

1 UNITED STATES DEPARTMENT OF EDUCATION

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

**CLASS ADMINISTRATIVE  
PETITION FOR GUIDANCE  
DOCUMENTS**

Petition to Modify Existing Guidance  
Documents pursuant to 34 C.F.R. § 9.15(a)

*Filed Concurrently with* Declarations by  
Laquana A., Alicia B., Barbara B., Kari  
Brennan, Melina E.A., Georgia Flowers-  
Lee, Tiffany G., Virginia Glass, Anna H.,  
Michelle K., Amy Mizialko, Evelyn P.,  
Manuela P., Julian Canek Pena-Vargas,  
Alyssa Potaszniak, Karla R., Martha S.,  
Perla S., *and with* 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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19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

**Page**

I. INTRODUCTION ..... 1

II. LEGAL AUTHORITY ..... 6

III. EDUCATIONAL EXPERIENCES FROM ACROSS THE NATION..... 7

PARENTS AND STUDENTS ..... 7

    Markel M. .... 7

    Jeremy H. .... 9

    Nathaniel B. .... 9

    C.A. .... 10

    Isaiah G. .... 13

    Rourke K. .... 14

    Zavier H. .... 16

    Brogan H. .... 17

    Leora I. .... 17

    Darlin P. .... 18

    Anthony P. .... 19

    Charly T. .... 20

    Adalberto T. .... 21

    Jasmine S. .... 22

    A. S. .... 24

EDUCATORS ..... 25

    Kari Brennan..... 25

    Georgia Flowers Lee ..... 27

    Virginia Glass ..... 27

    Amy Mizialko ..... 29

    Julian Canek Pena-Vargas ..... 31

    Alyssa Potasznik ..... 33

1 ADVOCACY GROUPS..... 35

2     The Advocacy Institute..... 35

3     Boston Teachers Union (“BTU”) ..... 35

4     Education Austin (“EA”)..... 36

5     Madison Teachers Inc. (“MTI”) ..... 36

6     Milwaukee Teachers’ Education Association (“MTEA”)..... 37

7     Oakland Education Association (“OEA”) ..... 37

8     United Teachers Los Angeles (“UTLA”)..... 38

9 IV.   FACTS ..... 39

10     A.    How did we get here?..... 40

11     B.    Challenges identifying disabilities and necessary services ..... 43

12     C.    Insufficient resources identified pre-pandemic ..... 45

13     D.    Insufficient resources provided during pandemic ..... 46

14     E.    Racial disproportionality ..... 48

15     F.    Responding to manifestations of disabilities with discipline ..... 50

16 V.    JUSTIFICATION FOR THE GUIDANCE REQUESTED ..... 54

17     A.    The Department Must Ensure and Demand That American Rescue  
 18         Plan Act Funds As Well As Additional Federal Resources Are  
        Deployed to Assist Students with Disabilities. .... 54

19     B.    A National Investigation of the Longstanding Inequities in Special  
 20         Education and 504 Compliance is Needed..... 57

21     C.    The Department Should Provide Meaningful Guidance to Ensure  
        FAPE During Pandemic. .... 59

22         1.    The Department must provide meaningful guidance about  
 23             special education and disability discrimination in a remote  
            learning environment..... 63

24         2.    The Department must provide meaningful guidance about  
 25             disparate impacts affecting students of color with disabilities  
            before and during the pandemic and how to prevent disparate  
 26             harm when schools fully reopen..... 65

27         3.    The Department must provide meaningful guidance directing  
 28             schools to recognize and address trauma proactively, with input  
            of educators and parents of students of color with disabilities. .... 67

1  
2  
3  
4  
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6  
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9  
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24  
25  
26  
27  
28

4. The Department must provide meaningful guidance preventing schools from unjustly removing students of color with disabilities for behaviors that are manifestations of their disabilities, due to systemic denial of FAPE, or caused by trauma. .... 67

VI. REMEDIES REQUESTED..... 70

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. A broad-based coalition of  
6 educators’ unions, parents of students with disabilities, and a disability rights advocacy  
7 group, the Advocacy Institute, have joined in filing this Petition for Guidance Documents  
8 on behalf of students of color with disabilities and all similarly-situated students who were  
9 entitled to, and denied, special education services, accommodations in general education,  
10 and other related services during the pandemic to ensure attention is provided to this often  
11 forgotten group when schools fully reopen and the nation emerges from the pandemic.

12           2.       In Spring 2020, nearly all students in the United States switched to remote  
13 learning. While this change in education impacted all, the ability to continue to learn  
14 during these tumultuous times depended greatly on the resources available to and potential  
15 obstacles facing the student, including whether they have a disability and whether they had  
16 access to aids, resources, and services. As demonstrated in the concurrently-filed Expert  
17 Report published by the Center for Civil Rights Remedies of the Civil Rights Project at the  
18 University of California, Los Angeles (“CCRR Expert Report”), the students most  
19 burdened by inequities in access to educational resources are students of color with  
20 disabilities. Starting from the enactment of the Individuals with Disabilities in Education  
21 Act (“IDEA”), 20 U.S.C. §§ 1400 *et seq.*, our federal legal system purported to ensure a  
22 free and appropriate education (“FAPE”) to students with disabilities, but in reality, IDEA  
23 has been chronically underfunded since its inception. As the CCRR Expert Report details,  
24 there are increasing numbers of students with disabilities who are part of the general  
25 education population, and for whom schools are required to provide supports and services  
26 pursuant to Section 504 of the Rehabilitation Act of 1973 (“Section 504”) to address a  
27 wide range of disabilities related to physical and mental health, including those  
28 experiencing trauma, and yet no federal funds have ever been provided to ensure their

1 needs can be met. By failing to provide sufficient resources to meet the needs of all  
2 students with disabilities, federal policymakers have undermined school districts’ duty to  
3 provide a FAPE for every student.

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

21         4.       In recent months, several class action lawsuits alleging FAPE denial have  
22 been filed, often blaming remote learning as the problem and seeking remedies for those  
23 students whose parents or guardians are able to sue for relief. But the problem is much  
24 larger and more entrenched than the remedial scope of these lawsuits. This Petition asks  
25 the Department to use its full authority to evaluate and redress these longstanding  
26 systematic failings. Guidance from the Department is particularly critical as millions of  
27 students are returning to in-person instruction for the first time in over a year and educators  
28 are facing the unprecedented task of reconnecting students to an in-person school

1 community, assessing students’ social and emotional well-being, and determining the best  
2 way to meet students’ mental health and learning needs after this unprecedented year.  
3 Meeting those needs will require extraordinary investments in both personnel and supports  
4 for students—particularly students of color with disabilities. Congress recognized that  
5 when passing the historic American Rescue Plan (“ARP”) Act—with its largest ever one-  
6 time investment in public education. Petitioners call on the Department to provide  
7 guidance directing school districts to use those funds as the first down payment toward  
8 meeting the needs of students of color with disabilities.

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

19         6.       This Petition does not target any particular district, but instead calls on the  
20 Department itself to assist with ensuring continuing education during and after the  
21 pandemic for students of color with disabilities. Last week Secretary Cardona announced  
22 that ARP Act funds should go to “implementing strategies to meet the social, emotional,  
23 mental health, and academic needs of students hit hardest by the pandemic, including  
24 through evidence-based interventions and critical services like community schools.”<sup>1</sup>

25  
26 \_\_\_\_\_  
27 <sup>1</sup> *Department of Education Announces American Rescue Plan Funds for All 50 States, Puerto*  
28 *Rico, and the District of Columbia to Help Schools Reopen*, U.S. DEPARTMENT OF EDUCATION  
(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>.

1 Petitioners agree, but accomplishing this is no easy task. Department Guidance delineating  
2 how to do this is necessary to make Secretary Cardona’s suggestion a reality. In asking  
3 that the Department act swiftly to guide districts across the nation on these issues,  
4 Petitioners recognize that the pandemic has only exacerbated pre-pandemic disability  
5 discrimination and disparate impacts in receiving the correct special education services for  
6 students of color with disabilities. As the Biden Administration’s Executive Order on  
7 Racial Equity stated, federal agencies must grapple with whether “new policies,  
8 regulations, or guidance documents may be necessary to advance equity in agency actions  
9 and programs” because agencies must “recognize and work to redress inequities in their  
10 policies and programs that serve as barriers to equal opportunity.”<sup>2</sup> The Executive Order  
11 testifies to racial justice as a struggle that is both ongoing and urgent; in short, redressing  
12 this struggle cannot and must not be delayed any 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 this Petition, the Advocacy  
17 Institute, parents of students of color with disabilities, and teachers—from Boston to  
18 Juneau and places in between, Austin, Los Angeles, Madison, Milwaukee, Oakland and  
19 San Antonio—through many of their unions collectively ask the Department for prompt  
20 and critical action. The former administration’s ineffective actions and maladroit inactions  
21 during the pandemic have resulted in denial of meaningful educational opportunities for  
22 students with disabilities, particularly students of color, across the nation. The current  
23 Administration can chart a new course, responding to longstanding educational inequities,  
24 by placing racial equity at the forefront of its agenda.

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26 <sup>2</sup> *Executive Order On Advancing Racial Equity and Support for Underserved Communities*  
27 *through the Federal Government*, Secs. 1 & 5, THE WHITE HOUSE (Jan. 20, 2021),  
28 <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/>.



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

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

27 <sup>4</sup> *Id.* at Part III, 49-53.

28 <sup>5</sup> *Id.* at 49-50 (emphasis supplied).

<sup>6</sup> 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  
& ELAINE WEISS, ECONOMIC POLICY INSTITUTE, *THE TEACHER SHORTAGE IS REAL, LARGE AND*  
*GROWING, AND WORSE THAN WE THOUGHT* (2019), <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  
available labor pool were special education teachers; in California, the shortage is especially

1 **II. LEGAL AUTHORITY**

2 9. This Petition for Guidance is submitted pursuant to 34 C.F.R. § 9.15, which  
3 provides the public with the right to petition the Department to modify or withdraw  
4 guidance documents.

5 10. The Department has an obligation to respond to this document as a Petition  
6 under 34 C.F.R. § 9.15(b), and must do so in a timely manner no later than 90 days after  
7 receipt of this request, which is June 21, 2021. Given the irreparable harm to students of  
8 color with disabilities that will result from inaction, Petitioners respectfully request that the  
9 Department engage with both Petitioners and other stakeholders over these critical issues  
10 immediately to ensure that the Department develops its response with the full input of all  
11 impacted communities.

12  
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14  
15 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-](https://learningpolicyinstitute.org/product/pace-california-special-education-teacher-shortage-report)  
[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  
19 third of districts throughout the country saw a significantly higher number of retirements and  
20 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),  
21 <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  
22 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  
23 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-](https://www.wsj.com/articles/teacher-shortage-compounds-covid-crisis-in-schools-11608050176)  
24 [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*  
25 *Longer Relevant*, ATLANTIC (Jan. 4, 2021),  
<https://www.theatlantic.com/ideas/archive/2021/01/schools-staff-shortages/617465/>. In 2020,  
26 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,  
27 2021), <https://www.sacbee.com/news/politics-government/the-state-worker/article249161175.html>.  
28 A recent California State Teachers Retirement System (“CalSTRS”) survey found that 62 percent  
of the teachers retiring in 2020 did so earlier than they expected. *See id.*

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 **III. EDUCATIONAL EXPERIENCES FROM ACROSS THE NATION**

6 **Parents and Students**

7 **Markel M.**

8 11. **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 & 3. They are Black.<sup>7</sup> *Id.* ¶ 2. Markel, a 17 year high school junior with an IEP for  
11 speech and behavioral issues, enjoys football, basketball, and hip hop dance. *Id.* ¶¶ 4 & 9.  
12 Markel’s two older brothers also had IEPs to assist them with their academics. *Id.* ¶ 5.  
13 Despite their IEPs, they did not get the individualized attention or the services described in  
14 their IEPs, including tutoring. *Id.* Laquana was repeatedly told that there was not enough  
15 funding for her sons to receive services. *Id.* ¶ 6. As a result, Markel’s oldest brother  
16 graduated with a certificate of completion instead of a high school diploma. *Id.* ¶ 5.

17 12. Markel has difficulty with reading comprehension. *Id.* In first grade, the  
18 school requested that Markel receive a formal evaluation for speech. *Id.* ¶ 15. The school  
19 identified Markel with a general speech and processing issue, but not dyslexia. *Id.* After  
20 Markel’s evaluation, Laquana had to repeatedly follow up in order to create an IEP. *Id.* ¶  
21 16. When Markel struggled academically and did not receive assistance, he would become  
22

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23 <sup>7</sup> 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 frustrated and lash out. *Id.* ¶ 13. In elementary school, Markel had a behavioral aide who  
2 would attend classes with him and help him stay focused, but this service was discontinued  
3 in junior high without explanation. *Id.* ¶ 12. When Markel acted out, he would be  
4 suspended, causing him to fall further behind. *Id.* In elementary school, the school  
5 reached out to Laquana to discuss a 504 plan for Markel that allowed him to step out of  
6 class and calm down in a designated location, and this led to fewer suspensions. *Id.* ¶¶ 19  
7 & 21. By junior high, the school became more focused on punishment for manifestations  
8 of his disabilities. *Id.* From 2008 until 2016, Markel was suspended between a day and a  
9 month every other month. *Id.* ¶ 13. In 2016, Markel transferred to a school with a Black  
10 Assistant Principal who connected well with Markel, and Markel’s behavior improved and  
11 he was only suspended one or two times in high school. *Id.*

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

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

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

1 **Jeremy H.**

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

7 17. Jeremy was first diagnosed with a speech issue when he was not speaking at  
8 three years old and living in a homeless shelter. *Id.* ¶ 5. From kindergarten until fourth  
9 grade, Jeremy attended general education courses and received speech therapy from the  
10 same speech therapist. *Id.* ¶ 8. Once remote learning began in March 2020, Jeremy did  
11 not attend any Zoom classes for the remainder of the school year because he was not  
12 comfortable having his computer camera on. *Id.* ¶ 11. As a result of this anxiety, he also  
13 missed his Zoom speech therapy, although his speech therapist was able to reach him by  
14 phone on a few occasions. *Id.* ¶ 13. After months of discussion, Jeremy agreed to attend  
15 Zoom classes during the 2020-2021 classes if his camera was off. *Id.* ¶ 15. Although  
16 Alicia regularly communicated with the school about Jeremy’s paralyzing anxiety, the  
17 school never recommended that Jeremy be evaluated or receive services for anxiety. *Id.* ¶  
18 14. Jeremy has not been assessed for a 504 Plan, nor has anyone mentioned evaluation,  
19 accommodations or services to Alicia. *Id.* ¶ 10.

20 **Nathaniel B.**

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

27 19. Nathaniel received an IEP and a 504 plan for attention deficit hyperactivity  
28 disorder (“ADHD”) in second grade due to his difficulty sitting still and being quiet. *Id.* ¶

1 5. Nathaniel has a potlatch voice, which is a ceremonial deep booming voice. *Id.* ¶ 6.  
2 Before his IEP and 504 plan, he was often reprimanded for speaking too loudly. *Id.*

3 20. Under his 504 plan, Nathaniel can step out of class and move around when  
4 he needs to. *Id.* ¶ 9. Despite this, Nathaniel has consistently been removed from the  
5 classroom because of manifestations of his ADHD symptoms. *Id.* ¶ 10. Nathaniel finds it  
6 hard to stop talking or moving around. *Id.* When teachers get frustrated with him they  
7 send him into the hall or isolate him, depriving him of class time and ostracizing him, and  
8 this has a significant emotional impact on him. *Id.* For example, in sixth grade Nathaniel  
9 was prohibited from attending an overnight camping trip because he talked during a  
10 performance. *Id.* ¶ 11. Only three students in the entire grade were not permitted to attend  
11 the camping trip, which further reinforced the idea that he was an outsider in some way.  
12 *Id.* ¶ 13. When Barbara confronted the school, the response was that his IEP and 504 plan  
13 were not specific to field trips. *Id.* ¶ 14.

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

20 **C.A.**

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

26 23. C.A. is in seventh grade and has been homeschooled since Fall 2020 due to  
27 the challenges of remote learning. *Id.* ¶ 3. C.A. enjoys reading and drawing, and wants to  
28 be an artist when she grows up. *Id.* ¶¶ 4-5. C.A. is considered to have autism spectrum

1 disorder (“ASD”) level 1, which makes it difficult for her to initiate appropriate social  
2 interactions. *Id.* ¶ 6. She also has high levels of anxiety and other learning and behavioral  
3 differences that are essentially manifestations of her autism, such as ADHD, oppositional  
4 defiant disorder (“ODD”), sensory processing disorder (“SPD”), and obsessive compulsive  
5 disorder (“OCD”). *Id.* ¶ 7. C.A.’s main special education identifier is emotional  
6 disturbance (“ED”) because she did not have an ASD diagnosis when she received her  
7 original IEP. *Id.* Although she obtained her ASD diagnosis shortly after her IEP, the  
8 school stated that C.A. did not qualify for autism services because she did not have an  
9 academic need for autism-related services. *Id.* In Melina’s experience, the ED label leads  
10 to teachers thinking that those children are “difficult” or poorly behaved, instead of  
11 understanding that many schools classify children with the ED label for manifestations of  
12 autism. *Id.* ¶ 18. During her own career as an educator, Melina observed how insufficient  
13 teacher training prevented educators from effectively supporting students. *Id.* ¶ 25.

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

24         25. C.A. has encountered obstacles when it comes to receiving services. In first  
25 grade, C.A. could not get one-on-one support for math and behavior-related issues, so her  
26 grandmother accompanied her to math twice a week. *Id.* ¶ 13. In third grade, C.A.’s  
27 teacher told her to go to a small room the size of a closet by herself to finish her work. *Id.*  
28 ¶ 15. In fourth grade, the school denied the request that C.A. receive one-on-one support

1 and a behavioral therapist. *Id.* ¶ 21. Melina’s family pays for C.A. to see an occupational  
2 therapist twice a week through their insurance. *Id.* ¶ 22. While C.A.’s pediatrician  
3 recommended she see an ABA therapist, their insurance would not cover it. *Id.*

4         26. Melina also struggled to get C.A. evaluated for special education services.  
5 *Id.* ¶ 16. Most of C.A.’s third grade year involved Melina trying to obtain an evaluation,  
6 which resulted in her taking 15 days off from her own teaching position. *Id.* By the end of  
7 C.A.’s third grade year, the school finally evaluated her and concluded that she qualified  
8 for an IEP. *Id.* Melina found the lengthy process frustrating, especially because she had  
9 outside documentation indicating a medical diagnosis. *Id.* Melina believes that C.A. was  
10 only evaluated because she made advocating for her daughter a full-time job. *Id.* ¶ 17. For  
11 parents who lack the time, money, language skills, or knowledge of what services are  
12 available, this task would be virtually impossible. *Id.* ¶ 18. Even with Melina and her  
13 parents’ experience in education, Melina has found advocating for C.A. challenging. *Id.*  
14 ¶ 26. Unless the parent is assertive and a special education expert, IEP meetings will often  
15 be pro forma and shorter than the amount of time needed to actually create an effective  
16 IEP. *Id.* ¶¶ 26-27.

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

26         28. C.A.’s anxiety prevents her from wearing a mask for more than 30 minutes.  
27 *Id.* ¶ 8. Melina decided to homeschool C.A. until it is safe to return to in-person learning.  
28 *Id.* ¶ 39. Homeschooling C.A. requires constant one-on-one attention. *Id.* ¶¶ 33; 38. As a



1 family of educators, Melina’s family has been able to divide up C.A.’s schooling. *Id.* ¶ 36.  
2 Melina does not see it as a permanent solution, but is the only safe way for C.A. to be  
3 educated currently. *Id.* ¶ 39.

4 **Isaiah G.**

5 29. **Isaiah G.** is a LAUSD student with an IEP. Tiffany G. Decl. ¶ 1. Isaiah and  
6 his mother **Tiffany G.** are African American. *Id.* ¶ 3. Isaiah is 12 years old, is in sixth  
7 grade, and has an IEP for multiple physical disabilities. *Id.* ¶¶ 2; 5. He was born with  
8 chronic lung disease, an encephalocele, which is a protrusion of the skull into the brain,  
9 cleft palate, and Dandy-Walker syndrome—a congenital brain malformation. *Id.* As a  
10 result of his physical conditions, he has problems with his gastrointestinal system and his  
11 liver, has pulmonary hypertension, and is legally deaf. *Id.* Isaiah is ambulatory but has  
12 never eaten by mouth, and he has a tracheostomy limiting his speech. *Id.* ¶¶ 6; 8. Despite  
13 an independent evaluation that indicated Isaiah is autistic, the school told Tiffany that it  
14 could not determine whether Isaiah was autistic because of the manifestations of his  
15 multiple physical disabilities. *Id.* ¶ 17.

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

26 31. Shortly after the transfer, Tiffany realized Isaiah’s IEP initially did not  
27 include speech therapy or DHH services because he did not receive these services at his  
28 prior school where they were part of the curriculum. *Id.* ¶ 21. Before the pandemic,

1 Isaiah’s IEP included 240 minutes of speech therapy a month as well as ACC and DHH  
2 services, occupational therapy, adaptive physical education, and a nurse. *Id.* Since remote  
3 learning began, the only service Isaiah receives is occupational therapy. *Id.* ¶ 27. Isaiah’s  
4 special education classes are not adaptive to his legal deafness and do not include ASL  
5 translation or a transcript, and the school does not have a speech pathologist. *Id.* ¶¶ 29-30.  
6 Isaiah is only able to attend remote classes because Tiffany provides one-on-one  
7 assistance, including ASL translation and nursing services. *Id.* ¶ 27. At the end of the  
8 2019-2020 school year, Tiffany decided to have Isaiah repeat the sixth grade because he  
9 had significantly regressed in the remote environment without access to the services in his  
10 IEP. To date, Isaiah has not received speech therapy or learning aide services. *Id.* ¶ 21. In  
11 part, Tiffany perceives Isaiah’s struggles as due to a lack of guidance for how schools  
12 should serve students with multiple medical needs, but no mental disability. *Id.* ¶ 23.

13 **Rourke K.**

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

27           33.     After MMSD determined Rourke did not qualify for an IEP, Michelle sought  
28 an independent evaluation through the Waisman Center (“WC”) at the University of

1 Wisconsin Madison. *Id.* ¶ 12. In June 2019, the WC determined Rourke was autistic and  
2 had a speech delay. *Id.* In August 2019, Michelle sought a second evaluation from  
3 Achieving Collaborative Treatment (“ACT”), which confirmed the WC’s results and  
4 created a treatment plan that included Applied Behavior Analysis (“ABA”) behavioral  
5 therapy both at home and in class. *Id.* ¶ 8. Rourke’s ACT therapist implemented programs  
6 to address the aggressive behaviors he displayed when he got frustrated. *Id.*

7         34. When it came time to enroll Rourke in pre-kindergarten, MMSD denied  
8 Michelle’s request to have Rourke’s therapist attend his class. *Id.* ¶ 13. As a result,  
9 Michelle did not enroll Rourke in a MMSD school and instead enrolled him in private pre-  
10 kindergarten where he could be accompanied by his therapist. *Id.* Michelle explored  
11 transferring Rourke to Hometown Preschool in the Verona School District (“VSD”), but  
12 again encountered issues because ABA therapists were not permitted in classrooms. *Id.*  
13 ¶ 15. VSD eventually agreed to allow ABA therapists, but the COVID-19 pandemic  
14 abruptly halted the availability of ABA therapy in March 2020. *Id.* When Rourke  
15 attended pre-kindergarten without ABA therapists, his episodes of aggression and violence  
16 dramatically increased. *Id.* ¶ 16.

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

26         36. After Michelle lobbied the School Board and her state and federal  
27 representatives, MMSD agreed to conduct a virtual observation to determine whether an  
28 IEP was appropriate. *Id.* ¶ 19. Three minutes into the evaluation, Rourke bit his therapist

1 and later spit on his therapist. *Id.* Although MMSD acknowledged that Rourke displayed  
2 severe problematic behaviors, it found that the behaviors were not frequent enough to  
3 warrant an IEP. *Id.* ¶ 21. At Michelle’s request, MMSD has agreed to cover the cost of an  
4 independent IEP evaluation. *Id.* While they await an evaluation, Rourke is enrolled in  
5 private school where he can have his therapist present with him. *Id.* ¶ 20. Because Rourke  
6 is now attending private school, Michelle has to work multiple jobs to cover the cost. *Id.*  
7 ¶ 23.

8 **Zavier H.**

9 37. **Zavier H.** is 15 years old and in 10th grade. Anna H. Decl. ¶ 3. Zavier is  
10 funny, and he loves to read Percy Jackson books and listen to pop and rock music. *Id.* ¶ 4.  
11 **Anna H.** is the mother of three children, Zavier H., Brogan H., and Leora I., in MMSD.  
12 *Id.* ¶¶ 1- 2. Anna, Zavier, Brogan, and Leora are white. *Id.* ¶ 2.

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

23 39. Prior to the pandemic, Zavier received occupational, speech, and vision  
24 therapy as well as special education, nursing services, and an aide. *Id.* ¶ 12. Once remote  
25 learning began, Anna began acting as Zavier’s one-on-one and performing all of his  
26 nursing and therapies. *Id.* ¶ 16. Because Zavier has limited mobility, Anna must log  
27 Zavier into each class and assist him to physically complete any assignment. *Id.* ¶¶ 16-20.  
28 Zavier is immunocompromised and is unable to return to school or even have an aide assist

1 in the home until, at a minimum, his family and the aide are able to receive vaccines. *Id.*  
2 ¶ 21.

3 **Brogan H.**

4 40. **Brogan H.** is 12 years old, is homeschooled, is in sixth grade, and uses they/  
5 them pronouns. *Id.* ¶ 24. Brogan loves to make people laugh, is outgoing, inquisitive, and  
6 loves to play video games. *Id.* ¶ 25. Prior to homeschooling Brogan attended public  
7 schools, where they had a 504 plan to assist with focus and attention issues. *Id.* ¶ 27.  
8 When Brogan was in kindergarten they were diagnosed with ADHD and autism and  
9 obtained an IEP to assist with executive functioning, word ordering, and prioritizing  
10 issues. *Id.* ¶¶ 27-28. Brogan becomes very emotional when frustrated so their IEP  
11 permitted them to leave the classroom to go calm down in a quiet place. *Id.* ¶¶ 29-30; 32.  
12 Because Brogan needs to make noise when they are highly emotional, this accommodation  
13 was counterproductive. *Id.* ¶ 32. Brogan began performing poorly in school and began  
14 being bullied. *Id.* As a result, Anna began homeschooling Brogan, which has improved  
15 their learning, but she hopes Brogan will be able to return to public school. *Id.* ¶¶ 33-34.

16 **Leora I.**

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

28

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

9 **Darlin P.**

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

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

1           45. Darlin originally wanted to attend a community college after high school, but  
2 Evelyn was told that Darlin would not be able to have a one-on-one aide. *Id.* ¶ 33. Evelyn  
3 understood that Darlin could retain his one-on-one at the transition center which also had a  
4 dual enrollment program with California State University Dominguez Hills. *Id.* Darlin  
5 has not been able to enroll in any college classes, but now that they are remote he is  
6 considering signing up. *Id.* The transition center is not like a traditional school, but it  
7 instead functions more like a trade or vocational school. *Id.* ¶ 12. The center, however,  
8 limits students based on their disabilities. *Id.* ¶ 13. For example, last year Darlin was told  
9 to be a “security guard” for one of his classes where students made arts and crafts to sell at  
10 a farmers market because he can only use one hand. *Id.* Darlin is an excellent writer and  
11 has many abilities, but he is often assigned programs that are far too basic for him, causing  
12 him to grow bored and preventing him from progressing. *Id.* ¶ 14.

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

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

26 **Anthony P.**

27           48. **Anthony P.** is a LAUSD student with an IEP. Manuela P. Decl. ¶ 1.  
28 Anthony and his mother **Manuela P.** are Latinx. Manuela’s primary language is K’iche,

1 an Indigenous language native to Guatemala. She also speaks Spanish and some English.  
2 *Id.* ¶ 2. Anthony is 12 years old, in seventh grade, and has an IEP for Down Syndrome.  
3 *Id.* Anthony is non-verbal but can use some hand signals and gestures to communicate.  
4 *Id.* ¶ 3. Prior to March 2020, Anthony received occupational and speech therapy, and was  
5 enrolled in special education courses to develop fundamental life skills. *Id.* ¶¶ 6-7.  
6 Manuela requested an instructional aide, but the school told her Anthony could only have  
7 an aide if he was receiving medication. *Id.* ¶ 7.

8         49. When Anthony’s school transitioned to remote learning, his school refused  
9 to give him a computer. *Id.* ¶ 9. The school told Manuela that special education students  
10 would not be given computers because they were more likely to break them. *Id.* Instead  
11 Anthony received paper packets, even though he is still learning to read and could not  
12 learn through written packets. *Id.* Because Anthony was not receiving appropriate  
13 resources, Manuela transferred him to a different school, but the new school also refused to  
14 give him a computer. *Id.* ¶ 10. Although Anthony received a computer after several  
15 requests, Manuela had to take the computer back several times because the school  
16 repeatedly gave her computers that were broken. *Id.*

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

26 **Charly T.**

27         51. **Karla R.** is the parent of two children, **Charly T.** and **Adalberto T.**, who  
28 both have IEPs and are enrolled in LAUSD schools. Karla R. Decl. ¶ 1. Karla and her



1 family are Latinx. *Id.* ¶ 34. Charly is 12 years old, in seventh grade, and has an IEP for  
2 autism. *Id.* ¶ 3. Prior to the pandemic, she had a behavioral instructor (“BI”) who  
3 accompanied her for about six hours a day at school, speech therapy, counseling, and  
4 received special education as part of her IEP. *Id.* ¶¶ 8; 18. Charly is bright and high-  
5 functioning, but she needs assistance with executive function to focus and independently  
6 complete tasks. *Id.* ¶¶ 3; 8-9. Since remote school began, Charly’s BI is only available via  
7 chat during her Zoom class and cannot prompt her to log in or change classes when she  
8 needs to. *Id.* ¶¶ 13; 14. Because classes are not recorded, Charly falls behind when she is  
9 late or misses class. *Id.* Charly has had difficulties completing assignments on time. *Id.*  
10 ¶ 16. Prior to March 2020, Charly was obtaining As and Bs in all classes and functioning  
11 at grade level. *Id.* ¶ 11. As of January 5, 2021, her assessment indicates that she is  
12 performing at one grade level below her current grade for reading and between one and  
13 three grade levels below her grade in math. *Id.* ¶ 12. Before the pandemic, Charly also  
14 had therapy once a week for emotional and behavioral issues. *Id.* ¶ 18. Charly’s therapy  
15 has been discontinued, even though extended social isolation has taken a toll. *Id.*

16 **Adalberto T.**

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

22 53. Once he enrolled in first grade, Karla again requested an evaluation and IEP  
23 for Adalberto. *Id.* ¶ 22. The school performed an assessment and determined Adalberto  
24 was entitled to services for ADHD, but stated that it could not assess him for Asperger’s.  
25 *Id.* The school indicated that Adalberto needed a BI but could not find one for over a year.  
26 *Id.* ¶ 23. When the school still could not find a BI in second grade, Karla went to  
27 Adalberto’s class every day for an hour to act as his aide. *Id.* At the beginning of third  
28 grade, when another child with a BI moved schools, Adalberto finally received a BI. *Id.*

1 ¶ 26. With the BI accompanying him in special education classes, Adalberto began  
2 making significant strides in November 2019. *Id.* ¶ 27. These changes transformed  
3 Adalberto. *Id.* ¶¶ 27-28. He was more excited to go to school, and his grades and  
4 behavior improved until the pandemic halted his progress. *Id.* ¶¶ 27; 33.

5 54. Since transitioning to remote learning, Adalberto has been easily distracted  
6 and sometimes refuses to get out of bed or log into Zoom. *Id.* ¶ 33. Adalberto still has a  
7 BI, but they can only communicate through chat and Adalberto needs assistance focusing  
8 and engaging with his assignments. *Id.* ¶ 34. Sometimes Adalberto is muted or has his  
9 camera turned off during class for speaking out of turn because there is not someone there  
10 to keep him on task. *Id.* Karla provided Adalberto with a behavioral therapist through her  
11 insurance who comes to her home four days a week and assists Adalberto in working  
12 independently. *Id.* Despite this, he has regressed academically and socially. *Id.* ¶¶ 35-36.

13 **Jasmine S.**

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

25 56. Jasmine is a bright social butterfly who frequently memorizes stories  
26 verbatim. *Id.* ¶ 7. Doctors diagnosed Jasmine with cerebral palsy just before her first  
27 birthday. *Id.* ¶ 8. At first doctors were unsure whether she would be able to walk, but she  
28 has progressed from using a walker to now using a cane and leg braces. *Id.* Jasmine was

1 born with hydrocephalus in both sides of her brain, which affects her entire body but the  
2 left side more severely. *Id.* In 2017 she was diagnosed with epilepsy. *Id.* ¶ 9. Although  
3 Jasmine rarely has a severe seizure, epilepsy makes her brain foggy which makes it  
4 difficult for her to focus or effectively socialize with her peers. *Id.*

5 57. Jasmine’s IEP began when she was three years old and in Head Start. *Id.*  
6 ¶ 10. Because Jasmine was diagnosed with epilepsy in pre-kindergarten and had just  
7 begun to manage her medication, Martha requested that Jasmine repeat pre-kindergarten.  
8 *Id.* MMSD informed Martha that if Jasmine repeated pre-kindergarten she would lose her  
9 special education services, including her therapies. Martha and several of Jasmine’s  
10 therapists disagreed with the school’s decision, but the school refused to change its policy.  
11 *Id.* Martha reenrolled Jasmine in pre-kindergarten without her therapies or special  
12 education. *Id.* The following year when Jasmine was enrolled in kindergarten, she again  
13 received all of her services. *Id.* Martha felt frustrated that a child without disabilities  
14 could repeat pre-kindergarten without penalty, but Jasmine lost her services for a year  
15 because she did so. *Id.* ¶ 11. Martha filed a complaint with the federal OCR over this  
16 incident around 2016, but OCR responded stating that MMSD did nothing wrong. *Id.*

17 58. In the 2019-2020 school year prior to the pandemic, Jasmine attended a  
18 combination of special education and general education classes as well as occupational,  
19 speech, and physical therapies. *Id.* ¶ 13. Before remote learning, Jasmine’s math, writing,  
20 and physical education were special education classes, and her history and science courses  
21 were general education classes. *Id.* ¶ 14. While in history and science class, Jasmine was  
22 a part of a small group that received extra attention from the special education teacher. *Id.*  
23 Jasmine stopped receiving this additional assistance when virtual learning started, making  
24 history and science inaccessible to her. *Id.* ¶ 15. She has had to stop attending these  
25 classes altogether, and the school told Martha there is no budget for additional staff if she  
26 were to take summer school. *Id.* Martha decided it would be more useful for Jasmine to  
27 develop life skills like math and reading, so she now focuses on helping Jasmine keep up  
28 in those classes. *Id.* ¶ 16. Jasmine benefits from individualized attention, but Martha has

1 had to learn on her own how to support Jasmine. *Id.* ¶ 32. Martha would like Jasmine to  
2 have one-on-one assistance, but MMSD does not provide personal aides. *Id.* ¶ 22.

3 59. Although the school has not given out grades during the pandemic, Jasmine  
4 has likely improved in reading and math because of Martha’s assistance and because she is  
5 taking fewer classes. *Id.* ¶ 23. Despite continued speech and occupational therapy,  
6 Jasmine’s progress with motor and movement skills has slowed down because she has  
7 fewer opportunities to practice skills. *Id.* ¶ 31. Prior to remote learning Jasmine was  
8 constantly practicing throughout the day as she moved from place to place and interacted  
9 with her peers, but during remote learning she has less reason to use these skills. *Id.*

10 **A. S.**

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

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

1 English and Spanish. *Id.* ¶ 7. A.S.’s most recent IEP meeting took place at the end of last  
2 school year. *Id.* ¶ 13. Perla was unable to attend because she was in the hospital, and the  
3 school did not reschedule the meeting. *Id.*

4 62. Prior to beginning remote learning, A.S. received speech therapy for 45  
5 minutes two times per week and one weekly session of therapy for her anxiety. *Id.* ¶ 10.  
6 Since the pandemic began, her speech therapy is only 30 minutes twice a week and is no  
7 longer one-on-one. *Id.* ¶ 14. Because A.S.’s therapies now include two or three children  
8 and are shorter, she has less opportunity to practice and her speech has regressed. *Id.*  
9 Perla does not recall ever agreeing to change A.S.’s IEP from individualized to group  
10 therapies. *Id.* ¶ 15. Beyond learning regression, A.S. also struggles socially. When  
11 remote learning first began A.S. would cry when she saw her teacher and classmates on  
12 Zoom. *Id.* ¶ 16. Now she struggles with anxiety when her camera is on and is frustrated  
13 with constantly being inside. *Id.* Perla worries that A.S.’s social anxiety is worsening and  
14 that she will struggle when classes begin again in person. *Id.* ¶ 18. Given this, A.S. would  
15 benefit from additional weekly therapy sessions for anxiety. *Id.* ¶ 16.

## 16 Educators

### 17 Kari Brennan

18 63. **Kari Brennan** is a special education teacher for high school students at the  
19 Alliance School (“Alliance”) in Milwaukee, Wisconsin. Kari Brennan Decl. ¶ 1. The  
20 2020-21 school year is her 26th year teaching and her eighth year teaching special  
21 education. *Id.* ¶ 2. Alliance was founded with a mission of reducing bullying and  
22 providing a safe space for lesbian, gay, bisexual, transgender, and queer (“LGBTQ”)   
23 students and students of color. *Id.* ¶ 3. Approximately 200 students currently attend  
24 Alliance. *Id.* About 60 percent of Kari’s students are Black and 40 percent are white. *Id.*  
25 ¶ 4. Around 82 percent of the school qualifies for the free lunch program, and a number of  
26 students experience various degrees of homelessness. *Id.*

27 64. When Kari taught general education, part of her job included making  
28 referrals for IEPs and 504 plan evaluations. *Id.* ¶ 6. Now she participates in IEP meetings

1 and reevaluations as a special education teacher. *Id.* About six of the 200 students at  
2 Alliance have 504 plans. *Id.* ¶ 9. About 47 percent of the students at Alliance have IEPs.  
3 *Id.* In Kari’s experience, one of the disadvantages of 504 plans is the lack of supplemental  
4 services beyond the 504 accommodation and the lack of a designated advocate for students  
5 with 504 plans. *Id.* ¶ 10.

6 65. Kari works with 10 students who are considered to have severe behavior  
7 dysmorphic disorder (“BDD”) or emotional disabilities. *Id.* ¶ 8. Many of her students  
8 engage in self-harming behaviors, suffer from anxiety, act out in class, or avoid class  
9 altogether. *Id.* During the pandemic, Kari has noticed an improvement in these students’  
10 behavior. *Id.* ¶ 12. Now that school is one of the only ways for students to interact, they  
11 seem much more interested in school and are more engaged with the subject matter. *Id.*  
12 Since classes are taught through Google Meet which does not require students to turn their  
13 cameras on, about 99 percent of students have their cameras off and mainly engage  
14 through the chat function. *Id.*

15 66. To Kari’s knowledge Alliance has conducted IEP meetings and reevaluations  
16 throughout the pandemic, so there is no backlog. *Id.* ¶ 14. For the most part, students have  
17 also been able to keep up with their therapies and services.<sup>8</sup> *Id.* Since student behavior  
18 has improved, the biggest issue is now attendance. *Id.* ¶ 15. After students miss a few  
19 classes, they are referred to the behavior intervention team. *Id.* In Kari’s experience, there  
20

21 \_\_\_\_\_  
22 <sup>8</sup> 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](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 are various barriers that prevent students from attending class, from connectivity issues to  
2 homelessness. *Id.*

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

### 8 **Georgia Flowers Lee**

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

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

### 26 **Virginia Glass**

27 70. **Virginia Glass** is an educational diagnostician who left her position in AISD  
28 in December 2020 due to health concerns. Virginia Glass Decl. ¶ 1. Virginia has 35 years

1 of experience in education. *Id.* ¶ 3. She has worked as a teacher in every grade in K-12,  
2 an assistant principal, a principal, an intermediary between the Texas Education Agency  
3 and AISD, and a diagnostician. *Id.* Virginia is certified as a special education teacher and  
4 a reading specialist, and is also certified to identify and evaluate early childhood  
5 disabilities. *Id.* In her prior position as a diagnostician, Virginia worked with  
6 administrators to develop appropriate learning strategies for struggling students. *Id.* ¶ 2.

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

19         72. As an educational diagnostician, Virginia was present at many IEP meetings  
20 where she witnessed committees making decisions based on cost rather than the individual  
21 student's needs. *Id.* ¶ 9. This contravenes the committee's obligation to create an  
22 individualized plan without regard to price. *Id.* ¶ 10. IEP committees assure parents that  
23 the student can be successful with significantly fewer services than what is truly needed.  
24 *Id.* ¶ 9. For example, student receive only "consultation" with a therapist as opposed to  
25 direct therapy. *Id.* Or students with autism rarely receive in-home training, which is  
26 designated as one of the strategies that IEP committees should consider. *Id.* ¶ 10.  
27 Shortcomings in IEP plans are rarely challenged in schools where students come from  
28 families with limited incomes, and in practice only very informed parents are aware that



1 their children are entitled to additional services. *Id.* ¶ 11. At schools where students are  
2 predominantly low-income, additional services are rarely even discussed. *Id.*

3 73. Since the pandemic began, many students have not been assessed due to  
4 school closures, reluctance to allow in-person testing, staff shortages, and lack of training  
5 on how to conduct remote assessments. *Id.* ¶ 13. Like many other districts, AISD was  
6 unprepared to develop materials for remote assessments and received no guidance from  
7 federal or state education departments. *Id.* ¶ 14. As a result, remote evaluations have still  
8 not taken place, creating a significant backlog that AISD still does not have a plan to  
9 address, as well as confusion for teachers on their students’ needs. *Id.* ¶¶ 15; 17.

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

15 75. In Virginia’s experience, the effects of the pandemic on learning have fallen  
16 especially hard on students with disabilities, who have missed classes at higher rates. *Id.*  
17 ¶ 20. Because the school did not have a plan to address excessive absences, teachers were  
18 left with the task of reaching out to students, with little to no support from other staff. *Id.*  
19 ¶ 23. Some students with Spanish-speaking parents have also stopped receiving services  
20 because there is no translator or liaison to communicate with parents about what must be  
21 done in order for a student to continue receiving services. *Id.* ¶ 22. Virginia sees more  
22 multilingual outreach and training as a key priority for districts. *Id.* ¶ 25.

23 **Amy Mizialko**

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

1           77. Amy’s firsthand experience has demonstrated that special education  
2 programs are the foundation of an equitable and accessible education. *Id.* ¶ 3. Amy,  
3 however, sees teacher shortages as the most significant barrier to creating strong schools.  
4 *Id.* ¶ 4. As of January 2021, MPS has 130 teacher vacancies, including 42 special  
5 education teacher positions. *Id.* ¶ 11. This means that schools must rely on stopgap  
6 measures such as pulling paraprofessionals, health assistants, central office teachers, and  
7 school support teachers to teach or cover classrooms. *Id.* ¶ 4. Staffing shortages also force  
8 teachers to absorb students from other classes, further burdening already overcrowded  
9 classrooms. *Id.* Class sizes have extended far beyond the workable limit, with as many as  
10 36 students in some elementary classroom and as many as 50 students in some middle and  
11 high school classes. *Id.* ¶ 9. As a result, it is extremely difficult for students to receive the  
12 necessary individualized or small group support to assist with their learning. *Id.*

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

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

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

7 **Julian Canek Pena-Vargas**

8           81. **Julian Canek Pena-Vargas** is a high school teacher in his 11th year of  
9 teaching in LAUSD. Julian Canek Pena-Vargas Decl. ¶¶ 1-2. Julian has taught at a public  
10 LAUSD school for the last five years. *Id.* ¶ 2. Julian teaches an interdisciplinary class  
11 called political studies, which is a combination of English and economics in the fall and  
12 world literature and government in the spring. *Id.* Julian also teaches credit recovery, a  
13 class focused on helping students graduate. *Id.* Julian has taught classes for English  
14 Language Learner (“ELL”) students, as he speaks English and Spanish fluently. *Id.*

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

21           83. When Julian was able to connect with families, the phone calls would take  
22 considerably longer than an average phone call due to the amount of trauma families were  
23 experiencing. *Id.* ¶ 5. Some of Julian’s students were experiencing severe economic  
24 insecurity and had to begin working to support their families. *Id.* Julian would do his best  
25 to connect families to resources such as meals, school psychologists, and technological  
26 support. *Id.* Despite this outreach, some students did not attend school again and Julian  
27 was not able to contact them because their families either moved or changed phone  
28 numbers. *Id.* ¶ 6. One of Julian’s students moved three times in the first month of the

1 pandemic and struggled to attend class due to unstable internet access, so he brought the  
2 student a router. *Id.* In Julian’s experience, ELL students and students who joined later in  
3 the semester were the most likely to not return. *Id.* Other students struggled when their  
4 Chromebooks broke, as it was difficult to obtain new devices with school closed. *Id.* ¶ 11.

5 84. In Spring 2020, LAUSD mandated that teachers call the parents of students  
6 who were on track to receive a D or F. *Id.* ¶ 7. At Julian’s school, each teacher was  
7 responsible for reaching out to the 20 students in their advisory class. *Id.* Julian  
8 encountered difficulty reaching parents who were either at work or did not have updated  
9 contact information. *Id.* As one of the few bilingual teachers, Julian made additional  
10 phone calls to connect with monolingual Spanish-speaking families. *Id.* In instances  
11 where parents only spoke Indigenous languages, teachers had to rely on students to serve  
12 as interpreters. *Id.* One challenge Julian faces is balancing student outreach with respect  
13 for their struggles. *Id.* ¶ 10. One of his students recently lost a parent to COVID-19, so he  
14 has been mindful about communicating while giving her space to grieve. *Id.*

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

22  
23 <sup>9</sup> 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](http://www.communityschools.org/aboutschools/what_is_a_community_school.aspx) (last visited  
27 Mar. 15, 2021); Katie Jarnot, *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           86. Remote learning also created challenges for Julian, who teaches in his garage  
2 so his wife, who is also a teacher, can use the kitchen, and his daughter can attend her  
3 second grade classes in the living room. *Id.* ¶ 12. Julian has also had to develop new  
4 methods of teaching and grading. *Id.* ¶ 14. For example, Julian previously used rubrics  
5 and peer grading for in-class writing assignments but has not found a way to engage  
6 students in remote peer grading. *Id.*

7           87. Julian’s recommendation for improving learning is to adequately fund both  
8 IDEA and Section 504. *Id.* ¶ 15. From his work in credit recovery, Julian has seen how  
9 trauma can derail a student’s learning without necessarily qualifying them for an IEP. *Id.*

10 **Alyssa Potasznik**

11           88. **Alyssa Potasznik** is a special education teacher in the Austin Independent  
12 School District (“AISD”). Alyssa Potasznik Decl. ¶ 1. The 2020-21 school year is  
13 Alyssa’s 11th year of teaching. *Id.* ¶ 2. Alyssa is a special education resource and  
14 inclusion English teacher for 10th and 11th grade and a ninth through 12th grade study  
15 skills teacher. *Id.* Her job involves dual roles of teaching, which requires planning lessons  
16 and providing individualized attention, and case management, which entails developing  
17 IEPs, monitoring students’ progress, and communicating with teachers and parents. *Id.*  
18 ¶¶ 2-3. In her case management role, Alyssa supervises 20 students. *Id.* ¶ 3. This number  
19 has increased each year, as her caseload had only 11 students when she first started. *Id.*  
20 The demands of both roles can be hard to balance. For example, 14 of Alyssa’s IEPs are  
21 scheduled for January and February 2021, making it difficult for her to lesson plan and  
22 prepare for teaching simultaneously. *Id.*

23           89. Alyssa has seen how school administrators are sometimes hesitant to  
24 evaluate students for special education, especially if they believe that parents will not  
25 advocate for their children. *Id.* ¶¶ 5-7. In one instance, the school declined to evaluate a  
26 student until the student’s mother, who was Latinx and a single mother, hired an attorney  
27 through Disability Rights Texas. *Id.* ¶ 7. After an attorney was retained, the student was  
28 evaluated. *Id.* Although the student was ultimately admitted to special education, there

1 was a significant delay in her receiving services. *Id.* This embodied how low-income  
2 parents’ concerns are dismissed unless they have an advocate. *Id.*

3 90. One of the most significant issues facing special education teachers in AISD  
4 is a severe staff shortage. In the 2018-19 school year, nearly all the licensed specialists in  
5 school psychology (“LSSP”) assigned to AISD quit in response to a dramatic increase in  
6 workload coupled with extremely low pay compared to surrounding districts. *Id.* ¶ 8. The  
7 lack of LSSPs drastically slows down the evaluation process, and last year many of  
8 Alyssa’s students were not able to be reevaluated. *Id.* Alyssa anticipates that this backlog  
9 will result in students not obtaining the services they need. *Id.* ¶ 20. Alyssa’s campus also  
10 instituted a new management software to track how special education teachers are  
11 spending their time. *Id.* ¶ 10. Instead of focusing on providing services, teachers must  
12 spend considerable amounts of time documenting each minute of their day. *Id.* Staff  
13 shortages in special education are common because teachers and specialists often quit due  
14 to the intense strain and workload. This in turn increases the burden on remaining  
15 teachers, creating a vicious cycle. *Id.* ¶¶ 10-11.

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

26 92. Alyssa knows of many students who have lost loved ones during the  
27 pandemic and may need additional resources such as counseling. *Id.* ¶ 15. Alyssa’s  
28 school has a mental health specialist but no established structure to identify students

1 suffering from trauma. *Id.* ¶ 14. Attendance has been another issue, as AISD does not  
2 have a designated plan in place for when a student is absent for many consecutive days or  
3 when they drop off the radar entirely. *Id.* ¶ 18.

4 93. To address some of these issues, Alyssa proposes instituting class and  
5 caseload caps to reduce the strain on teachers. *Id.* ¶ 21. Alyssa also believes there should  
6 be a paradigm shift in term of how special education is conceptualized. *Id.* ¶ 27. Rather  
7 than being seen as a way to redress deficits in certain students’ learning, special education  
8 should be seen as a rising tide that lifts all boats. *Id.* ¶ 28. This would allow for more  
9 institutional support for special education, including more leadership programs and  
10 training to support teachers. *Id.* ¶ 27.

### 11 Advocacy Groups

#### 12 The Advocacy Institute

13 94. **The Advocacy Institute** is a non-profit organization dedicated to the  
14 development of products, projects, and services that work to improve the lives of people  
15 with disabilities. The Advocacy Institute is currently involved in IDEA Money Watch  
16 project which tracks the use of more than \$12 billion in federal funds to support special  
17 education services for children with disabilities entitled to services under IDEA. The  
18 Institute also assists parents, advocates, and attorneys to make effective use of the IDEA  
19 state complaint process.

#### 20 Boston Teachers Union (“BTU”)

21 95. **BTU** represents over 10,000 educators in the Boston Public Schools  
22 (“BPS”), and its members educate nearly 11,500 students with disabilities out of a student  
23 population of over 54,000. BTU strives to “provide the best education we can for the  
24 system’s students,” to “promote the strengthening of public education,” and to “work to  
25 ensure adequate funding to support improvements in public education.” In Spring 2020,  
26 BTU released a report entitled “Inclusion and Racial Equity in the Boston Public Schools,”  
27 which explicitly identified racial disparities in special education that prevent students of  
28

1 color from accessing inclusion-oriented programming.<sup>10</sup> In October 2020, BTU released a  
2 statement on the decision to shift to all-virtual learning, reiterating its commitment to  
3 serving high-needs students: “We continue to advocate for a safe and sustainable plan that  
4 safely provides the additional services that many of our special education, EL [English  
5 learners] and other students continue to need.”<sup>11</sup>

6 **Education Austin (“EA”)**

7 96. EA represents approximately 3,000 educators in the Austin Independent  
8 School District dedicated to creating equitable public schools. EA members educate  
9 approximately 75,057 students, including 10,256 special education students—with about  
10 one third of students dually identified as emergent bilingual and special education students.  
11 Through organizing and advocacy, EA strives to create stronger public schools with a rich  
12 learning experience for all students. In particular, EA works to ensure that all students  
13 have the resources to learn and attend school. EA is committed to reversing the special  
14 education IEP “negative feedback loop” created by funding and staff shortages and work  
15 toward an education future that is equitable and accessible for all students.<sup>12</sup>

16 **Madison Teachers Inc. (“MTI”)**

17 97. MTI represents about 3,000 educators in the Madison Metropolitan School  
18 District (“MMSD”), and its members educate about 4,000 students with disabilities, amid a  
19 total school population of 27,000 students. MTI is a democratic, member-led union  
20 advocating to advance quality public education for all, and has a Subcommittee on Special  
21 Education. As part of its ongoing work to eliminate systemic racism, MTI has called for  
22 funding more mental health specialists in schools instead of school resource officers

23 \_\_\_\_\_  
24 <sup>10</sup> BOSTON TEACHERS UNION, INCLUSION AND RACIAL EQUITY IN THE BOSTON PUBLIC SCHOOLS  
(2020), [https://btu.org/wp-content/uploads/2020/06/BTU\\_Inclusion-flyer\\_pf7.pdf](https://btu.org/wp-content/uploads/2020/06/BTU_Inclusion-flyer_pf7.pdf).

25 <sup>11</sup> See Christopher Gavin, *Read: Boston Teachers Union releases statement on district’s decision*  
26 *to shift entirely to remote learning*, BOSTON.COM (Oct. 21, 2020),  
[www.boston.com/news/education/2020/10/21/boston-teachers-union-statement-remote-learning](http://www.boston.com/news/education/2020/10/21/boston-teachers-union-statement-remote-learning).

27 <sup>12</sup> Clara Ence Morse, *AISD’s Special Education System Struggles to Keep Up*, AUSTIN CHRONICLE  
28 (Feb. 26, 2021) <https://www.austinchronicle.com/news/2021-02-26/aids-special-education-system-struggles-to-keep-up/>.



1 (SROs). In July 2020, the MTI Board of Directors publicly supported removing SROs  
2 from four comprehensive high schools and adequately staffing schools with counselors,  
3 psychologists, social workers, and nurses.<sup>13</sup> MTI is committed to implementing restorative  
4 justice and trauma-informed modes of crisis prevention within schools, as part of a broader  
5 effort to confront the criminalization of students of color and students with disabilities.<sup>14</sup>

6 **Milwaukee Teachers' Education Association ("MTEA")**

7 98. MTEA represents 5,100 educators in Milwaukee's public schools, and its  
8 members educate over 15,000 students with disabilities among a total student population  
9 of approximately 78,000. MTEA's focus is on helping all children and educators thrive.  
10 MTEA is dedicated to expanding resources and supporting reforms that promote  
11 educational equity, and notes that as advocates for educators, MTEA members and staff  
12 are advocates for all children. In the early days of the pandemic, MTEA recommitted  
13 itself to inclusion for special education students who may require hands-on, experiential,  
14 project-based, and concrete learning opportunities during distance learning. MTEA  
15 believes that great care and flexibility must be guaranteed to both students and educators  
16 during these exceptional times. The aims should be relationships, regular communication,  
17 and offering students opportunities for enrichment, practice learning, and support.

18 **Oakland Education Association ("OEA")**

19 99. OEA represents nearly 3,000 educators in the Oakland (California) Unified  
20 School District ("OUSD"), and its members educate over 6,500 students with disabilities  
21 in a total school population of approximately 49,000 students. OEA is "committed to  
22 building a more racially and socially just school district" and to "putting power back into  
23 the hands of the people of Oakland."<sup>15</sup> OEA has been in the forefront of advocating for a  
24

25 \_\_\_\_\_  
26 <sup>13</sup> *Anti-Racism Statement, calls for funding schools and counselors*, MTI (Jul. 24, 2020),  
[www.madisonteachers.org/anti-racism-statement-calls-for-funding-for-schools-and-counselors/](http://www.madisonteachers.org/anti-racism-statement-calls-for-funding-for-schools-and-counselors/).

27 <sup>14</sup> *See id.* ("In order to create restorative classrooms, we need to have restorative schools,  
28 supported by restorative relationships and restorative systems for decision making.").

<sup>15</sup> *Who We Are*, OAKLAND EDUCATION ASSOCIATION (2018), <https://oaklandea.org/howe-are/>.

1 school system that invests in holistic support services instead of criminalizing students of  
2 color and students with disabilities. In June 2020, an OEA member authored a letter  
3 asking OUSD to adopt the George Floyd Resolution to Eliminate the Oakland Schools  
4 Police Department, which was widely supported by special education teachers.<sup>16</sup> The  
5 letter called for an end to the school to prison pipeline, which disproportionately affects  
6 students with disabilities, and for more dedicated resources for special education. In  
7 August 2020, the OEA and OUSD published a MOU on distance learning that stressed the  
8 importance of continuity of learning for students with disabilities and provided that special  
9 education teachers should have priority for necessary equipment, including hot spots and  
10 other technological resources.<sup>17</sup>

11 **United Teachers Los Angeles (“UTLA”)**

12 100. UTLA represents over 31,000 educators in the second largest district in the  
13 nation, where the vast majority of students are Black, Indigenous, and People of Color  
14 (“BIPOC”) and about 25 percent are English Language Learners. Its members educate  
15 over 62,000 students with disabilities in a total school population of approximately  
16 500,000. UTLA’s mission is “to do what’s best for the classroom and the kids in them”  
17 and UTLA is determined to “protect the budget axe from falling on the classroom.” UTLA  
18 proudly fights for wraparound services for special education students. In January 2020,  
19 UTLA proposed the creation of the UTLA-LAUSD Special Education Task Force to  
20 convene quarterly for the express purpose of meeting the unique needs of special education  
21 students and educators.<sup>18</sup> In August 2019, UTLA and the California Teachers Association  
22

23 <sup>16</sup> See Oakland Education Association, *Special Education Teachers for Police-Free Schools*,  
24 FACEBOOK (June 21, 2020), <https://www.facebook.com/OaklandEA/videos/special-education-teachers-for-police-free-schools/2509559029295884/>.

25 <sup>17</sup> See Oakland Education Association & Oakland Unified School District, *Memorandum of*  
26 *Understanding between Oakland Unified School District and Oakland Education Association:*  
27 *Distance Learning Due to School Closures during COVID-19 Pandemic* (Apr. 5, 2020),  
<https://oaklandea.org/wp-content/uploads/2020/04/COVID-MOU-4.5.2020.pdf>.

28 <sup>18</sup> See United Teachers Los Angeles, *Bargaining Proposal* (Jan. 29, 2020),  
[https://www.utla.net/sites/default/files/utla\\_proposal-special\\_education\\_1-29-20v2.pdf](https://www.utla.net/sites/default/files/utla_proposal-special_education_1-29-20v2.pdf), at 3.

1 (“CTA”) published a joint report entitled “State of Denial: California Charter Schools and  
2 Special Education Students,” highlighting the persistent under-enrollment of students with  
3 disabilities in charter schools.<sup>19</sup> UTLA published on its website’s FAQ section on special  
4 education the following proclamation on its commitment to special education: “We know  
5 when it is safe for students to return to school, they will require even greater resources than  
6 our districts previously had in their tool kits. This will require more special education  
7 teachers, more counselors, more nurses, and more service providers and targeted services  
8 to build our students up.”<sup>20</sup>

9 **IV. FACTS**

10 101. As we approach the 50th anniversary of the landmark passage of Section  
11 504, which was dramatically captured in the Netflix documentary *Crip Camp*, the  
12 Department of Education must grapple with how much work remains to fulfill that  
13 legislation’s promises. The gap between the law’s intent and achievement was disturbing  
14 prior to the pandemic—with a large and growing group of nearly 1.4 million students with  
15 disabilities that districts are supposed to identify and who are entitled to services under  
16 Section 504 but are unlikely to be receiving them because there are no federal or state  
17 funds dedicated to meeting their needs specifically.<sup>21</sup> Even before the pandemic, these  
18 underserved students were disproportionately students of color.<sup>22</sup> Now, widespread trauma  
19 from mass death and sustained social isolation have undoubtedly deepened the divide.  
20 That this trauma for many students comes on top of long promised, but not fully provided,  
21 special education services under the IDEA, only compounds the crisis and the need for  
22 federal intervention.

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25 <sup>19</sup> *State of Denial*, *supra* note 8.

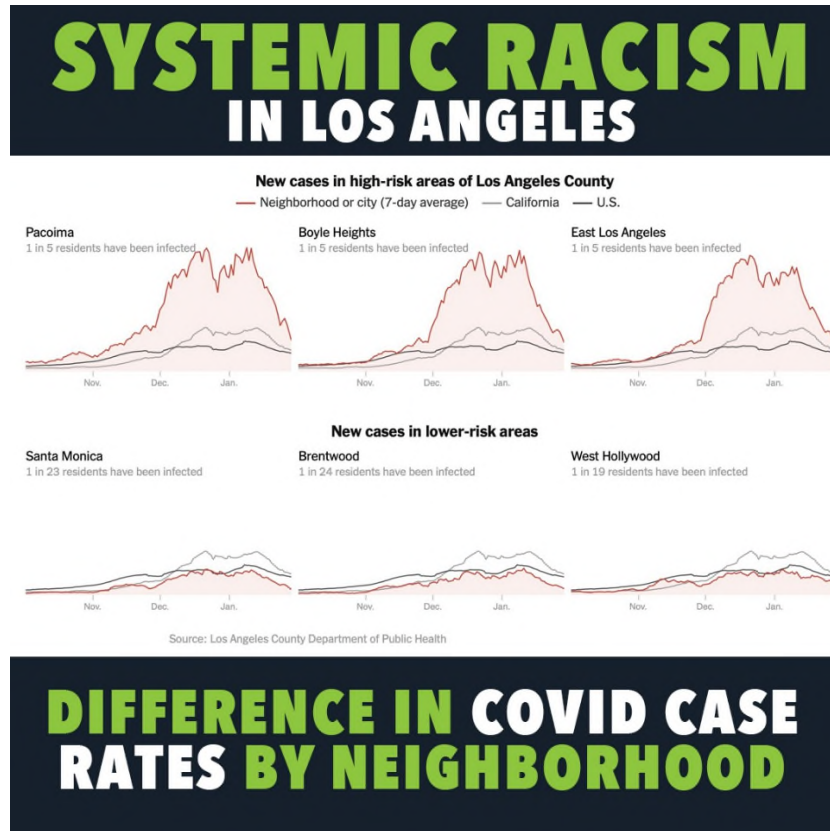
26 <sup>20</sup> *Members – FAQ*, UNITED TEACHERS LOS ANGELES, [https://www.utla.net/members-  
27 faq#Special%20Education](https://www.utla.net/members-faq#Special%20Education) (last visited Mar. 18, 2021).

28 <sup>21</sup> CCRRE Expert Report at 4.

<sup>22</sup> *Id.* at 15-20.

1           A.     How did we get here?

2           102.   The depth of the current crisis in educational access for students of color  
3 with disabilities is in no small part due to the former Education Secretary DeVos’s view  
4 that it was not her responsibility or that of the federal government to track school districts  
5 and their coronavirus infection rates or to assist with how schools are to reopen.<sup>23</sup> But the  
6 disproportionate deleterious racial impact extends well before 1973, and although the  
7 passage of Section 504 and the IDEA helped, chronic underfunding and the Department’s  
8 inadequate monitoring and enforcement have contributed to the inequity in the delivery of  
9 special education and related supports and services for students with disabilities who have  
10 a right to be educated but require their needs be met to receive FAPE.



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23  
24 Figure 1 Systematic Racism in Los Angeles: Difference in COVID case Rates by Neighborhood<sup>24</sup>

25  
26  
27 <sup>23</sup> 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>.

28 <sup>24</sup> This graphic is based on data from the Los Angeles Department of Public Health. See LA

1 103. 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.<sup>25</sup> 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  
9 *County COVID-19 Surveillance Dashboard*, COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC  
10 HEALTH, [http://dashboard.publichealth.lacounty.gov/covid19\\_surveillance\\_dashboard/](http://dashboard.publichealth.lacounty.gov/covid19_surveillance_dashboard/) (last visited  
11 Mar. 14, 2021). Low-income communities of color have been disproportionately devastated by  
12 COVID-19. In predominantly Latinx communities, 1 in 5 residents have been infected by  
13 COVID-19. Pacoima is 7 percent white, 2 percent Black, 3 percent Asian, and 87 percent Latinx,  
14 and the median household income is \$65,849. *L.A. (North Central/Arleta & Pacoima) & San  
Fernando Cities*, CENSUS REPORTER (2019), [https://censusreporter.org/profiles/79500US0603707-  
15 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,  
16 Central City, and Boyle Heights are 12 percent white, 8 percent Black, 15 percent Asian, and 63  
17 percent Latinx, and the median household income is \$46,691. *L.A. City (East Central/Central  
City & Boyle Heights)*, CENSUS REPORTER (2019),  
18 [https://censusreporter.org/profiles/79500US0603744-los-angeles-county-central-la-city-east-  
19 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,  
20 1 percent Asian, and 96 percent Latinx, and the median household income is \$53,194. *E. L.A.*,  
21 CENSUS REPORTER (2019), [https://censusreporter.org/profiles/16000US0620802-east-los-angeles-  
22 ca/](https://censusreporter.org/profiles/16000US0620802-east-los-angeles-ca/). In contrast, wealthier and predominantly white neighborhoods have substantially lower rates  
23 of infection. Santa Monica, where 1 in 23 residents have been infected, is 66 percent white, 4  
24 percent Black, 8 percent Asian, and 18 percent Latinx, and the median household income is  
25 \$92,490. *Santa Monica*, CENSUS REPORTER (2019),  
26 <https://censusreporter.org/profiles/16000US0670000-santa-monica-ca/>. Brentwood, where 1 in 24  
27 residents have been infected, is 52 percent white, 8 percent Black, 10 percent Asian, and 23  
28 percent Latinx, and the median household income is \$108,994. *Brentwood*, CENSUS REPORTER  
(2019), <https://censusreporter.org/profiles/16000US0608142-brentwood-ca/>. West Hollywood,  
where 1 in 19 residents have been infected, is 75 percent white, 4 percent Black, 6 percent Asian,  
and 10 percent Latinx, and the median household income is \$74,044. *W. Hollywood*, CENSUS  
REPORTER (2019), <https://censusreporter.org/profiles/16000US0684410-west-hollywood-ca/>.

<sup>25</sup> Joseph Shapiro, *COVID-19 Infections And Deaths Are Higher Among Those With Intellectual  
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](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 conditions such as diabetes, and the disproportionate number of essential workers who are  
2 BIPOC.

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

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

10 (b) Students have been transferred between different special education  
11 teachers or substitutes because of the special education teacher shortage and  
12 recent retirements.

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

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

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

23 (g) Students who started in a suburban district were pushed into an urban  
24 district because of special education needs or IEP requirements.<sup>26</sup>

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

27  
28 <sup>26</sup> See, e.g., Amy Mizialko Decl. ¶ 12.

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

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

5 105. Persistent underfunding of the IDEA and historically inadequate Department  
6 oversight, along with many states underfunding public education, including special  
7 education, has limited services in denial of FAPE and undermined the accurate assessment  
8 of disability as required by the IDEA’s child find provisions. Thus, students of color in  
9 resource-strapped districts experience the greatest negative impacts, while higher-income,  
10 majority-white districts can mitigate the detrimental effects of cuts to services.

11 106. Since remote learning began in March, 2020, students with disabilities have  
12 either lost or had decreased access to new evaluations. Remote learning has presented new  
13 challenges to child find and accurate identification and diagnosis of students with  
14 disabilities to ensure they receive appropriate support.

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

1 random district-by-district basis. Even then, it faltered in its obligations to students with  
2 disabilities.

3 108. As the CCRR explains, 3,434 school districts (serving over 1.8 million  
4 students) did not identify a single 504-only student, and 91 districts with over 3,000  
5 students enrolled (serving 630,450 students) did not have a single 504-only student.<sup>27</sup>  
6 There is also wide disparity by state on 504-only child find: with New Hampshire, Texas,  
7 Louisiana, Vermont, and Connecticut over five percent in 2017-18, while Oklahoma,  
8 Arizona, California, Nebraska, Wisconsin, New Mexico, and Missouri were under 1.5  
9 percent.<sup>28</sup> All racial groups have a lower 504-only find than whites,<sup>29</sup> and Native  
10 American, Latinx, and Black students have a higher percentage attending a district with a  
11 low rate (below 0.5 percent) of 504-only students identified. Correspondingly there is  
12 little to no 504 support and services for students or their teachers in those districts—a  
13 meaningful factor influencing the achievement gap based on race.<sup>30</sup>

14 109. CCRR’s “review of the racial disparities at the state and district level” noted  
15 the serious possibility that many districts are denying FAPE to a broad subset of students  
16 with disabilities, although the precise number of students in each district who should be  
17 deemed eligible pursuant to Section-504 only criteria is unknown.<sup>31</sup> During the pandemic,  
18 initial evaluations for special education services has become more challenging, and there  
19 have been periods of time when the initial evaluations were not occurring at all. Where in-  
20 person evaluations have occurred, concerns have arisen about the accuracy of tests  
21 administered under new COVID-related conditions.<sup>32</sup> These alarming pre-pandemic  
22 statistics show that many districts had problems meeting their child find obligations  
23

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24 <sup>27</sup> CCRR Expert Report at 13.

25 <sup>28</sup> *Id.* at 15, Table 1.

26 <sup>29</sup> *Id.* at 15-16, Figure 2.

27 <sup>30</sup> *Id.* at 16; 20.

28 <sup>31</sup> *Id.* at 16.

<sup>32</sup> *Id.* at 56 & n. 170.



1 without adequate federal oversight. This shortcoming must be corrected immediately  
2 because the number of 504-only students will only have increased during the pandemic.

3 110. Even once identified, 504-only students have not been adequately supported.  
4 In the absence of well-designed behavioral intervention plans, this insufficient support  
5 often manifests in suspension and, as a result, learning loss. The CCRR found that, again  
6 pre-pandemic, 504-only students in 2017-18 lost 30 days of instruction per 100 students  
7 enrolled, meaning that they lost 11 more days than students without disabilities.<sup>33</sup> This  
8 indicates that 504 plans were not working as they should even before the pandemic, and  
9 **additional** guidance and resources at the federal level are required to ensure that students  
10 with disabilities have the same educational opportunities as other students post-pandemic.

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

12 111. The challenges of remote learning are exacerbated in the special education  
13 context, where additional support and supplemental resources are often necessary to  
14 guarantee that students with disabilities receive a FAPE.

15 112. Many school districts do not meet their obligation to identify and meet the  
16 needs of 504 only students.<sup>34</sup> The CCRR Expert Report found that in districts with at least  
17 1,000 students, typically 2.9 percent of students were reported as 504 only; in 1 percent of  
18 these medium to large districts, however, the districts identified no 504-only students.<sup>35</sup>  
19 This illustrates that many districts vastly under-identify 504 only students. The same may  
20 be true for IDEA. Many parents request IEP evaluations or 504 services which take  
21 months or even years to obtain. For example, Michelle K. has spent the last year trying to  
22 get her son Rourke IEP services for his autism diagnosis.<sup>36</sup> Likewise, Melina E. A. was  
23 unable to receive an IEP for C.A.'s autism diagnosis; instead the district provided C.A.

24  
25 \_\_\_\_\_  
26 <sup>33</sup> *Id.* at 25, Figure 5.

27 <sup>34</sup> *Id.* at 12.

28 <sup>35</sup> *Id.* at 13.

<sup>36</sup> *See* Michelle K. Decl. ¶¶ 10-20.

1 some services for the manifestation of her autism.<sup>37</sup>

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

3 113. Students with disabilities have also been deprived of opportunities to create  
4 or update their IEPs, especially in ways that reflect the remote learning context. In an  
5 American Institutes of Research (“AIR”) survey, when administrators were asked during  
6 the pandemic about their ability to comply with IDEA-eligibility evaluation, over half the  
7 administrators indicated that compliance with the referral and evaluation requirements was  
8 more difficult.<sup>38</sup> California researchers looking into student engagement in online learning  
9 found that “students with disabilities had participation rates that were much lower than  
10 their peers.”<sup>39</sup> One study on student engagement in remote learning across LAUSD found:  
11 “Compared to more advantaged students, fewer middle and high school students who are  
12 Black, Hispanic, living in low-income households, classified as English learners, [or] have  
13 a disability ... participated across all measures of online activity. Low participation may  
14 show lost learning which could take students years to recoup.”<sup>40</sup> Disability advocates have  
15 also asserted that poor achievement levels raise concerns about both “the quality and  
16 quantity of special education instruction.”<sup>41</sup> Specifically, access to instruction has  
17 diminished for students who cannot benefit from online instruction without additional  
18 support from an in-person assistant or technical support from assistive technology.<sup>42</sup>

19 114. “[L]ow-income students and students of color, especially Black and Latinx  
20 students, and homeless students have lost more instruction than their White and non-poor  
21 counterparts.”<sup>43</sup> In the in-person classroom setting, students with disabilities typically  
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23 <sup>37</sup> See Melina E. A. Decl. ¶¶ 19-20.

24 <sup>38</sup> CCRR Expert Report at 54 & n. 153.

25 <sup>39</sup> *Id.* at 55 & n. 165.

26 <sup>40</sup> *Id.* at 55 & n. 161.

27 <sup>41</sup> *Id.* at 54 & n. 155.

28 <sup>42</sup> *Id.* at 54 & n. 156.

<sup>43</sup> *Id.* at 55 & n. 159.

1 benefit from additional assistance through occupational therapists, speech therapists,  
2 nurses, counselors, and other specialists and aides. These supplemental services have been  
3 harder to access in the remote setting.

4 115. Despite teacher efforts to conduct outreach to students through all available  
5 communications methods<sup>44</sup> and districts providing internet hotspots and computers and  
6 replacements, many students lack reliable internet access and necessary technology for  
7 remote learning. This is especially pronounced for low-income students of color with  
8 disabilities, whose families tend to have fewer resources to supplement remote learning.

9 116. Students of color whose parents or guardians are essential workers also may  
10 not receive the additional individualized attention from those adults that other students  
11 may receive. Parents who are essential workers may not have the time or capacity to  
12 review their child’s learning plan to ensure it aligns with the requirements under their IEP.  
13 Laquana A. noted that her son often did not receive adequate work to ensure that he was  
14 learning. As a result, Laquana would try to come up with assignments for Markel such as  
15 telling him to read a certain word or look up definitions; but as a single mother and an  
16 essential worker this has been burdensome and difficult to manage on top of trying to  
17 ensure Markel obtains accommodations to be successful at school.<sup>45</sup>

18 117. Although it is difficult to accurately estimate how the pandemic has affected  
19 learning loss, those engaged in predictive research have noted that the situation appears  
20 dire, especially for students with disabilities.<sup>46</sup> In part, learning loss arises from the  
21 difficulty of providing certain services and accommodations in the virtual setting. For  
22 example, 73 percent of special education administrators responding to the AIR’s October  
23 2020 survey reported “that it was more or substantially more difficult to provide  
24 appropriate instructional accommodations” in the remote learning context.<sup>47</sup>

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26 <sup>44</sup> See, e.g., Tiffany G. Decl. ¶ 29-30; Anna H. Decl. ¶ 20; Karla R. Decl. ¶¶ 13-16; 34.

27 <sup>45</sup> Laquana A. Decl. ¶ 29.

28 <sup>46</sup> CCR Expert Report at 54.

<sup>47</sup> *Id.* at 54 & n. 157.

1           **E. Racial disproportionality**

2           118. The disproportionate representation of students of color in special education  
3 is well-documented, and the underrepresentation of students of color receiving Section 504  
4 plans is documented in the concurrently filed CCRR Expert Report.<sup>48</sup> Explicit  
5 congressional findings have recognized racial disparities in special education as a serious  
6 issue. Since 1997, Congress has repeatedly acknowledged that significant  
7 disproportionality based on race was occurring in the identification and placement of  
8 students of color with disabilities.<sup>49</sup>

9           119. Racial disparity in special education is a persistent issue. When Congress  
10 reauthorized IDEA in 1997, it found that students of color were 2.3 times more likely to be  
11 labeled as having special education needs than white students.<sup>50</sup> When Congress  
12 reauthorized the IDEA, it added requirements<sup>51</sup> that states review district data on  
13 identification in specific disability categories, restrictive placement and racial  
14 disproportionality in discipline.<sup>52</sup> Research demonstrates that students of color are  
15 significantly more likely than similarly-situated white students to be placed in restrictive  
16 special education environments that are segregated from students in non-special education  
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18 \_\_\_\_\_  
19 <sup>48</sup> *Id.* at 10-15.

20 <sup>49</sup> *See* Pub. L. No. 105-17, § 601(c)(8)(A), 111 Stat. 37, 40 (1997). Congress has since amended  
21 IDEA several times to address these disparities. Pub. L. No. 108-446, § 618(d).

22 <sup>50</sup> 20 U.S.C. § 1400-1487 (Supp. IV 1998).

23 <sup>51</sup> 20 U.S.C. § 1418(d).

24 <sup>52</sup> In cases of significant disproportionality in identifying children with disabilities or  
25 disproportionality in placing students in particular education settings such as disciplinary  
26 removals, the State or the Secretary of the Interior must require local education agencies (“LEAs”)  
27 to publicly report on the revision of these practices and must reserve 15 percent of its IDEA Part B  
28 funds for coordinated early intervention services (“CEIS”). 34 C.F.R. §§ 300.646(c) & (d); 20  
U.S.C. § 1413(f)(1). In 2018, the Department of Education reported to Congress that 240 LEAs  
throughout the 50 states, Washington D.C., the Bureau of Indian Schools, and schools in U.S.  
territories had to reserve 15 percent of IDEA Part B funds for CEIS. *See 40th Annual Report to  
Congress on the Implementation of the Individuals with Disabilities Education Act*, OFFICE OF  
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>.

1 classrooms, and far more likely to be removed for disciplinary reasons.<sup>53</sup>

2       120. Students of color are both over-identified and under-identified in terms of  
3 special education.<sup>54</sup> This dual-track phenomenon leads to injury in both directions:  
4 segregation and stigma in the former scenario (with insufficient support provided  
5 notwithstanding the identification), and then failure to provide support and necessary  
6 education services in the latter. The evaluation process—which has subjective elements—  
7 is complicated, and highly affected by state and local contextual factors, including but not  
8 limited to access to effective reading instruction in general education, discipline  
9 disparities, implicit racial bias, and availability of early intervention supports and services  
10 for kids exposed to environmental toxins, trauma, and racism.

11       121. The overrepresentation of students of color in special education classrooms  
12 is experienced as a form of educational segregation, where disability serves as a  
13 “normalized” category of marginalization for students of color: “Overt racially  
14 segregating schooling practices have given way to largely under-acknowledged and more  
15 covert forms of racial segregation, including some special education practices.”<sup>55</sup> In this  
16 way, special education can become a “dumping ground” for Black children deemed  
17 uncontrollable, unmotivated, or unintelligent.<sup>56</sup> For many Black children categorized as  
18 having a disability, special education placement does not correlate to more educational  
19 support; rather it can result in separation from general education classrooms and high rates  
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22 <sup>53</sup> See Daniel J. Losen, *New Research on Special Education and Minority Students with*  
23 *Implications for Civil Rights Advocacy*, 36 CLEARINGHOUSE REV. 132 (2002). See also Dustin  
24 Rynders, *Battling Implicit Bias in the IDEA to Advocate for African American Students with*  
*Disabilities*, 35 TOURO L. REV. 461 (2019).

25 <sup>54</sup> See Francis A. Pearman, F. Chris Curran, Benjamin Fisher & Joseph Gardella, *Are Achievement*  
26 *Gaps Related to Discipline Gaps? Evidence from National Data*, 5 AERA Open 1 (2019),  
<https://journals.sagepub.com/doi/pdf/10.1177/2332858419875440>.

27 <sup>55</sup> See Beth A. Ferri & David J. Connor, *Tools of Exclusion: Race, Disability, and (Re)Segregated*  
28 *Education*, 107 TEACHERS COLLEGE RECORD 453, 454 (2005).

<sup>56</sup> LaToya Baldwin Clark, *Beyond Bias*, 53 HARV. C.R.-C.L. L. REV. 381, 382 (2018).

1 of discipline.<sup>57</sup> One significant study concluded that this is a “new form of school  
2 segregation in subversion of *Brown v. Board*.”<sup>58</sup>

3 122. There should be greater attention paid to districts where the data show large  
4 differences by race. Specifically where the data appears to show that whites are  
5 disproportionately identified as having autism, and BIPOC students are disproportionately  
6 identified as having emotionally disturbance or intellectual disability, especially where,  
7 within the same district there are large differences in disciplinary removal by category.<sup>59</sup>  
8 For example, although C.A., a Chicana student, had a formal autism diagnosis, her District  
9 provided her an IEP under the emotional disturbance identifier rather than under an autism  
10 classification.<sup>60</sup> This meant that C.A. received IEP services for the manifestations of  
11 autism, but not the autism itself.<sup>61</sup>

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

13 123. Students of color with disabilities experience higher rates of discipline. In  
14 the remote learning setting, this has translated to students of color being removed from  
15 Zoom classrooms or marked absent or tardy due to technological issues.<sup>62</sup> Inconsistent  
16 guidance on assessing absences in the remote learning context or removing students for  
17 allegedly disruptive behavior can result in students being reported for truancy. This  
18 problem is particularly pronounced for students of color with disabilities.

19 \_\_\_\_\_  
20 <sup>57</sup> *Id.* at 383.

21 <sup>58</sup> *Id.*

22 <sup>59</sup> U.S. COMMISSION ON CIVIL RIGHTS, BEYOND SUSPENSIONS: EXAMINING SCHOOL DISCIPLINE  
23 POLICIES AND CONNECTIONS TO THE SCHOOL-TO-PRISON PIPELINE FOR STUDENTS OF COLOR WITH  
24 DISABILITIES (2019) at 101, <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf> at  
25 101; Baldwin Clark *supra* note 56 at 395-97 (observing that in the 2014-2015 school year Black  
26 children comprised only 16 percent of public school enrollment but represented one-quarter of  
27 children receiving special education services for emotional disturbance and intellectual  
28 disturbance respectively).

26 <sup>60</sup> Melina E.A. Decl. ¶¶ 2; 16; 18; 20

27 <sup>61</sup> *Id.* ¶ 20.

28 <sup>62</sup> *See, e.g.*, Laquana A. Decl. ¶¶ 13-14; Barbara B. Decl. ¶¶ 10-16; Melina E. A. Decl. ¶¶ 28-32;  
Karla R. Decl. ¶ 34.

1           124. The CCRR Expert Report, citing the Department’s Guidance on the  
2 Inclusion of Behavior Supports in Individualized Education Plans published in August  
3 2016, notes “extraordinarily high rates and wide disparities” in the extent to which students  
4 of color are excluded and disciplined in response to student misbehaviors.<sup>63</sup> This suggests  
5 that the IDEA is not protecting students of color with disabilities from unjust disciplinary  
6 exclusion.<sup>64</sup> Moreover, inadequate or inappropriate services often lie at the root of these  
7 misbehaviors: “Many students with disabilities may exhibit heightened behavioral  
8 problems only when their academic or behavioral needs are not being met. This can result  
9 from a misdiagnosis, providing supports and services that do not address the disability,  
10 overlooking the behavioral needs caused by the disability, or failing to deliver the  
11 supports, services and responses that are in the student’s IEP or 504 plan, including, but  
12 not limited to those described in a behavioral intervention plan.”<sup>65</sup> Significantly, the  
13 decision to punish behaviors by taking away instructional time can build up to a denial of  
14 FAPE.<sup>66</sup> Moreover, the federal data reported on lost instruction suggests that the high rates  
15 of disciplinary exclusion in alternative schools are being overlooked. For example, recent  
16 data analyses show that the average amount of instruction lost for students with IEPs who  
17 are attending an alternative school is 148 days per 100 students.<sup>67</sup> This is more than twice  
18 the 68 days lost per 100 at the secondary level for students with disabilities overall where  
19 the vast majority attend traditional schools.<sup>68</sup>

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<sup>63</sup> CCRR Expert Report at 6; *Dear Colleague Letter on Ensuring Equity and Providing Behavioral Supports to Students with Disabilities*, U.S. Department of Education Office of Special Education Programs (2016), <https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>.

<sup>64</sup> *Id.* at 29-30.

<sup>65</sup> *Id.* at 29.

<sup>66</sup> *Id.* at 30.

<sup>67</sup> *Id.* at 32 & n. 73.

<sup>68</sup> *Id.* at 33.

1           125. While ascertaining the precise number of days lost due to discipline  
2 accounting for race and disability is difficult, CCRR’s analysis of data in 2017 revealed  
3 racial disparities in lost instruction among students with disabilities.<sup>69</sup> Further, the analysis  
4 of the 2017-2018 CRDC data which enables the calculation of differences in the risk from  
5 being suspended at least once reveals profound racial disparities among students with  
6 disabilities. A review of data from California from 2018-19 revealed that Black students  
7 tend to suffer substantially more lost instruction than their non-Black peers. Black males  
8 with disabilities lost 149 days of instruction as compared to 107 days for Native students,  
9 60 days for Latinx students, and 89 days for white students.<sup>70</sup> This racial discipline gap  
10 among students with disabilities between Black and whites was growing, not narrowing,  
11 before the pandemic.<sup>71</sup> And in many districts, the racial disparity for students with IEPs is  
12 extreme yet unchecked.<sup>72</sup>

13           126. The CCRR Expert Report also highlights that the Los Angeles Unified  
14 School District and Milwaukee Public Schools have “unusually high rates of referral to  
15 law enforcement for secondary students with disabilities.”<sup>73</sup> Los Angeles Unified School  
16 District referred 2.71 percent of all secondary students with disabilities to law  
17 enforcement.<sup>74</sup> LAUSD's referral rate for students with IEPs was almost one percentage  
18 point higher than the rate for all students. In Los Angeles, the rate of referral to law  
19 enforcement for all students was higher than the district's out-of-school suspension rate.<sup>75</sup>  
20 That “disturbing pattern, where referrals to law enforcement outnumbered out-of-school  
21  
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23 <sup>69</sup> *Id.* at 32, Figure 5.

24 <sup>70</sup> *Id.*

25 <sup>71</sup> *Id.*

26 <sup>72</sup> *Id.* at 32-34.

27 <sup>73</sup> *Id.* at 41; 43, Figure 8.

28 <sup>74</sup> *Id.* at 41.

<sup>75</sup> *Id.*



1 suspensions,” must be halted and remedied under Title II and IV as well as Section 504.<sup>76</sup>  
2 The CCRR Expert Report highlights the districts where the school-policing data were  
3 reported, but it also found that 61 percent of large districts reported zero school related  
4 arrests, including New York City and Pittsburgh, suggesting an oversight failure in the  
5 collection and reporting of police involvement in schools, and masking the true number of  
6 districts referring a high percentage of students of color with disabilities to the police based  
7 on their school misconduct.<sup>77</sup>

8 127. Despite the possibility of race-based denial of FAPE suggested by the  
9 discipline disparities among students with disabilities, the DeVos administration took steps  
10 pre-pandemic to reduce oversight of racially disparate impacts by rescinding Title VI  
11 guidance on school discipline, refusing to conduct systematic Office of Civil Rights  
12 discrimination investigations,<sup>78</sup> and by requesting to delay the implementation of IDEA  
13 disproportionality regulations that were approved in 2016, where President Obama’s  
14 Education Department had clarified their application to discipline disparities and sought to  
15 encourage more complete implementation on the states’ part.<sup>79</sup> A federal court stopped the  
16 effort to delay the regulations, but the rescission of Nondiscriminatory Administration of  
17 School Discipline published in 2014 was not subject to judicial review.<sup>80</sup> As the current

18 \_\_\_\_\_  
19 <sup>76</sup> *Id.*

20 <sup>77</sup> *Id.* at 39 & n. 102.

21 <sup>78</sup> Annie Waldman, *DeVos Has Scuttled More than 1,200 Civil Rights Probes Inherited from*  
22 *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)  
23 [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  
24 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)  
25 [department-suggests-less-expansive-approach-ocr-investigations](https://www.insidehighered.com/news/2017/06/16/education-department-suggests-less-expansive-approach-ocr-investigations).

26 <sup>79</sup> Francisco Vara-Orta, *It’s Official: DeVos has Axed Obama Discipline Guidelines Meant to*  
27 *Reduce Suspensions of Students of Color*, CHALKBEAT (Dec. 21, 2018),  
28 [https://www.chalkbeat.org/2018/12/21/21106428/it-s-official-devos-has-axed-obama-discipline-](https://www.chalkbeat.org/2018/12/21/21106428/it-s-official-devos-has-axed-obama-discipline-guidelines-meant-to-reduce-suspensions-of-students-of-color/)  
29 [guidelines-meant-to-reduce-suspensions-of-students-of-](https://www.chalkbeat.org/2018/12/21/21106428/it-s-official-devos-has-axed-obama-discipline-guidelines-meant-to-reduce-suspensions-of-students-of-color/)  
30 [color](https://www.chalkbeat.org/2018/12/21/21106428/it-s-official-devos-has-axed-obama-discipline-guidelines-meant-to-reduce-suspensions-of-students-of-color/); Andrew Ujifusa, *Betsy DeVos Revokes*  
31 *Obama Discipline Guidance Designed to Protect Students of Color*, EDUCATION WEEK (Dec. 21,  
32 2018), [https://www.edweek.org/policy-politics/betsy-devos-revokes-obama-discipline-guidance-](https://www.edweek.org/policy-politics/betsy-devos-revokes-obama-discipline-guidance-designed-to-protect-students-of-color/2018/12)  
33 [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) .

34 <sup>80</sup> *SPLC Statement on the Department of Education Rescinding Guidance Documents*, SOUTHERN  
35 POVERTY LAW CENTER (Oct. 25, 2017), <https://www.splcenter.org/news/2017/10/25/splc->

1 administration works to fulfill its commitment to “building back better,”<sup>81</sup> we respectfully  
2 urge that the Department’s efforts include overhauling the last administration’s concerted  
3 attempt to reduce protections against racial discrimination in education. Then the  
4 Department must focus on eradicating the many ways discrimination is experienced by  
5 students of color with disabilities.

6 **V. JUSTIFICATION FOR THE GUIDANCE REQUESTED**

7 128. The COVID-19 pandemic has exacerbated mental health struggles and  
8 trauma for many students with disabilities, especially those who are low-income and/or  
9 students of color. To date, the federal government has not provided sufficient oversight, or  
10 issued meaningful guidance to ensure students with disabilities receive FAPE during and  
11 after the pandemic. This Petition respectfully requests that the Department take immediate  
12 action in order to prevent, mitigate and remedy further learning loss and regression for  
13 these students.

14 **A. The Department Must Ensure and Demand That American Rescue Plan**  
15 **Act Funds As Well As Additional Federal Resources Are Deployed to**  
16 **Assist Students with Disabilities.**

17 129. The passage of President Biden’s ground-breaking ARP Act at long last  
18 holds the promise of providing significant resources to meeting the needs of students with

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

28 <sup>81</sup> See *Build Back Better: Joe Biden’s Jobs and Economic Recovery Plan for Working Families*,  
BIDEN HARRIS, <https://joebiden.com/build-back-better/> (last visited Mar. 13, 2021) (“We’ve seen  
again this year the tragic costs of systemic racism. Biden believes that addressing those costs has  
to be core to every part of the economic agenda, and also a distinct priority in its own right. As  
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 disabilities. The ARP Act provides \$122.7 billion for the existing Elementary and  
2 Secondary School Emergency Relief fund. School districts must reserve 20 percent of  
3 these funds for programs that address learning loss and the remaining funds can be used  
4 for a variety of purposes including reducing class sizes and hiring additional teachers,  
5 specialized instructional support personnel and other educational staff. In addition, \$3  
6 billion is provided as additional IDEA funding for fiscal year 2021. The Department  
7 should issue guidance making clear that ARP Act funds should be used to assist students  
8 with disabilities in recovering from disrupted learning and delayed or foregone services  
9 due to the pandemic, while also providing proactive suggestions for how this money can  
10 be spent to assist these students.

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

24       131. The ARP Act funds allow states and school districts to begin to tackle the  
25 multiple and overlapping problems that historical underfunding and racial bias have caused  
26 with the correct identification and support of students with special education needs and  
27 disabilities. Guidance from the Department can play a pivotal role in ensuring this  
28 opportunity is not squandered. The Department should immediately issue guidance

1 informing states and school districts of their obligation to spend this money equitably and  
2 in ways that tackle discrimination and unequal outcomes resulting from both the pandemic  
3 and pre-pandemic causes. This guidance should also emphasize the importance of  
4 stakeholder engagement at all levels, both state and local, to ensure that the funds are spent  
5 in the way most useful to parents, educators, and communities.

6 132. In particular, to tackle the needs catalogued in this petition, the Guidance  
7 should provide priorities and suggestions for how this money should be spent, while  
8 making it clear that ARP funds can be used to:

- 9 • Hire additional qualified staff (such as educators, paraeducators, school  
10 psychologists) to provide supports and services to students with disabilities;
- 11 • Provide funding for the creation and implementation of 504 plans for students;
- 12 • Provide safe and reliable transportation services so students with disabilities can  
13 safely access in-person instruction;
- 14 • Provide high-quality professional development to all school staff on identifying  
15 trauma, implicit bias, and resiliency; and
- 16 • Provide programs to assist students with disabilities with remote education  
17 technologies and modalities.

18 133. The Guidance should also provide programmatic suggestions, including  
19 hiring additional staff to reduce class sizes, modifying the curriculum to emphasize social-  
20 emotional learning, and providing trauma-informed care and mental health supports and  
21 services to all students (e.g. through the hiring of school counselors, therapists, and  
22 psychologists to provide mental health support for the entire student body). The Guidance  
23 should inform districts that learning loss programs, including summer school, afterschool,  
24 and tutoring, must be made available for students with disabilities and that failure to do so  
25 violates federal law. Because ARP funds, while substantial are one-time funds, the  
26 Department must also join with the broader educational community to push for increased  
27 and sustained funding to ensure IDEA and 504 compliance, which is critical to remedy the  
28 inequities in educational opportunities identified in this Petition.

1           **B. A National Investigation of the Longstanding Inequities in Special**  
2           **Education and 504 Compliance is Needed.**

3           134. To grasp the scope of the problems in special education and 504 compliance,  
4 the Department should investigate the discrimination against BIPOC students with  
5 disabilities across the nation. As the CCRR Expert Report and the concurrently-filed  
6 declarations from urban and rural communities show, the problem is systemic and found in  
7 every state. Therefore, a comprehensive remedy depends on greater federal oversight and  
8 more effective civil rights enforcement. The Department should systematically remedy the  
9 federal failure to adequately fund IDEA, and to provide additional funds to ensure  
10 comprehensive enforcement of Section 504’s obligations, including, but not limited to  
11 child find requirements.<sup>82</sup> Individual district investigations alone in the face of such  
12 widespread failure will not ensure the provision of FAPE to BIPOC students with  
13 disabilities. A serious federal commitment, including to the collection of accurate data, is  
14 a first step because the problem is widespread, but few even know that there is a problem  
15 in part due to the data, or absence of data, being reported. For example, the CRDC collects  
16 the 504-only numbers only every two years—no other group of students is counted every  
17 other year, and it has already been announced that the CRDC will not collect data for the  
18 2019-2020 school year, leaving a long gap to determine Section 504 compliance. The  
19 pandemic makes this information more, not less, important and moving to an annual  
20 CRDC collection can help fill this information gap.

21 \_\_\_\_\_  
22 <sup>82</sup> Both LAUSD Superintendent Austin Beutner and district unions have noted much larger  
23 systemic problems must be addressed because absent a comprehensive plan to redress the  
24 disproportionate impact of the COVID-19 pandemic on low-income communities, plans to fully  
25 reopen public schools will “fall[] well short of what is needed to provide help to the students and  
26 communities [school districts] serve.” Among other improvements, Beutner and others have  
27 advocated for “targeted funding for students who have been disproportionately affected by the  
28 pandemic, including English-learners, students with disabilities, and homeless and foster youth.”  
City News Service, *LAUSD Suggests Improvements to Gov. Newsom’s School Reopening Plan*,  
NBC LOS ANGELES (Jan. 11, 2021), <https://www.nbclosangeles.com/news/local/lausd-suggests-improvements-to-gov-newsoms-school-reopening-plan/2503827/>. The Department can guide  
districts on how ARP funds can be spent to target interventions for students disproportionately  
affected by the pandemic, including students of color with disabilities.

1           135. All students with disabilities between three and 21 years of age are entitled  
2 to a FAPE under the IDEA and its corresponding regulations. Under the IDEA, FAPE  
3 includes identified special education and related services, i.e., “specifically designed  
4 instruction, at no cost to parents, to meet a disabled student’s unique needs,”<sup>83</sup> including  
5 counseling, psychological services, school social work services, speech-language  
6 pathology, and physical and occupational therapy.<sup>84</sup> Specially-designed instruction  
7 includes effective instruction conducted at home.<sup>85</sup> FAPE is satisfied when a district  
8 provides personalized instruction with sufficient support services to permit a student with a  
9 disability to benefit educationally from that instruction. Because individual petitioners’  
10 children have not received specialized education services nor many of the support services  
11 identified in their IEPs since March 2020, these students have not been able to benefit  
12 educationally from the remote instruction. They have experienced learning regression and  
13 are entitled to additional services to help remedy any losses. Even where students have  
14 IEPs, OCR has the authority to “investigate an allegation under Section 504 that a  
15 student’s IEP was not implemented because the allegation is that the school has violated  
16 Section 504.”<sup>86</sup>

17           136. To be clear, this coalition is not asserting that FAPE cannot occur in a  
18 remote environment for students with disabilities. To the contrary, as the declarations of  
19 Alicia B., Tiffany G., Martha S., and Anna H. illustrate, the remote learning may  
20 sometimes be essential for immunocompromised students or family members.<sup>87</sup> Instead,  
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22 <sup>83</sup> *Bd. of Educ. of Hendrick Hudson Ctr. Sch. Dist. v. Rowley*, 458 U.S. 176, 181 (1982) (holding  
23 that IDEA’s use of “individualized” requires an IEP to be tailored to each student’s unique needs).

24 <sup>84</sup> 20 U.S.C. §§ 1401(26)(A) and (29).

25 <sup>85</sup> 20 U.S.C. §§ 1401(14) and (26)(A).

26 <sup>86</sup> *See Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter*  
27 *Schools under Section 504 of the Rehabilitation Act of 1973*, U.S. DEPARTMENT OF EDUCATION  
(2016), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf>, at  
28 4, n. 15.

<sup>87</sup> *See, e.g.*, Alicia B. Decl. ¶ 3; Tiffany G. Decl. ¶¶ 5-10; Martha S. Decl. ¶ 3; Anna H. Decl. ¶¶ 5-  
7; 23; 38-39; 49.

1 other than distributing Chromebooks and hotspots for some students with disabilities and  
2 assigned aides to assist through chat features, the students discussed herein exemplify a  
3 national failure to provide BIPOC students with disabilities with the accommodations  
4 mandated in their IEPs and/or 504 Plans. The pandemic has raised unprecedented  
5 challenges leading to some inevitable delay in or modification to IEP services and  
6 accommodations, and to some quantum of learning loss, but the across-the-board failure to  
7 provide additional resources and meaningful guidance leaves these students deeply  
8 vulnerable. This year-long lapse of critical education may cause irreparable damage, not  
9 only to the educational progress and life development of all students with disabilities  
10 identified herein but also all similarly situated students with disabilities whose IEPs have  
11 not been fulfilled during this period. The Department should investigate to determine the  
12 depth and breadth of the problems reflected in this Petition so that it can take and advocate  
13 for appropriate action to remedy them.

14 **C. The Department Should Provide Meaningful Guidance to Ensure FAPE**  
15 **During Pandemic.**

16 137. The Department must issue Guidance to ensure districts are meeting the  
17 unprecedented challenges created by the COVID-19 pandemic to guarantee the  
18 enforcement of Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and  
19 the IDEA. The DeVos Department stood idly by instead of helping those students who  
20 were the most vulnerable to denial of FAPE before and during the pandemic—students of  
21 color with disabilities. Now, the current Department has the opportunity to provide  
22 meaningful guidance that finally addresses the difficulties facing students of color with  
23 disabilities.

24 138. Section 504 guarantees students with disabilities FAPE, and the elements of  
25 the student’s FAPE are documented in a Section 504 plan, identifying the student’s needs  
26 and communicating to school personnel information necessary for successful  
27  
28

1 implementation.<sup>88</sup> OCR has issued guidance and provided other information over the  
2 years to explain the requirements of Section 504 applicable to the rights of students with  
3 disabilities in public elementary or secondary schools.<sup>89</sup> Yet during the pandemic’s critical  
4 early days, the DeVos Department continued to merely follow pre-pandemic law with no  
5 accounting for the educational constraints imposed by the health and safety threats of  
6 COVID-19.<sup>90</sup> Such perfunctory advice and lack of specificity about adjustments in a  
7 remote environment rendered any guidance effectively meaningless. The three concrete  
8 examples given in the four guidance documents were:

9 (1) “Accessible technology may afford students, including students with  
10 disabilities, an opportunity to have access to high-quality educational  
11 instruction during an extended school closure, especially when continuing  
12 education must be provided through distance learning.”<sup>91</sup>

13 (2) “[I]f a teacher who has a blind student in her class is working from home  
14 and cannot distribute a document accessible to that student, she can distribute  
15 to the rest of the class an inaccessible document and, if appropriate for the  
16 student, read the document over the phone to the blind student or provide the  
17 blind student with an audio recording of a reading of the document aloud.”<sup>92</sup>

18 (3) “Many disability-related modifications and services may be effectively  
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20 <sup>88</sup> See *Frequently Asked Questions*, *supra* note 86, at 8.

21 <sup>89</sup> *Id.* at 10 & n. 14.

22 <sup>90</sup> See, e.g., *Office for Civil Rights Issues COVID-19-related Technical Assistance Document to*  
23 *Assist K-12 Schools with Meeting Their Obligations under Federal Civil Rights Laws* (Sept. 28,  
24 *2020*); *Office for Civil Rights Releases New Resource for Postsecondary Institutions on Protecting*  
25 *the Civil Rights of Students During COVID-19* (May 12, 2020); *Office for Civil Rights Publishes*  
26 *New Resource on Accessibility and Distance Learning Options Urging States to Continue*  
27 *Educating Students with Disabilities* (Mar. 21, 2020); *Office for Civil Rights Issues New Resource*  
28 *on Schools’ Obligations to Protect the Civil Rights of Students During COVID-19* (Mar. 16,  
2020). POLICY GUIDANCE PORTAL, U.S. DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS,  
<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>.

<sup>91</sup> Guidance from Mar. 16, 2020, *supra* note 90, at 2.

<sup>92</sup> Guidance from Mar. 21, 2020, *supra* note 90, at 2.



1 provided online. These may include, for instance, extensions of time for  
2 assignments, videos with accurate captioning or embedded sign language  
3 interpreting, accessible reading materials, and many speech or language  
4 services through video conferencing.”<sup>93</sup>

5 139. Past guidance documents issued by OCR under the DeVos Department of  
6 Education have simply reiterated that federal disability laws still apply in the distance  
7 learning context, but have failed to confront the hard questions posed by the pandemic or  
8 to set specific standards or best practices for how school districts should ensure that  
9 students with disabilities are receiving a FAPE. By and large, the guidance documents  
10 employ vague language that shifts the burden of compliance onto school districts without  
11 providing clear suggestions. For instance, the OCR skirted the issue in March 2020:  
12 “[S]chools must make local decisions that take into consideration the health, safety, and  
13 well-being of all their students and staff, as well as their obligation to ensure that students  
14 with disabilities are receiving a FAPE. This includes making individualized decisions  
15 regarding how to provide special education and related services to students with  
16 disabilities.”<sup>94</sup> The guidance document did not offer further insight into what the  
17 individualized decision process should look like or what factors should be taken into  
18 account. It is altogether unclear what concrete assistance, if any, this guidance document  
19 was intended to provide.

20 140. In that same guidance document, OCR made this bland statement, which  
21 offers no help in the highly disruptive and chaotic pandemic environment: “School districts  
22 should therefore continue to make individualized determinations as to whether students’  
23 IEPs or Section 504 plans need to be revised to ensure students with disabilities are  
24 provided a FAPE, including by identifying how the special education or related aids and  
25 services called for by a student’s IEP or Section 504 plan may be provided through a  
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27 \_\_\_\_\_  
<sup>93</sup> *Id.*

28 <sup>94</sup> Guidance from Sept. 28, 2020, *supra* note 90, at 4.

1 variety of instructional methods and settings. School staff and parents are encouraged to  
2 work together to find ways to meet the needs of students with disabilities, notwithstanding  
3 challenges due to COVID-19.”<sup>95</sup> Again, the guidance inappropriately abdicates the  
4 Department’s own significant role, and shifts the onus of protecting students with  
5 disabilities from districts to educators and parents, without meaningful support from the  
6 federal government.

7 141. The guidance documents issued by the OCR under the DeVos Department of  
8 Education reflects an unsettling indifference towards the plight of students, families, and  
9 educators. In a time of unprecedented national crisis, the DeVos Department did nothing  
10 more than issue boilerplate statements devoid of tangible measures that school districts  
11 could take to protect students and teachers or to promote learning. School districts were  
12 left floundering as they scrambled to provide students with the technology and resources to  
13 transition to remote learning. The current Administration can undo this harm, equip school  
14 districts with the support they need to continue adapting to uncertain times, and build back  
15 better. This Administration has the opportunity both to set an example and to leave an  
16 important legacy of principled dedication to educational equity.

17 142. Today, to ensure students of color with disabilities are provided with FAPE,  
18 the Department must provide focused help to students of color with disabilities, educators,  
19 families, students and other stakeholders to better understand and apply the laws as they  
20 pertain to students suffering from trauma from the pandemic in elementary and secondary  
21 schools. Through the Resource Guide accompanying the July 26, 2016 letter of Catherine  
22 E. Lhamon, Assistant Secretary for Civil Rights, the OCR sought “to help educators,  
23 families, students, and other stakeholders better understand these laws [which included  
24 Section 504] as they pertain to students with ADHD in elementary and secondary schools  
25 in order to ensure that these students receive the regular or special education, related aids  
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28 <sup>95</sup> *Id.* at 5-6.

1 and services, or supplementary aids and services the student needs to be successful.”<sup>96</sup>  
2 That help must be tailored and well-informed to ensure all students, including students of  
3 color, receive the education and related aids and services they need to overcome learning  
4 obstacles and learning regression occurring during the pandemic. The Department needs  
5 to issue guidance to states and school districts that sets forth their obligations to inform  
6 parents and guardians of 504-only eligibility, the process by which eligibility can be  
7 identified, and the results, support and services that are available.

8 143. To address the crisis in educational opportunity for disabled students, the  
9 Department should modify existing guidance documents pursuant to 34 C.F.R. § 9.15(a),  
10 to address how states and districts should: (1) prevent disability discrimination during the  
11 pandemic, particularly in a remote learning environment necessary for the protection of  
12 students, educators, staff and their families, (2) redress disparate impacts affecting students  
13 of color with disabilities during the pandemic, (3) address trauma proactively by  
14 consulting stakeholders and instituting proactive plans to support social and emotional  
15 learning for all students, and (4) avoid using discipline in response to manifestations of  
16 disability or diagnosed disorders, including trauma related to the pandemic.

17  
18 **1. The Department must provide meaningful guidance about special**  
19 **education and disability discrimination in a remote learning**  
20 **environment.**

21 144. The IDEA requires that all students with disabilities between three and 21  
22 years of age receive FAPE. Students with disabilities have experienced the most severe  
23 levels of harm from the pandemic.<sup>97</sup> While many lawsuits have been filed claiming that  
24 the key to ensuring FAPE for students with disabilities is to reopen schools, such lawsuits  
25 ignore the reality that many students with disabilities risk their own lives or those of loved

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27 <sup>96</sup>*Dear Colleague Letter and Resource Guide on Students with ADHD*, U.S. DEPARTMENT OF  
28 EDUCATION OFFICE FOR CIVIL RIGHTS (2016),  
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>.

<sup>97</sup> CCRR Expert Report at 54.

1 ones if exposed to COVID-19.<sup>98</sup> Furthermore, absent proper training for identification and  
2 support, students experiencing untreated trauma and other mental health and behavior  
3 disorders will not be able to learn.

4 145. It is evident that remote learning will continue for some time for many  
5 students with disabilities. Guidance is needed from the Department on how to meet the  
6 needs of students with disabilities during the pandemic as well as to protect their rights  
7 now and when schools fully reopen. Under the IDEA and Section 504, states and school  
8 districts must provide each student with disabilities an appropriate education and avoid  
9 unnecessary segregation. Section 504 also requires states and school districts to refrain  
10 from actions that have caused unjustified disparate impact discrimination, to furnish  
11 comparable academic and non-academic facilities and settings, and to provide reasonable  
12 accommodation.<sup>99</sup>

13 146. There is ample evidence demonstrating the difficulties that the COVID-19  
14 pandemic has created for states and school districts seeking to administer an effective  
15 special education program. Special education teachers do not have the same access to  
16 classroom aids, tactile teaching methods, and assistance from other specialists that would  
17 typically allow them to supplement students' learning. The restrictions inherent in the  
18 virtual learning environment can work to the disadvantage of students with disabilities.  
19 The remote learning environment may limit the capacity of school districts to identify  
20 students with disabilities and update diagnoses. For students with disabilities, not having  
21 access to services such as aid from therapists and specialists can result in a loss of  
22 educational opportunity and even regression.

23 147. Students have reported struggles obtaining reliable hotspots or a computer,  
24 which practically impacts their ability to access educational opportunity. In addition,  
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26 <sup>98</sup> For example, Jeremy H. cannot return to school because his mother suffers from lupus. *See*  
27 Alicia B. Decl. ¶ 3. Xavier H., Brogan H., and Leora I. cannot return to school because Xavier is  
28 immunocompromised. *See* Anna H. Decl. ¶ 18.

<sup>99</sup> 34 C.F.R. §§ 104.4, 104.34 (2012).

1 parents and guardians who are essential workers cannot provide support to their children  
2 during the school day to ensure they can access and remain engaged with remote learning.  
3 Parents at times cannot access the applications used for remote learning and need  
4 assistance to do so. Without the proper technological support and assistance, students are  
5 unable to access the classroom space in the virtual learning context, which will occur until  
6 schools fully reopen. When in-person learning resumes, special attention should be given  
7 to students who noted significant access issues during remote learning.

8 148. More generally, as the example of California shows, children with  
9 disabilities are less likely to access remote education. A study of LAUSD found that  
10 among high school students, students with disabilities had the lowest participation rate in  
11 online classes.<sup>100</sup> This occurs due to lack of access to digital supplies such as computers or  
12 internet, or in many cases because students are unable to learn online because of the  
13 severity of their disabilities. Consequently, many students with disabilities are not  
14 receiving specialized instruction or accommodations set forth in their IEPs. New  
15 accommodations are necessary to be successful in the remote environment, in order to  
16 fulfill Section 504's guarantees. Guidance from the Department on how best to meet these  
17 challenges, and on how ARP funds may be spent to do so, is critical to prevent the  
18 pandemic from fueling further educational inequities for students of color with disabilities.  
19 Guidance is also needed on assessing absences and/or tardiness in the remote learning  
20 context to protect students with disabilities from unwarranted discipline or other adverse  
21 consequences for circumstances beyond their control.

22 **2. The Department must provide meaningful guidance about**  
23 **disparate impacts affecting students of color with disabilities**  
24 **before and during the pandemic and how to prevent disparate**  
25 **harm when schools fully reopen.**

26 149. Pursuant to its statutory authority, the Department's implementing  
27 regulations for Title VI currently prohibit the use of practices and policies that have "the

28 <sup>100</sup> CCRR Expert Report at 55 & n. 162.

1 effect of subjecting individuals to discrimination because of their race” in federally-funded  
2 schools and educational programs.<sup>101</sup> In other words, the regulation prohibits practice and  
3 policies that have a disparate impact on students of color. That regulation is violated when:  
4 (1) a challenged practice has a “sufficiently adverse racial impact” and (2) the practice is  
5 not “adequately justified.”<sup>102</sup>

6 150. Additional Guidance is needed to assist states and school districts in  
7 avoiding unjustified racially disparate impacts against students with disabilities. Examples  
8 of necessary interventions include increasing access to reliable internet, evaluating for  
9 trauma in communities most impacted by the pandemic’s devastation, providing additional  
10 education and services, and taking into account the greater likelihood of parents leaving  
11 the home because they are essential workers instead of being able to work an office job  
12 remotely and assist with their child’s remote learning throughout the day. Even prior to  
13 the pandemic, schools with a high proportion of students of color tended to struggle with  
14 unequal access to resources. These issues have worsened in the remote learning context  
15 due to technological difficulties and the loss of on-campus resources. In the absence of  
16 meaningful guidance from the Department about how to compensate for disparate home  
17 situations and disproportionality, existing well-documented racial disparities in education  
18 will only be exacerbated.

19 151. Any guidance addressing the backlog of evaluations should also address how  
20 to improve the evaluation process – rather than perpetuate disproportionality in  
21 identification – including by disability category and in restrictive placements, especially  
22 once schools return to in-person instruction. There may be new issues with education in  
23 the least restrictive environment that lead to unnecessarily restrictive settings for students  
24 that need extra support to ensure they can follow social distancing and other health-based  
25 protocols for behavior. Any guidance related to addressing the backlog of evaluations  
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27 <sup>101</sup> 34 C.F.R. § 100.3(b)(2).

28 <sup>102</sup> *Quarles v. Oxford Municipal Separate Sch. Dist.*, 868 F.2d 750, 754 (5th Cir. 1989); *Ga. State Conf. of Branches of NAACP v. State of Ga.*, 775 F.2d 1403, 1417 (11th Cir. 1985).

1 must meaningfully advise on how to improve rather than perpetuate the disproportionality.  
2 Such guidance should also provide best practices for school districts in providing  
3 translation services for IDEA and 504 services including initial evaluations, meetings to  
4 develop IEPs and 504 plans, and the provision of IEP and 504 plan services.

5 **3. The Department must provide meaningful guidance directing**  
6 **schools to recognize and address trauma proactively, with input**  
7 **of educators and parents of students of color with disabilities.**

8 152. As of the filing of this Petition, over 530,000 Americans have died from  
9 COVID-19,<sup>103</sup> directly impacting millions across the country, including students. And  
10 even students who have not directly experienced the death of a family member, friend or  
11 educational aid, those students still have lost over a year of social interactions under  
12 normal conditions without restrictions. Before academic instruction and learning can be  
13 effective, the enormous social and emotional needs of students must be met. The  
14 Department should direct school districts to use their ARP funds to meet these needs  
15 through a process that is anchored in the input of educators and other stakeholders. Swift  
16 action is necessary to prioritize meeting these deep social and emotional needs so that  
17 effective instruction and learning can resume. Given the high toll the pandemic has taken  
18 on communities of color in particular, proactively addressing pandemic trauma is crucial to  
19 racial equity. ARP funds should be used to provide the tools to do so including engaging  
20 stakeholders, providing high-quality professional development for the entire district on  
21 implicit racial bias, trauma-informed instruction, and 504 tools and supports.

22 **4. The Department must provide meaningful guidance preventing**  
23 **schools from unjustly removing students of color with disabilities**  
24 **for behaviors that are manifestations of their disabilities, due to**  
25 **systemic denial of FAPE, or caused by trauma.**

26 153. While it has been far too common to punish students for behavior that is  
27 known to be caused by their disabilities,<sup>104</sup> or even be removed from the mainstream to be  
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29 <sup>103</sup> See *COVID Data Tracker*, CENTER FOR DISEASE CONTROL AND PREVENTION,  
30 <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Mar.3, 2021).

31 <sup>104</sup> The differences among students with disabilities in lost instruction due to suspension and the

1 placed in a restrictive setting,<sup>105</sup> the law is supposed to protect students with disabilities  
2 from such discipline through conducting functional behavioral assessments, developing  
3 and implementing behavioral interventions, and ensuring their procedural rights, including  
4 the right to a manifestation determination meeting are not neglected.<sup>106</sup> The procedural  
5 safeguard, however, was inadequate even before the pandemic, as it is not triggered until  
6 the student has ten or more days of suspension in a school year. Such a hearing will be  
7 even more inadequate with the increase in disability manifestations likely to occur from  
8 the trauma experienced, if not treated, during the pandemic, and the challenges of returning  
9 to a regular school schedule after more than a year-long period of distance learning or in-  
10 person schedule disruptions. Meaningful guidance is required to turn the tide of the  
11 overrepresentation of students with disabilities among incarcerated youth, especially youth  
12 with emotional disturbance and youth of color with disabilities.<sup>107</sup>

13       154. Given the high toll the pandemic has taken on communities of color in  
14 particular, students need accommodations because of trauma, anxiety, depression, or stress  
15 related to the death of a family member. Delay in providing support may increase the risk  
16 of permanent damage, and there is a disproportionately higher need in school districts  
17  
18

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

23 <sup>105</sup> The data in the CCRR Expert Report describes extraordinarily high rates of disciplinary  
24 removal and large disparities by both disability and race with disability. This suggests that the  
25 protections against punishing students with disabilities for behavior caused by their disabilities are  
26 not being properly implemented in many districts. *Id.* at 24-26; 31-38 & n. 196.

27 <sup>106</sup> *Dear Colleague Letter: Nondiscriminatory Administration of School Discipline*, U.S.  
28 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>.

<sup>107</sup> CCRR Expert Report at 67.



1 serving high percentages of low-income students.<sup>108</sup> Immediate and robust federal  
2 guidance is critical so that instead of reacting to manifestations of trauma and other  
3 disorders through discipline and suspensions, districts work to identify students needing an  
4 evaluation, ensure that timely evaluations on an unprecedented scale occur, and provide  
5 the supports and services necessary for these students to stay on track and in school.

6 155. “Behavior related to trauma during childhood—particularly on the ability to  
7 regulate emotions and behavior—must be distinguished from other mental health needs  
8 and from delinquent behavior.”<sup>109</sup> Research supports the principle that intervention and  
9 treatment of symptoms of complex trauma experienced before the onset of puberty is  
10 particularly important to avoid manifestations of aggressive or delinquent behavior.<sup>110</sup>  
11 While pre-pandemic supports were inadequate, there was also a “reduction in the quantity  
12 and quality of mental health supports and services” during the pandemic.<sup>111</sup> All students  
13 regardless of race should have access to “culturally competent mental and behavioral  
14 health care before their behavioral health deteriorates significantly.”<sup>112</sup> The Department of  
15 Education, because of its national jurisdiction, is the only agency positioned to ensure such  
16 equal access for students regardless of race because, as demonstrated by the CCRR Expert  
17 Report, in the absence of federal oversight states and districts will vary dramatically in  
18 their response, and students of color with disabilities will be left behind.

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<sup>108</sup> *Id.* at 66-67.

25 <sup>109</sup> *Id.* at 50 (citing KATE LOWENSTEIN, CITIZENS FOR JUVENILE JUSTICE, *Shutting Down the*  
26 *Trauma to Prison Pipeline Early: Appropriate Care for Child-Welfare Involved Youth* (2018)).

27 <sup>110</sup> CCRR Expert Report at 50.

28 <sup>111</sup> *Id.* at 52.

<sup>112</sup> *Id.* at 52 & n. 139 (citing LOWENSTEIN, *supra* note 109).

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

6           – Corbett O’Toole, Disability Rights Activist

7           **VI. REMEDIES REQUESTED**

8           156. Petitioners recognize that the matters raised in this Petition are complex and  
9           longstanding, which will take considerable time and attention and sustained additional  
10          funding to redress. Petitioners respectfully request that the Department consider how best  
11          to involve stakeholders, including students of color with disabilities, parents and educators,  
12          in developing the critical guidance requested. As one step in that process, Petitioners  
13          respectfully request a meeting with the Secretary of Education within the next month to  
14          discuss the needs identified in this Petition and the desired remedies identified below.

15          157. The Department is legally obligated to act on this Petition within “90  
16          calendar days after receipt” of the Petition.<sup>113</sup>

17                   **Guidance Documents**

18          158. We respectfully submit that meaningful guidance should address *inter alia*:

- 19                   • Procedure for identifying which students may need additional compensatory  
20                   or recovery services, including timelines for making these determinations;
- 21                   • Extension of age range in which students may obtain special education  
22                   services so that students who missed individualized education and services  
23                   and aged-out during the pandemic can still receive the education services to  
24                   which they were entitled;
- 25                   • How to work through the backlog of initial requests to evaluate students for a  
26                   disability, any evaluation backlog, and how to respond to new evaluation  
27                   requests which likely will increase due to the pandemic and parents  
28                   recognizing previously unidentified disabilities or disorders from witnessing

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<sup>113</sup> 34 C.F.R. § 9.15(b).

1 remote learning, including a timeline for individual assessments of students  
2 to occur within a specified period of time after students return to in-person  
3 instruction and clarification as to the baseline against which IEP goals should  
4 be measured during the pandemic;

- 5 • How failure to comply with federal requirements under Section 504 and  
6 IDEA, for example, can also trigger a disparate impact violation pursuant to  
7 antidiscrimination law pursuant to Title VI, Section 504, and Title IX;
- 8 • Guidance for developing and implementing plans, anchored in stakeholder  
9 input, for assessing and meeting the social and emotional needs of students;
- 10 • Guidance for educators and parents on addressing trauma to ensure that  
11 students who did not previously qualify for services are appropriately  
12 identified and provided services including providing high quality  
13 professional development;
- 14 • Development and guidance for all educators to receive implicit bias,  
15 multicultural competency, restorative justice, trauma-sensitive responses,  
16 trauma identification trainings and develop a response plan that complies  
17 with Section 504;
- 18 • Development of train the trainers trainings to increase the school district’s  
19 internal capacity so there are skilled trainers in the school district that can be  
20 used for additional professional development on implicit bias, multicultural  
21 competency, restorative justice, trauma-sensitive responses, and trauma  
22 identification;
- 23 • Ensuring that funds provided via the ARP Act are spent in equitable ways to  
24 assist students with disabilities, including by ensuring that any learning loss  
25 programs are also available to students with disabilities, hiring additional  
26 specialized support staff, creating trauma-informed care for all students,  
27 ensuring a focus on social emotional learning for all students, and that  
28

1 stakeholders are engaged at every level to determine the best uses for these  
2 funds;

- 3 • Guidance on how to safely provide in-person special education services  
4 while also complying with necessary COVID-19 health and safety protocols,  
5 such as how to safely provide initial evaluations for special education  
6 services, how to safely provide hands-on assistance and instruction, and how  
7 to assist students who have difficulty abiding by facemask or social  
8 distancing requirements due to the nature of their disabilities;
- 9 • Guidance on best practices for serving students with disabilities who are also  
10 English-language learners, including the use of translation services and how  
11 to assist parents; and
- 12 • Development of train the trainers trainings to increase the school district’s  
13 internal capacity so there are skilled trainers in the school district system that  
14 can be used for additional professional development on best practices for  
15 serving students with disabilities who are also English-language learners.

16 159. One way the Department can share its guidance would be an OCR-sponsored  
17 national conference, similar to the OCR cosponsored conference entitled “Trauma-  
18 Informed Approaches in School: Supporting Girls of Color and Rethinking Discipline” in  
19 2016, where the Department brought “together states and districts, key researchers and  
20 experts, and nonprofit partners to focus on improving school systems’ approach to better  
21 serve girls of color who have experienced trauma.”<sup>114</sup>

22 **Improvements to Civil Rights Oversight and Enforcement**

23 160. In order to meaningfully respond to systemic discrimination, civil rights  
24 oversight and enforcement capacities must be expanded through initiatives such as: (a)

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27 <sup>114</sup> U.S. DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS, SECURING EQUAL EDUCATIONAL  
28 <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf>, at 11.

1 reviewing changes made to OCR’s enforcement protocol made during the Trump  
2 administration and reinstating Obama administration policies designed to encourage  
3 investigators of complaints to review data and information for evidence of systemic  
4 discrimination; (b) reinstating and expanding the Department and the Department of  
5 Justice’s 2014 guidance on school discipline to inform state and local efforts to eliminate  
6 the discriminatory use of exclusionary discipline policies; (c) utilizing disparate impact  
7 regulations to challenge systemic racial discrimination; and (d) reviewing 504-only and  
8 IDEA identification data to flag large districts that fall short of their duty to identify  
9 students, including not identifying any students.

10 **Better Data Tracking**

11 161. A significant challenge to knowing the extent and depth of the nation’s  
12 shortcomings on federal law entitlements is the poor quality of data that the Department is  
13 currently requiring districts to track. We fully support the improved data tracking and  
14 collecting for students with disabilities identified in the CCRR Expert Report, requiring  
15 districts that receive federal funding to report days of missed days and with a cross section  
16 of race with disability for 504-only students, school-related offenses referred to and arrests  
17 by law enforcement with a cross section of race with disability for 504 only-students, and  
18 days of out-of-school suspension with a cross section of race with disability, and chronic  
19 absenteeism with a cross-section of race with disability.<sup>115</sup> The Department should not  
20 delay the data collection through the CRDC another year,<sup>116</sup> and enforce compliance with  
21 the states’ annual discipline collection and reporting requirements to the public and the  
22 Secretary under 20 U.S.C. § 1418(a).<sup>117</sup>

23 162. The IDEA established the [National Center for Special Education Research](#)  
24 duties under Section 177, requiring *inter alia*, research to assess the excess costs of special  
25

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27 <sup>115</sup> CCRR Expert Report at 68-69.

28 <sup>116</sup> *Id.* at 68.

<sup>117</sup> *Id.* at 66-69.

1 education. But when searching the NCSER website, no research emerges, indicating either  
2 that it has not collected data as Congress envisioned or that it is not easily-accessible to the  
3 public. To fulfill Congressional intent, we recommend the mandatory reporting of the  
4 following information for every public school district by campus each year to NCSER or  
5 in the alternative to the CRDC:

- 6 a. Special Education enrollment disaggregated by race, gender, and disability  
7 eligibility categories for IDEA;
- 8 b. Number of IEP Evaluation conducted disaggregated by race and gender;
- 9 c. Number of 504 Evaluations conducted disaggregated by race and gender;
- 10 d. Number of students with IEPs disaggregated by race, gender, IDEA  
11 disability classification;
- 12 e. Number students with 504 plans disaggregated by race, gender, and  
13 accommodation categories;
- 14 f. Discipline, including day(s) of suspension, disaggregated by race, gender,  
15 disability type IDEA, and 504;
- 16 g. Average per special education student and total spent on special education  
17 services;
- 18 h. Average per special education and total spent on special education services  
19 separated by IDEA disability category; and
- 20 i. The number of students and percentage of students with disabilities who have  
21 had at least one of the following: (1) a functional behavioral assessment; (2) a  
22 behavioral improvement plan; or (3) a manifestation determination review with  
23 outcome indicated.

24 163. Additionally, the data collection must be: (1) provided in a standardized  
25 format to allow for evaluation; (2) accompanied with unique Federal identification codes  
26 (“NCES”) and full school names that match standardized data column names and  
27 definitions; (3) reviewed for quality control such that when districts submit data with  
28 obvious error (e.g. school codes that do not match to school names or data that is

1 incoherent), they should be either monitored or required to amend their data; (4) submitted  
2 regularly on an annual basis via the CRDC to ascertain trends; and (5) published and  
3 available to all stakeholders, including schools, districts, parents, educators, states,  
4 community advocacy groups, individual advocates, researchers, and teachers unions.

5 164. The persistent disproportionality based on race in the nation’s special  
6 education system calls out for more federal oversight of districts on an ongoing basis post-  
7 pandemic. We therefore ask OCR to ramp up its investigations and enforcement activity.

8 **Funding Priorities**

9 165. While Congress needs to fulfill its promise of funding 40 percent of the cost  
10 of the IDEA as well as fund Section 504 plans, the funds provided by the ARP Act can be  
11 utilized to protect students of color with disabilities. In agreement with Secretary  
12 Cardona’s declaration last week that ARP funds be spent to implement “strategies to meet  
13 the social, emotional, mental health, and academic needs of students hit hardest by the  
14 pandemic, including through evidence-based interventions and critical services like  
15 community schools . . . ,”<sup>118</sup> we request that the Department issue Guidance specifically  
16 enumerating how to accomplish, which includes directing the funds towards: (a) child find  
17 and evaluations, protection and advocacy services, especially those with offices located to  
18 serve communities of color; (b) access to resources to treat behavioral and emotional  
19 problems; (c) fostering community-based mental health services; and (d) grants to fund  
20 bonuses and incentives to recruit special education teachers from the general education  
21 population, particularly bilingual teachers and teachers who come from groups in the  
22 community that have historically been discriminated against and/or have direct experience  
23 living in such communities. In addition, the Department can provide guidance that the  
24 expenditure of the ARP Act funds should: (a) encourage states to equitably distribute

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26 \_\_\_\_\_  
27 <sup>118</sup> *Department of Education Announces American Rescue Plan Funds for All 50 States, Puerto*  
28 *Rico, and the District of Columbia to Help Schools Reopen*, U.S. DEPARTMENT OF EDUCATION  
(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>.

1 funds; (b) promote training for school personnel to implement more effective alternatives  
2 to punitive and exclusionary forms of school discipline; (c) train school staff to better  
3 address the needs of students with disabilities and students with mental health needs; (d)  
4 provide support for research-based technical assistance to develop alternatives to  
5 disciplinary removals of students at both the state and district levels; and (e) increased  
6 funding for Full-Service Community Schools Programs that implement improvement  
7 strategies that employ an open democratic process and do not compromise free, equitable,  
8 universal and quality public education. A clear focus on redressing the combined impact of  
9 race-based and disability-based discrimination should be at the core of these efforts.

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