

1 UNITED STATES HOUSE OF REPRESENTATIVES

2 LAQUANA A., individually and as next of
3 friend of minor child M.M.,

4 THE ADVOCACY INSTITUTE,

5 ALICIA B., individually and as next of
6 friend of minor child J.H.,

7 BOSTON TEACHERS UNION,

8 EDUCATION AUSTIN,

9 TIFFANY G., individually and as next of
10 friend of minor child I.G.,

11 ANNA H., individually and as next of
12 friend of minor children Z.H., B.H. and
L.I.,

13 EVELYN P., individually and as next of
14 friend of student D.P.,

15 MADISON TEACHERS INC.,

16 MILWAUKEE TEACHERS'
17 EDUCATION ASSOCIATION,

18 OAKLAND EDUCATION
19 ASSOCIATION,

20 MANUELA P., individually and as next of
friend of minor child A.P.,

21 MARTHA S., individually and as next of
22 friend of minor child J.S.,

23 PERLA S., individually and as next friend
24 of student A.S.,

25 and

26 UNITED TEACHERS LOS ANGELES,

27 Petitioners,
28

**PUBLIC COMMENT ON MAY 6, 2021
HOUSE COMMITTEE ON
EDUCATION AND LABOR HEARING
ON ADDRESSING THE IMPACT OF
COVID-19 ON STUDENTS WITH
DISABILITIES**

Filed Concurrently with the Executive
Summary of the Expert Report by the
Center for Civil Rights Remedies at the
Civil Rights Project at the University of
California, Los Angeles

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1 *“I had to try to adapt. I had to fit into this world that wasn’t built for me.”*
2 – Jimmy Lebrecht, Sound Designer and Disability Rights Activist

3 **I. INTRODUCTION**

4 1. The COVID-19 pandemic has impacted everyone on the planet, but its short-
5 term and long-term impact is not equally borne by all. On March 23, 2021, a broad-based
6 coalition of educators’ unions, parents of students with disabilities, and a disability rights
7 advocacy group, the Advocacy Institute, joined in filing a Petition for Guidance
8 Documents on behalf of students of color with disabilities and all similarly-situated
9 students who were entitled to, and denied, special education services, accommodations in
10 general education, and other related services during the pandemic to ensure attention is
11 provided to this often forgotten group when schools fully reopen and the nation emerges
12 from the pandemic. Today, the Coalition files this comment to join the official record of
13 the House Education and Labor Committee hearing on addressing the impact of COVID-
14 19 pandemic on students with disabilities, focusing particularly on students of color with
15 disabilities.

16 2. In Spring 2020, nearly all students in the United States switched to remote
17 learning. While this change in education impacted all, the ability to continue to learn
18 during these tumultuous times depended greatly on the resources available to and potential
19 obstacles facing the student, including whether they have a disability and whether they had
20 access to aids, resources, and services. As demonstrated in the concurrently-filed
21 Executive Summary to the Expert Report published by the Center for Civil Rights
22 Remedies of the Civil Rights Project at the University of California, Los Angeles (“CCRR
23 Expert Report”), the students most burdened by inequities in access to educational
24 resources are students of color with disabilities. Starting from the enactment of the
25 Individuals with Disabilities in Education Act (“IDEA”), 20 U.S.C. §§ 1400 *et seq.*, our
26 federal legal system purported to ensure a free and appropriate education (“FAPE”) to
27 students with disabilities, but in reality, IDEA has been chronically underfunded since its
28 inception. As the CCRR Expert Report details, there are increasing numbers of students

1 with disabilities who are part of the general education population, and for whom schools
2 are required to provide supports and services pursuant to Section 504 of the Rehabilitation
3 Act of 1973 (“Section 504”) to address a wide range of disabilities related to physical and
4 mental health, including those experiencing trauma, and yet no federal funds have ever
5 been provided to ensure their needs can be met. By failing to provide sufficient resources
6 to meet the needs of all students with disabilities, federal policymakers have undermined
7 school districts’ duty to provide a FAPE for every student.

8 3. The Department of Education (“Department” or “Agency”), under former
9 Secretary of Education Betsy DeVos, further aggravated the negative impacts of chronic
10 underfunding through its failure to issue any meaningful guidance documents to ensure
11 students with disabilities were educated during the pandemic. In the context of the
12 pandemic, that basic and persistent shortfall has been deepened by the failure to provide
13 additional funding to support home-based resources to compensate for the changed
14 instructional model implemented to keep students and teachers safe. This confluence of
15 systemic and emergent failures to meet need with responsive proportionate resources has
16 reached a crisis that requires immediate intervention by the Department under Secretary of
17 Education Miguel Cardona. The Department is now uniquely positioned to confront
18 decades of educational inequity head-on. The pandemic exposed deep fissures in our
19 educational system, bringing into clear view the ways in which students of color with
20 disabilities have been profoundly underserved by previous administrations. The problems
21 that Secretary Cardona has inherited are in no way new, but with the resources recently
22 made available by Congress, this Administration has the opportunity to finally undertake a
23 committed and deliberate effort to ensure that all students—regardless of color and
24 disability—have access to the resources needed to learn and thrive. Congress must look to
25 ensuring the Department of Education has adequate resources to monitor and prosecute
26 civil rights violations occurring in districts across the country.

27 4. In recent months, several class action lawsuits alleging FAPE denial have
28 been filed, often blaming remote learning as the problem and seeking remedies for those

1 students whose parents or guardians are able to sue for relief. But the problem is much
2 larger and more entrenched than the remedial scope of these lawsuits. The Coalition
3 requests Congress to provide funding so that the Department can exercise its full authority
4 to evaluate and redress these longstanding systematic failings. Guidance from the
5 Department is particularly critical as millions of students are returning to in-person
6 instruction for the first time in over a year and educators are facing the unprecedented task
7 of reconnecting students to an in-person school community, assessing students’ social and
8 emotional well-being, and determining the best way to meet students’ mental health and
9 learning needs after this unprecedented year. Meeting those needs will require
10 extraordinary investments in both personnel and supports for students—particularly
11 students of color with disabilities. Congress recognized that when passing the historic
12 American Rescue Plan (“ARP”) Act—with its largest ever one-time investment in public
13 education. But those one-time funds are insufficient to readdress decades of systemic
14 underfunding of private education for students with disabilities.

15 5. The parents, teachers, unions, and the Advocacy Institute, who joined
16 together to file its Petition with Department of Education, are primarily concerned about
17 how the confluence of severe resource shortages, inadequate training, and the increase in
18 teacher retirements are causing a depletion of the supply of those qualified to deliver
19 special education services nationally in the face of a sharp increase in need. The Coalition
20 seeks to shine a light on the problem’s source—a yet-to-be realized longstanding promise
21 from the federal government. While Congress has passed laws, such as the IDEA and
22 Section 504, it has provided less than half the promised funding for the former and no
23 funding to school districts to ensure compliance with the latter’s legal obligations (e.g.
24 providing accommodations or timely evaluations).

25 6. The Coalition does not target any particular district, but instead have called
26 on the Department itself to assist with ensuring continuing education during and after the
27 pandemic for students of color with disabilities. Secretary Cardona announced that ARP
28 Act funds should go to “implementing strategies to meet the social, emotional, mental

1 health, and academic needs of students hit hardest by the pandemic, including through
2 evidence-based interventions and critical services like community schools.”¹ The
3 Coalition agrees, but accomplishing this is no easy task. Plus, the pandemic has only
4 exacerbated pre-pandemic disability discrimination and disparate impacts in receiving the
5 correct special education services for students of color with disabilities. As the Biden
6 Administration’s Executive Order on Racial Equity stated, federal agencies must grapple
7 with whether “new policies, regulations, or guidance documents may be necessary to
8 advance equity in agency actions and programs” because agencies must “recognize and
9 work to redress inequities in their policies and programs that serve as barriers to equal
10 opportunity.”² The Executive Order testifies to racial justice as a struggle that is both
11 ongoing and urgent; in short, redressing this struggle cannot and must not be delayed any
12 longer.

13 7. The pandemic began under the tenure of an Education Secretary who
14 appeared to be more focused on unlawfully redirecting the nation’s limited education
15 funding to private schools than administering the IDEA and Section 504 as the crisis
16 ravaged school districts large and small, rural and urban. In the March 23 Class Petition,
17 the Advocacy Institute, parents of students of color with disabilities, and teachers—from
18 Boston to Juneau and places in between, Austin, Los Angeles, Madison, Milwaukee,
19 Oakland and San Antonio—through many of their unions collectively ask the Department
20 for prompt and critical action. The former administration’s ineffective actions and
21 maladroit inactions during the pandemic have resulted in denial of meaningful educational
22

23 _____
24 ¹ *Department of Education Announces American Rescue Plan Funds for All 50 States, Puerto Rico, and the District of Columbia to Help Schools Reopen*, U.S. DEPARTMENT OF EDUCATION
25 (Mar. 17, 2021), <https://www.ed.gov/news/press-releases/department-education-announces-american-rescue-plan-funds-all-50-states-puerto-rico-and-district-columbia-help-schools-reopen>.

26 ² *Executive Order On Advancing Racial Equity and Support for Underserved Communities through the Federal Government*, Secs. 1 & 5, THE WHITE HOUSE (Jan. 20, 2021),
27 <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.
28

1 opportunities for students with disabilities, particularly students of color, across the nation.
2 The current Congress and Administration can chart a new course, responding to
3 longstanding educational inequities, by placing racial equity at the forefront of its agenda.

4 8. The overarching problem is insufficient funding.³ But even with an infusion
5 of additional funding, inequality and educational deficits will persist absent more robust
6 federal oversight, civil rights enforcement, and greater transparency with data at the district
7 level.⁴ As the CCRR Expert Report explains, it is the combination of insufficient federal
8 implementation oversight *and* inadequate funding of education that burdens students of
9 color with disabilities profoundly and disproportionately.⁵ When children’s educational
10 rights are being violated, we cannot wait for thousands or millions of separate legal actions
11 to be brought to ensure FAPE. With each day that passes, students who are denied critical
12 services experience learning regression. Parents and families shouldering tremendous
13 personal loss and uncertainty encounter additional hardships in helping their children
14 navigate remote learning and rebound from prolonged social isolation. Teachers who are
15 already overburdened due to widespread staffing shortages and budgetary constraints
16 struggle to overcome remote learning challenges, underscoring the need for
17 comprehensive, bold, and immediate federal action, particularly given the severe
18 nationwide teacher shortage and dramatic increases in retirements since the pandemic
19 began.⁶

21 ³ In passing the IDEA, Congress promised to cover up to 40 percent of the states’ annual average
22 per pupil expenditure (“AAPE”). *See* DANIEL J. LOSEN, PAUL MARTINEZ & GRACE HAE RIM SHIN,
23 THE CENTER FOR CIVIL RIGHTS REMEDIES AT CIVIL RIGHTS PROJECT OF UCLA, DISABLING
24 INEQUITY: THE URGENT NEED FOR RACE-CONSCIOUS RESOURCE REMEDIES 8 (2021) (hereafter
25 “CCRR Expert Report”). Congress has consistently fallen short of that number. From 2010 to
26 2021, federal average per pupil expenditure has never risen above 16 percent. *See id.* at 81, Table
B1. The best year on record was 2009 due to federal stimulus funding, and even then it was only
33 percent for one year. *Id.* & n. 178. With the sole exception of 2009, Congress “has never
provided more than 20 [percent] of the additional costs.” *Id.* at 57.

27 ⁴ *Id.* at Part III, 49-53.

28 ⁵ *Id.* at 49-50 (emphasis supplied).

⁶ Almost a year before the pandemic, the Economic Policy Institute published a report entitled
“The teacher shortage is real, large and growing, and worse than we thought.” *See* EMMA GARCÍA

1 “I don’t think I felt, really, shame about my disability. What I felt more was
2 exclusion.” – Judith Heumann, lifelong civil rights advocate for people with
3 disabilities
4

5 **II. EDUCATIONAL EXPERIENCES FROM ACROSS THE NATION**

6 **Parents and Students**

7 **Markel M.**

8 9. **Markel M.** is an Oakland Unified School District (“OUSD”) student with an
9 IEP, and his mother, Laquana A., is an essential worker at FedEx. **Laquana A.** Decl. ¶¶ 1
10
11

12 & ELAINE WEISS, ECONOMIC POLICY INSTITUTE, THE TEACHER SHORTAGE IS REAL, LARGE AND
13 GROWING, AND WORSE THAN WE THOUGHT (2019), [https://www.epi.org/publication/the-teacher-
14 shortage-is-real-large-and-growing-and-worse-than-we-thought-the-first-report-in-the-perfect-
storm-in-the-teacher-labor-market-series/](https://www.epi.org/publication/the-teacher-shortage-is-real-large-and-growing-and-worse-than-we-thought-the-first-report-in-the-perfect-storm-in-the-teacher-labor-market-series/). The educators most in demand and with the smallest
15 available labor pool were special education teachers; in California, the shortage is especially
pressing, according to the [Learning Policy Institute \(LPI\) report](https://learningpolicyinstitute.org/product/pace-california-special-education-teacher-shortage-report) released in February 2020. *See*
16 NAOMI ONDRASEK, DESIREE CARVER-THOMAS, CAITLIN SCOTT & LINDA DARLING-HAMMOND,
LEARNING POLICY INSTITUTE, CALIFORNIA’S SPECIAL EDUCATION TEACHER SHORTAGE (2020),
17 [https://learningpolicyinstitute.org/product/pace-california-special-education-teacher-shortage-
report](https://learningpolicyinstitute.org/product/pace-california-special-education-teacher-shortage-report). The LPI Report points to a dire mass acceleration of the teacher shortage in response to
18 inadequate and dangerous governmental inaction during the pandemic. According to one report, a
third of districts throughout the country saw a significantly higher number of retirements and
19 resignations in Fall 2020 than in the year before the pandemic. *See* Madeline Will, *The Teaching
Profession in 2020 (in Charts)*, EDUCATION WEEK (Dec. 18, 2020),
20 <https://www.edweek.org/teaching-learning/the-teaching-profession-in-2020-in-charts/2020/12>.
Illinois saw a drastic jump in teacher retirement with a 50 percent increase in retirements for
21 educators between July and September 2020 compared to 2019, according to the state’s Teacher
Retirement System. Most states sampled saw higher than normal retirement activity throughout
22 Summer 2020. *See* Valerie Bauerlein, *Teacher Shortage Compounds Covid-19 Crisis in Schools*,
WALL STREET JOURNAL (Dec. 15, 2020), [https://www.wsj.com/articles/teacher-shortage-
23 compounds-covid-crisis-in-schools-11608050176](https://www.wsj.com/articles/teacher-shortage-compounds-covid-crisis-in-schools-11608050176). Schools also experienced shortages of
substitute teachers during the pandemic. *See* Elliot Haspel, *The Debate About School Safety Is No
24 Longer Relevant*, ATLANTIC (Jan. 4, 2021),
<https://www.theatlantic.com/ideas/archive/2021/01/schools-staff-shortages/617465/>. In 2020,
25 California saw a 26 percent increase in teacher retirement. *See* Andrew Sheeler, *COVID-19 is
driving many California teachers to early retirement, CalSTRS says*, SACRAMENTO BEE (Feb. 11,
26 2021), <https://www.sacbee.com/news/politics-government/the-state-worker/article249161175.html>.
27 A recent California State Teachers Retirement System (“CalSTRS”) survey found that 62 percent
28 of the teachers retiring in 2020 did so earlier than they expected. *See id.*

1 & 3. They are Black.⁷ *Id.* ¶ 2. Markel, a 17 year high school junior with an IEP for
2 speech and behavioral issues, enjoys football, basketball, and hip hop dance. *Id.* ¶¶ 4 & 9.
3 Markel’s two older brothers also had IEPs to assist them with their academics. *Id.* ¶ 5.
4 Despite their IEPs, they did not get the individualized attention or the services described in
5 their IEPs, including tutoring. *Id.* Laquana was repeatedly told that there was not enough
6 funding for her sons to receive services. *Id.* ¶ 6. As a result, Markel’s oldest brother
7 graduated with a certificate of completion instead of a high school diploma. *Id.* ¶ 5.

8 10. Markel has difficulty with reading comprehension. *Id.* In first grade, the
9 school requested that Markel receive a formal evaluation for speech. *Id.* ¶ 15. The school
10 identified Markel with a general speech and processing issue, but not dyslexia. *Id.* After
11 Markel’s evaluation, Laquana had to repeatedly follow up in order to create an IEP. *Id.* ¶
12 16. When Markel struggled academically and did not receive assistance, he would become
13 frustrated and lash out. *Id.* ¶ 13. In elementary school, Markel had a behavioral aide who
14 would attend classes with him and help him stay focused, but this service was discontinued
15 in junior high without explanation. *Id.* ¶ 12. When Markel acted out, he would be
16 suspended, causing him to fall further behind. *Id.* In elementary school, the school
17 reached out to Laquana to discuss a 504 plan for Markel that allowed him to step out of
18 class and calm down in a designated location, and this led to fewer suspensions. *Id.* ¶¶ 19
19 & 21. By junior high, the school became more focused on punishment for manifestations
20 of his disabilities. *Id.* From 2008 until 2016, Markel was suspended between a day and a
21 month every other month. *Id.* ¶ 13. In 2016, Markel transferred to a school with a Black
22 _____

23 ⁷ We have chosen to capitalize the word “Black,” “Latinx,” and “Native” following the
24 scholarship of Kimberlé W. Crenshaw and Cheryl I. Harris because Black, Latinx, Native, and
25 other similar minorities constitute a specific cultural group and therefore capitalization is required
26 to denote the existence of a proper noun. “Although ‘white’ and ‘Black’ have been defined in
27 opposition, they are not functional opposites. ‘White’ has incorporated Black subordination;
28 ‘Black’ is not based on domination.” Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV.
1707, 1710 n.3 (1993). *See also* Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment:
Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2
(1988) (expounding upon the capitalization of “Black” as an acknowledgment that such an identity
refers not merely to skin color but to heritage, experience, and personal and cultural identity).

1 Assistant Principal who connected well with Markel, and Markel’s behavior improved and
2 he was only suspended one or two times in high school. *Id.*

3 11. Markel has never received the services listed in his IEP, including
4 supplemental tutoring. *Id.* ¶ 23. Laquana has asked the principal, special education
5 teachers, and other staff about tutoring in and out of IEP meetings, and each time she is
6 told that there is no funding. *Id.* During the 2018-2019 school year, Laquana hired a
7 private tutor to assist Markel every week. *Id.* ¶ 25. Laquana noticed that Markel
8 improved academically and behaviorally, and his confidence increased. *Id.* After a year,
9 Laquana could no longer afford the private tutor and discontinued the service. *Id.* ¶ 26.

10 12. Markel wants to obtain a high school diploma and go on to college, but the
11 lack of support may make this difficult. *Id.* ¶¶ 9 & 28. When Laquana asserted she
12 wanted Markel to obtain a diploma, the school only moved him from special education
13 Physical Education to general education Physical Education. *Id.*

14 13. Since remote learning began, Markel has received very little instruction. *Id.*
15 ¶ 29. To ensure Markel is learning, Laquana creates extra assignments while also working
16 full-time herself. *Id.* Markel has lost several family members due to the pandemic and
17 will need mental health support to process this grief to continue to learn when schools
18 reopen. *Id.* ¶ 33. Between being disciplined for manifestations of his disability and being
19 denied critical services in his IEP, Markel is being left behind.

20 **Jeremy H.**

21 14. **Jeremy H.** is a Los Angeles Unified School District (“LAUSD”) student and
22 identifies as Mexican American. Alicia B. Decl. ¶¶ 1 & 2. Jeremy is 11 years old, is in
23 fifth grade, and has an IEP for speech. *Id.* His mother, **Alicia B.**, is severely
24 immunocompromised because she has lupus, so Alicia and Jeremy have strictly observed
25 social distancing and quarantining during the pandemic. *Id.*

26 15. Jeremy was first diagnosed with a speech issue when he was not speaking at
27 three years old and living in a homeless shelter. *Id.* ¶ 5. From kindergarten until fourth
28 grade, Jeremy attended general education courses and received speech therapy from the

1 same speech therapist. *Id.* ¶ 8. Once remote learning began in March 2020, Jeremy did
2 not attend any Zoom classes for the remainder of the school year because he was not
3 comfortable having his computer camera on. *Id.* ¶ 11. As a result of this anxiety, he also
4 missed his Zoom speech therapy, although his speech therapist was able to reach him by
5 phone on a few occasions. *Id.* ¶ 13. After months of discussion, Jeremy agreed to attend
6 Zoom classes during the 2020-2021 classes if his camera was off. *Id.* ¶ 15. Although
7 Alicia regularly communicated with the school about Jeremy’s paralyzing anxiety, the
8 school never recommended that Jeremy be evaluated or receive services for anxiety. *Id.* ¶
9 14. Jeremy has not been assessed for a 504 Plan, nor has anyone mentioned evaluation,
10 accommodations or services to Alicia. *Id.* ¶ 10.

11 **Nathaniel B.**

12 16. Nathaniel B. is an eighth grade student in the Juneau School District (“JSD”)
13 with an IEP and a 504 plan. **Barbara B.** Decl. ¶ 1. Nathaniel, his mother Barbara, and the
14 rest of his family are Alaskan Natives from the Ahtna Athabascan, Haida, and Tlingit
15 tribes. *Id.* ¶ 2. Nathaniel maintains a strong connection to his Alaskan Native heritage and
16 enjoys singing traditional songs, gathering traditional foods, and visiting his family’s
17 ancestral home where he fishes to provide for his extended family. *Id.* ¶ 4.

18 17. Nathaniel received an IEP and a 504 plan for attention deficit hyperactivity
19 disorder (“ADHD”) in second grade due to his difficulty sitting still and being quiet. *Id.* ¶
20 5. Nathaniel has a potlatch voice, which is a ceremonial deep booming voice. *Id.* ¶ 6.
21 Before his IEP and 504 plan, he was often reprimanded for speaking too loudly. *Id.*

22 18. Under his 504 plan, Nathaniel can step out of class and move around when
23 he needs to. *Id.* ¶ 9. Despite this, Nathaniel has consistently been removed from the
24 classroom because of manifestations of his ADHD symptoms. *Id.* ¶ 10. Nathaniel finds it
25 hard to stop talking or moving around. *Id.* When teachers get frustrated with him they
26 send him into the hall or isolate him, depriving him of class time and ostracizing him, and
27 this has a significant emotional impact on him. *Id.* For example, in sixth grade Nathaniel
28 was prohibited from attending an overnight camping trip because he talked during a

1 performance. *Id.* ¶ 11. Only three students in the entire grade were not permitted to attend
2 the camping trip, which further reinforced the idea that he was an outsider in some way.
3 *Id.* ¶ 13. When Barbara confronted the school, the response was that his IEP and 504 plan
4 were not specific to field trips. *Id.* ¶ 14.

5 19. Barbara sees the school system’s lack of tolerance for Nathaniel’s ADHD as
6 an affront to his Alaskan Native identity. *Id.* ¶ 15. Nathaniel’s energy would be applauded
7 by his community, but it is condemned by his school. *Id.* The curriculum does not engage
8 him because it focuses on white America’s history instead of integrating Native culture.
9 *Id.* ¶ 16. Barbara sees Nathaniel’s experience as a product of colonization, both in how he
10 is inordinately disciplined and in how he is deprived of connection to his culture. *Id.* ¶ 15.

11 **C.A.**

12 20. **Melina E. A.** is the parent of two children, 12 year old **C.A.** and five year
13 old **S.A.**, in San Antonio, Texas. Melina E. A. Decl. ¶¶ 1-2. Melina is currently the lead
14 organizer with Northside American Federation of Teachers (“AFT”) 3216. *Id.* ¶ 2. Prior
15 to working as an organizer, Melina was an educator in the district for seven years. *Id.*
16 Melina’s family is Latino, *id.*, and Melina and C.A. describe themselves as Chicanas.

17 21. C.A. is in seventh grade and has been homeschooled since Fall 2020 due to
18 the challenges of remote learning. *Id.* ¶ 3. C.A. enjoys reading and drawing, and wants to
19 be an artist when she grows up. *Id.* ¶¶ 4-5. C.A. is considered to have autism spectrum
20 disorder (“ASD”) level 1, which makes it difficult for her to initiate appropriate social
21 interactions. *Id.* ¶ 6. She also has high levels of anxiety and other learning and behavioral
22 differences that are essentially manifestations of her autism, such as ADHD, oppositional
23 defiant disorder (“ODD”), sensory processing disorder (“SPD”), and obsessive compulsive
24 disorder (“OCD”). *Id.* ¶ 7. C.A.’s main special education identifier is emotional
25 disturbance (“ED”) because she did not have an ASD diagnosis when she received her
26 original IEP. *Id.* Although she obtained her ASD diagnosis shortly after her IEP, the
27 school stated that C.A. did not qualify for autism services because she did not have an
28 academic need for autism-related services. *Id.* In Melina’s experience, the ED label leads

1 to teachers thinking that those children are “difficult” or poorly behaved, instead of
2 understanding that many schools classify children with the ED label for manifestations of
3 autism. *Id.* ¶ 18. During her own career as an educator, Melina observed how insufficient
4 teacher training prevented educators from effectively supporting students. *Id.* ¶ 25.

5 22. When C.A. was around 10 months old, Melina noticed that she had strong
6 behavioral responses to small actions. *Id.* ¶ 10. C.A.’s pediatrician recommended
7 intensive therapies such as cognitive behavior therapy, but over time this has become less
8 successful. *Id.* ¶ 10. Because C.A. is especially sensitive to certain foods and smells,
9 Melina created a 504 plan allowing her to sit in the same lunch spot every day. *Id.* ¶ 11.
10 As C.A. got older her IEP plan also included accommodations to manage her anxiety, such
11 as access to the cool down room, or the behavior, academic, and social education
12 (“BASE”) room. *Id.* ¶ 12. These accommodations were not always effective, as C.A.
13 often did not know when she needed to go to BASE or was reluctant to go because she saw
14 it as a punishment. *Id.* ¶ 23.

15 23. C.A. has encountered obstacles when it comes to receiving services. In first
16 grade, C.A. could not get one-on-one support for math and behavior-related issues, so her
17 grandmother accompanied her to math twice a week. *Id.* ¶ 13. In third grade, C.A.’s
18 teacher told her to go to a small room the size of a closet by herself to finish her work. *Id.*
19 ¶ 15. In fourth grade, the school denied the request that C.A. receive one-on-one support
20 and a behavioral therapist. *Id.* ¶ 21. Melina’s family pays for C.A. to see an occupational
21 therapist twice a week through their insurance. *Id.* ¶ 22. While C.A.’s pediatrician
22 recommended she see an ABA therapist, their insurance would not cover it. *Id.*

23 24. Melina also struggled to get C.A. evaluated for special education services.
24 *Id.* ¶ 16. Most of C.A.’s third grade year involved Melina trying to obtain an evaluation,
25 which resulted in her taking 15 days off from her own teaching position. *Id.* By the end of
26 C.A.’s third grade year, the school finally evaluated her and concluded that she qualified
27 for an IEP. *Id.* Melina found the lengthy process frustrating, especially because she had
28 outside documentation indicating a medical diagnosis. *Id.* Melina believes that C.A. was

1 only evaluated because she made advocating for her daughter a full-time job. *Id.* ¶ 17. For
2 parents who lack the time, money, language skills, or knowledge of what services are
3 available, this task would be virtually impossible. *Id.* ¶ 18. Even with Melina and her
4 parents' experience in education, Melina has found advocating for C.A. challenging. *Id.*
5 ¶ 26. Unless the parent is assertive and a special education expert, IEP meetings will often
6 be pro forma and shorter than the amount of time needed to actually create an effective
7 IEP. *Id.* ¶¶ 26-27.

8 25. Although C.A. has never been suspended for manifestations of her disability,
9 she was often sent to BASE when teachers or staff could not manage her. *Id.* ¶ 28. For
10 example, her IEP states that C.A. finds it difficult to process general announcements. *Id.*
11 ¶ 29. On at least one occasion, a staff member who was unaware of C.A.'s IEP attempted
12 to reprimand her for not following an announcement, resulting in an emotional outburst.
13 *Id.* In another one of C.A.'s classes, other students would agitate her because they thought
14 it was funny when she had an emotional reaction. *Id.* ¶ 31. Because her teacher did not
15 have much experience in managing these situations, C.A. was frequently sent to BASE.
16 *Id.* C.A.'s emotional outbursts embarrassed her and led to her missing class. *Id.* ¶ 30.

17 26. C.A.'s anxiety prevents her from wearing a mask for more than 30 minutes.
18 *Id.* ¶ 8. Melina decided to homeschool C.A. until it is safe to return to in-person learning.
19 *Id.* ¶ 39. Homeschooling C.A. requires constant one-on-one attention. *Id.* ¶¶ 33; 38. As a
20 family of educators, Melina's family has been able to divide up C.A.'s schooling. *Id.* ¶ 36.
21 Melina does not see it as a permanent solution, but is the only safe way for C.A. to be
22 educated currently. *Id.* ¶ 39.

23 **Isaiah G.**

24 27. **Isaiah G.** is a LAUSD student with an IEP. Tiffany G. Decl. ¶ 1. Isaiah and
25 his mother **Tiffany G.** are African American. *Id.* ¶ 3. Isaiah is 12 years old, is in sixth
26 grade, and has an IEP for multiple physical disabilities. *Id.* ¶¶ 2; 5. He was born with
27 chronic lung disease, an encephalocele, which is a protrusion of the skull into the brain,
28 cleft palate, and Dandy-Walker syndrome—a congenital brain malformation. *Id.* As a

1 result of his physical conditions, he has problems with his gastrointestinal system and his
2 liver, has pulmonary hypertension, and is legally deaf. *Id.* Isaiah is ambulatory but has
3 never eaten by mouth, and he has a tracheostomy limiting his speech. *Id.* ¶¶ 6; 8. Despite
4 an independent evaluation that indicated Isaiah is autistic, the school told Tiffany that it
5 could not determine whether Isaiah was autistic because of the manifestations of his
6 multiple physical disabilities. *Id.* ¶ 17.

7 28. Isaiah has had 27 surgeries and missed most of his schooling between first
8 grade and fourth grade. *Id.* ¶ 5. Isaiah began school through the Carlson Home Hospital
9 Program, where he also received services such as speech and occupation therapy, a special
10 education tutor, and assistance using his augmentative and alternative communication
11 device (“ACC”) before transitioning to an in-person elementary school, *id.* ¶ 16, where he
12 received speech and occupational therapy as well as deaf and hard of hearing (“DHH”)
13 services. *Id.* ¶ 18. When Isaiah was in sixth grade in the 2019-2020 school year, he
14 transferred to a school for deaf students and their siblings that provides a bilingual
15 education in English and American Sign Language (“ASL”). *Id.* ¶ 19. In January 2020,
16 Isaiah transferred schools to a special day program that Isaiah needed. *Id.*

17 29. Shortly after the transfer, Tiffany realized Isaiah’s IEP initially did not
18 include speech therapy or DHH services because he did not receive these services at his
19 prior school where they were part of the curriculum. *Id.* ¶ 21. Before the pandemic,
20 Isaiah’s IEP included 240 minutes of speech therapy a month as well as ACC and DHH
21 services, occupational therapy, adaptive physical education, and a nurse. *Id.* Since remote
22 learning began, the only service Isaiah receives is occupational therapy. *Id.* ¶ 27. Isaiah’s
23 special education classes are not adaptive to his legal deafness and do not include ASL
24 translation or a transcript, and the school does not have a speech pathologist. *Id.* ¶¶ 29-30.
25 Isaiah is only able to attend remote classes because Tiffany provides one-on-one
26 assistance, including ASL translation and nursing services. *Id.* ¶ 27. At the end of the
27 2019-2020 school year, Tiffany decided to have Isaiah repeat the sixth grade because he
28 had significantly regressed in the remote environment without access to the services in his

1 IEP. To date, Isaiah has not received speech therapy or learning aide services. *Id.* ¶ 21. In
2 part, Tiffany perceives Isaiah’s struggles as due to a lack of guidance for how schools
3 should serve students with multiple medical needs, but no mental disability. *Id.* ¶ 23.

4 **Rourke K.**

5 30. **Rourke K.** is a child with special needs in the Madison, Wisconsin
6 Metropolitan School District (“MMSD”). Michelle K. Decl. ¶ 1. Rourke is an extroverted
7 and talkative five year old kindergarten student who loves building things and learning. *Id.*
8 ¶ 3. Rourke and his mother **Michelle K.** are white. When Rourke was two years old, his
9 daycare provider told Michelle that Rourke would not sit with the other children at circle
10 time. *Id.* When Rourke was three years old, Michelle’s pediatrician recommended
11 occupational therapy, speech therapy, and an autism evaluation. *Id.* ¶¶ 3; 6. MMSD
12 observed Rourke at the daycare he had attended since he was four months old, where his
13 teachers worked to minimize his overstimulation. *Id.* ¶ 7. The occupational therapist who
14 participated in the evaluation said that because his daycare made so many
15 accommodations, they could not observe Rourke under typical classroom conditions. *Id.* ¶
16 11. As a result, MMSD determined that Rourke was not entitled to an IEP, even though he
17 scored low in the adaptive area, indicating some autism or sensory issues. *Id.*

18 31. After MMSD determined Rourke did not qualify for an IEP, Michelle sought
19 an independent evaluation through the Waisman Center (“WC”) at the University of
20 Wisconsin Madison. *Id.* ¶ 12. In June 2019, the WC determined Rourke was autistic and
21 had a speech delay. *Id.* In August 2019, Michelle sought a second evaluation from
22 Achieving Collaborative Treatment (“ACT”), which confirmed the WC’s results and
23 created a treatment plan that included Applied Behavior Analysis (“ABA”) behavioral
24 therapy both at home and in class. *Id.* ¶ 8. Rourke’s ACT therapist implemented programs
25 to address the aggressive behaviors he displayed when he got frustrated. *Id.*

26 32. When it came time to enroll Rourke in pre-kindergarten, MMSD denied
27 Michelle’s request to have Rourke’s therapist attend his class. *Id.* ¶ 13. As a result,
28 Michelle did not enroll Rourke in a MMSD school and instead enrolled him in private pre-

1 kindergarten where he could be accompanied by his therapist. *Id.* Michelle explored
2 transferring Rourke to Hometown Preschool in the Verona School District (“VSD”), but
3 again encountered issues because ABA therapists were not permitted in classrooms. *Id.*
4 ¶ 15. VSD eventually agreed to allow ABA therapists, but the COVID-19 pandemic
5 abruptly halted the availability of ABA therapy in March 2020. *Id.* When Rourke
6 attended pre-kindergarten without ABA therapists, his episodes of aggression and violence
7 dramatically increased. *Id.* ¶ 16.

8 33. At Rourke’s therapist’s suggestion, Michelle attempted to transfer Rourke to
9 other schools in MMSD, but the district denied these requests. *Id.* ¶ 17. Michelle again
10 attempted to obtain an IEP for Rourke for his kindergarten year, but MMSD denied her
11 request to conduct the evaluation virtually. *Id.* ¶ 18. Instead, MMSD suggested that
12 Michelle enroll Rourke in MMSD kindergarten without an IEP or his ACT therapists. *Id.*
13 MMSD also refused to review the WC and ACT documents diagnosing Rourke with
14 autism and a speech delay. *Id.* Michelle found this persistent inaction especially
15 problematic because children with autism have a limited window during their childhood
16 where intervention and therapy can significantly improve their social and speech skills. *Id.*

17 34. After Michelle lobbied the School Board and her state and federal
18 representatives, MMSD agreed to conduct a virtual observation to determine whether an
19 IEP was appropriate. *Id.* ¶ 19. Three minutes into the evaluation, Rourke bit his therapist
20 and later spit on his therapist. *Id.* Although MMSD acknowledged that Rourke displayed
21 severe problematic behaviors, it found that the behaviors were not frequent enough to
22 warrant an IEP. *Id.* ¶ 21. At Michelle’s request, MMSD has agreed to cover the cost of an
23 independent IEP evaluation. *Id.* While they await an evaluation, Rourke is enrolled in
24 private school where he can have his therapist present with him. *Id.* ¶ 20. Because Rourke
25 is now attending private school, Michelle has to work multiple jobs to cover the cost. *Id.*
26 ¶ 23.

27 **Zavier H.**

28 35. **Zavier H.** is 15 years old and in 10th grade. Anna H. Decl. ¶ 3. Zavier is

1 funny, and he loves to read Percy Jackson books and listen to pop and rock music. *Id.* ¶ 4.
2 **Anna H.** is the mother of three children, Xavier H., Brogan H., and Leora I., in MMSD.
3 *Id.* ¶¶ 1- 2. Anna, Xavier, Brogan, and Leora are white. *Id.* ¶ 2.

4 36. Xavier has an IEP for his spastic quadriplegia cerebral palsy and dystonia,
5 which results in his muscles contracting uncontrollably. *Id.* ¶ 5. He is non-vocal, is
6 legally blind with low vision, has trouble with his lungs and breathing, does not eat by
7 mouth, and does not walk or use cerebral palsy switches. *Id.* ¶¶ 5-6. Xavier has no
8 cognitive disability, but because he cannot speak or use ASL, until recently much of his
9 communication has been based on the ways he moves his eyes, his affect, or through
10 lifting a finger. *Id.* ¶¶ 7-8. Anna recently obtained Eye Gaze technology that allows
11 Xavier to select letters and words from a grid to form words and sentences. *Id.* ¶¶ 7-10; 13.
12 Xavier’s school did not recommend or pay for this technology; rather, he obtained the
13 technology through the WC. *Id.* ¶ 10.

14 37. Prior to the pandemic, Xavier received occupational, speech, and vision
15 therapy as well as special education, nursing services, and an aide. *Id.* ¶ 12. Once remote
16 learning began, Anna began acting as Xavier’s one-on-one and performing all of his
17 nursing and therapies. *Id.* ¶ 16. Because Xavier has limited mobility, Anna must log
18 Xavier into each class and assist him to physically complete any assignment. *Id.* ¶¶ 16-20.
19 Xavier is immunocompromised and is unable to return to school or even have an aide assist
20 in the home until, at a minimum, his family and the aide are able to receive vaccines. *Id.*
21 ¶ 21.

22 **Brogan H.**

23 38. **Brogan H.** is 12 years old, is homeschooled, is in sixth grade, and uses they/
24 them pronouns. *Id.* ¶ 24. Brogan loves to make people laugh, is outgoing, inquisitive, and
25 loves to play video games. *Id.* ¶ 25. Prior to homeschooling Brogan attended public
26 schools, where they had a 504 plan to assist with focus and attention issues. *Id.* ¶ 27.
27 When Brogan was in kindergarten they were diagnosed with ADHD and autism and
28 obtained an IEP to assist with executive functioning, word ordering, and prioritizing

1 issues. *Id.* ¶¶ 27-28. Brogan becomes very emotional when frustrated so their IEP
2 permitted them to leave the classroom to go calm down in a quiet place. *Id.* ¶¶ 29-30; 32.
3 Because Brogan needs to make noise when they are highly emotional, this accommodation
4 was counterproductive. *Id.* ¶ 32. Brogan began performing poorly in school and began
5 being bullied. *Id.* As a result, Anna began homeschooling Brogan, which has improved
6 their learning, but she hopes Brogan will be able to return to public school. *Id.* ¶¶ 33-34.

7 **Leora I.**

8 39. **Leora I.** is eight years old, in third grade, and uses they/she pronouns. *Id.* ¶
9 35. Leora enjoys crafting and designing clothing. *Id.* ¶ 36. Leora has an immunoglobulin
10 A (“IgA”) deficiency which means that they lack an important protein needed to fight off
11 infections. *Id.* ¶ 37. Leora fights colds from about September until March of every school
12 year and misses significant amounts of school. *Id.* ¶ 39. When Leora misses school they
13 lose confidence and feel overwhelmed about catching up. *Id.* ¶ 39. Because of Leora’s
14 excessive illness-related absences, their school has threatened to take Anna to truancy
15 court. *Id.* ¶ 41. For the last two years, Anna has attempted to obtain a 504 plan to help
16 Leora catch up. *Id.* ¶ 40. Before the pandemic, the school would not create a 504 plan for
17 Leora. *Id.* ¶ 40. Now that Leora’s courses are remote, the school does not think a 504 plan
18 is needed even though they are still behind and missing classes due to illness. *Id.* ¶ 42.

19
20 40. Leora has been hesitant to join Zoom classes. Because they are a
21 perfectionist who feels behind from illness-related absences they feel put on the spot and
22 anxious on Zoom. *Id.* ¶ 43. Leora’s gym teacher started kicking Leora out of class when
23 they would not turn on their camera or talk in class. *Id.* ¶ 44. Anna explained that Leora is
24 uncomfortable using their camera and asked whether the teacher could enable the chat
25 function. *Id.* ¶ 45. The gym teacher declined Anna’s requests and stated that other
26 children would abuse the chat. *Id.* Despite Leora’s absences from class the school has not
27 reached out to provide Leora assistance. *Id.* ¶ 46.

1 **Darlin P.**

2 41. **Darlin P.** is an adult LAUSD student with an IEP. Evelyn P. Decl. ¶ 1.
3 Darlin is 20 years old and attends a post-high school transitional center. Darlin and his
4 mother **Evelyn P.** are Latinx. *Id.* ¶¶ 2-4. Darlin has a bubbly personality and loves to help
5 others, take pictures, and listen to music. *Id.* ¶ 5. Darlin has cerebral palsy, is wheelchair
6 bound, and only has the use of one hand as a result of a spinal injury which likely occurred
7 at birth. *Id.* ¶ 7. Darlin has had an IEP since kindergarten which entitled him to a one-on-
8 one aide throughout the school day. *Id.* ¶ 8.

9 42. In third grade, Mr. Walker became Darlin’s one-on-one and stayed in this
10 role until the end of Darlin’s 11th grade year when he retired. *Id.* Mr. Walker would assist
11 Darlin with everything, including setting up his materials for classes, retrieving things
12 from his backpack, taking care of his personal hygiene needs, and pushing Darlin’s chair
13 until he received an electric wheelchair. *Id.* Mr. Walker was a big part of Darlin’s life. *Id.*
14 ¶ 8. After graduation, they maintained regular communication. *Id.* ¶ 10. Mr. Walker
15 contracted COVID-19 and passed away toward the end of 2020, greatly affecting Darlin.
16 *Id.* ¶¶ 10; 34. In addition to Mr. Walker, seven members of Darlin’s family have recently
17 died, including three who died of COVID-19. *Id.* ¶ 34. Darlin has struggled with anxiety
18 during the pandemic and spends many days withdrawn into his room. *Id.* ¶¶ 10; 34.
19 Although Darlin mentioned the impacts of Mr. Walker’s death to his homeroom teacher,
20 the school has not offered any trauma or anxiety-related services. *Id.* ¶ 34.

21 43. Darlin originally wanted to attend a community college after high school, but
22 Evelyn was told that Darlin would not be able to have a one-on-one aide. *Id.* ¶ 33. Evelyn
23 understood that Darlin could retain his one-on-one at the transition center which also had a
24 dual enrollment program with California State University Dominguez Hills. *Id.* Darlin
25 has not been able to enroll in any college classes, but now that they are remote he is
26 considering signing up. *Id.* The transition center is not like a traditional school, but it
27 instead functions more like a trade or vocational school. *Id.* ¶ 12. The center, however,
28 limits students based on their disabilities. *Id.* ¶ 13. For example, last year Darlin was told

1 to be a “security guard” for one of his classes where students made arts and crafts to sell at
2 a farmers market because he can only use one hand. *Id.* Darlin is an excellent writer and
3 has many abilities, but he is often assigned programs that are far too basic for him, causing
4 him to grow bored and preventing him from progressing. *Id.* ¶ 14.

5 44. The transition school also did not give Darlin a one-on-one aide to assist him
6 as he moves between classes or for his personal hygiene changes throughout the day, even
7 though it is mentioned in his IEP. *Id.* ¶ 15. Instead, administration told Evelyn that the
8 school had people ready to change Darlin as needed. *Id.* This has not been the case, and
9 Darlin has many days when he requested hygiene assistance but did not receive it, which
10 resulted in the development of sores and severe discomfort. *Id.*

11 45. Once remote learning began Darlin’s class shrunk, and sometimes Darlin is
12 the only student in his class. *Id.* The online transition has been difficult. *Id.* ¶ 21. On one
13 occasion the work packets he was sent did not match up with the curriculum. *Id.* ¶¶ 22; 27.
14 On another occasion Darlin could not access the school applications through his email
15 account. *Id.* ¶ 26. Even when Darlin is able to access his classes, the work assigned does
16 not allow him to interact with other students or make progress in reading comprehension.
17 *Id.* Darlin has not made academic or skills progress since the pandemic began. *Id.*

18 **Anthony P.**

19 46. **Anthony P.** is a LAUSD student with an IEP. Manuela P. Decl. ¶ 1.
20 Anthony and his mother **Manuela P.** are Latinx. Manuela’s primary language is K’iche,
21 an Indigenous language native to Guatemala. She also speaks Spanish and some English.
22 *Id.* ¶ 2. Anthony is 12 years old, in seventh grade, and has an IEP for Down Syndrome.
23 *Id.* Anthony is non-verbal but can use some hand signals and gestures to communicate.
24 *Id.* ¶ 3. Prior to March 2020, Anthony received occupational and speech therapy, and was
25 enrolled in special education courses to develop fundamental life skills. *Id.* ¶¶ 6-7.
26 Manuela requested an instructional aide, but the school told her Anthony could only have
27 an aide if he was receiving medication. *Id.* ¶ 7.

28 47. When Anthony’s school transitioned to remote learning, his school refused

1 to give him a computer. *Id.* ¶ 9. The school told Manuela that special education students
2 would not be given computers because they were more likely to break them. *Id.* Instead
3 Anthony received paper packets, even though he is still learning to read and could not
4 learn through written packets. *Id.* Because Anthony was not receiving appropriate
5 resources, Manuela transferred him to a different school, but the new school also refused to
6 give him a computer. *Id.* ¶ 10. Although Anthony received a computer after several
7 requests, Manuela had to take the computer back several times because the school
8 repeatedly gave her computers that were broken. *Id.*

9 48. Since Anthony obtained a working computer his learning has improved, but
10 only because Manuela gives him one-on-one attention. *Id.* ¶¶ 14-16. The online program
11 where Anthony accesses his lessons requires that he select the correct answer on the
12 screen, which Manuela must help him do. *Id.* ¶ 13. He is now able to attend Zoom speech
13 and occupational therapy, but they have not been structured to meet his individualized
14 needs. *Id.* ¶ 17. His speech therapy does not teach Anthony sign language, which is
15 essential because he is non-verbal. *Id.* ¶ 18. Manuela tried to teach Anthony sign
16 language through videos online, but he is not able to focus through this method and would
17 benefit from more structured lessons and social interaction. *Id.* ¶¶ 15, 18.

18 **Charly T.**

19 49. **Karla R.** is the parent of two children, **Charly T.** and **Adalberto T.**, who
20 both have IEPs and are enrolled in LAUSD schools. Karla R. Decl. ¶ 1. Karla and her
21 family are Latinx. *Id.* ¶ 34. Charly is 12 years old, in seventh grade, and has an IEP for
22 autism. *Id.* ¶ 3. Prior to the pandemic, she had a behavioral instructor (“BI”) who
23 accompanied her for about six hours a day at school, speech therapy, counseling, and
24 received special education as part of her IEP. *Id.* ¶¶ 8; 18. Charly is bright and high-
25 functioning, but she needs assistance with executive function to focus and independently
26 complete tasks. *Id.* ¶¶ 3; 8-9. Since remote school began, Charly’s BI is only available via
27 chat during her Zoom class and cannot prompt her to log in or change classes when she
28 needs to. *Id.* ¶¶ 13; 14. Because classes are not recorded, Charly falls behind when she is

1 late or misses class. *Id.* Charly has had difficulties completing assignments on time. *Id.*
2 ¶ 16. Prior to March 2020, Charly was obtaining As and Bs in all classes and functioning
3 at grade level. *Id.* ¶ 11. As of January 5, 2021, her assessment indicates that she is
4 performing at one grade level below her current grade for reading and between one and
5 three grade levels below her grade in math. *Id.* ¶ 12. Before the pandemic, Charly also
6 had therapy once a week for emotional and behavioral issues. *Id.* ¶ 18. Charly's therapy
7 has been discontinued, even though extended social isolation has taken a toll. *Id.*

8 **Adalberto T.**

9 50. Adalberto is nine years old, in fourth grade, has an IEP for ADHD, and is
10 considered to have high spectrum Asperger's syndrome and to be on the autism spectrum.
11 *Id.* ¶ 3. Although Adalberto behaved similarly to Charly in pre-school and kindergarten,
12 his school repeatedly denied requests for an evaluation. *Id.* ¶ 21. Karla obtained an
13 independent ADHD and Asperger's diagnosis at the end of kindergarten. *Id.*

14 51. Once he enrolled in first grade, Karla again requested an evaluation and IEP
15 for Adalberto. *Id.* ¶ 22. The school performed an assessment and determined Adalberto
16 was entitled to services for ADHD, but stated that it could not assess him for Asperger's.
17 *Id.* The school indicated that Adalberto needed a BI but could not find one for over a year.
18 *Id.* ¶ 23. When the school still could not find a BI in second grade, Karla went to
19 Adalberto's class every day for an hour to act as his aide. *Id.* At the beginning of third
20 grade, when another child with a BI moved schools, Adalberto finally received a BI. *Id.*
21 ¶ 26. With the BI accompanying him in special education classes, Adalberto began
22 making significant strides in November 2019. *Id.* ¶ 27. These changes transformed
23 Adalberto. *Id.* ¶¶ 27-28. He was more excited to go to school, and his grades and
24 behavior improved until the pandemic halted his progress. *Id.* ¶¶ 27; 33.

25 52. Since transitioning to remote learning, Adalberto has been easily distracted
26 and sometimes refuses to get out of bed or log into Zoom. *Id.* ¶ 33. Adalberto still has a
27 BI, but they can only communicate through chat and Adalberto needs assistance focusing
28 and engaging with his assignments. *Id.* ¶ 34. Sometimes Adalberto is muted or has his

1 camera turned off during class for speaking out of turn because there is not someone there
2 to keep him on task. *Id.* Karla provided Adalberto with a behavioral therapist through her
3 insurance who comes to her home four days a week and assists Adalberto in working
4 independently. *Id.* Despite this, he has regressed academically and socially. *Id.* ¶¶ 35-36.

5 **Jasmine S.**

6 53. **Jasmine S.** is a MMSD student who is currently receiving special education
7 services through an IEP. Martha S. Decl. ¶ 1. Jasmine and her mother **Martha S.** are
8 white working class, and Martha is a single mother who is very involved in Jasmine's
9 education. *Id.* ¶ 2. Jasmine is eight years old, in third grade, and has an IEP for cerebral
10 palsy and epilepsy. *Id.* ¶¶ 5-6; 8. Because Martha uses a wheelchair, prior to last year she
11 had difficulty visiting Jasmine's classroom on the second floor to volunteer or assist when
12 Jasmine had epileptic seizures. *Id.* ¶ 5. Martha had to request an elevator pass from the
13 school office every time until she proactively spoke with school personnel to explain why
14 she should retain the elevator pass. *Id.* When Jasmine was in kindergarten, the children
15 with physical disabilities were forced to sit on the side of the bleachers in folding chairs
16 during a music presentation, making Jasmine feel like she did not belong. *Id.* ¶ 6.

17 54. Jasmine is a bright social butterfly who frequently memorizes stories
18 verbatim. *Id.* ¶ 7. Doctors diagnosed Jasmine with cerebral palsy just before her first
19 birthday. *Id.* ¶ 8. At first doctors were unsure whether she would be able to walk, but she
20 has progressed from using a walker to now using a cane and leg braces. *Id.* Jasmine was
21 born with hydrocephalus in both sides of her brain, which affects her entire body but the
22 left side more severely. *Id.* In 2017 she was diagnosed with epilepsy. *Id.* ¶ 9. Although
23 Jasmine rarely has a severe seizure, epilepsy makes her brain foggy which makes it
24 difficult for her to focus or effectively socialize with her peers. *Id.*

25 55. Jasmine's IEP began when she was three years old and in Head Start. *Id.*
26 ¶ 10. Because Jasmine was diagnosed with epilepsy in pre-kindergarten and had just
27 begun to manage her medication, Martha requested that Jasmine repeat pre-kindergarten.
28 *Id.* MMSD informed Martha that if Jasmine repeated pre-kindergarten she would lose her

1 special education services, including her therapies. Martha and several of Jasmine's
2 therapists disagreed with the school's decision, but the school refused to change its policy.
3 *Id.* Martha reenrolled Jasmine in pre-kindergarten without her therapies or special
4 education. *Id.* The following year when Jasmine was enrolled in kindergarten, she again
5 received all of her services. *Id.* Martha felt frustrated that a child without disabilities
6 could repeat pre-kindergarten without penalty, but Jasmine lost her services for a year
7 because she did so. *Id.* ¶ 11. Martha filed a complaint with the federal OCR over this
8 incident around 2016, but OCR responded stating that MMSD did nothing wrong. *Id.*

9 56. In the 2019-2020 school year prior to the pandemic, Jasmine attended a
10 combination of special education and general education classes as well as occupational,
11 speech, and physical therapies. *Id.* ¶ 13. Before remote learning, Jasmine's math, writing,
12 and physical education were special education classes, and her history and science courses
13 were general education classes. *Id.* ¶ 14. While in history and science class, Jasmine was
14 a part of a small group that received extra attention from the special education teacher. *Id.*
15 Jasmine stopped receiving this additional assistance when virtual learning started, making
16 history and science inaccessible to her. *Id.* ¶ 15. She has had to stop attending these
17 classes altogether, and the school told Martha there is no budget for additional staff if she
18 were to take summer school. *Id.* Martha decided it would be more useful for Jasmine to
19 develop life skills like math and reading, so she now focuses on helping Jasmine keep up
20 in those classes. *Id.* ¶ 16. Jasmine benefits from individualized attention, but Martha has
21 had to learn on her own how to support Jasmine. *Id.* ¶ 32. Martha would like Jasmine to
22 have one-on-one assistance, but MMSD does not provide personal aides. *Id.* ¶ 22.

23 57. Although the school has not given out grades during the pandemic, Jasmine
24 has likely improved in reading and math because of Martha's assistance and because she is
25 taking fewer classes. *Id.* ¶ 23. Despite continued speech and occupational therapy,
26 Jasmine's progress with motor and movement skills has slowed down because she has
27 fewer opportunities to practice skills. *Id.* ¶ 31. Prior to remote learning Jasmine was
28 constantly practicing throughout the day as she moved from place to place and interacted

1 with her peers, but during remote learning she has less reason to use these skills. *Id.*

2 **A. S.**

3 58. **A.S.** is a child in the Boston Public Schools (“BPS”) with an IEP. Perla S.
4 Decl. ¶ 1. A.S. and her mother **Perla S.** are Latinx and speak Spanish and English. *Id.* ¶ 2.
5 A.S. is six years old, in first grade, and has an IEP for speech and social anxiety. *Id.* ¶¶ 3;
6 6. A.S. has a big personality, enjoys going to the park and painting, and wants to be a
7 veterinarian. *Id.* ¶ 3.

8 59. A.S.’s Head Start teacher first told Perla that A.S. was speaking differently
9 than her peers. *Id.* ¶ 4. In contrast to her big personality at home, A.S. was extremely
10 quiet in class and spent most of her time alone. *Id.* Shortly thereafter, A.S.’s doctor
11 evaluated her for autism and found that she had a speech delay and social anxiety rather
12 than autism. *Id.* ¶ 5. Head Start also conducted an evaluation when A.S. was three years
13 old and reached the same conclusion, as did another evaluation completed when A.S. was
14 in kindergarten. *Id.* Once A.S. obtained her diagnosis, Perla had difficulty obtaining an
15 IEP evaluation. *Id.* ¶ 6. Initially the IEP coordinator did not want to conduct an
16 evaluation. *Id.* Because Perla primarily speaks Spanish and the school did not provide
17 translation services, Perla struggled to advocate for her daughter with the IEP coordinator.
18 *Id.* After Perla asked A.S.’s social worker from early intervention therapy to meet with the
19 coordinator, the coordinator was much more willing to conduct the evaluation. *Id.* The
20 school eventually provided translations in IEP meetings and a copy of IEP documents in
21 English and Spanish. *Id.* ¶ 7. A.S.’s most recent IEP meeting took place at the end of last
22 school year. *Id.* ¶ 13. Perla was unable to attend because she was in the hospital, and the
23 school did not reschedule the meeting. *Id.*

24 60. Prior to beginning remote learning, A.S. received speech therapy for 45
25 minutes two times per week and one weekly session of therapy for her anxiety. *Id.* ¶ 10.
26 Since the pandemic began, her speech therapy is only 30 minutes twice a week and is no
27 longer one-on-one. *Id.* ¶ 14. Because A.S.’s therapies now include two or three children
28 and are shorter, she has less opportunity to practice and her speech has regressed. *Id.*

1 Perla does not recall ever agreeing to change A.S.’s IEP from individualized to group
2 therapies. *Id.* ¶ 15. Beyond learning regression, A.S. also struggles socially. When
3 remote learning first began A.S. would cry when she saw her teacher and classmates on
4 Zoom. *Id.* ¶ 16. Now she struggles with anxiety when her camera is on and is frustrated
5 with constantly being inside. *Id.* Perla worries that A.S.’s social anxiety is worsening and
6 that she will struggle when classes begin again in person. *Id.* ¶ 18. Given this, A.S. would
7 benefit from additional weekly therapy sessions for anxiety. *Id.* ¶ 16.

8 Educators

9 Kari Brennan

10 **61.** **Kari Brennan** is a special education teacher for high school students at the
11 Alliance School (“Alliance”) in Milwaukee, Wisconsin. Kari Brennan Decl. ¶ 1. The
12 2020-21 school year is her 26th year teaching and her eighth year teaching special
13 education. *Id.* ¶ 2. Alliance was founded with a mission of reducing bullying and
14 providing a safe space for lesbian, gay, bisexual, transgender, and queer (“LGBTQ”)
15 students and students of color. *Id.* ¶ 3. Approximately 200 students currently attend
16 Alliance. *Id.* About 60 percent of Kari’s students are Black and 40 percent are white. *Id.*
17 ¶ 4. Around 82 percent of the school qualifies for the free lunch program, and a number of
18 students experience various degrees of homelessness. *Id.*

19 **62.** When Kari taught general education, part of her job included making
20 referrals for IEPs and 504 plan evaluations. *Id.* ¶ 6. Now she participates in IEP meetings
21 and reevaluations as a special education teacher. *Id.* About six of the 200 students at
22 Alliance have 504 plans. *Id.* ¶ 9. About 47 percent of the students at Alliance have IEPs.
23 *Id.* In Kari’s experience, one of the disadvantages of 504 plans is the lack of supplemental
24 services beyond the 504 accommodation and the lack of a designated advocate for students
25 with 504 plans. *Id.* ¶ 10.

26 **63.** Kari works with 10 students who are considered to have severe behavior
27 dysmorphic disorder (“BDD”) or emotional disabilities. *Id.* ¶ 8. Many of her students
28 engage in self-harming behaviors, suffer from anxiety, act out in class, or avoid class

1 altogether. *Id.* During the pandemic, Kari has noticed an improvement in these students’
2 behavior. *Id.* ¶ 12. Now that school is one of the only ways for students to interact, they
3 seem much more interested in school and are more engaged with the subject matter. *Id.*
4 Since classes are taught through Google Meet which does not require students to turn their
5 cameras on, about 99 percent of students have their cameras off and mainly engage
6 through the chat function. *Id.*

7 64. To Kari’s knowledge Alliance has conducted IEP meetings and reevaluations
8 throughout the pandemic, so there is no backlog. *Id.* ¶ 14. For the most part, students have
9 also been able to keep up with their therapies and services.⁸ *Id.* Since student behavior
10 has improved, the biggest issue is now attendance. *Id.* ¶ 15. After students miss a few
11 classes, they are referred to the behavior intervention team. *Id.* In Kari’s experience, there
12 are various barriers that prevent students from attending class, from connectivity issues to
13 homelessness. *Id.*

14 65. In order to address students’ mental health issues, Kari recommends that
15 schools expand psychology services by hiring dedicated counselors and social workers to
16 ensure that students can access therapy at school, regardless of insurance. *Id.* ¶ 17. Kari
17 advocates for increasing wraparound services, where a team develops individualized
18 services for them, and for increasing early access to therapy. *Id.* ¶¶ 18-19.

19
20
21 _____
22 ⁸ While Kari shares one example of a charter school success story, other charter schools not
23 adequately serving students with moderate to severe disabilities is well-documented. *See* CTA
24 and UTLA, *State of Denial: California Charter Schools and Special Education Students* (Aug.
25 2019), https://www.utla.net/sites/default/files/state_of_denial_brief_-_final.pdf, at 5 (noting that in
26 LAUSD, students with intellectual disability, orthopedic impairment, or visual impairment were
27 enrolled in charter schools at roughly one quarter the rate at which they were enrolled in LAUSD
28 schools); ACLU of Southern California & Public Advocates, *Unequal Access: How Some
California Charter Schools Illegally Restrict Enrollment* (Jul. 31, 2016),
<https://www.aclusocal.org/en/publications/unequal-access>, at 5-7 (finding that several California
charter schools illegally restrict enrollment based on grades and grade level assessments, which
prevents English language learners or in some cases students with health issues or disabilities from
attending these schools). *See* Karla R. Decl. ¶ 26 (recounting Adalberto, a charter school student,
received a behavioral aide after another student left the school when her aide became available).

1 **Georgia Flowers Lee**

2 66. **Georgia Flowers Lee** has worked as an educator in a LAUSD special
3 education preschool program for about six years. Georgia Flowers Lee Decl. ¶ 2. Her
4 school is approximately 74 percent Latinx and 20 percent Black. *Id.* In 2019, her caseload
5 could not exceed eight students but due to funding constraints she ended the 2020 school
6 year with 12 students. *Id.* Georgia knows other teachers who have 17 students when their
7 class should be capped at 10. *Id.* Teachers with 15 or more students can request an
8 assistant, but it often takes the district several months to assign an assistant. *Id.*

9 67. Remote learning has been hard on Georgia’s students. *Id.* ¶ 4. In Spring
10 2020, a handful of students did not ever log into Zoom, so Georgia called, emailed, and
11 eventually drove by some of her students’ homes. *Id.* When she communicated with their
12 families, she discovered that some families did not have resources to access remote
13 classes, as the school did not provide laptops to preschoolers. *Id.* The school also lacked
14 funds for a PSA counselor, who would reach out to students who missed class. *Id.*
15 Georgia also found that many of her students’ households lacked basic materials, which
16 prompted her to apply for a grant to distribute school supplies to her students. *Id.* ¶
17 5. Georgia’s key recommendation is funding more direct services for students who may
18 not have IEPs but are in severe need of trauma-related support. *Id.* ¶ 7.

19 **Virginia Glass**

20 68. **Virginia Glass** is an educational diagnostician who left her position in AISD
21 in December 2020 due to health concerns. Virginia Glass Decl. ¶ 1. Virginia has 35 years
22 of experience in education. *Id.* ¶ 3. She has worked as a teacher in every grade in K-12,
23 an assistant principal, a principal, an intermediary between the Texas Education Agency
24 and AISD, and a diagnostician. *Id.* Virginia is certified as a special education teacher and
25 a reading specialist, and is also certified to identify and evaluate early childhood
26 disabilities. *Id.* In her prior position as a diagnostician, Virginia worked with
27 administrators to develop appropriate learning strategies for struggling students. *Id.* ¶ 2.

28 69. Before the pandemic, Virginia tested students referred for special education

1 by teachers, administrators, and parents. *Id.* ¶ 6. She estimates that 90 percent of referrals
2 were well-founded and resulted in a recommendation of services. *Id.* Most of these
3 referrals were triggered by easily visible behaviors, but Virginia believes that students who
4 are specific learning disabled are severely under-identified and therefore not referred for
5 services promptly or at all. *Id.* Specific learning disabled means that the student has a
6 disorder with one or more of the basic psychological processes involved in understanding
7 or using language. *Id.* Before Virginia left her position, she worked with five students
8 who had struggled with reading comprehension for years until they were finally referred
9 for a special education evaluation as juniors. *Id.* Because the district does not cover
10 training staff on identifying students for a 504 plan, she believes many students who would
11 qualify for 504 services in general education are not identified. *Id.* ¶ 12.

12 70. As an educational diagnostician, Virginia was present at many IEP meetings
13 where she witnessed committees making decisions based on cost rather than the individual
14 student’s needs. *Id.* ¶ 9. This contravenes the committee’s obligation to create an
15 individualized plan without regard to price. *Id.* ¶ 10. IEP committees assure parents that
16 the student can be successful with significantly fewer services than what is truly needed.
17 *Id.* ¶ 9. For example, student receive only “consultation” with a therapist as opposed to
18 direct therapy. *Id.* Or students with autism rarely receive in-home training, which is
19 designated as one of the strategies that IEP committees should consider. *Id.* ¶ 10.
20 Shortcomings in IEP plans are rarely challenged in schools where students come from
21 families with limited incomes, and in practice only very informed parents are aware that
22 their children are entitled to additional services. *Id.* ¶ 11. At schools where students are
23 predominantly low-income, additional services are rarely even discussed. *Id.*

24 71. Since the pandemic began, many students have not been assessed due to
25 school closures, reluctance to allow in-person testing, staff shortages, and lack of training
26 on how to conduct remote assessments. *Id.* ¶ 13. Like many other districts, AISD was
27 unprepared to develop materials for remote assessments and received no guidance from
28 federal or state education departments. *Id.* ¶ 14. As a result, remote evaluations have still

1 not taken place, creating a significant backlog that AISD still does not have a plan to
2 address, as well as confusion for teachers on their students’ needs. *Id.* ¶¶ 15; 17.

3 72. Virginia was granted a health accommodation in Fall 2020 which allowed
4 her to work from home, but she was denied accommodations for Spring 2021 after Texas
5 determined that in-person learning would resume. *Id.* ¶ 16. Virginia informed her
6 supervisor that she was especially susceptible to a severe COVID-19 infection due to
7 health conditions, but her work from home request was denied, forcing her to resign. *Id.*

8 73. In Virginia’s experience, the effects of the pandemic on learning have fallen
9 especially hard on students with disabilities, who have missed classes at higher rates. *Id.*
10 ¶ 20. Because the school did not have a plan to address excessive absences, teachers were
11 left with the task of reaching out to students, with little to no support from other staff. *Id.*

12 ¶ 23. Some students with Spanish-speaking parents have also stopped receiving services
13 because there is no translator or liaison to communicate with parents about what must be
14 done in order for a student to continue receiving services. *Id.* ¶ 22. Virginia sees more
15 multilingual outreach and training as a key priority for districts. *Id.* ¶ 25.

16 **Amy Mizialko**

17 74. **Amy Mizialko** is a teacher with 28 years of experience in the Milwaukee
18 Public Schools (“MPS”). Amy Mizialko Decl. ¶ 1. Amy began teaching special education
19 in 1992. *Id.* ¶ 2. In 2018, Amy was elected President of the Milwaukee Teachers
20 Education Association (“MTEA”), which represents educators employed by MPS. *Id.*

21 75. Amy’s firsthand experience has demonstrated that special education
22 programs are the foundation of an equitable and accessible education. *Id.* ¶ 3. Amy,
23 however, sees teacher shortages as the most significant barrier to creating strong schools.
24 *Id.* ¶ 4. As of January 2021, MPS has 130 teacher vacancies, including 42 special
25 education teacher positions. *Id.* ¶ 11. This means that schools must rely on stopgap
26 measures such as pulling paraprofessionals, health assistants, central office teachers, and
27 school support teachers to teach or cover classrooms. *Id.* ¶ 4. Staffing shortages also force
28 teachers to absorb students from other classes, further burdening already overcrowded

1 classrooms. *Id.* Class sizes have extended far beyond the workable limit, with as many as
2 36 students in some elementary classroom and as many as 50 students in some middle and
3 high school classes. *Id.* ¶ 9. As a result, it is extremely difficult for students to receive the
4 necessary individualized or small group support to assist with their learning. *Id.*

5 76. Due to this teacher shortage, teachers with an emergency license who have
6 only completed a crash course training or have no previous experience are sometimes
7 placed in classrooms where students have the greatest need. *Id.* ¶ 15. It is entirely
8 possible that a student with special education needs in MPS will be taught by more
9 emergency licensed teachers than certified teachers over the course of a K-12 lifespan. *Id.*
10 ¶ 16. Because emergency licensed teachers are not certified, they are not permitted to
11 write IEPs. *Id.* ¶ 17. Some schools have only one to two certified special education
12 teachers, who must balance their own caseload’s IEPs while also taking on IEP duties for
13 emergency licensed teachers. *Id.* This can double or triple their IEP responsibilities,
14 leaving certified special education teachers stretched thin. *Id.*

15 77. Approximately 20 percent of the MPS student population is composed of
16 students diagnosed with special education needs, and in some high schools this population
17 is almost 40 percent. *Id.* ¶ 12. Amy has also seen how the challenges facing students in
18 special education are exacerbated by structural factors such as generational poverty. *Id.*
19 MPS has been impacted by lead poisoning, as thousands of MPS students have been
20 diagnosed with “other health impairment” disability due to a lack of safe water. *Id.* ¶ 13.

21 78. To address the persistent staffing shortage and avoid relying on emergency
22 licensure, Amy advocates for a collaborative effort on the part of MPS, the Wisconsin
23 legislature, the Wisconsin Department of Education, and the Department. *Id.* ¶ 18. These
24 measures include bonuses for fully certified special education teachers, intermittent
25 longevity bonuses to promote retention, and dedicated efforts to recruit special education
26 teachers who reflect the diversity of Milwaukee’s student population. *Id.* ¶¶ 18-19.

27 **Julian Canek Pena-Vargas**

28 79. **Julian Canek Pena-Vargas** is a high school teacher in his 11th year of

1 teaching in LAUSD. Julian Canek Pena-Vargas Decl. ¶¶ 1-2. Julian has taught at a public
2 LAUSD school for the last five years. *Id.* ¶ 2. Julian teaches an interdisciplinary class
3 called political studies, which is a combination of English and economics in the fall and
4 world literature and government in the spring. *Id.* Julian also teaches credit recovery, a
5 class focused on helping students graduate. *Id.* Julian has taught classes for English
6 Language Learner (“ELL”) students, as he speaks English and Spanish fluently. *Id.*

7 80. Since remote learning began, Julian has seen a sharp uptick in absences. *Id.*
8 ¶ 4. It would be common for 50 to 75 percent of a class to be absent due to lack of clear
9 expectations regarding attendance, inconsistent access to technology, and overall chaos
10 related to the pandemic. *Id.* Julian usually has about 100 students, and at the beginning of
11 the pandemic he would reach out to families once a student missed multiple classes. *Id.*
12 When 50-75 students were absent in one day, he cannot follow up with each student. *Id.*

13 81. When Julian was able to connect with families, the phone calls would take
14 considerably longer than an average phone call due to the amount of trauma families were
15 experiencing. *Id.* ¶ 5. Some of Julian’s students were experiencing severe economic
16 insecurity and had to begin working to support their families. *Id.* Julian would do his best
17 to connect families to resources such as meals, school psychologists, and technological
18 support. *Id.* Despite this outreach, some students did not attend school again and Julian
19 was not able to contact them because their families either moved or changed phone
20 numbers. *Id.* ¶ 6. One of Julian’s students moved three times in the first month of the
21 pandemic and struggled to attend class due to unstable internet access, so he brought the
22 student a router. *Id.* In Julian’s experience, ELL students and students who joined later in
23 the semester were the most likely to not return. *Id.* Other students struggled when their
24 Chromebooks broke, as it was difficult to obtain new devices with school closed. *Id.* ¶ 11.

25 82. In Spring 2020, LAUSD mandated that teachers call the parents of students
26 who were on track to receive a D or F. *Id.* ¶ 7. At Julian’s school, each teacher was
27 responsible for reaching out to the 20 students in their advisory class. *Id.* Julian
28 encountered difficulty reaching parents who were either at work or did not have updated

1 contact information. *Id.* As one of the few bilingual teachers, Julian made additional
2 phone calls to connect with monolingual Spanish-speaking families. *Id.* In instances
3 where parents only spoke Indigenous languages, teachers had to rely on students to serve
4 as interpreters. *Id.* One challenge Julian faces is balancing student outreach with respect
5 for their struggles. *Id.* ¶ 10. One of his students recently lost a parent to COVID-19, so he
6 has been mindful about communicating while giving her space to grieve. *Id.*

7 83. In Fall 2020, attendance improved due to more clearly defined attendance
8 requirements and the help of a Pupil Services and Attendance (“PSA”) counselor at
9 Julian’s school. *Id.* ¶ 8. The PSA can regularly communicate with families, conduct home
10 visits when needed, and make referrals to other services. Services have also improved due
11 to a Psychiatric Social Worker (“PSW”) who provides counseling, case management, and
12 referrals. *Id.* In 2021, Julian’s school became a community school,⁹ which has further
13 expanded access to critical resources for families. *Id.*

14 84. Remote learning also created challenges for Julian, who teaches in his garage
15 so his wife, who is also a teacher, can use the kitchen, and his daughter can attend her
16 second grade classes in the living room. *Id.* ¶ 12. Julian has also had to develop new
17 methods of teaching and grading. *Id.* ¶ 14. For example, Julian previously used rubrics
18 and peer grading for in-class writing assignments but has not found a way to engage
19 students in remote peer grading. *Id.*

20 85. Julian’s recommendation for improving learning is to adequately fund both
21 IDEA and Section 504. *Id.* ¶ 15. From his work in credit recovery, Julian has seen how
22

23 ⁹ A community school is built upon partnerships between the school and community resources,
24 integrating academics, health, social services, youth and community development, and community
25 development. *See What is a Community School?*, COALITION FOR COMMUNITY SCHOOLS,
26 http://www.communityschools.org/aboutschools/what_is_a_community_school.aspx (last visited
27 Mar. 15, 2021); Katie Jarrot, *School Views: The Advantages of Community Schools*, VAIL DAILY
28 (Feb. 5, 2020), [https://www.vaildaily.com/opinion/school-views-the-advantages-of-community-
schools/](https://www.vaildaily.com/opinion/school-views-the-advantages-of-community-schools/); Cheryl D. Hayes & Richard R. Buery Jr., *Community Schools: A Worthwhile Investment*,
EDUCATION WEEK (Aug. 20, 2013), [https://www.edweek.org/leadership/opinion-community-
schools-a-worthwhile-investment/2013/08](https://www.edweek.org/leadership/opinion-community-schools-a-worthwhile-investment/2013/08) (noting in Cincinnati, where every school is a
community school, the graduation rate increased from 51 percent to more than 80 percent).

1 trauma can derail a student’s learning without necessarily qualifying them for an IEP. *Id.*

2 **Alyssa Potasznik**

3 86. **Alyssa Potasznik** is a special education teacher in the Austin Independent
4 School District (“AISD”). Alyssa Potasznik Decl. ¶ 1. The 2020-21 school year is
5 Alyssa’s 11th year of teaching. *Id.* ¶ 2. Alyssa is a special education resource and
6 inclusion English teacher for 10th and 11th grade and a ninth through 12th grade study
7 skills teacher. *Id.* Her job involves dual roles of teaching, which requires planning lessons
8 and providing individualized attention, and case management, which entails developing
9 IEPs, monitoring students’ progress, and communicating with teachers and parents. *Id.*
10 ¶¶ 2-3. In her case management role, Alyssa supervises 20 students. *Id.* ¶ 3. This number
11 has increased each year, as her caseload had only 11 students when she first started. *Id.*
12 The demands of both roles can be hard to balance. For example, 14 of Alyssa’s IEPs are
13 scheduled for January and February 2021, making it difficult for her to lesson plan and
14 prepare for teaching simultaneously. *Id.*

15 87. Alyssa has seen how school administrators are sometimes hesitant to
16 evaluate students for special education, especially if they believe that parents will not
17 advocate for their children. *Id.* ¶¶ 5-7. In one instance, the school declined to evaluate a
18 student until the student’s mother, who was Latinx and a single mother, hired an attorney
19 through Disability Rights Texas. *Id.* ¶ 7. After an attorney was retained, the student was
20 evaluated. *Id.* Although the student was ultimately admitted to special education, there
21 was a significant delay in her receiving services. *Id.* This embodied how low-income
22 parents’ concerns are dismissed unless they have an advocate. *Id.*

23 88. One of the most significant issues facing special education teachers in AISD
24 is a severe staff shortage. In the 2018-19 school year, nearly all the licensed specialists in
25 school psychology (“LSSP”) assigned to AISD quit in response to a dramatic increase in
26 workload coupled with extremely low pay compared to surrounding districts. *Id.* ¶ 8. The
27 lack of LSSPs drastically slows down the evaluation process, and last year many of
28 Alyssa’s students were not able to be reevaluated. *Id.* Alyssa anticipates that this backlog

1 will result in students not obtaining the services they need. *Id.* ¶ 20. Alyssa’s campus also
2 instituted a new management software to track how special education teachers are
3 spending their time. *Id.* ¶ 10. Instead of focusing on providing services, teachers must
4 spend considerable amounts of time documenting each minute of their day. *Id.* Staff
5 shortages in special education are common because teachers and specialists often quit due
6 to the intense strain and workload. This in turn increases the burden on remaining
7 teachers, creating a vicious cycle. *Id.* ¶¶ 10-11.

8 89. This staffing shortage is particularly pronounced in the inclusion support
9 area, which provides students with individualized support in general education classes. *Id.*
10 ¶ 12. Districts typically do not have enough inclusion specialists, and existing inclusion
11 specialists must often act as substitutes. *Id.* At Alyssa’s school, inclusion teachers were
12 pulled out of their classes to teach life skills. *Id.* This has resulted in limited inclusion
13 support for juniors and especially seniors, who have no inclusion support at all. *Id.*
14 Alyssa’s school also lacks a certified specialist in dyslexia intervention. *Id.* ¶ 13. The only
15 trained specialist in dyslexia intervention is also the school’s 504 coordinator, leaving her
16 stretched incredibly thin. *Id.* To Alyssa’s knowledge, only five of 2,500 students at the
17 school receive dyslexia intervention. *Id.*

18 90. Alyssa knows of many students who have lost loved ones during the
19 pandemic and may need additional resources such as counseling. *Id.* ¶ 15. Alyssa’s
20 school has a mental health specialist but no established structure to identify students
21 suffering from trauma. *Id.* ¶ 14. Attendance has been another issue, as AISD does not
22 have a designated plan in place for when a student is absent for many consecutive days or
23 when they drop off the radar entirely. *Id.* ¶ 18.

24 91. To address some of these issues, Alyssa proposes instituting class and
25 caseload caps to reduce the strain on teachers. *Id.* ¶ 21. Alyssa also believes there should
26 be a paradigm shift in term of how special education is conceptualized. *Id.* ¶ 27. Rather
27 than being seen as a way to redress deficits in certain students’ learning, special education
28 should be seen as a rising tide that lifts all boats. *Id.* ¶ 28. This would allow for more

1 institutional support for special education, including more leadership programs and
2 training to support teachers. *Id.* ¶ 27.

3 **III. FACTS**

4 92. As we approach the 50th anniversary of the landmark passage of Section
5 504, which was dramatically captured in the Netflix documentary *Crip Camp*, Congress
6 must grapple with how much work remains to fulfill that legislation’s promises. The gap
7 between the law’s intent and achievement was disturbing prior to the pandemic—with a
8 large and growing group of nearly 1.4 million students with disabilities that districts are
9 supposed to identify and who are entitled to services under Section 504 but are unlikely to
10 be receiving them because there are no federal or state funds dedicated to meeting their
11 needs specifically.¹⁰ Even before the pandemic, these underserved students were
12 disproportionately students of color.¹¹ Now, widespread trauma from mass death and
13 sustained social isolation have undoubtedly deepened the divide. That this trauma for
14 many students comes on top of long promised, but not fully provided, special education
15 services under the IDEA, only compounds the crisis and the need for federal intervention.

16 **A. How did we get here?**

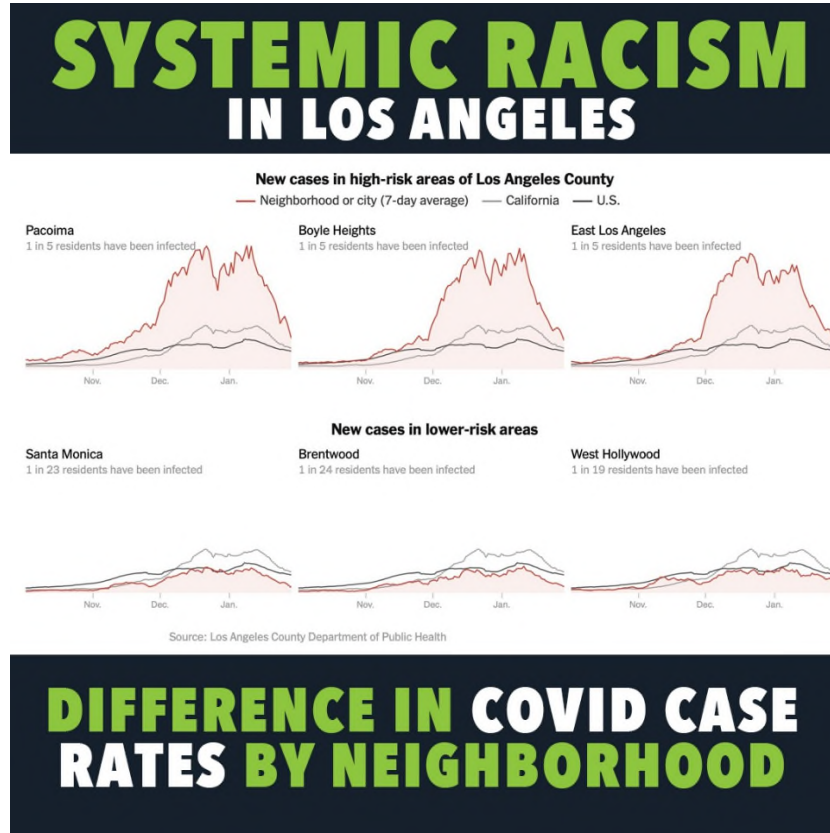
17 93. The depth of the current crisis in educational access for students of color
18 with disabilities is in no small part due to the former Education Secretary DeVos’s view
19 that it was not her responsibility or that of the federal government to track school districts
20 and their coronavirus infection rates or to assist with how schools are to reopen.¹² But the
21 disproportionate deleterious racial impact extends well before 1973, and although the
22 passage of Section 504 and the IDEA helped, chronic underfunding and the Department’s
23 inadequate monitoring and enforcement have contributed to the inequity in the delivery of
24 special education and related supports and services for students with disabilities who have

25 _____
26 ¹⁰ CCRR Expert Report at 4.

27 ¹¹ *Id.* at 15-20.

28 ¹² See Lauren Camera, *DeVos: Not My Job to Track School Reopening Plans*, U.S. NEWS (Oct. 20,
2020), <https://www.usnews.com/news/education-news/articles/2020-10-20/betsy-devos-not-my-job-to-track-schools-coronavirus-reopening-plans>.

1 a right to be educated but require their needs be met to receive FAPE.



15 Figure 1 Systematic Racism in Los Angeles: Difference in COVID case Rates by Neighborhood¹³

17 ¹³ This graphic is based on data from the Los Angeles Department of Public Health. See *LA*
18 *County COVID-19 Surveillance Dashboard*, COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC
19 HEALTH, http://dashboard.publichealth.lacounty.gov/covid19_surveillance_dashboard/ (last visited
20 Mar. 14, 2021). Low-income communities of color have been disproportionately devastated by
21 COVID-19. In predominantly Latinx communities, 1 in 5 residents have been infected by
22 COVID-19. Pacoima is 7 percent white, 2 percent Black, 3 percent Asian, and 87 percent Latinx,
23 and the median household income is \$65,849. *L.A. (North Central/Arleta & Pacoima) & San*
24 *Fernando Cities*, CENSUS REPORTER (2019), [https://censusreporter.org/profiles/79500US0603707-](https://censusreporter.org/profiles/79500US0603707-los-angeles-county-la-north-centralarleta-pacoima-san-fernando-cities-puma-ca/)
25 [los-angeles-county-la-north-centralarleta-pacoima-san-fernando-cities-puma-ca/](https://censusreporter.org/profiles/79500US0603707-los-angeles-county-la-north-centralarleta-pacoima-san-fernando-cities-puma-ca/). East Central,
26 Central City, and Boyle Heights are 12 percent white, 8 percent Black, 15 percent Asian, and 63
27 percent Latinx, and the median household income is \$46,691. *L.A. City (East Central/Central*
28 *City & Boyle Heights)*, CENSUS REPORTER (2019), [https://censusreporter.org/profiles/79500US0603744-los-angeles-county-central-la-city-east-](https://censusreporter.org/profiles/79500US0603744-los-angeles-county-central-la-city-east-centralcentral-city-boyle-heights-puma-ca/)
[centralcentral-city-boyle-heights-puma-ca/](https://censusreporter.org/profiles/79500US0603744-los-angeles-county-central-la-city-east-centralcentral-city-boyle-heights-puma-ca/). East Los Angeles is 2 percent white, 0 percent Black,
1 percent Asian, and 96 percent Latinx, and the median household income is \$53,194. *E. L.A.*,
CENSUS REPORTER (2019), [https://censusreporter.org/profiles/16000US0620802-east-los-angeles-](https://censusreporter.org/profiles/16000US0620802-east-los-angeles-ca/)
[ca/](https://censusreporter.org/profiles/16000US0620802-east-los-angeles-ca/). In contrast, wealthier and predominantly white neighborhoods have substantially lower rates
of infection. Santa Monica, where 1 in 23 residents have been infected, is 66 percent white, 4
percent Black, 8 percent Asian, and 18 percent Latinx, and the median household income is
\$92,490. *Santa Monica*, CENSUS REPORTER (2019),

1 94. The harsh and disparate impact of the pandemic on BIPOC communities
2 have resulted in great trauma to students in those communities, which educators will need
3 to address to reach students and re-engage them in school. Students with intellectual
4 disabilities and autism are significantly more likely to contract and die from COVID-19
5 than students without disabilities.¹⁴ Students of color with disabilities generally are more
6 likely to be exposed to the virus or have had a family member die from COVID-19 because
7 of more crowded living conditions, the greater likelihood of untreated underlying medical
8 conditions such as diabetes, and the disproportionate number of essential workers who are
9 BIPOC.

10 95. During the pandemic, special education teachers, specialized instructional
11 support personnel and other educators have not received critically needed additional
12 resources and guidance that would help them more smoothly and comprehensively adjust
13 to remote learning and more effectively ensure their students' 504 plans or IEPs are met.
14 As a result, pandemic-related patterns for students of color with disabilities have emerged:

15 (a) Students have fallen behind or regressed since March 2020 due to not
16 receiving services and supports identified in their IEPs.

17 (b) Students have been transferred between different special education
18 teachers or substitutes because of the special education teacher shortage and
19

20 <https://censusreporter.org/profiles/16000US0670000-santa-monica-ca/>. Brentwood, where 1 in 24
21 residents have been infected, is 52 percent white, 8 percent Black, 10 percent Asian, and 23
22 percent Latinx, and the median household income is \$108,994. *Brentwood*, CENSUS REPORTER
23 (2019), <https://censusreporter.org/profiles/16000US0608142-brentwood-ca/>. West Hollywood,
24 where 1 in 19 residents have been infected, is 75 percent white, 4 percent Black, 6 percent Asian,
25 and 10 percent Latinx, and the median household income is \$74,044. *W. Hollywood*, CENSUS
26 REPORTER (2019), <https://censusreporter.org/profiles/16000US0684410-west-hollywood-ca/>.

27 ¹⁴ Joseph Shapiro, *COVID-19 Infections And Deaths Are Higher Among Those With Intellectual*
28 *Disabilities*, NPR MORNING EDITION (Jun. 9, 2020)

<https://www.npr.org/2020/06/09/872401607/covid-19-infections-and-deaths-are-higher-among-those-with-intellectual-disabilities>; Margaret A. Turk, M.D., *Intellectual and developmental disability and COVID-19 case-fatality trends*, DISABILITY HEALTH J. (Jul. 13, 2020)

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7245650/> (“COVID-19 appears to present a greater risk to people with [intellectual and developmental disabilities], especially at younger ages.”).

1 recent retirements.

2 (c) Students need, but have not received, additional resources or special
3 equipment to be able to learn effectively in a remote environment
4 (e.g. students lack adequate internet access, a dedicated computer, or another
5 person to help navigate the technology, or a disability inhibits learning over
6 computer), even after being identified and requested by parents.

7 (d) Students' IEPs require occupational therapists, speech therapists, nurses,
8 and other specialists, but students have had no or reduced access to them.

9 (f) Since March, many students were not able to receive in-person initial
10 evaluations or triennial evaluations by districts, have a new IEP created, or
11 have their IEPs updated.

12 (g) Students who started in a suburban district were pushed into an urban
13 district because of special education needs or IEP requirements.¹⁵

14 (h) Students who are eligible for 504 plans or 504-related services are not
15 receiving them, primarily because the district will not evaluate them.

16 ARP funding can be directed to redress the above-emerging issues, but it will take strong
17 guidance from the Department to ensure all districts understand how they can, and why
18 they must, use this funding to guarantee FAPE.

19 **B. Challenges identifying disabilities and necessary services**

20 96. Persistent underfunding of the IDEA and historically inadequate Department
21 oversight, along with many states underfunding public education, including special
22 education, has limited services in denial of FAPE and undermined the accurate assessment
23 of disability as required by the IDEA's child find provisions. Thus, students of color in
24 resource-strapped districts experience the greatest negative impacts, while higher-income,
25 majority-white districts can mitigate the detrimental effects of cuts to services.

26 97. Since remote learning began in March, 2020, students with disabilities have
27

28 ¹⁵ See, e.g., Amy Mizialko Decl. ¶ 12.

1 either lost or had decreased access to new evaluations. Remote learning has presented new
2 challenges to child find and accurate identification and diagnosis of students with
3 disabilities to ensure they receive appropriate support.

4 98. Before COVID-19, large numbers of students with disabilities received no
5 supports or services despite their right to receive them. Furthermore, there is
6 disproportionate under-identification of BIPOC students for Section 504-only plans.
7 Nationally, there is a clear pattern of under-identification of students with disabilities who
8 are thereby deemed not eligible for special education under the IDEA (“504-only
9 students”). This population includes students diagnosed with asthma, diabetes, ADHD,
10 autism, behavioral problems, depression, anxiety disorders, trauma-related issues, and
11 other mental or physical health needs. These students are entitled to supports and services
12 in the general education classroom but on balance, these students do not receive resources
13 to support a FAPE; they would benefit if Congress allocated federal funding to assist
14 districts with the costs associated with implementing Section 504 plans. This funding
15 basic deficiency was aggravated by the DeVos Department of Education’s insufficient
16 oversight and its lack of vision and initiative. Instead of pursuing broad-based solutions,
17 the DeVos Department of Education waited for individual complaints to be filed on a
18 random district-by-district basis. Even then, it faltered in its obligations to students with
19 disabilities.

20 99. As the CCRR explains, 3,434 school districts (serving over 1.8 million
21 students) did not identify a single 504-only student, and 91 districts with over 3,000
22 students enrolled (serving 630,450 students) did not have a single 504-only student.¹⁶
23 There is also wide disparity by state on 504-only child find: with New Hampshire, Texas,
24 Louisiana, Vermont, and Connecticut over five percent in 2017-18, while Oklahoma,
25 Arizona, California, Nebraska, Wisconsin, New Mexico, and Missouri were under 1.5
26
27

28 ¹⁶ CCRR Expert Report at 13.

1 percent.¹⁷ All racial groups have a lower 504-only find than whites,¹⁸ and Native
2 American, Latinx, and Black students have a higher percentage attending a district with a
3 low rate (below 0.5 percent) of 504-only students identified. Correspondingly there is
4 little to no 504 support and services for students or their teachers in those districts—a
5 meaningful factor influencing the achievement gap based on race.¹⁹

6 100. CCRR’s “review of the racial disparities at the state and district level” noted
7 the serious possibility that many districts are denying FAPE to a broad subset of students
8 with disabilities, although the precise number of students in each district who should be
9 deemed eligible pursuant to Section-504 only criteria is unknown.²⁰ During the pandemic,
10 initial evaluations for special education services has become more challenging, and there
11 have been periods of time when the initial evaluations were not occurring at all. Where in-
12 person evaluations have occurred, concerns have arisen about the accuracy of tests
13 administered under new COVID-related conditions.²¹ These alarming pre-pandemic
14 statistics show that many districts had problems meeting their child find obligations
15 without adequate federal oversight. This shortcoming must be corrected immediately
16 because the number of 504-only students will only have increased during the pandemic.

17 101. Even once identified, 504-only students have not been adequately supported.
18 In the absence of well-designed behavioral intervention plans, this insufficient support
19 often manifests in suspension and, as a result, learning loss. The CCRR found that, again
20 pre-pandemic, 504-only students in 2017-18 lost 30 days of instruction per 100 students
21 enrolled, meaning that they lost 11 more days than students without disabilities.²² This
22 indicates that 504 plans were not working as they should even before the pandemic, and
23 **additional** guidance and resources at the federal level are required to ensure that students
24

25 ¹⁷ *Id.* at 15, Table 1.

26 ¹⁸ *Id.* at 15-16, Figure 2.

27 ¹⁹ *Id.* at 16; 20.

28 ²⁰ *Id.* at 16.

²¹ *Id.* at 56 & n. 170.

²² *Id.* at 25, Figure 5.

1 with disabilities have the same educational opportunities as other students post-pandemic.

2 **C. Insufficient resources identified pre-pandemic**

3 102. The challenges of remote learning are exacerbated in the special education
4 context, where additional support and supplemental resources are often necessary to
5 guarantee that students with disabilities receive a FAPE.

6 103. Many school districts do not meet their obligation to identify and meet the
7 needs of 504 only students.²³ The CCRR Expert Report found that in districts with at least
8 1,000 students, typically 2.9 percent of students were reported as 504 only; in 1 percent of
9 these medium to large districts, however, the districts identified no 504-only students.²⁴
10 This illustrates that many districts vastly under-identify 504 only students. The same may
11 be true for IDEA. Many parents request IEP evaluations or 504 services which take
12 months or even years to obtain. For example, Michelle K. has spent the last year trying to
13 get her son Rourke IEP services for his autism diagnosis.²⁵ Likewise, Melina E. A. was
14 unable to receive an IEP for C.A.’s autism diagnosis; instead the district provided C.A.
15 some services for the manifestation of her autism.²⁶

16 **D. Insufficient resources provided during pandemic**

17 104. Students with disabilities have also been deprived of opportunities to create
18 or update their IEPs, especially in ways that reflect the remote learning context. In an
19 American Institutes of Research (“AIR”) survey, when administrators were asked during
20 the pandemic about their ability to comply with IDEA-eligibility evaluation, over half the
21 administrators indicated that compliance with the referral and evaluation requirements was
22 more difficult.²⁷ California researchers looking into student engagement in online learning
23 found that “students with disabilities had participation rates that were much lower than
24

25 _____
26 ²³ *Id.* at 12.

27 ²⁴ *Id.* at 13.

²⁵ *See* Michelle K. Decl. ¶¶ 10-20.

²⁶ *See* Melina E. A. Decl. ¶¶ 19-20.

²⁷ CCRR Expert Report at 54 & n. 153.

1 their peers.”²⁸ One study on student engagement in remote learning across LAUSD found:
2 “Compared to more advantaged students, fewer middle and high school students who are
3 Black, Hispanic, living in low-income households, classified as English learners, [or] have
4 a disability ... participated across all measures of online activity. Low participation may
5 show lost learning which could take students years to recoup.”²⁹ Disability advocates have
6 also asserted that poor achievement levels raise concerns about both “the quality and
7 quantity of special education instruction.”³⁰ Specifically, access to instruction has
8 diminished for students who cannot benefit from online instruction without additional
9 support from an in-person assistant or technical support from assistive technology.³¹

10 105. “[L]ow-income students and students of color, especially Black and Latinx
11 students, and homeless students have lost more instruction than their White and non-poor
12 counterparts.”³² In the in-person classroom setting, students with disabilities typically
13 benefit from additional assistance through occupational therapists, speech therapists,
14 nurses, counselors, and other specialists and aides. These supplemental services have been
15 harder to access in the remote setting.

16 106. Despite teacher efforts to conduct outreach to students through all available
17 communications methods³³ and districts providing internet hotspots and computers and
18 replacements, many students lack reliable internet access and necessary technology for
19 remote learning. This is especially pronounced for low-income students of color with
20 disabilities, whose families tend to have fewer resources to supplement remote learning.

21 107. Students of color whose parents or guardians are essential workers also may
22 not receive the additional individualized attention from those adults that other students
23 may receive. Parents who are essential workers may not have the time or capacity to
24

25 ²⁸ *Id.* at 55 & n. 165.

26 ²⁹ *Id.* at 55 & n. 161.

27 ³⁰ *Id.* at 54 & n. 155.

28 ³¹ *Id.* at 54 & n. 156.

³² *Id.* at 55 & n. 159.

³³ *See, e.g.*, Tiffany G. Decl. ¶ 29-30; Anna H. Decl. ¶ 20; Karla R. Decl. ¶¶ 13-16; 34.

1 review their child’s learning plan to ensure it aligns with the requirements under their IEP.
2 Laquana A. noted that her son often did not receive adequate work to ensure that he was
3 learning. As a result, Laquana would try to come up with assignments for Markel such as
4 telling him to read a certain word or look up definitions; but as a single mother and an
5 essential worker this has been burdensome and difficult to manage on top of trying to
6 ensure Markel obtains accommodations to be successful at school.³⁴

7 108. Although it is difficult to accurately estimate how the pandemic has affected
8 learning loss, those engaged in predictive research have noted that the situation appears
9 dire, especially for students with disabilities.³⁵ In part, learning loss arises from the
10 difficulty of providing certain services and accommodations in the virtual setting. For
11 example, 73 percent of special education administrators responding to the AIR’s October
12 2020 survey reported “that it was more or substantially more difficult to provide
13 appropriate instructional accommodations” in the remote learning context.³⁶

14 **E. Racial disproportionality**

15 109. The disproportionate representation of students of color in special education
16 is well-documented, and the underrepresentation of students of color receiving Section 504
17 plans is documented in the concurrently filed CCRR Expert Report.³⁷ Explicit
18 congressional findings have recognized racial disparities in special education as a serious
19 issue. Since 1997, Congress has repeatedly acknowledged that significant
20 disproportionality based on race was occurring in the identification and placement of
21 students of color with disabilities.³⁸

22 110. Racial disparity in special education is a persistent issue. When Congress
23 reauthorized IDEA in 1997, it found that students of color were 2.3 times more likely to be
24

25 ³⁴ Laquana A. Decl. ¶ 29.

26 ³⁵ CCRR Expert Report at 54.

27 ³⁶ *Id.* at 54 & n. 157.

28 ³⁷ *Id.* at 10-15.

³⁸ *See* Pub. L. No. 105-17, § 601(c)(8)(A), 111 Stat. 37, 40 (1997). Congress has since amended IDEA several times to address these disparities. Pub. L. No. 108-446, § 618(d).

1 labeled as having special education needs than white students.³⁹ When Congress
2 reauthorized the IDEA, it added requirements⁴⁰ that states review district data on
3 identification in specific disability categories, restrictive placement and racial
4 disproportionality in discipline.⁴¹ Research demonstrates that students of color are
5 significantly more likely than similarly-situated white students to be placed in restrictive
6 special education environments that are segregated from students in non-special education
7 classrooms, and far more likely to be removed for disciplinary reasons.⁴²

8 111. Students of color are both over-identified and under-identified in terms of
9 special education.⁴³ This dual-track phenomenon leads to injury in both directions:
10 segregation and stigma in the former scenario (with insufficient support provided
11 notwithstanding the identification), and then failure to provide support and necessary
12 education services in the latter. The evaluation process—which has subjective elements—
13 is complicated, and highly affected by state and local contextual factors, including but not
14 limited to access to effective reading instruction in general education, discipline
15 disparities, implicit racial bias, and availability of early intervention supports and services

17 ³⁹ 20 U.S.C. § 1400-1487 (Supp. IV 1998).

18 ⁴⁰ 20 U.S.C. § 1418(d).

19 ⁴¹ In cases of significant disproportionality in identifying children with disabilities or
20 disproportionality in placing students in particular education settings such as disciplinary
21 removals, the State or the Secretary of the Interior must require local education agencies (“LEAs”)
22 to publicly report on the revision of these practices and must reserve 15 percent of its IDEA Part B
23 funds for coordinated early intervention services (“CEIS”). 34 C.F.R. §§ 300.646(c) & (d); 20
24 U.S.C. § 1413(f)(1). In 2018, the Department of Education reported to Congress that 240 LEAs
25 throughout the 50 states, Washington D.C., the Bureau of Indian Schools, and schools in U.S.
26 territories had to reserve 15 percent of IDEA Part B funds for CEIS. *See 40th Annual Report to
27 Congress on the Implementation of the Individuals with Disabilities Education Act*, OFFICE OF
28 SPECIAL EDUCATION AND REHABILITATIVE SERVICES, U.S. DEPARTMENT OF EDUCATION (2018) at
287-291, <https://www2.ed.gov/about/reports/annual/osep/2018/parts-b-c/40th-arc-for-idea.pdf>.

⁴² *See* Daniel J. Losen, *New Research on Special Education and Minority Students with
Implications for Civil Rights Advocacy*, 36 CLEARINGHOUSE REV. 132 (2002). *See also* Dustin
Rynders, *Battling Implicit Bias in the IDEA to Advocate for African American Students with
Disabilities*, 35 TOURO L. REV. 461 (2019).

⁴³ *See* Francis A. Pearman, F. Chris Curran, Benjamin Fisher & Joseph Gardella, *Are Achievement
Gaps Related to Discipline Gaps? Evidence from National Data*, 5 AERA Open 1 (2019),
<https://journals.sagepub.com/doi/pdf/10.1177/2332858419875440>.

1 for kids exposed to environmental toxins, trauma, and racism.

2 112. The overrepresentation of students of color in special education classrooms
3 is experienced as a form of educational segregation, where disability serves as a
4 “normalized” category of marginalization for students of color: “Overt racially
5 segregating schooling practices have given way to largely under-acknowledged and more
6 covert forms of racial segregation, including some special education practices.”⁴⁴ In this
7 way, special education can become a “dumping ground” for Black children deemed
8 uncontrollable, unmotivated, or unintelligent.⁴⁵ For many Black children categorized as
9 having a disability, special education placement does not correlate to more educational
10 support; rather it can result in separation from general education classrooms and high rates
11 of discipline.⁴⁶ One significant study concluded that this is a “new form of school
12 segregation in subversion of *Brown v. Board*.”⁴⁷

13 113. There should be greater attention paid to districts where the data show large
14 differences by race. Specifically where the data appears to show that whites are
15 disproportionately identified as having autism, and BIPOC students are disproportionately
16 identified as having emotionally disturbance or intellectual disability, especially where,
17 within the same district there are large differences in disciplinary removal by category.⁴⁸
18 For example, although C.A., a Chicana student, had a formal autism diagnosis, her District
19 provided her an IEP under the emotional disturbance identifier rather than under an autism
20

21 _____
22 ⁴⁴ See Beth A. Ferri & David J. Connor, *Tools of Exclusion: Race, Disability, and (Re)Segregated Education*, 107 TEACHERS COLLEGE RECORD 453, 454 (2005).

23 ⁴⁵ LaToya Baldwin Clark, *Beyond Bias*, 53 HARV. C.R.-C.L. L. REV. 381, 382 (2018).

24 ⁴⁶ *Id.* at 383.

25 ⁴⁷ *Id.*

26 ⁴⁸ U.S. COMMISSION ON CIVIL RIGHTS, BEYOND SUSPENSIONS: EXAMINING SCHOOL DISCIPLINE
27 POLICIES AND CONNECTIONS TO THE SCHOOL-TO-PRISON PIPELINE FOR STUDENTS OF COLOR WITH
28 DISABILITIES (2019) at 101, <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf> at
101; Baldwin Clark *supra* note 56 at 395-97 (observing that in the 2014-2015 school year Black
children comprised only 16 percent of public school enrollment but represented one-quarter of
children receiving special education services for emotional disturbance and intellectual
disturbance respectively).

1 classification.⁴⁹ This meant that C.A. received IEP services for the manifestations of
2 autism, but not the autism itself.⁵⁰

3 **F. Responding to manifestations of disabilities with discipline**

4 114. Students of color with disabilities experience higher rates of discipline. In
5 the remote learning setting, this has translated to students of color being removed from
6 Zoom classrooms or marked absent or tardy due to technological issues.⁵¹ Inconsistent
7 guidance on assessing absences in the remote learning context or removing students for
8 allegedly disruptive behavior can result in students being reported for truancy. This
9 problem is particularly pronounced for students of color with disabilities.

10 115. The CCRR Expert Report, citing the Department’s Guidance on the
11 Inclusion of Behavior Supports in Individualized Education Plans published in August
12 2016, notes “extraordinarily high rates and wide disparities” in the extent to which students
13 of color are excluded and disciplined in response to student misbehaviors.⁵² This suggests
14 that the IDEA is not protecting students of color with disabilities from unjust disciplinary
15 exclusion.⁵³ Moreover, inadequate or inappropriate services often lie at the root of these
16 misbehaviors: “Many students with disabilities may exhibit heightened behavioral
17 problems only when their academic or behavioral needs are not being met. This can result
18 from a misdiagnosis, providing supports and services that do not address the disability,
19 overlooking the behavioral needs caused by the disability, or failing to deliver the
20 supports, services and responses that are in the student’s IEP or 504 plan, including, but
21 not limited to those described in a behavioral intervention plan.”⁵⁴ Significantly, the
22 _____

23 ⁴⁹ Melina E.A. Decl. ¶¶ 2; 16; 18; 20

24 ⁵⁰ *Id.* ¶ 20.

25 ⁵¹ *See, e.g.*, Laquana A. Decl. ¶¶ 13-14; Barbara B. Decl. ¶¶ 10-16; Melina E. A. Decl. ¶¶ 28-32;
26 Karla R. Decl. ¶ 34.

27 ⁵² CCRR Expert Report at 6; *Dear Colleague Letter on Ensuring Equity and Providing Behavioral*
28 *Supports to Students with Disabilities*, U.S. Department of Education Office of Special Education
29 Programs (2016), <https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>.

30 ⁵³ *Id.* at 29-30.

31 ⁵⁴ *Id.* at 29.

1 decision to punish behaviors by taking away instructional time can build up to a denial of
2 FAPE.⁵⁵ Moreover, the federal data reported on lost instruction suggests that the high rates
3 of disciplinary exclusion in alternative schools are being overlooked. For example, recent
4 data analyses show that the average amount of instruction lost for students with IEPs who
5 are attending an alternative school is 148 days per 100 students.⁵⁶ This is more than twice
6 the 68 days lost per 100 at the secondary level for students with disabilities overall where
7 the vast majority attend traditional schools.⁵⁷

8 116. While ascertaining the precise number of days lost due to discipline
9 accounting for race and disability is difficult, CCRR’s analysis of data in 2017 revealed
10 racial disparities in lost instruction among students with disabilities.⁵⁸ Further, the analysis
11 of the 2017-2018 CRDC data which enables the calculation of differences in the risk from
12 being suspended at least once reveals profound racial disparities among students with
13 disabilities. A review of data from California from 2018-19 revealed that Black students
14 tend to suffer substantially more lost instruction than their non-Black peers. Black males
15 with disabilities lost 149 days of instruction as compared to 107 days for Native students,
16 60 days for Latinx students, and 89 days for white students.⁵⁹ This racial discipline gap
17 among students with disabilities between Black and whites was growing, not narrowing,
18 before the pandemic.⁶⁰ And in many districts, the racial disparity for students with IEPs is
19 extreme yet unchecked.⁶¹

20 117. The CCRR Expert Report also highlights that the Los Angeles Unified
21 School District and Milwaukee Public Schools have “unusually high rates of referral to
22 law enforcement for secondary students with disabilities.”⁶² Los Angeles Unified School
23

24 ⁵⁵ *Id.* at 30.

25 ⁵⁶ *Id.* at 32 & n. 73.

26 ⁵⁷ *Id.* at 33.

27 ⁵⁸ *Id.* at 32, Figure 5.

28 ⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 32-34.

⁶² *Id.* at 41; 43, Figure 8.

1 District referred 2.71 percent of all secondary students with disabilities to law
2 enforcement.⁶³ LAUSD's referral rate for students with IEPs was almost one percentage
3 point higher than the rate for all students. In Los Angeles, the rate of referral to law
4 enforcement for all students was higher than the district's out-of-school suspension rate.⁶⁴
5 That “disturbing pattern, where referrals to law enforcement outnumbered out-of-school
6 suspensions,” must be halted and remedied under Title II and IV as well as Section 504.⁶⁵
7 The CCRR Expert Report highlights the districts where the school-policing data were
8 reported, but it also found that 61 percent of large districts reported zero school related
9 arrests, including New York City and Pittsburgh, suggesting an oversight failure in the
10 collection and reporting of police involvement in schools, and masking the true number of
11 districts referring a high percentage of students of color with disabilities to the police based
12 on their school misconduct.⁶⁶

13 118. Despite the possibility of race-based denial of FAPE suggested by the
14 discipline disparities among students with disabilities, the DeVos administration took steps
15 pre-pandemic to reduce oversight of racially disparate impacts by rescinding Title VI
16 guidance on school discipline, refusing to conduct systematic Office of Civil Rights
17 discrimination investigations,⁶⁷ and by requesting to delay the implementation of IDEA
18 disproportionality regulations that were approved in 2016, where President Obama’s
19 Education Department had clarified their application to discipline disparities and sought to
20 encourage more complete implementation on the states’ part.⁶⁸ A federal court stopped the
21

22 ⁶³ *Id.* at 41.

23 ⁶⁴ *Id.*

24 ⁶⁵ *Id.*

25 ⁶⁶ *Id.* at 39 & n. 102.

26 ⁶⁷ Annie Waldman, *DeVos Has Scuttled More than 1,200 Civil Rights Probes Inherited from*
27 *Obama*, (Jun. 21, 2018), [https://www.propublica.org/article/devos-has-scuttled-more-than-1-200-](https://www.propublica.org/article/devos-has-scuttled-more-than-1-200-civil-rights-probes-inherited-from-obama)
28 [civil-rights-probes-inherited-from-obama](https://www.propublica.org/article/devos-has-scuttled-more-than-1-200-civil-rights-probes-inherited-from-obama); Andrew Kreigbaum, *Not Look for Patterns*, INSIDE
HIGHER ED (Jun. 16, 2017), [https://www.insidehighered.com/news/2017/06/16/education-](https://www.insidehighered.com/news/2017/06/16/education-department-suggests-less-expansive-approach-ocr-investigations)
[department-suggests-less-expansive-approach-ocr-investigations](https://www.insidehighered.com/news/2017/06/16/education-department-suggests-less-expansive-approach-ocr-investigations).

⁶⁸ Francisco Vara-Orta, *It’s Official: DeVos has Axed Obama Discipline Guidelines Meant to*
Reduce Suspensions of Students of Color, CHALKBEAT (Dec. 21, 2018),
<https://www.chalkbeat.org/2018/12/21/21106428/it-s-official-devos-has-axed-obama-discipline->

1 effort to delay the regulations, but the rescission of Nondiscriminatory Administration of
2 School Discipline published in 2014 was not subject to judicial review.⁶⁹ As the current
3 administration works to fulfill its commitment to “building back better,”⁷⁰ we respectfully
4 urge that the Department’s efforts include overhauling the last administration’s concerted
5 attempt to reduce protections against racial discrimination in education. Then the
6 Department must focus on eradicating the many ways discrimination is experienced by
7 students of color with disabilities.

8 *“The world doesn’t want us around and wants us dead. We live with that
9 reality, so there’s always gonna be, ‘Am I gonna survive? Am I gonna push
10 back? Am I gonna fight to be here?’ that’s always true. So, if you wanna call
11 that anger, I call it kind of drive. You have to be willing to thrive or you’re
12 not going to make it.”*

13 – Corbett O’Toole, Disability Rights Activist

14 **IV. CONGRESSIONAL ACTION**

15 119. The passage of the ground-breaking ARP Act at long last holds the promise
16 of providing significant resources to meeting the needs of students with disabilities. The

17 [guidelines-meant-to-reduce-suspensions-of-students-of](#); Andrew Ujifusa, *Betsy DeVos Revokes
18 Obama Discipline Guidance Designed to Protect Students of Color*, EDUCATION WEEK (Dec. 21,
19 2018), [https://www.edweek.org/policy-politics/betsy-devos-revokes-obama-discipline-guidance-
20 designed-to-protect-students-of-color/2018/12](https://www.edweek.org/policy-politics/betsy-devos-revokes-obama-discipline-guidance-designed-to-protect-students-of-color/2018/12) .

21 ⁶⁹ *SPLC Statement on the Department of Education Rescinding Guidance Documents*, SOUTHERN
22 POVERTY LAW CENTER (Oct. 25, 2017), [https://www.splcenter.org/news/2017/10/25/splc-
23 statement-department-education-rescinding-guidance-documents](https://www.splcenter.org/news/2017/10/25/splc-statement-department-education-rescinding-guidance-documents); Casey Bayer, *DeVos Rescinds
24 Guidance Documents for Disabled Students: What Does It Mean?*, HARVARD GRADUATE SCHOOL
25 OF EDUCATION (Oct. 24, 2017), [https://www.gse.harvard.edu/news/17/10/devos-rescinds-
26 guidance-documents-disabled-students-what-does-it-mean](https://www.gse.harvard.edu/news/17/10/devos-rescinds-guidance-documents-disabled-students-what-does-it-mean); Michelle Diament, *Trump
27 Administration Rescinds Special Ed Guidance*, DISABILITY SCOOP (Oct. 20, 2017),
28 <https://www.disabilityscoop.com/2017/10/20/trump-rescinds-special-ed-guidance/24323/>, *Council
of Parent Att’ys & Advocs., Inc. v. DeVos*, 365 F. Supp. 3d 28 (D. D.C. 2019), *appeal
dismissed*, No. 19-5137, 2019 WL 4565514 (D.C. Cir. Sept. 18, 2019).

⁷⁰ *See Build Back Better: Joe Biden’s Jobs and Economic Recovery Plan for Working Families*,
25 BIDEN HARRIS, <https://joebiden.com/build-back-better/> (last visited Mar. 13, 2021) (“We’ve seen
26 again this year the tragic costs of systemic racism. Biden believes that addressing those costs has
27 to be core to every part of the economic agenda, and also a distinct priority in its own right. As
28 President, he will pursue a dedicated agenda to close the racial wealth gap, to expand affordable
housing, to invest in Black, Latino, and Native American entrepreneurs and communities, **to
advance policing and criminal justice reform, and to make real the promise of educational
opportunity regardless of race or zip code.**” (emphasis supplied)).

1 ARP Act provides \$122.7 billion for the existing Elementary and Secondary School
2 Emergency Relief fund. School districts must reserve 20 percent of these funds for
3 programs that address learning loss and the remaining funds can be used for a variety of
4 purposes including reducing class sizes and hiring additional teachers, specialized
5 instructional support personnel and other educational staff. In addition, \$3 billion is
6 provided as additional IDEA funding for fiscal year 2021. But because it is one-time
7 funds, the ARP Act does not go far enough in the long term.

8 120. Federal funding for special education has long lagged behind actual need and
9 there has never been funding for districts to meet accommodations that have a cost-
10 component under Section 504. With no funds to ensure districts can meet Section 504
11 students' needs, and with little oversight and accountability, districts have an incentive to
12 not identify students as eligible only under Section 504 – despite the legal and moral
13 obligation to identify all eligible students. In more affluent suburban districts, parents can
14 bypass this deficiency because they have the resources to go to many different specialists
15 to obtain correct diagnoses. Students in rural and urban districts with inadequate access to
16 specialists or with parents who cannot take paid time off to accompany their children to
17 multiple specialists often are unable to obtain a diagnosis on which to base a Section 504-
18 only plan. The CCRR Expert Report documents this disparity and while many large
19 districts are not identifying any students for 504 support, there is no mechanism at the
20 OCR to flag these districts for investigation based on this data.

21 121. To grasp the scope of the problems in special education and 504 compliance,
22 the Department must have adequate resources to be able to investigate the discrimination
23 against BIPOC students with disabilities across the nation. As the CCRR Expert Report
24 and the concurrently-filed declarations from urban and rural communities show, the
25 problem is systemic and found in every state. Therefore, a comprehensive remedy
26 depends on greater federal oversight and more effective civil rights enforcement.
27 Individual district investigations alone in the face of such widespread failure will not
28 ensure the provision of FAPE to BIPOC students with disabilities. A serious federal

1 commitment, including to the collection of accurate data, is a first step because the
2 problem is widespread, but few even know that there is a problem in part due to the data,
3 or absence of data, being reported. For example, the CRDC collects the 504-only numbers
4 only every two years—no other group of students is counted every other year, and it has
5 already been announced that the CRDC will not collect data for the 2019-2020 school
6 year, leaving a long gap to determine Section 504 compliance. The pandemic makes this
7 information more, not less, important and moving to an annual CRDC collection can help
8 fill this information gap.

9 122. All students with disabilities between three and 21 years of age are entitled
10 to a FAPE under the IDEA and its corresponding regulations. Under the IDEA, FAPE
11 includes identified special education and related services, i.e., “specifically designed
12 instruction, at no cost to parents, to meet a disabled student’s unique needs,”⁷¹ including
13 counseling, psychological services, school social work services, speech-language
14 pathology, and physical and occupational therapy.⁷² Specially-designed instruction
15 includes effective instruction conducted at home.⁷³ FAPE is satisfied when a district
16 provides personalized instruction with sufficient support services to permit a student with a
17 disability to benefit educationally from that instruction. Because the children identified
18 herein have not received specialized education services nor many of the support services
19 identified in their IEPs since March 2020, these students have not been able to benefit
20 educationally from the remote instruction. They have experienced learning regression and
21 are entitled to additional services to help remedy any losses.

22 123. To be clear, the Coalition is not asserting that FAPE cannot occur in a
23 remote environment for students with disabilities. To the contrary, as the declarations of
24 Alicia B., Tiffany G., Martha S., and Anna H. illustrate, the remote learning may
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26 _____
27 ⁷¹ *Bd. of Educ. of Hendrick Hudson Ctr. Sch. Dist. v. Rowley*, 458 U.S. 176, 181 (1982) (holding
28 that IDEA’s use of “individualized” requires an IEP to be tailored to each student’s unique needs).

⁷² 20 U.S.C. §§ 1401(26)(A) and (29).

⁷³ 20 U.S.C. §§ 1401(14) and (26)(A).

1 sometimes be essential for immunocompromised students or family members.⁷⁴ Instead,
2 other than distributing Chromebooks and hotspots for some students with disabilities and
3 assigned aides to assist through chat features, the students discussed herein exemplify a
4 national failure to provide BIPOC students with disabilities with the accommodations
5 mandated in their IEPs and/or 504 Plans. The pandemic has raised unprecedented
6 challenges leading to some inevitable delay in or modification to IEP services and
7 accommodations, and to some quantum of learning loss, but the across-the-board failure to
8 provide additional resources and meaningful guidance leaves these students deeply
9 vulnerable. This year-long lapse of critical education may cause irreparable damage, not
10 only to the educational progress and life development of all students with disabilities
11 identified herein but also all similarly situated students with disabilities whose IEPs have
12 not been fulfilled during this period.

13 124. As of the filing of this Comment, over 575,000 Americans have died from
14 COVID-19,⁷⁵ directly impacting millions across the country, including students. And even
15 students who have not directly experienced the death of a family member, friend or
16 educational aid, those students still have lost over a year of social interactions under
17 normal conditions without restrictions. Before academic instruction and learning can be
18 effective, the enormous social and emotional needs of students must be met. The
19 Department has correctly directed school districts to use their ARP funds to meet these
20 needs through a process that is anchored in the input of educators and other stakeholders.
21 Given the high toll the pandemic has taken on communities of color in particular,
22 proactively addressing pandemic trauma is crucial to racial equity. ARP funds should be
23 used to provide the tools to do so including engaging stakeholders, providing high-quality
24 professional development for the entire district on implicit racial bias, trauma-informed
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26 _____
27 ⁷⁴ See, e.g., Alicia B. Decl. ¶ 3; Tiffany G. Decl. ¶¶ 5-10; Martha S. Decl. ¶ 3; Anna H. Decl. ¶¶ 5-
28 7; 23; 38-39; 49.

⁷⁵ See *COVID Data Tracker*, CENTER FOR DISEASE CONTROL AND PREVENTION,
<https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited May 6, 2021).

1 instruction, and 504 tools and supports. But one year of increased funding will not be
2 enough.

3 125. While it has been far too common to punish students for behavior that is
4 known to be caused by their disabilities,⁷⁶ or even be removed from the mainstream to be
5 placed in a restrictive setting,⁷⁷ the law is supposed to protect students with disabilities
6 from such discipline through conducting functional behavioral assessments, developing
7 and implementing behavioral interventions, and ensuring their procedural rights, including
8 the right to a manifestation determination meeting are not neglected.⁷⁸ The procedural
9 safeguard, however, was inadequate even before the pandemic, as it is not triggered until
10 the student has ten or more days of suspension in a school year. Such a hearing will be
11 even more inadequate with the increase in disability manifestations likely to occur from
12 the trauma experienced, if not treated, during the pandemic, and the challenges of returning
13 to a regular school schedule after more than a year-long period of distance learning or in-
14 person schedule disruptions. Congress must act to turn the tide of the overrepresentation
15 of students with disabilities among incarcerated youth, especially youth with emotional
16 disturbance and youth of color with disabilities.⁷⁹

17
18
19 ⁷⁶ The differences among students with disabilities in lost instruction due to suspension and the
20 corresponding higher risks for negative life outcomes associated with being suspended means that
21 the racial differences in disciplinary removal from school also reduces access to supports and
22 services. This in turn translates into stark racial differences among students with disabilities in
23 terms of exposure to harm. *See* CCR Expert Report at 32; 35. Such negative life outcomes
24 include “lower achievement, grade retention, dropping out, juvenile delinquency and adult
25 incarceration rates.” *Id.* at 23.

26 ⁷⁷ The data in the CCR Expert Report describes extraordinarily high rates of disciplinary
27 removal and large disparities by both disability and race with disability. This suggests that the
28 protections against punishing students with disabilities for behavior caused by their disabilities are
not being properly implemented in many districts. *Id.* at 24-26; 31-38 & n. 196.

⁷⁸ *Dear Colleague Letter: Nondiscriminatory Administration of School Discipline*, U.S.

DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS (Jan. 8, 2014),

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>, *repealed by Dear
Colleague Letter*, U.S. DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS (Dec. 21, 2018),

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201812.pdf>.

⁷⁹ CCR Expert Report at 67.



The Center for Civil Rights Remedies

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Disabling Inequity: **The Urgent Need for Race-Conscious Resource Remedies**

by Daniel J. Losen, Paul Martinez and Grace Hae Rim Shin

March 22, 2021

EXECUTIVE SUMMARY

Among the most critical pre-pandemic inequities that have not received sufficient attention is the fact that many districts are not meeting their legal and moral obligation to educate students with disabilities, which must include providing needed mental health services, behavioral supports and educationally sound interventions by well qualified staff. This report begins by revealing serious pre-existing conditions of inadequate support that are likely to be exacerbated by the current pandemic. We also summarize the pandemic's disparate impact, which is resulting in greater losses of instructional time amidst increasing experiences of trauma. This report argues that post-pandemic we will need to do much more than return to the pre-pandemic efforts in order to avoid serious and continuing hardship to students, and especially to students of color with disabilities. This includes, but is not limited to, additional steps to ensure that all students with disabilities who need supports and services to receive a free appropriate public education (FAPE) have those needs met, and that they are not excluded because of behaviors caused by their disability.

This report has three parts. **Part I** demonstrates that there is a large subgroup of students with disabilities who have a right to receive supports and services but whose needs appear to be ignored in many large districts all across the nation. When most people think about students with disabilities they think of the roughly 7 million students that are deemed eligible for special education, as required by the Individuals with Disabilities Education Act (IDEA). But there is another large and growing group of nearly 1.4 million students with disabilities that districts are supposed to identify and support, even though they do not necessarily require specialized instruction. Another federal anti-discrimination law, Section 504 of the Rehabilitation Act of 1973, protects both types of students from disability discrimination: those who need special education and those who do not. Section 504 requires all public

schools that receive federal funds to identify those that do not require specially designed instruction, but do have a disability that substantially limits one or more major life activities. Districts must provide a wide range of supports and services to these students known as "504-only" students, to ensure that they, too, receive a FAPE.

The 504-only students often include those with ADHD, depression, anxiety disorders, students who have experienced trauma, and many others who may need mental/behavioral health services on a regular basis. Some 504-only students may need a wide range of supports and services, in and out of the classroom including modifications in their classroom from their teacher to help them with attention, organization, processing or behavioral challenges. Others may only need regular assistance from a school nurse for conditions like diabetes, asthma or food allergies. Although 504-only students typically do not include students with the most severe needs, the range of disability types and extent of needed supports and services is quite broad.

For example, some students with ADHD might be deemed eligible for special education pursuant to an evaluation for eligibility under the IDEA, and for those students the IEP team would proceed to develop an individualized education plan (IEP). For other students with ADHD the evaluation team might determine that they do not need special education in order to ensure that the student receives a free appropriate public education (FAPE). However, if the team finds that their ADHD "substantially impairs a major life activity," the district would be required to provide whatever supports and services the team determined that the student needed in order to receive a FAPE and the team would develop a 504 Plan. But, if the team determines that their condition does not "substantially" impair a major life activity, the district would not be required to provide any supports or services.

The last reported count of 504-only eligible students was for the 2017-18 school year as part of the Civil Rights Data Collection (CRDC). This report reveals that they are at least 2.7% of all public-school students, which represents more than a quadrupling of their share of the nation's student body since 2000. However, state-level rates vary widely, from Mississippi, at 0.65%, to New Hampshire, at 6.32%.

We find strong evidence suggesting that hundreds of large districts could be failing to identify 504-only students. Our findings show that in 3,298 districts, serving nearly 1.8 million students (1,781,962), not one 504-only student is identified. When all the districts with at least 1,000 enrolled students are examined, one can see that in 306 districts serving nearly one million students not one 504-only student is identified.

Our review of the data also shows that students from certain racial/ethnic groups are more likely to attend school in districts that identify 504-only students at low rates. This report

further examines only those districts that enrolled at least one hundred students of their respective racial/ethnic groups. The percentage of each racial/ethnic group attending a district where not one student from their group was identified as 504-only is as follows: Native American: 22%; Black: 6%; Latinx: 4%; White: 3%. Our analysis also reveals the percentage of each group enrolled in districts where students from their respective group are identified for 504-only at or below the rate of 0.4%, which we deem a "low rate" (based on statistical methods) as follows: 39% of all Native American students, 23% of all Latinx students, and 16% of Black students attend districts with low 504-only rates. White students are consistently the racial group with the highest identification rates for 504-only.

Part II of this report focuses on the school experiences of students with disabilities who are eligible for special education and related supports and services under the IDEA and who constitute close to 14% of all public-school students in grades K-12. We examine three outcome areas: disciplinary exclusion, referral to law enforcement, and chronic absenteeism. In each area we find glaring disparities, which are far worse for non-White students receiving special education. The key Part II findings are:

1. Students with disabilities (IDEA) have far higher rates of lost instruction due to discipline than their non-disabled peers: Due to out-of-school suspensions, across all grade levels nationally, students without disabilities lost 19 days per 100 students enrolled while students with disabilities (IDEA) lost 41 days per 100 students enrolled. When we focused on secondary students in large districts, we found many districts with much higher rates and wider disparities, including 30 districts where students with disabilities (IDEA) lost at least 90 more days per 100 students than were lost by their peers without IEPs. In five large districts, the difference was at least 149 days more.

2. Profound racial differences among students with disabilities (IDEA) exist in students' risk for being suspended out-of-school at least once: Nationally, among secondary students with disabilities (IDEA), 24% of Black students, 15% of Native American students, and 11% of White students were suspended out of school at least once in 2017-18. These disparities are even greater in many large districts highlighted in the report, where the risk for suspension for Black secondary students with disabilities was well above 40% for Blacks and 33% for Native American students.

We also find large differences when the data are broken down by discipline category. For example, students with emotional disturbance, a category in which Black students are over-represented, have a 37% risk for being removed for discipline and the highest risk for being educated in a correctional facility. The extraordinarily high rates and wide disparities featured in this report raise grave questions about the quality of educational supports and services that are provided to students with disabilities to address their social and emotional

needs and challenges pre-pandemic. Further, to the extent that students with disabilities are being denied access to school for disability-caused behaviors, these descriptive findings also raise questions about possibly unlawful, discriminatory discipline on the basis of race and/or disability status.

3. Students with disabilities experience high and racially disparate rates of referrals to law enforcement: We consider it to be a serious problem that in 2017-18, 61% of districts with at least 1,000 secondary students reported zero school-related arrests. This represents a slight increase over 60% in 2015-16. Districts reporting zero students arrested included New York City, Pittsburgh, PA and several other large cities. In some cases, police reported data to other agencies, proving that the zeros are not true. These data discrepancies raise concerns that non-compliance with federal civil rights collection and/or reporting requirements may be masking over serious problems of excessive policing in some districts. Therefore, to illustrate concerns with policing, this report focuses just on the referrals to law enforcement, which covers all calls to police to address specific instances of student misconduct, and includes all arrests.

We reveal that in 811 districts rates of referral to law enforcement for secondary students with disabilities (IDEA) were at least 2% in 2017-18. Altogether these 811 districts enrolled 619,372 secondary students with disabilities (IDEA) from 48 states and the District of Columbia. Each of these districts had rates of referral to law enforcement for students with disabilities (IDEA) that were between 2% and 45%. Included among these districts were many in Texas, Chicago, Illinois, and in California, both the San Diego and Los Angeles Unified School Districts.

Given concerns about racism in policing directed at Blacks, our findings highlight that in 38 of the large districts that enrolled at least 100 Black secondary students with disabilities (IDEA), 10% or more of these students were referred to law enforcement. Austin, Texas, had the highest rate for these students, an astonishing 32.3%! In seven of these 38 districts, including Los Angeles, the rate of referral to law enforcement for Black secondary students with disabilities (IDEA) was higher than their rate of out-of-school suspension! We also found that in 53 districts, among secondary students with disabilities (IDEA), the Black risk for referral to law enforcement was at least five percentage points higher than it was for their White peers with disabilities (IDEA).

4. Students receiving special education experience high and disparate levels of chronic absenteeism: One additional outcome measure that flags a wide set of factors and has recently been added to most statewide accountability systems is chronic absenteeism. This is defined in the CRDC as the percentage of students who missed 15 or more school days in a given year for any reason. In 2015-16 we found that, nationally, 22.5% of students with

disabilities (IDEA) were chronically absent, compared to 14.9% of students without disabilities. According to our analyses, high school students with disabilities (IDEA) had a rate of 28%, compared to 20% for students without disabilities.

When we further disaggregate the data for 2018-19 from the state of California, this report finds that racial disparities persist. Among low-income high school students with disabilities in California, the rates of chronic absenteeism disaggregated by race are as follows: African American, 37%; Native Americans, 40%; Asian, 16%; Latinx, 28%; and White, 22%. Given that the economic fallout from the pandemic has resulted in an increase in evictions and homeless families, it is important to note that pre-pandemic data showed that chronic absenteeism among homeless high school students with disabilities were the highest of all. The rates ranged from 59% chronically absent for Native Americans to 29% for Asian students. Viewed together, these pre-pandemic data raise concerns about the racially disparate impact of inadequate special education and related supports and services, and the likelihood of even worse outcomes in the future if we return to the inadequate status quo once schools fully re-open in person.

Part III reviews the evidence that the pandemic is exacerbating the pre-existing inequitable conditions and concludes with recommendations for federal policymakers. It begins by examining the rising incidence of childhood trauma and mental health problems, which have likely created additional racially disparate burdens during the pandemic. These include greater exposure to violence or abuse in the home, loss of family members to COVID-19, parents losing jobs, and evictions. According to the Centers for Disease Control and Prevention (CDC), there has been a steep increase in depression and anxiety disorders, and these adverse experiences can contribute to the development of a disability. Part III also summarizes findings from studies demonstrating that, mid-pandemic, students with disabilities are losing much more instructional time than their non-disabled peers.

The purpose of providing this analysis now is to suggest that the magnitude of the inequities that students with disabilities experience is being overlooked, especially those experienced by children of color. Part III concludes by documenting the pre-existing grossly inadequate federal (and state) funding that leaves us poorly prepared to cope with the additional disparate burden from the pandemic. For FY 2021, Congress allocated only \$13.8 billion for the IDEA, which is approximately 13% of the total additional costs of providing education to students who need special education. A truly equitable remedy would begin by fulfilling the original promise of meeting 40% of the additional costs, which would require an additional \$20 billion, for a total of over \$33 billion annually for IDEA alone. Ideally full funding would start next year, but a more realistic goal would aim to reach the 40% mark with incremental budget increases.

However, more funding is needed because fully funding the IDEA still leaves no federal funding earmarked for the 504-only students.ⁱ Nor did we find any states that earmarked state funds to provide supports and services to 504-only eligible students. We conclude that under federal law the 504-only students have rights, but there are no resources specific to meeting their needs. We recommend beginning with at least one billion dollars per year with some of those funds dedicated to more accurate counts and estimates of the additional costs of meeting the needs of 504-only students. State educational agencies should also earmark additional funding to meet the needs of 504-only students. Legislative solutions might include amending the Every Student Succeeds Act, or creating a new statute that would specify additional funds to provide mental health services and effective behavioral supports and interventions for students who have a disability pursuant to 504-only, as well as for students who have experienced trauma.

A long-term remedy will also need to boost efforts to remedy the impact of race and disability bigotry. Left unaddressed, biases could easily influence the flow of any additional funds. Confounding any federal remedy is also a looming crisis in state funding caused in part by the pandemic, but also due to the history of state tax cuts and an incomplete recovery in state funding for education from cuts made during the last recession.

Part III concludes with specific federal policy recommendations based on this report's research findings including the following:

- 1) **Bolster civil rights enforcement and the capacity to bring about substantive change when responding to systemic discrimination:** Reinstate the federal DOJ/OCR school discipline guidance issued in 2014, and add explanations and examples of how disparate impact also applies to the discipline of students with disabilities and the disparate impact that burdens students of color with disabilities from unsound discipline policies and from the failure to provide required behavioral supports; create a system to flag for possible investigation those large districts that report enrolling no 504-only students; collect, publicly report and review civil rights education data annually, starting with 2019-20; boost civil rights investigations into systemic discrimination; provide additional incentives and technical support to ensure that accurate data are reported to the public, especially the data on school policing, and used to investigate high rates and large disparities in referrals to police by race, disability and the confluence of the two.
- 2) **Expand federal funding to eliminate the shortages of counselors, social workers, nurses, school psychologists and well trained fully certified special education teachers:** Provide incentives for state funding to cover students experiencing trauma and for 504-only students; include accountability for states like Ohio that have not provided adequate or equitably distributed resources and have been found in violation of their own state constitutional mandates.

These are just some of the important steps that the federal government will need to take so that the pandemic recovery does not simply return students with disabilities to the gross inadequacies and racial inequities of the pre-pandemic status quo.

ⁱ None of the additional funding that Congress has suggested for COVID-19 relief has been specifically earmarked for students with disabilities who are not eligible for special education, but still entitled by law to receive supports and services. See email correspondence with Ron Hager, Managing Attorney for Education and Employment, and Eric Buehlmann, Deputy Director for Policy Director, National Disabilities Rights Network (2021, January 12) [on file with author].