will not only receive an education
13 in secular subjects, but also in the faith.

14 5. This belief flows directly from the Torah, the Talmud, and the Jewish Code
15 of Law, all of which impose on Jewish parents a duty to transmit the faith to their
16 children.

17 6. For example, the Torah instructs “Take to heart these instructions with which
18 I charge you this day. Impress them upon your children. Recite them when you stay
19 at home and when you are away, when you lie down and when you get up.”
20 *Deuteronomy* 6:7-8; *see also Deuteronomy* 11:19 (“And you shall teach them to your
21 children—reciting them when you stay at home and when you are away, when you
22 lie down and when you get up.”).

23 7. Similarly, the Talmud instructs that parents must teach both Torah and
rabbinic writings to their children. *See, e.g.,* Talmud Bavli, *Kiddushin* 29a (“The
sages taught a father is obligated . . . to teach his son Torah.”); *id.* at 29b (“From
where do we know that a father is obligated to teach his son Torah? As it is written,

1 ‘and you shall teach them to your children’.” (quoting (*Deuteronomy* 11:19)); *id.* at
2 30a (describing the Torah subjects encompassed within this obligation).

3 8. Likewise, the Jewish Code of Law, the Shulchan Aruch, explains that “there
4 is an obligation upon each person to teach his son Jewish law; if the father does not
5 teach him, the son is obligated to teach himself.” Rabbi Joseph Caro, Shulchan
6 Aruch, *Yoreh De’ah* 245:1.

7 9. In keeping with these religious beliefs, my husband and I decided that we
8 would send all of our children to Orthodox Jewish schools.

9 10. This is the course we took with five of our children, all of whom received an
10 education at an Orthodox Jewish school from pre-school through twelfth grade.

11 11. However, due to California’s discriminatory restriction, which prevents
12 special-education funding from being used to provide a free and appropriate public
13 education (FAPE) in a private religious school, we were unable to follow these
14 beliefs when it came to our son, N.P.

15 12. At age 3, N.P. was diagnosed with autism, and at age 6, he was diagnosed
16 with a WAC gene mutation that results in speech delays, behavioral issues, and
17 learning disabilities.

18 13. We wanted N.P. to have the same educational and religious opportunities as
19 his five brothers and sisters, and therefore endeavored to figure out a way for him to
20 receive an education at an Orthodox Jewish school that would also provide the
21 supports and services necessary to accommodate his disability.

22 14. We attempted to enroll N.P. in Orthodox Jewish schools such as Emek
23 Hebrew Academy and Adat Ari El, but had to withdraw him because we were forced
to pay for N.P.’s services ourselves.

1 15. There was no way for us to access a critical California funding program,
2 which could reimburse a private school the cost of N.P.'s special-education and
3 related services at no cost to us.

4 16. That's because California law categorically excludes private religious
5 schools from the reimbursement program. As a result, we lacked—and continue to
6 lack—any ability to petition for N.P. to be placed at a private Orthodox Jewish
7 school.

8 17. Thus, for N.P. to receive an education that nourished both his development
9 and his faith, we would be responsible for funding all of his special-education
10 services ourselves.

11 18. We simply could not, and cannot, make this work financially, and so we have
12 been forced to enroll N.P. in public school in order to provide an education for our
13 son.

14 19. Unlike our other five children, who have been educated exclusively at
15 Orthodox Jewish schools, N.P. has been educated mainly at public schools after our
16 brief but failed attempts to enroll him at Orthodox schools. He attended the Wilbur
17 Charter School for Advanced Academics, an affiliated charter school that is part of
18 the Los Angeles Unified School District (LAUSD), and Emelita Street Elementary
19 School, a LAUSD public school. He is now in seventh grade at Sutter Middle School,
20 a public school within LAUSD. He stopped receiving a mainstreamed education in
21 second grade and does not perform at grade level.

22 20. N.P. has an individualized education plan that includes speech therapy,
23 occupational therapy, and adaptive physical education.

24 21. These services are currently provided through LAUSD as a means of
25 enabling N.P. to receive a FAPE. But we do not believe he is actually receiving a

1 FAPE in public school, and we would like to petition for placement in an Orthodox
2 Jewish school.

3 22. For one thing, N.P.'s therapeutic and academic progress is severely impacted
4 by the fact that he does not receive services both when his public school is not in
5 session *and* when he does not attend school during Orthodox Jewish holidays. N.P.
6 would not experience this augmented service disruption in an Orthodox Jewish
7 school.

8 23. For another, we have experienced repeated difficulties getting N.P.'s public
9 school to adhere to our religious beliefs concerning Kosher food. Due to his
10 disability, N.P. has difficulty understanding the rules surrounding *kashrut* and
11 communicating his needs, and school officials have repeatedly given him non-
12 Kosher food to eat, despite our frequent requests not to do so.

13 24. On one occasion, I learned that N.P. had been given pizza, which is rarely
14 Kosher, to eat at school. When I spoke to the teacher to remind her again of our
15 religious beliefs surrounding food, she told me I had nothing to worry about because
16 the pizza was vegetarian.

17 25. The fact that the pizza was vegetarian did not render the food compliant with
18 our religious beliefs. It is frustrating to me that I need to argue with N.P.'s teachers
19 about how our sincerely held religious beliefs affect N.P.'s needs, and I would not
20 need to do this at an Orthodox Jewish school.

21 26. On another occasion, I was reprimanded by N.P.'s principal over our
22 observance of the Jewish holiday Sukkot, which spans seven days. In accordance
23 with our observance of the holiday, N.P. did not attend school for the duration of
24 Sukkot.

25 27. After he returned, his principal chastised me for allowing N.P. to miss so
26 much school. I explained to her that our religious beliefs, which hold that driving

1 and other forms of work are inappropriate during Sukkot, required us to keep N.P.
2 home. She explained to me that she had googled Sukkot and spoken to other Jewish
3 people, who said my interpretation of Sukkot was wrong and N.P. could have
4 attended school for at least part of the holiday.

5 28. I resented the fact that N.P.'s principal was instructing me on how to be a
6 good Jew, and for using interpretations of Jewish law that we do not agree with to
7 support her point. If N.P. attended an Orthodox Jewish school that aligned with our
8 religious beliefs, interactions like this would no longer occur.

9 29. These are not the only problems N.P. has experienced. On two occasions, he
10 was sent home from school early due to staffing issues. When I complained, school
11 officials told me that I could solve the problem by serving as N.P.'s aide throughout
12 each school day myself.

13 30. Because of these issues, my husband and I would like to petition to have N.P.
14 placed in an Orthodox Jewish school to receive the free and appropriate public
15 education guaranteed him by the Individuals with Disabilities Education Act and
16 California law. However, because of California's discriminatory exclusion of all
17 religious schools from eligibility for such placement, we are unable to do so.

18 31. Because we cannot provide for N.P.'s education and services without
19 California's special-education funding, we cannot follow our religious beliefs each
20 day he remains in public school. Every day N.P. spends in a public school is another
21 day of faith formation that we can never recover.

22 32. This law prevents us from doing for N.P. what we have done for our other
23 five children—providing them with an education that allows both their faith and

1 intellect to flourish. Without this law, we would be able to advocate that N.P. be
2 placed in the best educational environment for his unique circumstances.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on this 5th day of May, 2023.

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6 Sarah Perets

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DECLARATION OF SARAH PERETS

Exhibit 3

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Daniel L. Chen (CA SBN 312576)
Laura Wolk Slavis (DC Bar No. 1643193)
Brandon L. Winchel* (CA SBN 344719)
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHAYA LOFFMAN and JONATHAN
LOFFMAN, on their own behalf and on behalf of
their minor child M.L.; FEDORA NICK and
MORRIS TAXON, on their own behalf and on
behalf of their minor child K.T.; SARAH
PERETS and ARIEL PERETS, on their own
behalf and on behalf of their minor child N.P.;
JEAN & JERRY FRIEDMAN SHALHEVET
HIGH SCHOOL; and SAMUEL A. FRYER
YAVNEH HEBREW ACADEMY,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
EDUCATION; TONY THURMOND, in his
official capacity as Superintendent of Public
Instruction; LOS ANGELES UNIFIED
SCHOOL DISTRICT; and ANTHONY
AGUILAR, in his official capacity as Chief of
Special Education, Equity, and Access,

Defendants.

Case No.:

2:23-cv-01832-JLS-MRW

**DECLARATION OF FEDORA
NICK IN SUPPORT OF
PLAINTIFFS' MOTION FOR
A PRELIMINARY
INJUNCTION**

Date: July 21, 2023

Time: 10:30am

Courtroom: 8A

Judge: Hon. Josephine L. Staton

* Not a member of the D.C. Bar; admitted in
California. Practice limited to cases in federal court.

1 I, Fedora Nick, declare and state as follows:

2 1. My name is Fedora Nick. I am over the age of 18 and am capable of making
3 this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge of all of
4 the contents of this declaration.

5 2. I live with my husband Morris and our three children in Los Angeles,
6 California. My son, K.T., is 14 years old. My other two sons are 20 years old and 18
7 years old.

8 3. My family are Orthodox Jews. Among other things, this means that we strive
9 to abide by the laws of *kashrut* (which govern dietary restrictions), observe Jewish
10 holidays, engage in Orthodox Jewish prayers and services, and otherwise carry out
11 the tenets of our faith.

12 4. As Orthodox Jews, we also believe firmly in the importance of sending our
13 children to an Orthodox Jewish school, where they will not only receive an education
14 in secular subjects, but also in the faith.

15 5. This belief flows directly from the Torah, the Talmud, and the Jewish Code
16 of Law, all of which impose on Jewish parents a duty to transmit the faith to their
17 children.

18 6. For example, the Torah instructs “Take to heart these instructions with which
19 I charge you this day. Impress them upon your children. Recite them when you stay
20 at home and when you are away, when you lie down and when you get up.”
21 *Deuteronomy* 6:7-8; *see also Deuteronomy* 11:19 (“And you shall teach them to your
22 children—reciting them when you stay at home and when you are away, when you
23 lie down and when you get up.”).

1 7. Similarly, the Talmud instructs that parents must teach both Torah and
2 rabbinic writings to their children. *See, e.g.*, Talmud Bavli, *Kiddushin* 29a (“The
3 sages taught a father is obligated . . . to teach his son Torah.”); *id.* at 29b (“From
4 where do we know that a father is obligated to teach his son Torah? As it is written,
5 ‘and you shall teach them to your children.’.” (quoting (*Deuteronomy* 11:19))); *id.* at
6 30a (describing the Torah subjects encompassed within this obligation).

7 8. Likewise, the Jewish Code of Law, the Shulchan Aruch, explains that “there
8 is an obligation upon each person to teach his son Jewish law; if the father does not
9 teach him, the son is obligated to teach himself.” Rabbi Joseph Caro, Shulchan
10 Aruch, *Yoreh De’ah* 245:1.

11 9. In keeping with these religious beliefs, my husband and I decided that we
12 would send all of our children to Orthodox Jewish schools.

13 10. This is the course we took with our older two sons, both of whom received
14 an education at an Orthodox Jewish school from pre-school through twelfth grade.

15 11. However, due to California’s discriminatory restriction, which prevents
16 special-education funding from being used to provide a free and appropriate public
17 education (FAPE) in a private religious school, we could not follow these beliefs
18 when it came to our youngest son, K.T.

19 12. At approximately age 2, K.T. was diagnosed with pervasive developmental
20 disorder, not otherwise specified, which is now considered to be part of the autism
21 spectrum of disorders.

22 13. K.T.’s autism results in cognitive, behavioral, and motor difficulties.
23

1 14. We wanted K.T. to have the same educational and religious opportunities as
2 his brothers, and therefore endeavored to figure out a way for him to receive an
3 education at an Orthodox Jewish school that would also provide the support and
4 services necessary to accommodate his disability.

5 15. However, there was no way for us to access a critical California funding
6 program, which could reimburse a private school the cost of K.T.'s special-education
7 and related services at no cost to us.

8 16. That's because California law categorically excludes private religious
9 schools from the reimbursement program. As a result, we lacked—and continue to
10 lack—any ability to petition for K.T. to be placed at a private Orthodox Jewish
11 school.

12 17. If we enrolled K.T. in an educational setting that nourished both his
13 development and his faith, we would be responsible for funding all of his services
14 ourselves.

15 18. We simply could not, and cannot, make this work financially, and so we have
16 been forced to enroll K.T. in public school in order to provide an education for our
17 son.

18 19. Unlike our other two children, who have been educated exclusively at
19 Orthodox Jewish schools, K.T. has been educated exclusively at public schools. He
20 attended Vine Elementary School and Melrose Magnet School, both public schools
21 within Los Angeles Unified School District (LAUSD). He is now in eighth grade at
22 The City School, a charter school within LAUSD, and is scheduled to transition to a
23

1 public high school next year. He has been mainstreamed throughout, but he does not
2 perform at grade level.

3 20. K.T. has an individualized education plan that includes eight service
4 providers, including a full-time aide, a supervisor for the aide, speech and
5 occupational therapists, adaptive physical education, resource specialists for English
6 and math, and a private reading tutor.

7 21. These services are currently provided through LAUSD as a means of
8 enabling K.T. to receive a FAPE. But we do not believe he is actually receiving a
9 FAPE in public school.

10 22. For example, K.T.'s therapeutic and academic progress is severely impacted
11 by the fact that he does not receive services both on days when his public school is
12 not in session *and* on days when he cannot attend school due to an Orthodox Jewish
13 holiday. K.T. would not experience this level of service disruption were he to attend
14 an Orthodox Jewish school.

15 23. In addition, we have experienced repeated difficulties getting K.T.'s public
16 school to adhere to our religious beliefs concerning Kosher food. Due to his
17 disability, K.T. has difficulty understanding the rules surrounding *kashrut* and
18 communicating his needs, and he has repeatedly been given non-Kosher food to eat.

19 24. In addition, we fear that K.T. will face increased bullying due to his disability
20 at a large, chaotic public high school. We think it is paramount that we begin the
21 process of seeking placement elsewhere as soon as possible, before he is forced to
22 endure the even more challenging environment of high school.

1 25. Because of these issues, my husband and I would like to petition to have K.T.
2 placed in an Orthodox Jewish school to receive the free and appropriate public
3 education guaranteed him by the Individuals with Disabilities Education Act and
4 California law. However, because of California's discriminatory exclusion of all
5 religious schools from eligibility for such placement, we are unable to do so.

6 26. Because we cannot provide for K.T.'s education and services without
7 California's special-education funding, we are unable to follow our religious beliefs
8 each day he remains in public school. Every day K.T. spends in a public school is
9 another day of faith formation that we can never recover.

10 27. Unsurprisingly, K.T.'s inability to attend Orthodox Jewish schools alongside
11 his nondisabled siblings has had a profound impact on my family, particularly on
12 my son A.T.

13 28. Inspired by our family's experience and K.T.'s difficulties at public school,
14 A.T. has become a champion for inclusion of children with disabilities, including at
15 his own Orthodox Jewish high school. In his advocacy, A.T. has stressed that K.T.
16 has not received the same Jewish education in public school as A.T. has received,
17 which has negatively impacted K.T.'s ability to fully participate in many of the
18 religious observances that are important to A.T. and our family.

19 29. We are very proud of A.T.'s efforts, but we wish they weren't necessary.
20 Instead, we wish we lived in a world that did not contain laws like California's,
21 which discriminate against religious families and their children with disabilities.

22 30. This law prevents us from doing for K.T. what we have done for our other
23 two children—providing them with an education that allows both their faith and

1 intellect to flourish. Without this law, we would be able to advocate that K.T. be
2 placed in the best educational environment for his unique circumstances.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on this 12th day of May, 2023.

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5 Fedora Nick
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DECLARATION OF FEDORA NICK

Exhibit 4

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Daniel L. Chen (CA SBN 312576)
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHAYA LOFFMAN and JONATHAN
LOFFMAN, on their own behalf and on behalf of
their minor child M.L.; FEDORA NICK and
MORRIS TAXON, on their own behalf and on
behalf of their minor child K.T.; SARAH
PERETS and ARIEL PERETS, on their own
behalf and on behalf of their minor child N.P.;
JEAN & JERRY FRIEDMAN SHALHEVET
HIGH SCHOOL; and SAMUEL A. FRYER
YAVNEH HEBREW ACADEMY,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
EDUCATION; TONY THURMOND, in his
official capacity as Superintendent of Public
Instruction; LOS ANGELES UNIFIED
SCHOOL DISTRICT; and ANTHONY
AGUILAR, in his official capacity as Chief of
Special Education, Equity, and Access,

Defendants.

Case No.:

2:23-cv-01832-JLS-MRW

**DECLARATION OF RABBI
DAVID BLOCK IN SUPPORT
OF PLAINTIFFS' MOTION
FOR A PRELIMINARY
INJUNCTION**

Date: July 21, 2023

Time: 10:30 AM

Courtroom: 8A

Judge: Hon. Josephine L. Staton

* Not a member of the D.C. Bar; admitted in
California. Practice limited to cases in federal court.

1 I, David Block, declare and state as follows:

2 1. My name is David Block. I am over the age of 18 and am capable of making
3 this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge of all of
4 the contents of this declaration.

5 2. Since 2020, I have served as Head of School at the Jean & Jerry Friedman
6 Shalhevet High School, a private co-educational Orthodox Jewish high school in Los
7 Angeles, California. Prior to holding this position, I served as the Associate Head of
8 School at Shalhevet for two years. Before that, I served as Assistant Principal for
9 Judaic Studies. I am a rabbi and received my *semicha*, or rabbinic ordination, at
10 Yeshiva University in 2016.

11 3. Founded in 1992, Shalhevet offers a rigorous, dual curriculum of Judaic and
12 college preparatory studies. Shalhevet's goals are to promote the values of our
13 Jewish heritage, the ideals of American democracy, and a passionate support for the
14 welfare of the State of Israel, within an environment that encourages critical and
15 creative thought.

16 4. Shalhevet emphasizes study of Torah and following Jewish law, *halacha*,
17 which is the primary goal of Jewish education and of paramount importance in
18 Orthodox Judaism. "All the faith and all the love in the world remain insignificant
19 until they are actualized in a regular routine, in the Halakhah, which transforms faith
20 and love into reality." Norman Lamm, *The Illogic of Logical Conclusions*, in
21 *Derashot Shedarashti: Sermons of Rabbi Norman Lamm*, Feb. 10, 1973,
22 <https://perma.cc/J962-C96B>.

23 5. Study of Torah is not simply about the accumulation of knowledge or
development of skill: "even if one has retained nothing, the experience itself—live

1 contact with the epiphanous divine will manifested through Torah, and encounter
2 with the divine Presence, which hovers over its student—is immeasurably
3 important.” Aharon Lichtenstein, *Study, in 20th Century Jewish Religious Thought*
4 931, 934 (A. Cohen & P. Mendes-Flohr eds., 2009).

5 6. Shalhevet’s educational model is built on the following core values: deep
6 commitment to Torah and Israel; critical thinking and academic inquiry;
7 transformative personal growth; empathetic dialogue and discourse; active
8 engagement in community and beyond; and wellness, joy, and self-actualization.

9 7. In this way, we help Orthodox Jewish parents to fulfill their duty to provide
10 an Orthodox Jewish education to their children.

11 8. Shalhevet also strives to create an inclusive learning environment, where
12 students are prepared to lead meaningful, confident, and thoughtful Modern
13 Orthodox lives.

14 9. One area in which Shalhevet wishes to explore becoming more inclusive is
15 the education of students with disabilities.

16 10. Shalhevet believes that the Torah commands members of the Jewish
17 community to care for the most vulnerable, including those with disabilities. The
18 Torah further commands us to go and seek out the most vulnerable among us and to
19 welcome them into our community, rather than waiting for them to approach us.

20 11. For Shalhevet, these religious commands call us to explore developing a
21 program for children with disabilities that enables each child to obtain the required
22 individualized support necessary for his or her educational progress.

23 12. A primary way we could provide this individualized support is to become
a certified nonpublic school (NPS) under California law. If certified, Shalhevet could

1 receive students with disabilities as part of the free and appropriate public education
2 guaranteed to them by the Individuals with Disabilities Education Act and California
3 law.

4 13. Unfortunately, however, California will only certify schools if they are
5 “nonsectarian,” meaning, in part, that the applicant must state that the school is not
6 “formally affiliated with a religious group or sect.” Cal. Code Regs. tit. 5, § 3001(p).
7 Shalhevet obviously runs afoul of this requirement because of its affiliation with the
8 Orthodox Jewish faith.

9 14. Thus, though Shalhevet seeks the opportunity to qualify to provide a
10 distinctively Orthodox Jewish education to children with disabilities, California’s
11 nonsectarian requirement puts us to an impossible choice: we can either be a
12 religious school or seek certification as an NPS—we cannot do both.

13 15. Even beginning the certification process would require me to violate
14 Shalhevet’s sincerely held religious beliefs, since to do so would require me to
15 disavow its religious character as a Jewish educational institution.

16 16. I could not possibly violate those beliefs, and so we are unable to even
17 explore NPS certification.

18 17. California’s law asks Shalhevet to choose between its religious beliefs and
19 the ability to receive needed funding to serve students with disabilities. This choice
20 is particularly perplexing, since it is our religious beliefs that motivate us to explore
21 how we can better serve those with disabilities.
22
23

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on this 16 day of May, 2023.

3
4 
Rabbi David Block

Exhibit 5

Eric C. Rassbach (CA SBN 288041)
erassbach@becketlaw.org
Daniel L. Chen (CA SBN 312576)
Laura Wolk Slavis (DC Bar No. 1643193)
Brandon L. Winchel* (CA SBN 344719)
The Becket Fund for Religious Liberty
1919 Pennsylvania Ave., Suite 400
Washington, DC 20006
202-955-0095 tel. / 202-955-0090 fax

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHAYA LOFFMAN and JONATHAN
LOFFMAN, on their own behalf and on behalf of
their minor child M.L.; FEDORA NICK and
MORRIS TAXON, on their own behalf and on
behalf of their minor child K.T.; SARAH
PERETS and ARIEL PERETS, on their own
behalf and on behalf of their minor child N.P.;
JEAN & JERRY FRIEDMAN SHALHEVET
HIGH SCHOOL; and SAMUEL A. FRYER
YAVNEH HEBREW ACADEMY,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
EDUCATION; TONY THURMOND, in his
official capacity as Superintendent of Public
Instruction; LOS ANGELES UNIFIED
SCHOOL DISTRICT; and ANTHONY
AGUILAR, in his official capacity as Chief of
Special Education, Equity, and Access,

Defendants.

Case No.:

2:23-cv-01832-JLS-MRW

**DECLARATION OF RABBI
SHLOMO EINHORN IN
SUPPORT OF PLAINTIFFS'
MOTION FOR A
PRELIMINARY
INJUNCTION**

Date: July 21, 2023

Time: 10:30 AM

Courtroom: 8A

Judge: Hon. Josephine L. Staton

* Not a member of the D.C. Bar; admitted in
California. Practice limited to cases in federal court.

1 I, Shlomo Einhorn, declare and state as follows:

2 1. My name is Shlomo Einhorn. I am over the age of 18 and am capable of
3 making this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge of
4 all of the contents of this declaration.

5 2. Since 2012, I have served as Rabbi and Dean of the Samuel A. Fryer
6 Yavneh Hebrew Academy, a private co-educational Orthodox Jewish high school
7 in Los Angeles, California serving students from early childhood through eighth
8 grade. I received my rabbinic ordination (*Yoreh Yoreh*) from Yeshiva University in
9 2004 and my advanced rabbinic ordination (*Yadin Yadin*) from Yeshiva University
10 in 2018.

11 3. Founded in 1958, Yavneh offers a rigorous, dual curriculum of Judaic and
12 college preparatory studies.

13 4. Yavneh emphasizes study of Torah and following Jewish law, *halacha*, which
14 is the primary goal of Jewish education and of paramount importance in Orthodox
15 Judaism. “All the faith and all the love in the world remain insignificant until they
16 are actualized in a regular routine, in the Halakhah, which transforms faith and love
17 into reality.” Norman Lamm, *The Illogic of Logical Conclusions*, in *Derashot*
18 *Shedarashti: Sermons of Rabbi Norman Lamm*, Feb. 10, 1973,
19 <https://perma.cc/J962-C96B>.

20 5. Study of Torah is not simply about the accumulation of knowledge or
21 development of skill: “even if one has retained nothing, the experience itself—live
22 contact with the epiphanous divine will manifested through Torah, and encounter
23 with the divine Presence, which hovers over its student—is immeasurably

1 important.” Aharon Lichtenstein, *Study, in 20th Century Jewish Religious Thought*
2 931, 934 (A. Cohen & P. Mendes-Flohr eds., 2009).

3 6. Yavneh’s mission is to inspire and provide the tools for lifelong Jewish living.
4 These include *Ahavat* and *Limud Torah*, *Mitzvot*, and steadfast support of *Medinat*
5 *Yisrael*.

6 7. Yavneh fulfills its mission by guiding its students in the pursuit of knowledge
7 in a manner that maintains intellectual honesty, excites students’ curiosity, and meets
8 the demands of scholarship. We seek to instill in our students a fineness of character,
9 respect for others, integrity, and the centrality of worthy deeds in Jewish life.

10 8. In this way, we help Orthodox Jewish parents to fulfill their duty to provide
11 an Orthodox Jewish education to their children.

12 9. Yavneh also strives to create an inclusive learning environment, including for
13 students with disabilities. Through our CAL Department, we work to accommodate
14 the unique needs of each student, so that all Yavneh students have the tools necessary
15 to successfully demonstrate their knowledge. We provide accommodations such as
16 small-group testing, assistive technologies, and other interventions to meet this goal.

17 10. Yavneh would like to explore additional avenues of serving students with
18 disabilities, especially those with more complex needs.

19 11. A primary way we could provide this individualized support is to become a
20 certified nonpublic school (NPS) under California law. If certified, Yavneh could
21 receive students with disabilities as part of the free and appropriate public education
22 guaranteed to them by the Individuals with Disabilities Education Act and California
23 law.

Exhibit 6

Eric C. Rassbach (CA SBN 288041)
erassbach@becketlaw.org
Daniel L. Chen (CA SBN 312576)
Laura Wolk Slavis (DC Bar No. 1643193)
Brandon L. Winchel* (CA SBN 344719)
The Becket Fund for Religious Liberty
1919 Pennsylvania Ave., Suite 400
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202-955-0095 tel. / 202-955-0090 fax

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHAYA LOFFMAN and JONATHAN
LOFFMAN, on their own behalf and on behalf of
their minor child M.L.; FEDORA NICK and
MORRIS TAXON, on their own behalf and on
behalf of their minor child K.T.; SARAH
PERETS and ARIEL PERETS, on their own
behalf and on behalf of their minor child N.P.;
JEAN & JERRY FRIEDMAN SHALHEVET
HIGH SCHOOL; and SAMUEL A. FRYER
YAVNEH HEBREW ACADEMY,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
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official capacity as Superintendent of Public
Instruction; LOS ANGELES UNIFIED
SCHOOL DISTRICT; and ANTHONY
AGUILAR, in his official capacity as Chief of
Special Education, Equity, and Access,

Defendants.

Case No.:

2:23-cv-01832-JLS-MRW

**DECLARATION OF MIRA
SHUCHATOWITZ IN
SUPPORT OF PLAINTIFFS'
MOTION FOR A
PRELIMINARY
INJUNCTION**

Date: July 21, 2023

Time: 10:30am

Courtroom: 8A

Judge: Hon. Josephine L. Staton

* Not a member of the DC Bar; admitted in
California. Practice limited to cases in federal court.

1 1. My name is Mira Shuchatowitz. I am over the age of 18 and am capable of
2 making this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge
3 of all of the contents of this declaration.

4 2. On May 2, 2023, I emailed the California Department of Education and
5 requested a copy of the current certification application for a nonpublic,
6 nonsectarian school.

7 3. On May 3, 2023, I received by email the California Certification
8 Applications for a New Nonpublic, Nonsectarian School and a New Residential
9 Nonpublic, Nonsectarian School.

10 4. A true and correct copy of the California Certification Application for a New
11 Nonpublic, Nonsectarian School is attached as Exhibit A to this declaration.

12 5. A true and correct copy of the California Certification Application for a New
13 Residential Nonpublic, Nonsectarian School is attached as Exhibit B to this
14 declaration.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed on this 15 day of May, 2023.

17 
18 _____
19 Mira Shuchatowitz
20
21
22
23

Exhibit A

CALIFORNIA CERTIFICATION APPLICATION

NPS01 – NEW NONPUBLIC, NONSECTARIAN SCHOOL

Date of Submission:		If Revised, Application Revision Date:	
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NONPUBLIC SCHOOL INFORMATION			
Name of School:		CDS Code:	
School Address:			
City:	State:	Zip:	Fax:
School Administrator Name:		Phone:	
School Administrator E-mail Address:			
On-Site Contact Name:		Phone:	
On-Site Contact E-mail Address:			

NONPUBLIC SCHOOL DEMOGRAPHIC INFORMATION			
Gender(s) Served:			
Grade Levels Served:		Student Age Ranges Served:	
Total Student Capacity:		Number of Certified Classrooms:	

NONPUBLIC SCHOOL PROGRAM – PRIMARY DISABLING CONDITIONS SERVED			
Check the appropriate box to indicate each Primary Disabling Condition the NPS serves.			
<input type="checkbox"/> Autism (AUT)	<input type="checkbox"/> Hard of Hearing (HH)	<input type="checkbox"/> Orthopedic Impairment (OI)	
<input type="checkbox"/> Deaf-Blindness (DB)	<input type="checkbox"/> Hearing Impairment (HI)	<input type="checkbox"/> Specific Learning Disability (SLD)	
<input type="checkbox"/> Deafness (DEAF)	<input type="checkbox"/> Intellectual Disability (ID)	<input type="checkbox"/> Speech/Language Impairment (SLI)	
<input type="checkbox"/> Emotional Disturbance (ED)	<input type="checkbox"/> Multiple Disabilities (MD)	<input type="checkbox"/> Traumatic Brain Injury (TBI)	
<input type="checkbox"/> Established Medical Disability (EMD)	<input type="checkbox"/> Other Health Impairment (OHI)	<input type="checkbox"/> Visual Impairment (VI)	

Check if a residential program is affiliated with the NPS:	<input type="checkbox"/>	Program Name(s):
--	--------------------------	------------------

APPLICATION FEES	
Check the appropriate box to indicate the total student capacity of the NPS:	
Total Student Capacity	Application Fee
<input type="checkbox"/> 1–5 Students	<input type="checkbox"/> \$485.00
<input type="checkbox"/> 6–10 Students	<input type="checkbox"/> \$815.00
<input type="checkbox"/> 11–24 Students	<input type="checkbox"/> \$1,630.00
<input type="checkbox"/> 25–75 Students	<input type="checkbox"/> \$2,445.00
<input type="checkbox"/> 76 or More Students	<input type="checkbox"/> \$3,260.00

Application fees are nonrefundable pursuant to California *Education Code* Section 56366.1(m).

FILING INSTRUCTIONS
Mail the completed NPS01 form and a check payable to the California Department of Education to the following address:
California Department of Education Special Education Division Focused Monitoring and Technical Assistance Unit VI 1430 N Street, Room 2401 Sacramento, CA 95814-5901

CALIFORNIA DEPARTMENT OF EDUCATION USE ONLY			
Check#:	Amount Paid:	Date Received	Assigned Staff:

NPS02 – SPECIAL EDUCATION LOCAL PLAN AREA NOTIFICATION AND VERIFICATION

Intent to Apply for Nonpublic School Certification

NPS Name:

Pursuant to California *Education Code (EC)* § 56366.1:

(b)(1) The applicant shall provide the special education local plan area (SELPA) in which the applicant is located with the written notification of its intent to seek certification or renewal of its certification. The local educational agency (LEA) representatives shall acknowledge that they have been notified of the intent to certify or renew certification. The acknowledgment shall include a statement that representatives of the local educational agency for the area in which the applicant is located have had the opportunity to review the application at least 60 calendar days before submission of an initial application to the Superintendent, or at least 30 calendar days before submission of a renewal application to the Superintendent. The acknowledgment shall provide assurances that local educational agency representatives have had the opportunity to provide input on all required components of the application.

(2) If the local educational agency has not acknowledged an applicant's intent to be certified 60 calendar days from the date of submission for initial applications or 30 calendar days from the date of the return receipt for renewal applications, the applicant may file the application with the Superintendent.

SELPA Use Only

As the representative of the SELPA in which the NPS is located, I attest I have been notified of the intent of the NPS named above to be certified by the California Department of Education (CDE) as a NPS providing services for individuals with exceptional needs. The NPS has provided the opportunity to review and provide input on all components of the application.

Name of SELPA:

Date NPS application was sent to SELPA:

Printed name of SELPA Representative:

Signature of SELPA Representative:

Date signed by SELPA Representative:

NPS03 – FIRE INSPECTION CLEARANCE AND ASSURANCE STATEMENT

NPS Name:

Instructions: Pursuant to Title 5 of the *California Code of Regulations (CCR)* § 3060 (c)(20), submit a copy of the fire inspection clearance completed within the last 12 months.

Assurance Statement

Pursuant to *EC* § 56366.1(o), as the authorized agent of the NPS, I assure the NPS meets all applicable standards relating to fire, health, sanitation, and building safety.

Print Name of Authorized NPS Agent:

Signature of Authorized NPS Agent:

Title of Authorized NPS Agent:

Date Signed:

NPS04 – PROGRAM AND SERVICE DESCRIPTION

NPS Name:

Course of Study Leads to:

☐

Diploma

☐

Certificate of Completion

Provide a brief description of the program including entrance criteria and exit criteria for transition back to the public school setting, and specific services designed to address student needs as listed on the students' Individualized Education Programs (IEPs).

NPS05 – SERVICES AND FEES

Please provide information on all services for which you are seeking certification.

NPS Name:

Designated Instruction	Service Abbreviation	Fees	Time Allotment (per hour, day, or month)
Specially Designed Instruction (34 CFR § 300.39)	SDI/SAI	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Specially Designed Instruction – Extended School Year	SDI/SAI	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Related Services			
Adapted Physical Education (5 CCR § 3051.5)	APE	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Audiological Services (5 CCR § 3051.2)	AS	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Assistive Technology Service (5 CCR § 3051.19)	ATS	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Behavior Intervention–Design (5 CCR § 3051.23)	BID	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Behavior Intervention–Implementation (5 CCR § 3051.23)	BII	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Counseling and Guidance Services (5 CCR § 3051.9)	CG	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Related Services for the Deaf and Hard of Hearing (5 CCR § 3051.18)	DHH	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Early Education Programs (5 CCR § 3051.20)	EE	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Health and Nursing Services (5 CCR § 3051.12)	HNS	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Specialized Services for Low Incidence Disabilities (5 CCR § 3051.16)	LI	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Language, Speech and Hearing Development and Remediation (5 CCR § 3051.1)	LSDR	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Music Therapy (5 CCR § 3051.21)	MT	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Orientation and Mobility Instruction (5 CCR § 3051.3)	OM	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Occupational Therapy (5 CCR § 3051.6)	OT	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Parent Counseling and Training (5 CCR § 3051.11)	PCT	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Psychological Services Other Than Assessment and Development of the IEP (5 CCR § 3051.10)	PS	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Physical Therapy (5 CCR § 3051.6)	PT	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Recreation Services (5 CCR § 3051.15)	RS	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Social Worker Services (5 CCR § 3051.13)	SW	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Transcription Services (5 CCR § 3051.22)	TS	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Specially Designed Vocational Education and Career Development (5 CCR § 3051.14)	VECD	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Vision Services (5 CCR § 3051.7)	VS	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Vision Therapy (5 CCR § 3051.75)	VT	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Other Related Service (5 CCR § 3051.24)	OTH	<input style="width: 40px;" type="text"/>	<input style="width: 80px;" type="text"/>
Enter Other Related Service name(s): <input style="width: 490px;" type="text"/>			

NPS06 - CONTRACT INFORMATION

NPS Name:

[illegible]

NPS07a – CLASSROOM TEACHERS AND CLEARANCE INFORMATION

NPS Name:

Date of Submission:

This staff list should contain only classroom or substitute teachers. Include a copy of each credential.

[illegible]

**NPS07b – RELATED SERVICES LICENSED/CREDENTIALLED STAFF
AND CLEARANCE INFORMATION**

NPS Name: _____

Date of Submission:

This staff list should contain only staff whose position at the school requires a license or credential. This staff list should NOT contain paraprofessionals as those should be listed on NPS07c. Include licenses/credentials immediately after this form.

NPS Administrator Information

For NPS administrator qualifications requiring a credential and specific experience, include evidence of the relevant experience along with the qualifying credential as instructed above.

NPS Administrator Name	Related Service (BID, LSDR, etc.)	Type of License, Credential, or Degree	Expiration Date	Behavior Training Date	Hire Date	DOJ Date	TB Date

Related Services Provider Information

[illegible]

[illegible]

**Last Name, First Name
as shown on license or
credential)**

Related Service
(BID, LSDR, etc.)

**Expiration
Date**

**Hire
Date**

TB Date

NPS07c – NONLICENSED STAFF AND CLEARANCE INFORMATION

NPS Name:

Date of Submission:

This staff list should contain those staff who do not possess a license or credential. All staff who may potentially have contact with students during the school day should be included on this list (janitorial, secretarial, etc.). An individual who provides BII must be a high school (HS) graduate or equivalent. *Please do not submit copies of transcripts or high school diplomas.*

[illegible]

NPS07c – NONLICENSED STAFF AND CLEARANCE INFORMATION
(continued)

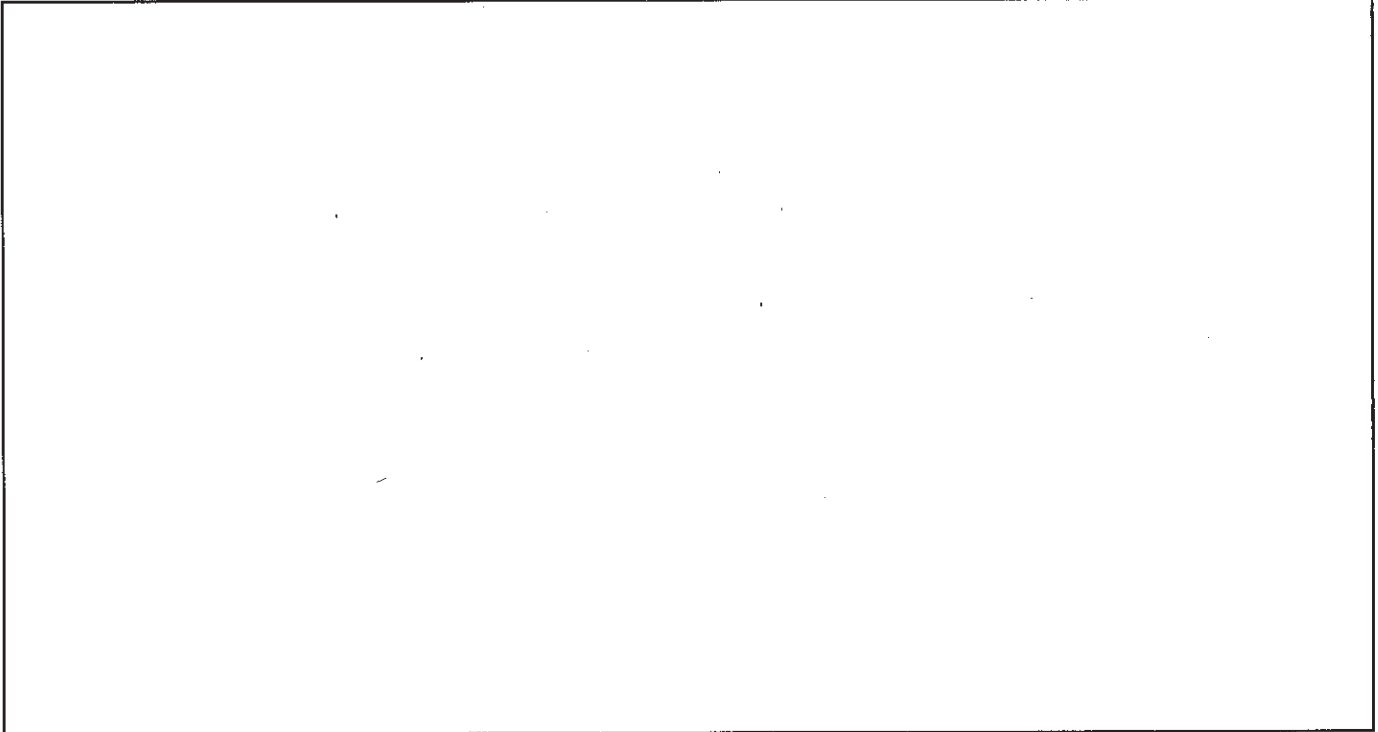
NPS Name:

Date of Submission: [illegible]

NPS08 – GEOGRAPHIC LOCATION

NPS Name:

Please provide written directions describing the location of the nonpublic school in reference to the nearest major airport. Include any major highways and landmarks. Also, please provide special instructions needed to find the school's main office, visitor check-in, and available parking. Include as an attachment a street map of the school's location.



NPS09 - NONPUBLIC SCHOOL ASSURANCE STATEMENT

NPS Name:

Pursuant to 5 CCR § 3060(d), the applicant shall submit a signed assurance statement that the nonpublic school will maintain compliance with the following:

- (1) Fair Employment Act;
- (2) Drug Free Workplace Act;
- (3) Section 504 of the Rehabilitation Act;
- (4) Individuals with Disabilities Education Act;
- (5) Civil Rights Act;
- (6) Nonsectarian status (as defined by 5 CCR § 3001(p), "Nonsectarian" means a private, nonpublic school or agency that is not owned, operated, controlled by, or formally affiliated with a religious group or sect, whatever might be the actual character of the education program or the primary purpose of the facility and whose articles of incorporation and/or by-laws stipulate that the assets of such agency or corporation will not inure to the benefit of a religious group);
- (7) Prohibition of Corporal Punishment of Pupils under *Education Code* section 49001; use of Positive Behavioral Interventions pursuant to *Education Code* sections 56520 through 56525;
- (8) OSHA Bloodborne Pathogens Standards;
- (9) all local, county, or state ordinances and/or statutes relating to fire, health, sanitation, and building safety;
- (10) use permit, conditional permit or zoning; and
- (11) other assurances as required by state or federal law set forth in an assurance statement in the nonpublic school or nonpublic agency application for certification.

As the NPS's authorized agent, I assure all information included in this application is true and accurate. I acknowledge the understanding that any violation of *Education Code* § 56366.4, may result in the suspension or revocation of the certification for the NPS.

Print Name of Authorized NPS Agent:

Signature of Authorized NPS Agent:

Title of Authorized NPS Agent:

Date Signed:

NPS10 - NONPUBLIC SCHOOL PROVIDER STATEMENT

California *Education Code* 56366.10

NPS Name:

In addition to the certification requirements set forth in Sections 56366 and 56366.1, a nonpublic, nonsectarian school that provides special education and related services to an individual with exceptional needs shall certify in writing to the Superintendent that it meets all of the following requirements:

(a) It will not accept a pupil with exceptional needs if it cannot provide or ensure the provision of the services outlined in the pupil's individualized education program.

(b) Pupils have access to the following educational materials, services, and programs that are consistent with each pupil's individualized education program:

(1) (A) For kindergarten and grades 1 to 8, inclusive, state-adopted, standards-based, core curriculum and instructional materials, including technology-based materials as defined in Section 60010.

(B) For grades 9 to 12, inclusive, standards-based, core curriculum and instructional materials, including technology-based materials as defined in Section 60010, used by any local educational agency that contracts with the nonpublic, nonsectarian school.

(2) College preparatory courses.

(3) Extracurricular activities, such as art, sports, music, and academic clubs.

(4) Career preparation and vocational training, consistent with transition plans pursuant to state and federal law.

(5) Supplemental assistance, including individual academic tutoring, psychological counseling, and career and college counseling.

(c) The teachers and staff provide academic instruction and support services to pupils with the goal of integrating pupils into the least restrictive environment pursuant to federal law.

(d) The school has and abides by a written policy for pupil discipline that is consistent with state and federal law and regulations.

(e) For a school serving pupils with significant behavioral needs or who are on behavioral intervention plans, the school has an individual onsite during school hours who is qualified, and responsible for the design, planning, and implementation of behavioral interventions, as authorized under Section 3051.23 of Title 5 of the California *Code of Regulations*.

(f) Commencing with the 2020–21 school year, the nonpublic, nonsectarian school provides annual training to all staff who have any contact or interaction with pupils during the schoolday. The training is also provided within 30 days of employment to new staff who have any contact or interaction with pupils during the schoolday. The nonpublic, nonsectarian school maintains written records of the training, and will provide written verification of the training upon request. The training shall comply with the requirements of subparagraphs (B) and (C) of paragraph (4) of subdivision (a) of Section 56366.1.

As the authorized administrator or designee of the NPS, I assure all the information included in this application is true and accurate. I acknowledge the understanding that any violations of EC § 56366.4, may result in the suspension or revocation of the certification for the NPS.

Print Name of Authorized NPS Agent:

Signature of Authorized NPS Agent:

Title of Authorized NPS Agent:

Date Signed:

NPS11 – SCHOOL YEAR CALENDAR AND SCHEDULES

NPS Name:

Pursuant to 5 CCR 3060(c)(19), the NPS shall provide a copy of the current school year calendar, weekly class schedule, and daily schedule with number of instructional minutes by each grade level served.

☐ 2022-23 School Year Calendar

☐ Weekly Class Schedule

☐ Daily Class Schedule

NPS12 – ANNUAL OPERATING BUDGET AND ATTESTATION

NPS Name:

Pursuant to 5 CCR § 3060(c)(12), a nonpublic, nonsectarian school that seeks certification shall include an annual operating budget, including projected costs and revenues for each school program, providing documentation that demonstrates that the rates to be charged are reasonable to support the operation of the school program.

Print Name of Authorized NPS Agent:

Signature of Authorized NPS Agent:

Title of Authorized NPS Agent:

Date Signed:

NPS13 – BUSINESS LICENSE

NPS Name:

Instructions: Pursuant to 5 CCR § 3060(c)(21)(A), submit a copy of the current business license for the property address along with this cover sheet. The business license must include the name and address of the proposed school site.

NPS14 – WRITTEN DISASTER PLAN

NPS Name:

Instructions: Pursuant to 5 CCR § 3060(c)(21)(B), submit a copy of the NPS's written emergency disaster plan of action along with this coversheet. Specifically, include fire and earthquake emergency procedures and any other emergency procedures that may affect the regular operation of the school.

NPS15 – MASS CASUALTY PLAN OF ACTION

NPS Name:

Instructions: Pursuant to 5 CCR § 3060(c)(21)(B), submit a copy of the NPS's written mass casualty plan of action along with this coversheet. The written plan of action identifies NPS staff that will respond to a mass casualty incident and assist in the coordination of any mutual aid response.

NPS16 – BUILDING SAFETY INSPECTION CLEARANCE

NPS Name:

Instructions: Pursuant to 5 CCR § 3060(c)(21)(C), all new or relocating NPS applications must include a copy of the building safety inspection clearance. The CDE does not provide a form template for this requirement. Contact the building department of the local jurisdiction to complete an inspection of the proposed site.

NPS17 – HEALTH INSPECTION CLEARANCE

NPS Name:

Instructions: Pursuant to 5 CCR § 3060(c)(21)(D), all new or relocating NPS applications must include a copy of the health inspection clearance consistent with local jurisdiction requirements. CDE does not provide a form template. Contact the local or state environmental health department to complete a health and safety inspection.

NPS18 – CERTIFICATION ASSURANCE STATEMENT

NPS Name:

I acknowledge that in accordance with *EC* § 56366.4, the Superintendent may revoke or suspend the certification of a nonpublic, nonsectarian school for any violation of *EC* § 56366.4 including, falsification or intentional misrepresentation of an element of the application, pupil records, or program presented for certification purposes.

I assure all information included in this application is true and accurate. I further assure the applicant will abide by contractual agreements with LEAs, and comply with all requirements of special education laws and regulations governing NPS certification and the provision of instruction, related services, and services to students with special needs.

Print Name of Authorized NPS Agent:

Signature of Authorized NPS Agent:

Title of Authorized NPS Agent:

Date Signed:

Exhibit B

CALIFORNIA CERTIFICATION APPLICATION

NPS01R – NEW RESIDENTIAL NONPUBLIC, NONSECTARIAN SCHOOL

Date of Submission: If Revised, Application Revision Date:

NONPUBLIC SCHOOL INFORMATION

Name of School:	CDS Code:
School Address:	
City:	State: Zip: Fax:
School Administrator Name:	Phone:
School Administrator E-mail Address:	
On-Site Contact Name:	Phone:
On-Site Contact E-mail Address:	

NONPUBLIC SCHOOL DEMOGRAPHIC INFORMATION

Gender(s) Served:	
Grade Levels Served:	Student Age Ranges Served:
Total Student Capacity:	Number of Certified Classrooms:

NONPUBLIC SCHOOL PROGRAM – PRIMARY DISABLING CONDITIONS SERVED

Check the appropriate box to indicate each Primary Disabling Condition the NPS serves.

<input type="checkbox"/> Autism (AUT)	<input type="checkbox"/> Hard of Hearing (HH)	<input type="checkbox"/> Orthopedic Impairment (OI)
<input type="checkbox"/> Deaf-Blindness (DB)	<input type="checkbox"/> Hearing Impairment (HI)	<input type="checkbox"/> Specific Learning Disability (SLD)
<input type="checkbox"/> Deafness (DEAF)	<input type="checkbox"/> Intellectual Disability (ID)	<input type="checkbox"/> Speech/Language Impairment (SLI)
<input type="checkbox"/> Emotional Disturbance (ED)	<input type="checkbox"/> Multiple Disabilities (MD)	<input type="checkbox"/> Traumatic Brain Injury (TBI)
<input type="checkbox"/> Established Medical Disability (EMD)	<input type="checkbox"/> Other Health Impairment (OHI)	<input type="checkbox"/> Visual Impairment (VI)

Check if a residential program is affiliated with the NPS:	Program Name(s):
--	------------------

APPLICATION FEES

Check the appropriate box to indicate the total student capacity of the NPS:

Total Student Capacity	Application Fee
<input type="checkbox"/> 1–5 Students	<input type="checkbox"/> \$485.00
<input type="checkbox"/> 6–10 Students	<input type="checkbox"/> \$815.00
<input type="checkbox"/> 11–24 Students	<input type="checkbox"/> \$1,630.00
<input type="checkbox"/> 25–75 Students	<input type="checkbox"/> \$2,445.00
<input type="checkbox"/> 76 or More Students	<input type="checkbox"/> \$3,260.00

Application fees are nonrefundable pursuant to California Education Code Section 56366.1(m).

FILING INSTRUCTIONS

Mail the completed NPS01R form and check payable to the California Department of Education to the following address:

California Department of Education
Special Education Division
Focused Monitoring and Technical Assistance Unit VI
1430 N Street, Room 2401
Sacramento, CA 95814-5901

CALIFORNIA DEPARTMENT OF EDUCATION USE ONLY

Check#:	Amount Paid:	Date Received	Assigned Staff:
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NPS02R – SPECIAL EDUCATION LOCAL PLAN AREA NOTIFICATION AND VERIFICATION

Intent to Apply for Nonpublic School Certification

NPS Name:

This form is not required for out-of-state schools

Pursuant to California Education Code (EC) § 56366.1:

(b)(1) The applicant shall provide the special education local plan area (SELPA) in which the applicant is located with the written notification of its intent to seek certification or renewal of its certification. The local educational agency (LEA) representatives shall acknowledge that they have been notified of the intent to certify or renew certification. The acknowledgment shall include a statement that representatives of the local educational agency for the area in which the applicant is located have had the opportunity to review the application at least 60 calendar days before submission of an initial application to the Superintendent, or at least 30 calendar days before submission of a renewal application to the Superintendent. The acknowledgment shall provide assurances that local educational agency representatives have had the opportunity to provide input on all required components of the application.

(2) If the local educational agency has not acknowledged an applicant's intent to be certified 60 calendar days from the date of submission for initial applications or 30 calendar days from the date of the return receipt for renewal applications, the applicant may file the application with the Superintendent.

SELPA Use Only

As the representative of the SELPA in which the NPS is located, I attest I have been notified of the intent of the NPS named above to be certified by the California Department of Education (CDE) as a NPS providing services for individuals with exceptional needs. The NPS has provided the opportunity to review and provide input on all components of the application.

Name of SELPA:

Date NPS application was sent to SELPA:

Printed name of SELPA Representative:

Signature of SELPA Representative:

Date signed by SELPA Representative:

SELPA Comments:

NPS03R – FIRE INSPECTION CLEARANCE AND ASSURANCE STATEMENT

NPS Name:

Instructions: Pursuant to Title 5 of the *California Code of Regulations (CCR)* § 3060 (c)(20), submit a copy of the fire inspection clearance completed within the last 12 months.

Assurance Statement

Pursuant to *EC* § 56366.1(o), as the authorized agent of the NPS, I assure the NPS meets all applicable standards relating to fire, health, sanitation, and building safety.

Print Name of Authorized NPS Agent:

Signature of Authorized NPS Agent:

Title of Authorized NPS Agent:

Date Signed:

NPS04R – PROGRAM AND SERVICE DESCRIPTION

NPS Name:

Course of Study Leads to: ☐ Diploma ☐ Certificate of Completion

Provide a brief description of the program including entrance criteria and exit criteria for transition back to the public school setting, and specific services designed to address student needs as listed on the students' Individualized Education Programs (IEPs):

NPS04R – PROGRAM AND SERVICE DESCRIPTION

Describe the relationship between the various entities operated by the same entity and define the responsibilities of each entity. The description shall clearly identify the services to be provided as part of each program, for example, the residential program, medical program, mental health program, and educational program.

NPS05R – SERVICES AND FEES

Please provide information on all services for which you are seeking certification.

NPS Name:

Designated Instruction	Service Abbreviation	Fees	Time Allotment (per hour, day, or month)
Specially Designed Instruction (34 CFR § 300.39)	SDI/SAI		
Specially Designed Instruction – Extended School Year	SDI/SAI		
Related Services			
Adapted Physical Education (5 CCR § 3051.5)	APE		
Audiological Services (5 CCR § 3051.2)	AS		
Assistive Technology Service (5 CCR § 3051.19)	ATS		
Behavior Intervention–Design (5 CCR § 3051.23)	BID		
Behavior Intervention–Implementation (5 CCR § 3051.23)	BII		
Counseling and Guidance Services (5 CCR § 3051.9)	CG		
Related Services for the Deaf and Hard of Hearing (5 CCR § 3051.18)	DHH		
Early Education Programs (5 CCR § 3051.20)	EE		
Health and Nursing Services (5 CCR § 3051.12)	HNS		
Specialized Services for Low Incidence Disabilities (5 CCR § 3051.16)	LI		
Language, Speech and Hearing Development and Remediation (5 CCR § 3051.1)	LSDR		
Music Therapy (5 CCR § 3051.21)	MT		
Orientation and Mobility Instruction (5 CCR § 3051.3)	OM		
Occupational Therapy (5 CCR § 3051.6)	OT		
Parent Counseling and Training (5 CCR § 3051.11)	PCT		
Psychological Services Other Than Assessment and Development of the IEP (5 CCR § 3051.10)	PS		
Physical Therapy (5 CCR § 3051.6)	PT		
Recreation Services (5 CCR § 3051.15)	RS		
Social Worker Services (5 CCR § 3051.13)	SW		
Transcription Services (5 CCR § 3051.22)	TS		
Specially Designed Vocational Education and Career Development (5 CCR § 3051.14)	VECD		
Vision Services (5 CCR § 3051.7)	VS		
Vision Therapy (5 CCR § 3051.75)	VT		
Other Related Service (5 CCR § 3051.24)	OTH		
Enter Other Related Service name(s): 			

NPS06R - CONTRACT INFORMATION

NPS Name:

[illegible]

NPS07R(a) – CLASSROOM TEACHERS AND CLEARANCE INFORMATION

NPS Name: _____

Date of Submission:

This staff list should contain only classroom or substitute teachers. Include a copy of each credential.

[illegible]

**NPS07R(b) – RELATED SERVICES LICENSED/CREDENTIALLED STAFF AND
CLEARANCE INFORMATION**

NPS Name: _____

Date of Submission:

This staff list should contain only staff whose position at the school requires a license or credential. This staff list should NOT contain paraprofessionals as those should be listed on NPS07R(c). Include licenses/credentials immediately after this form.

NPS Administrator Information							
For NPS administrator qualifications requiring a credential and specific experience, include evidence of the relevant experience along with the qualifying credential as instructed above.							
NPS Administrator Name	Related Service (BID, LSDR, etc.)	Type of License, Credential, or Degree	Expiration Date	Behavior Training Date	Hire Date	DOJ Date	TB Date

[illegible]

[illegible]

NPS07R(c) – NONLICENSED STAFF AND CLEARANCE INFORMATION

NPS Name: _____

Date of Submission:

This staff list should contain those staff who do not possess a license or credential. All staff who may potentially have contact with students during the school day should be included on this list (janitorial, secretarial, etc.). An individual who provides BII must be a high school (HS) graduate or equivalent. *Please do not submit copies of transcripts or high school diplomas.*

[illegible]

NPS07R(c) – NONLICENSED STAFF AND CLEARANCE INFORMATION (continued)

NPS Name:

Date of Submission: [illegible]

NPS08R – GEOGRAPHIC LOCATION

NPS Name:

Please provide written directions describing the location of the nonpublic school in reference to the nearest major airport. Include any major highways and landmarks. Also, please provide special instructions needed to find the school's main office, visitor check-in, and available parking. Include as an attachment a street map of the school's location.

NPS09R - NONPUBLIC SCHOOL ASSURANCE STATEMENT

NPS Name:

Pursuant to 5 CCR § 3060(d), the applicant shall submit a signed assurance statement that the nonpublic school will maintain compliance with the following:

- (1) Fair Employment Act;
- (2) Drug Free Workplace Act;
- (3) Section 504 of the Rehabilitation Act;
- (4) Individuals with Disabilities Education Act;
- (5) Civil Rights Act;
- (6) Nonsectarian status (as defined by 5 CCR § 3001(p), "Nonsectarian" means a private, nonpublic school or agency that is not owned, operated, controlled by, or formally affiliated with a religious group or sect, whatever might be the actual character of the education program or the primary purpose of the facility and whose articles of incorporation and/or by-laws stipulate that the assets of such agency or corporation will not inure to the benefit of a religious group);
- (7) Prohibition of Corporal Punishment of Pupils under *Education Code* section 49001; use of Positive Behavioral Interventions pursuant to *Education Code* sections 56520 through 56525;
- (8) OSHA Bloodborne Pathogens Standards;
- (9) all local, county, or state ordinances and/or statutes relating to fire, health, sanitation, and building safety;
- (10) use permit, conditional permit or zoning; and
- (11) other assurances as required by state or federal law set forth in an assurance statement in the nonpublic school or nonpublic agency application for certification.

As the NPS's authorized agent, I assure all information included in this application is true and accurate. I acknowledge the understanding that any violation of *Education Code* § 56366.4, may result in the suspension or revocation of the certification for the NPS.

Print Name of Authorized NPS Agent:

Signature of Authorized NPS Agent:

Title of Authorized NPS Agent:

Date Signed:

NPS10R - NONPUBLIC SCHOOL PROVIDER STATEMENT

California Education Code 56366.10

NPS Name:

In addition to the certification requirements set forth in Sections 56366 and 56366.1, a nonpublic, nonsectarian school that provides special education and related services to an individual with exceptional needs shall certify in writing to the Superintendent that it meets all of the following requirements:

- (a) It will not accept a pupil with exceptional needs if it cannot provide or ensure the provision of the services outlined in the pupil's individualized education program.
- (b) Pupils have access to the following educational materials, services, and programs that are consistent with each pupil's individualized education program:
 - (1) (A) For kindergarten and grades 1 to 8, inclusive, state-adopted, standards-based, core curriculum and instructional materials, including technology-based materials as defined in Section 60010.
 - (B) For grades 9 to 12, inclusive, standards-based, core curriculum and instructional materials, including technology-based materials as defined in Section 60010, used by any local educational agency that contracts with the nonpublic, nonsectarian school.
- (2) College preparatory courses.
- (3) Extracurricular activities, such as art, sports, music, and academic clubs.
- (4) Career preparation and vocational training, consistent with transition plans pursuant to state and federal law.
- (5) Supplemental assistance, including individual academic tutoring, psychological counseling, and career and college counseling.
- (c) The teachers and staff provide academic instruction and support services to pupils with the goal of integrating pupils into the least restrictive environment pursuant to federal law.
- (d) The school has and abides by a written policy for pupil discipline that is consistent with state and federal law and regulations.
- (e) For a school serving pupils with significant behavioral needs or who are on behavioral intervention plans, the school has an individual onsite during school hours who is qualified, and responsible for the design, planning, and implementation of behavioral interventions, as authorized under Section 3051.23 of Title 5 of the California *Code of Regulations*.
- (f) Commencing with the 2020–21 school year, the nonpublic, nonsectarian school provides annual training to all staff who have any contact or interaction with pupils during the schoolday. The training is also provided within 30 days of employment to new staff who have any contact or interaction with pupils during the schoolday. The nonpublic, nonsectarian school maintains written records of the training, and will provide written verification of the training upon request. The training shall comply with the requirements of subparagraphs (B) and (C) of paragraph (4) of subdivision (a) of Section 56366.1.

As the authorized administrator or designee of the NPS, I assure all the information included in this application is true and accurate. I acknowledge the understanding that any violations of EC § 56366.4, may result in the suspension or revocation of the certification for the NPS.

Print Name of Authorized NPS Agent:

Signature of Authorized NPS Agent:

Title of Authorized NPS Agent:

Date Signed:

NPS11R – SCHOOL YEAR CALENDAR AND SCHEDULES

NPS Name:

Pursuant to 5 CCR 3060(c)(19), the NPS shall provide a copy of the current school year calendar, weekly class schedule, and daily schedule with number of instructional minutes by each grade level served.

☐ 2022-23 School Year Calendar

☐ Weekly Class Schedule

☐ Daily Class Schedule

NPS12R – ANNUAL OPERATING BUDGET AND ATTESTATION

NPS Name:

Pursuant to 5 CCR § 3060(c)(12), a nonpublic, nonsectarian school that seeks certification shall include an annual operating budget, including projected costs and revenues for each school program, providing documentation that demonstrates that the rates to be charged are reasonable to support the operation of the school program.

Pursuant to EC § 56366.1(l) (1)(A) The entity operating the nonpublic, nonsectarian school maintains separate financial records for each entity that it operates, with each nonpublic, nonsectarian school identified separately from any licensed children's institution that it operates.

Pursuant to EC § 56366.1(l) (1)(B) The entity submits an annual budget that identifies the projected costs and revenues for each entity and demonstrates that the rates to be charged are reasonable to support the operation of the entity.

Instructions: Submit with this cover sheet the NPS's current annual operating budget(s), and sign the proceeding attestation.

Attestation

As the NPS Administrator or the designated NPS Financial Representative, by my signature I attest the NPS shall not seek funding from a public agency for a service, either separately or as part of a package of services, if the service is funded by another public agency, either separately or as part of a package of services.

Print Name of Authorized NPS Agent:

Signature of Authorized NPS Agent:

Title of Authorized NPS Agent:

Date Signed:

NPS13R – ENTITY-WIDE ANNUAL AUDIT AND ATTESTATION

Required for all NPSs that are affiliated with residential or Licensed Children's Institution programs

NPS Name:

Pursuant to EC 56366.1(f)(1), and 5 CCR 3060(c)(13), a nonpublic, nonsectarian school or agency that seeks certification shall include an entity-wide audit in accordance with generally accepted accounting and auditing principles including each entity's costs and revenues by individual cost center.

Instructions: Submit with this cover sheet the NPS's current annual entity-wide audit(s), and sign the proceeding attestation.

EC § 56366.1

(f)(1) Notwithstanding any other law, the Superintendent shall not certify or renew the certification of a nonpublic, nonsectarian school that also operates a licensed children's institution, unless all of the following conditions are met:

(A) The entity operating the nonpublic, nonsectarian school maintains separate financial records for each entity that it operates, with each nonpublic, nonsectarian school identified separately from any licensed children's institution that it operates.

(B) The entity submits an annual budget that identifies the projected costs and revenues for each entity and demonstrates that the rates to be charged are reasonable to support the operation of the entity.

(C) The entity submits an entity-wide annual audit that identifies its costs and revenues, by entity, in accordance with generally accepted accounting and auditing principles. The audit shall clearly document the amount of moneys received and expended on the educational program provided by the nonpublic, nonsectarian school.

(D) The relationship between various entities operated by the same entity are documented, defining the responsibilities of the entities. The documentation shall clearly identify the services to be provided as part of each program, for example, the residential or medical program, the mental health program, or the educational program. The entity shall not seek funding from a public agency for a service, either separately or as part of a package of services, if the service is funded by another public agency, either separately or as part of a package of services.

Maintenance of Financial Records Attestation:

As the NPS Administrator or the designated NPS Financial Representative, by my signature I attest the entity operating the nonpublic, nonsectarian school maintains separate financial records for each entity that it operates, with each nonpublic, nonsectarian school identified separately from any Licensed Children's Institution (LCI) that it operates.

Print Name of Authorized NPS Agent:

Signature of Authorized NPS Agent:

Title of Authorized NPS Agent: Date Signed:

NPS14R - RESIDENTIAL AND LCI PROGRAM INFORMATION

Proprietary Status

NPS Name:

Instructions: In the spaces provided below, list each residential or LCI program affiliated with the NPS. For each program listed, include with this form a copy of the current license(s) and certification(s).

Name of Residential or LCI Program Affiliated with the NPS	Certifying Body	Proprietary Status Issued by Certifying Body (type of program)	Total Student Capacity

NPS15R – LOCAL STATE CERTIFICATION

NPS Name:

This form is required only for an out-of-state NPS

Instructions: Pursuant to 5 CCR § 3060(c)(18), submit a copy of the current certification or license, issued by the state education agency in which the NPS is located, to provide education services to individuals with exceptional needs under the Individuals with Disabilities Education Act.

NPS16R – BUSINESS LICENSE

NPS Name:

Instructions: Pursuant to 5 CCR § 3060(c)(21)(A), submit a copy of the current business license for the property address along with this cover sheet. The business license must include the name and address of the proposed school site.

NPS17R – WRITTEN DISASTER PLAN

NPS Name:

Instructions: Pursuant to 5 CCR § 3060(c)(21)(B), submit a copy of the NPS's written emergency disaster plan of action along with this coversheet. Specifically, include fire and earthquake emergency procedures and any other emergency procedures that may affect the regular operation of the school.

NPS18R – MASS CASUALTY PLAN OF ACTION

NPS Name:

Instructions: Pursuant to 5 CCR § 3060(c)(21)(B), submit a copy of the NPS's written mass casualty plan of action along with this coversheet. The written plan of action identifies NPS staff that will respond to a mass casualty incident and assist in the coordination of any mutual aid response.

NPS19R – BUILDING SAFETY INSPECTION CLEARANCE

NPS Name:

Instructions: Pursuant to 5 CCR § 3060(c)(21)(C), all new or relocating NPS applications must include a copy of the building safety inspection clearance. The CDE does not provide a form template for this requirement. Contact the building department of the local jurisdiction to complete an inspection of the proposed site.

NPS20R – HEALTH INSPECTION CLEARANCE

NPS Name:

Instructions: Pursuant to 5 CCR § 3060(c)(21)(D), all new or relocating NPS applications must include a copy of the health inspection clearance consistent with local jurisdiction requirements. CDE does not provide a form template. Contact the local or state environmental health department to complete a health and safety inspection.

NPS21R – CERTIFICATION ASSURANCE STATEMENT

NPS Name:

I acknowledge that pursuant to *EC* § 56366.4, the Superintendent may revoke or suspend the certification of a nonpublic, nonsectarian school for any violation of *EC* § 56366.4 including, falsification or intentional misrepresentation of an element of the application, pupil records, or program presented for certification purposes.

I assure all information included in this application is true and accurate. I further assure the applicant will abide by contractual agreements with LEAs, and comply with all requirements of special education laws and regulations governing NPS certification and the provision of instruction, related services, and services to students with special needs.

Print Name of Authorized NPS Agent:

Signature of Authorized NPS Agent:

Title of Authorized NPS Agent:

Date Signed:

Exhibit 7

Eric C. Rassbach (CA SBN 288041)
erassbach@becketlaw.org
Daniel L. Chen (CA SBN 312576)
Laura Wolk Slavis (DC Bar No. 1643193)
Brandon L. Winchel* (CA SBN 344719)
The Becket Fund for Religious Liberty
1919 Pennsylvania Ave., Suite 400
Washington, DC 20006
202-955-0095 tel. / 202-955-0090 fax

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHAYA LOFFMAN and JONATHAN
LOFFMAN, on their own behalf and on behalf of
their minor child M.L.; FEDORA NICK and
MORRIS TAXON, on their own behalf and on
behalf of their minor child K.T.; SARAH
PERETS and ARIEL PERETS, on their own
behalf and on behalf of their minor child N.P.;
JEAN & JERRY FRIEDMAN SHALHEVET
HIGH SCHOOL; and SAMUEL A. FRYER
YAVNEH HEBREW ACADEMY,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
EDUCATION; TONY THURMOND, in his
official capacity as Superintendent of Public
Instruction; LOS ANGELES UNIFIED
SCHOOL DISTRICT; and ANTHONY
AGUILAR, in his official capacity as Chief of
Special Education, Equity, and Access,

Defendants.

Case No.:

2:23-cv-01832-JLS-MRW

**DECLARATION OF RONALD
NAGEL, M.D. IN SUPPORT
OF PLAINTIFFS' MOTION
FOR A PRELIMINARY
INJUNCTION**

Date: July 21, 2023

Time: 10:30am

Courtroom: 8A

Judge: Hon. Josephine L. Staton

* Not a member of the D.C. Bar; admitted in
California. Practice limited to cases in federal court.

1 I, Ronald A. Nagel, declare and state as follows:

2 1. My name is Ronald A. Nagel. I am over the age of 18 and am capable of
3 making this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge of
4 all of the contents of this declaration.

5 2. I am a double board-certified physician in Pediatrics and Pediatric
6 Endocrinology. I earned my bachelor's degree from UCLA and then graduated from
7 the Albert Einstein College of Medicine in New York City. I completed my pediatric
8 residency at Jacobi Medical Center/Albert Einstein College of Medicine, followed
9 by a two-year pediatric endocrine fellowship at UCLA Medical Center.

10 3. After completing my fellowship, I entered private practice in the Los Angeles
11 area, where I have practiced for nearly four decades. In addition to my pediatric
12 practice, I lecture medical students and residents as an Associate Clinical Professor
13 of Pediatrics at the David Geffen School of Medicine at UCLA. I previously served
14 as president of the Los Angeles Pediatric Society, and I help coordinate their
15 continuing medical education program. I have been recognized as a Super Doctor by
16 the Southern California Magazine for over 10 years.

17 4. During my many years of practice, I have had first-hand experience treating
18 many Orthodox Jewish children, including Orthodox Jewish children with
19 disabilities.

20 5. Many of the Orthodox Jewish children with disabilities that I treat receive
21 their education through public schools. Based on my experience, I believe that
22 requiring Orthodox Jewish children with disabilities to remain in public school—
23 where they cannot receive an education tailored to their religious beliefs—prevents

1 many children from reaching their full potential and undermines their overall health.

2 6. So much of a child's education is dependent on having self-confidence, pride,
3 and dignity. Those values are facilitated when a child with a disability is integrated
4 into both her community and her family unit by attending the same school as her
5 friends and siblings. When an Orthodox Jewish child with disabilities has no option
6 but to attend a public school in order to receive special-education services, the
7 integration into the family and community is broken, causing feelings of isolation
8 and low self-esteem in the child. Additionally, the child's understanding and
9 participation in Jewish rituals and religious practices, which are not taught in a public
10 school, also suffer. In one instance, to help ameliorate feelings of isolation and create
11 a sense of integration, a Jewish child who had no choice but to attend public school
12 insisted on wearing the uniform of the Yeshiva his siblings attended.

13 7. Of course, services like speech therapy, occupational therapy, and physical
14 therapy are provided in public schools, but they are not integrated within Jewish
15 customs and beliefs. So when a child can only receive the special-education services
16 she needs through a public school, that makes it far more difficult for that child to
17 be able to integrate with her family and practice the Jewish religious beliefs that are
18 essential to her self-identity.

19 8. Also, when Orthodox Jewish children are compelled to attend public school,
20 the special education they receive is oftentimes sub-par in the sense that they must
21 miss a lot of school for religious holidays like Rosh Hashanah, Passover, and Sukkot
22 that are not observed in public schools.

23 9. I have also treated Orthodox Jewish children with disabilities whose personal

1 circumstances allow them to receive a religious education. In many of these
2 situations, I have observed that a religious education helps these children
3 developmentally—especially with integration in their religious communities.

4 10. This problem has also negatively affected the family members of Orthodox
5 Jewish children with disabilities. I personally know of Jewish families who have
6 moved out of California to places that they believed better supported their ability to
7 educate their children at Orthodox Jewish schools, while also allowing them to
8 access special-education services and funding more easily.

9 11. Based on my experience in treating Orthodox Jewish children with
10 disabilities, in my opinion it is in the best interests of Orthodox Jewish families to
11 be free to decide for themselves whether to send their children to Orthodox Jewish
12 religious schools or public schools. Compelling these children to attend public
13 schools instead of religious schools can lead to negative psychological outcomes. In
14 my experience, outcomes for these children with disabilities are better when their
15 parents are allowed to choose what mode of education best fits their needs.

16 I declare under penalty of perjury that the foregoing is true and correct.
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1 Executed on this 17 day of May, 2023.

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4 Ronald A. Nagel, M.D.
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DECLARATION OF RONALD A. NAGEL, M.D.

1 **UNITED STATES DISTRICT COURT**
2 **CENTRAL DISTRICT OF CALIFORNIA**

3 CHAYA LOFFMAN and JONATHAN
4 LOFFMAN, on their own behalf and on behalf of
5 their minor child M.L.; FEDORA NICK and
6 MORRIS TAXON, on their own behalf and on
7 behalf of their minor child K.T.; SARAH
8 PERETS and ARIEL PERETS, on their own
9 behalf and on behalf of their minor child N.P.;
10 JEAN & JERRY FRIEDMAN SHALHEVET
11 HIGH SCHOOL; and SAMUEL A. FRYER
12 YAVNEH HEBREW ACADEMY,

13 Plaintiffs,

14 v.

15 CALIFORNIA DEPARTMENT OF
16 EDUCATION; TONY THURMOND, in his
17 official capacity as Superintendent of Public
18 Instruction; LOS ANGELES UNIFIED
19 SCHOOL DISTRICT; and ANTHONY
20 AGUILAR, in his official capacity as Chief of
21 Special Education, Equity, and Access,

22 Defendants.
23

Case No.:

2:23-cv-01832-JLS-MRW

**[PROPOSED] ORDER
GRANTING PLAINTIFFS'
MOTION FOR
PRELIMINARY
INJUNCTION**

Date: July 21, 2023

Time: 10:30am

Courtroom: 8A

Judge: Hon. Josephine L. Staton

1 THIS MATTER comes before the Court on Plaintiffs’ motion for a preliminary
2 injunction. Having reviewed the papers filed in support of and in opposition to this
3 motion, as well as all supporting declarations, the Court hereby GRANTS Plaintiffs’
4 motion for a preliminary injunction.

5 Plaintiffs have demonstrated a likelihood of success on the merits of their claims
6 under the Free Exercise Clause of the First Amendment to the United States
7 Constitution (Counts I and III), as well as their claim under the unconstitutional
8 conditions doctrine (Count V). Additionally, Plaintiffs have shown that without relief
9 they would suffer irreparable harm, and that the harms to their rights outweigh any harm
10 to the Defendants’ interests. Further, the public interest favors the protection of
11 Plaintiffs’ First Amendment rights. It is hereby ORDERED:

12 1. The Court DECLARES that the “nonsectarian” requirements in Cal. Educ. Code
13 §§ 56365 and 56366 are unconstitutional both on their face and as applied to Plaintiffs.

14 2. Defendants are ENJOINED from excluding religious schools from eligibility as
15 nonpublic schools or from the ability to receive the public funding available to certified
16 nonpublic schools.

17 3. Defendants are ENJOINED from requiring religious schools to attest to their
18 “nonsectarian status” as part of the application process to become certified as a
19 nonpublic school, including specifically on the forms entitled (a) California
20 Certification Application: New Nonpublic, Nonsectarian School; and (b) California
21 Certification Application: New Residential Nonpublic, Nonsectarian School.

22 4. This preliminary injunction shall take effect immediately and shall remain in
23 effect pending trial in this action or further order of this Court.

1 5. This Court has exercised its discretion to determine that no bond shall be required.

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3 IT IS SO ORDERED.

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5 Dated: _____

6 The Honorable Josephine L. Staton
7 United States District Judge
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