

**ADDRESSING THE IMPACT OF COVID-19
ON STUDENTS WITH DISABILITIES**

HEARING

BEFORE THE

**SUBCOMMITTEE ON
EARLY CHILDHOOD, ELEMENTARY,
AND SECONDARY EDUCATION**

OF THE

**COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES**

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

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ADDRESSING THE IMPACT OF COVID-19 ON STUDENTS WITH DISABILITIES

Thursday, May 6, 2021

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EARLY CHILDHOOD,
ELEMENTARY, AND SECONDARY EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m., via Zoom, Hon. Gregorio Kilili Camacho Sablan (Chairman of the Subcommittee) presiding.

Present: Representatives Sablan, Hayes, Grijalva, Yarmuth, Wilson, DeSaulnier, McBath, Manning, Bowman, Scott, Allen, Keller, Steel and Letlow.

Staff present: Phoebe Ball, Disability Counsel; Melissa Bellin, Professional Staff; Rashage Green, Director of Education Policy; Christian Haines, General Counsel; Eli Hovland, Policy Associate; Ariel Jona, Policy Associate; Max Moore, Staff Assistant; Mariah Mowbray, Clerk/Special Assistant to the Staff Director; Kayla Pennebecker, Staff Assistant; Véronique Pluviose, Staff Director; Lakeisha Steele, Senior Education Policy Advisor; Banyon Vassar, Deputy Director of Information Technology; Everett Winnick, System Administrator; Harley Adsit, Minority Press Assistant; Courtney Butcher, Minority Director of Member Services and Coalitions; Amy Raaf Jones, Minority Director of Education and Human Resources Policy; Hannah Matesic, Minority Director of Operations; Audra McGeorge, Minority Communications Director; Carlton Norwood, Minority Press Secretary; Chance Russell, Minority Legislative Assistant; Mandy Schaumburg, Minority Chief Counsel and Deputy Director of Education Policy; and Brad Thomas, Minority Senior Education Policy Advisor.

Chairman SABLÁN. The Subcommittee on Early Childhood, Elementary, and Secondary Education will come to order. Again, welcome everyone. I note that a quorum is present.

The Subcommittee is meeting today to hear testimony on addressing the impact of COVID-19 on students with disabilities. This is an entirely remote hearing. All microphones will be kept muted as a general rule to avoid unnecessary background noise.

Members and witnesses will be responsible for unmuting themselves when they are recognized to speak, or when they wish to seek recognition. I also ask that Members please identify themselves before they speak. Members should keep their cameras on while in the proceeding.

Members shall be considered present in the proceedings when they are visible on camera, and they shall be considered not present when they are not visible on camera. The only exception to this is if they are experiencing technical difficulty and inform Committee staff of such difficulty.

So if any Member experiences technical difficulties during the hearing you should stay connected on the platform, make sure you're muted, and use your phone to immediately call the Committee's IT director whose number was provided in advance. Should the Chair experience technical difficulty, or need to step away, Mr. Yarmuth, or another majority Member is hereby authorized to assume the gavel in the Chair's absence.

So this is an entirely remote hearing, and as such the Committee's hearing room is officially closed. Members who choose to sit in with their individual devices in the hearing room must wear headphones to avoid feedback, echoes, and distortion resulting from more than one person on the software platform sitting in the same room.

Members are also expected to adhere to social distancing and safe healthcare guidelines, including the use of masks, hand sanitizer and wiping down their areas both before and after their presence in the hearing room.

In order to ensure that the Committee's five-minute rule is adhered to, staff will be keeping track of time using the Committee's field timer. The field timer will appear in its own thumbnail drive and will be named 001 timer. There will be no one minute remaining warning. The field timer will show a blinking light when time is up.

Members and witnesses are asked to wrap up promptly when their time has expired.

While a roll call is not necessary to establish a quorum in official proceedings conducted remotely or with remote participation, the Committee has made it a practice whenever there is an official proceeding with remote participation for the Clerk to call the roll to help make clear who is present at the start of the proceeding.

This helps the Clerk and also helps those watching the platform and the livestream who may experience a few seconds delay. So at this time I ask the Clerk to please call the roll.

The CLERK. Chairman Sablan?

Chairman SABLAN. Present.

The CLERK. Mrs. Hayes?

Mrs. HAYES. Present.

The CLERK. Mr. Grijalva?

[No response]

The CLERK. Mr. Yarmuth?

Mr. YARMUTH. Present.

The CLERK. Ms. Wilson?

Ms. WILSON. Ms. Wilson is present.

The CLERK. Mr. DeSaulnier?

[No response]

The CLERK. Mr. Morelle?

[No response]

The CLERK. Mrs. McBath?

[No response]

The CLERK. Mr. Levin?

[No response]

The CLERK. Ms. Manning?

Ms. MANNING. Manning is present.

The CLERK. Mr. Bowman?

Mr. BOWMAN. Present.

The CLERK. Chairman Scott?

Mr. SCOTT. Chairman Scott is present.

The CLERK. Ranking Member Owens?

[No response]

The CLERK. Mr. Grothman?

[No response]

The CLERK. Mr. Allen?

[No response]

The CLERK. Mr. Keller?

[No response]

The CLERK. Mrs. Miller?

[No response]

The CLERK. Mr. Cawthorn?

[No response]

The CLERK. Mrs. Steel?

Mrs. STEEL. Present.

The CLERK. Ms. Letlow?

Ms. LETLOW. Present.

The CLERK. Ms. Foxx?

[No response]

The CLERK. Chairman Sablan that concludes the roll call.

Chairman SABLÁN. Ranking Member—

Mr. ALLEN. Chairman Sablan. Allen is here, sorry.

Chairman SABLÁN. Oh great, great, thank you Mr. Allen.

Mr. ALLEN. Sorry about that I had a call come through and I just couldn't get off of it, but I'm here.

Chairman SABLÁN. All right great, great. So now we could actually continue. Pursuant to Committee Rule 8(c) opening statements are limited to the Chair and the Ranking Member. This allows us to hear from our witnesses sooner and provides all Members with adequate time to ask questions. I recognize myself now for the purpose of making an opening statement.

Today we meet to discuss how the pandemic has affected students with disabilities and our responsibility to ensure they have access to free and appropriate education. As this Subcommittee has established, the pandemic has disrupted the educational lives of tens of millions of students across the country.

But no group of students have sought more access to education during this life saving classroom closures than students with disabilities. So to understand why we must examine the long-standing barriers to quality education for students with disabilities and how the pandemic has exacerbated these barriers.

For students with disabilities the problem is of equal education opportunity and Federal law is grounded in a basic guarantee. Access to free and appropriate education in the least restrictive environment that meets their needs.

Under The Rehabilitation Act and The Individuals With Disabilities Education Act, IDEA, this means that children with disabili-

ities have the right to an individualized education plan that meets the unique needs and prepares them for lifelong earnings and independent living, a right.

Unfortunately, even before the pandemic far too many students with disabilities did not receive the quality education guaranteed by law. While graduations rates for students with disabilities have improved in recent years, students with disabilities still graduate from high school at a disproportionately lower rate, and many receive certificates that are not equivalent to a diploma.

In many cases this is done because students with disabilities are less capable of reaching their educational goals. It is because we have failed back on our commitment to meeting their needs. For far too long the Federal Government has underfunded the IDEA as State governments have failed their responsibility to better support students with disabilities.

These disparities have fallen hardest on students of color who are often identified as disabled and then subjected to harsher discipline and worse educational settings. Unfortunately, the barriers to public education for students with disabilities have only become steeper during the pandemic.

Schools initially struggled to maintain educational services for students with disabilities. And without clear guidance from the Department of Education during the Trump administration, some schools determined they simply could not comply with IDEA.

However, even with the full support of schools students with disabilities still face an array of challenges, reflecting the broad diversity of the disabled community. Some students struggle with remote learning without additional materials or parents who can stay home. Many students also cannot receive critical services like physical therapy, fully remote platforms.

Schools face challenges to safely reopening classrooms for students with disabilities who may be more vulnerable to the virus or have difficulty following the public health mandates such as mask wearing. But the transition to remote learning has also revealed helpful lessons.

Remote communication has allowed some parents to more actively engage in school staff and for the first time remotely access support services for their children. Additionally, some students with disabilities have reported being able to do better in remote environments.

Over the last year Congress has taken a significant step to meet the needs of students with disabilities. Last year we enacted several relief packages that secured more than 65 billion dollars for K to 12 education, including funding to support students with disabilities.

And most recently we enacted the American Rescue Plan which provides more than 130 billion to help schools reopen classrooms safely, including relief for IDEA programs. We were disappointed that despite the widespread popularity of this package, not a single House or Senate republican voted for the bill, which provided critical resources for students, schools, and educators.

Nonetheless, while the decision whether or not to open schools is made on the State and local level, the resources in the American Rescue Plan will help schools reopen. As of the end of February

over 80 percent of K to 8 schools were offering some in-person instruction, and about half of schools were open full-time for in-person instructions for all students.

This data comes from before the CDC updated their guidance, and before most educators were able to get vaccinated. So schools have continued to reopen to more students in the past several weeks, and as vaccines become available to students, reopening schools to full-time in-person instruction will no longer pose an imminent threat to students and staff.

However, our work is far from over. So we continue today with the help of our witnesses, we will discuss how we can learn from the lessons of this pandemic to ensure equal access to education with all students with disabilities. We may disagree on the means, but I know each of us agrees that, now more than ever, we must uphold our promise to give all students with disabilities the opportunity to reach their full potential. That is their right.

I want to thank our witnesses again for being with us, and I'll turn to the Ranking Member Mr. Allen who is sitting in for Mr. Owens, for the purpose of making an opening statement. Sir, Mr. Allen please.

[The statement of Chairman Sablan follows:]

STATEMENT OF HON. GREGORIO KILILI CAMACHO SABLÁN, CHAIRMAN, SUBCOMMITTEE ON EARLY CHILDHOOD, ELEMENTARY, AND SECONDARY EDUCATION

Today, we meet to discuss how the pandemic has affected students with disabilities and our responsibility to ensure they have access to free and appropriate education.

As this subcommittee has established, the pandemic has disrupted the education and lives of tens of millions of students across the country. But no group of students has lost more access to education during these lifesaving classroom closures than students with disabilities.

To understand why, we must examine the long-standing barriers to quality education for students with disabilities and how the pandemic has exacerbated these barriers.

For students with disabilities, the promise of equal educational opportunity in Federal law is grounded in a basic guarantee: access to free and appropriate public education in the least restrictive environment that meets their needs.

Under the *Rehabilitation Act* and *Individuals with Disabilities Education Act*, IDEA, this means that children with disabilities have the right to an individualized education plan that meets their unique needs and prepares them for lifelong learning and independent living—their right.

Unfortunately, even before the pandemic, far too many students with disabilities did not receive the quality education guaranteed by law. While graduation rates for students with disabilities have improved in recent years, students with disabilities still graduate from high school at disproportionately lower rates, and many receive certificates that are not equivalent to a diploma.

In many cases, this is not because students with disabilities are less capable of reaching their educational goals—it is because we have held back on our commitment to meeting their needs.

For far too long, the Federal Government has underfunded the I-D-E-A and State governments have failed their responsibility to better support students with disabilities. These disparities have fallen hardest on students of color, who are often identified as disabled and then subject to harsher discipline and worse educational settings.

Unfortunately, the barriers to quality education for students with disabilities have only become steeper during the pandemic.

Schools initially struggled to maintain education services for students with disabilities. And without clear guidance from the Department of Education during the Trump administration—some schools determined they simply could not comply with I-D-E-A.

However, even with the full support of schools, students with disabilities still face an array of challenges, reflecting the broad diversity of the disabled community.

Some students struggle with remote learning without additional materials or parents who can stay home. Many students also cannot receive critical services, like physical therapy, through remote platforms. Schools face challenges to safely reopening classrooms for students with disabilities, who may be more vulnerable to the virus or have difficulty following public health mandates, such as mask-wearing.

But the transition to remote learning has also revealed helpful lessons. Remote communication has allowed some parents to more actively engage with school staff and, for the first time, remotely access support services for their children. Additionally, some students with disabilities have reported being able to focus better in remote environments.

Over the last year, Congress has taken significant steps to meet the needs of students with disabilities. Last year, we enacted several relief packages that secured more than \$65 billion for K–12 education, including funding to support students with disabilities. And, most recently, we enacted the American Rescue Plan, which provided more than \$130 billion to help schools reopen classrooms safely, including relief for IDEA programs.

We were disappointed that, despite the widespread popularity of this package, not a single House or Senate Republican voted for the bill, which provided critical resources for students, schools, and educators.

Nonetheless, while the decision whether or not to open schools is made on the State and local level, the resources in the American Rescue Plan will help schools reopen.

As of the end of February, over 80 percent of K–8 schools were offering some in-person instruction and about half of schools were open full time for in-person instruction for all students. This data comes from before the CDC updated their guidance and before most educators were able to get vaccinated. Schools have continued to re-open to more students in the past several weeks. As vaccines become available to students, re-opening schools for full-time, in-person instruction will no longer pose an imminent threat to students and staff.

However, our work is far from over.

So, we continue today. With the help of our witnesses, we will discuss how we can learn from the lessons of this pandemic to ensure equal access to education for all students with disabilities.

We may disagree on the means, but I know each of us agrees that, now more than ever, we must uphold our promise to give all students with disabilities the opportunity to reach their full potential. That is their right.

Mr. ALLEN. Thank you Chairman and it's good to be with you again, and unfortunately Representative Owens had travel delays this morning and he's on a plane right now, but he sends his sincere regrets to the Members and the witnesses and thanks to all for being here today and hopefully he gets here in time to be able to join us.

For the last 107 days President Biden and my democratic friends have ignored the science at the expense of our Nation's students, especially those with disabilities. You know this is not a partisan talking point.

The New York Post recently reported on the Biden administration's effort to appease teachers unions on a school reopening policy. But the American Federation of Teachers referring to itself as the CDC's thought partner. Democrats on this very Committee accuse the Trump administration of politicizing the CDC but ignore the Biden administration's blatant attempts to bend science to the will of this political allies.

To those students, educators and families watching at home let me be clear. The science is settled. Schools can and should safely open right now, and they've been open the entire year in the 12th District of Georgia.

Research demonstrates that school-age children are less likely to transmit the virus to others, including adults. Even in areas of high community spreads, schools can safely reopen with 3 feet of

social distancing and proper masking. Over 80 percent of K through 12 teachers have been vaccinated, and the FDA is set to expand Pfizer vaccine eligibility for 12 to 15 year-olds as early as next week. A medical miracle.

This evidence is overwhelming, but still 49 percent of school districts are currently open for in-person instructions. That is a far cry from President Biden's promise to fully reopen schools in his first 100 days. The effects of school closures are high for students with disabilities. As many special needs children benefit from consistent and attentive in-person instruction and services. Kids with special needs need routine, and I know this first-hand as my granddaughter has special needs.

She has just turned 4 years old she can't sit up and she can't walk, and she can't talk, but she has the most beautiful smile and loves her daddy big. All she does is hug my neck when I sit with her. But you know, thankfully Hampton School didn't close, and they had to deal with COVID, and she's in full-time because at her school she receives physical therapy.

And if she goes even a week without physical therapy it sets her back a month. When you take these kids away from the classroom it hurts them incredibly. They need to be in school. The lack of access to in-person instruction and services raises serious concerns about the impact of their academic progress and mental health is a huge, huge issue.

Among all students, self-reported mental health already dropped 40 percent since 2019 and mental health related emergency room visits are up 31 percent for children ages 12 to 17. Today we'll have an opportunity to hear from Reade Bush, a father of two special needs children for whom those numbers are more than just statistics. They are living a reality. Mr. Bush was forced to watch his 9-year-old son deteriorate before his eyes to be admitted to a hospital because of the mental toll from social isolation.

Mrs. Bush was forced to quit her job and home school their 9-year-old daughter after the public school failed to meet their daughter's individualized education program needs, citing a virtual 4-day school week. I'd like to send prayers to the Bush family and thank Reade for being willing to open up about this experience.

We cannot sit idly by while our children cry out for help. The CDC notes that children with disabilities are particularly impacted by the lack of interaction with peers as a result of online learning. This is in addition to projected learning loss which is expected to be as high as 12 months for some children.

Unfortunately, even State, and local leaders in many areas across the country have failed to provide adequate protections for students and their families. Parents are rightly frustrated. It is unbelievable that in America parents must fight for their special needs students to have the bare minimum of services provided to them.

These are the taxpayers. Sadly, no matter how hard a school district works, remote learning cannot fully meet the needs of all students with disabilities, while distance learning is acceptable under the Individuals With Disabilities Education Act. There are state-wide and district-wide policies that reduce or limit services, specifically for students with disabilities.

Simply put remote learning is making it more difficult for all students to learn and exacerbating difficulties for those most vulnerable students. The democratic strategy to put it generously is not working.

No amount of funding can cover for the President's weak leadership and coziness with groups who do not have the students best interests in mind. While I am glad democrats are acknowledging the difficulties facing students with disabilities during the pandemic, this hearing is pointless if democrats continue to ignore the science and reject common sense republican proposals that would direct Federal funds toward reopening schools.

Republicans are more concerned with what a year of learning loss will do to a generation of young people than we are in upsetting a few liberal elites. It's time democrats were too. I want to thank all of our witnesses for joining us for what I hope will result in a firm commitment to reopen schools to help those with disabilities and Mr. Chairman I yield back.

[The statement of Member Allen follows:]

STATEMENT OF HON. RICK W. ALLEN, MEMBER, SUBCOMMITTEE ON EARLY CHILDHOOD, ELEMENTARY, AND SECONDARY EDUCATION

For the last 107 days, President Biden and my Democrat friends have ignored the science at the expense of our Nation's students, especially those with disabilities. This is not a partisan talking point—the New York Post recently reported on the Biden administration's efforts to appease teachers unions on school reopening policies with the American Federation of Teachers referring to itself as the CDC's 'thought partner.'

Democrats on this very committee accused the Trump administration of politicizing the CDC but ignore the Biden administration's blatant attempts to bend science to the will of its political allies.

To those students, educators, and families watching at home, let me be clear: the science is settled—schools can and should safely reopen now.

Research demonstrates that school-aged children are less likely to transmit the virus to others, including adults. Even in areas with high community spread, schools can safely reopen with three feet of social distancing and proper masking. Over 80 percent of K–12 teachers have been vaccinated and the FDA is set to expand Pfizer vaccine eligibility for 12-to 15-year-olds as early as next week.

This evidence is overwhelming; but still, only 49 percent of school districts are currently open for in-person instruction. That is a far cry from President Biden's promise to fully reopen schools in his first 100 days.

The effects of school closures are heightened for students with disabilities, as many special needs children benefit from consistent and attentive 'in-person' instruction and services. Kids with special needs need routine, and I know this firsthand as my granddaughter has special needs. Thankfully Hampton's school didn't close and she's in full time, because at her school she receives physical therapy and if she goes even a week without that, it will really push her back. When you take these kids away from the classroom, that hurts them incredibly—they need to be in school. The lack of access to in-person instruction and services raises serious concerns about the impact on their academic progress and mental health. Among all students, self-reported mental health ratings dropped 40 percent since 2019 and mental health-related emergency room visits are up 31 percent for children ages 12 to 17.

Today, we will have the opportunity to hear from Reade Bush, a father of two special-needs children for whom those numbers are more than just statistics. Mr. Bush was forced to watch his 9-year-old son deteriorate before his eyes, to be admitted to a hospital because of the mental toll from social isolation. Mrs. Bush was forced to quit her job and homeschool their 9-year-old daughter after their public school failed to meet their daughter's Individualized Education Program needs, citing a virtual 4-day school week.

I'd like to send prayers to the Bush family and thank Reade for being willing to open up about this experience. We cannot sit idly by while our children cry out for help.

The CDC notes that children with disabilities are particularly impacted by the lack of interaction with peers as a result of online learning. This is an addition to projected learning loss, which is expected to be as high as 12 months for some children.

Unfortunately, even State and local leaders in many areas across the country have failed to provide adequate protections for students and their families. Parents are rightly frustrated—it is unbelievable that, in America, parents must fight for their special needs students to have the bare minimum of services provided to them.

Sadly, no matter how hard a school district works, remote learning cannot fully meet the needs of all students with disabilities. While distance learning is acceptable under the Individuals with Disabilities Education Act, there are statewide and district-wide policies that reduce or limit services specifically for students with disabilities.

Simply put, remote learning is making it more difficult for all students to learn and exacerbating difficulties for those most vulnerable students. The Democrat strategy to put it generously is not working. No amount of funding can cover for the President's weak leadership and coziness with groups that do not have students' best interests in mind.

While I am glad Democrats are acknowledging the difficulties facing students with disabilities during the pandemic, this hearing is pointless if Democrats continue to ignore the science and reject commonsense Republican proposals that would direct Federal funds toward re-opened schools.

Republicans are more concerned with what a year of learning loss will do to a generation of young people than we are upsetting a few liberal elites. It's time Democrats were, too.

Chairman SABLAN. Thank you. Thank you very much Mr. Allen. I would now like to recognize the witnesses. Let me start by recognizing Dr., I'm going to try this, Dr. Kovach, a special education teacher and President Elect with Council for Exceptional Children.

Dr. Kovach has been a special ed teacher and general education teacher at Tulsa Trail Elementary School for 23 years and received her doctorate in special education from Walden University. Dr. Kovach currently teaches third grade in a self-contained classroom and also teaches as an adjunct professor at Centenary University.

Dr. Kovach was Teacher of the Year in New Jersey in 2011 and is the President of the Council for Exceptional Children.

Ms. Kanika A. Littleton is Project Director for Michigan's Alliance for Families where she's dedicated to supporting families of students with disabilities, helping them to navigate complications related to special education programs and services.

She has a BA in sociology and a master's degree in medical sociology from Wayne State University and is also the mother of three children with disabilities, including a transition age autistic son.

Mr. Ron M. Hager is the Managing Attorney for Employment and Education at the National Disability Rights Network. He provides training and assistance to the P&A's on special education, and assists with technology, and assists in overseeing training and technical assistance to CAP.

He has specialized in disability law, particularly special education since 1979 when he started his legal career in Buffalo as a VISTA attorney. After that he was a clinical professor at the State University of New York at Buffalo Law School for 9 years of supervising the education law clinic.

In 1991 Mr. Hager moved to Neighborhood Legal Services where he represented clients in a wide variety of related cases. And as part of NLS's National AT Advocacy Project Mr. Hager also was a frequent author of disability law related issues. He was co-Chair of the New York State Bar Association's Committee on the Rights of

People with Disabilities for 4 years and was the President of the Board of Directors of Autistic Services, Inc. in Western New York for 10 years.

Mr. Hager earned a BA in Psychology for the State University of New York Binghamton, and a J.D. from the State University of New York at Buffalo Law School.

Reade Bush is a parent and lives in Arlington, Virginia. Mr. Bush is a physician assistant with 17 years of experience in emergency medicine in the Washington, DC. area. Additionally, Mr. Bush provides medical support at many large events, including the State of the Union Address and Presidential Inauguration.

Prior to his work in the medical field Mr. Bush volunteered as a firefighter, paramedic for 15 years and responded to the Pentagon on September 11, 2001. He also treated congressional Members and staff who were exposed to anthrax.

In the past year during COVID-19 school closures, Mr. Bush has been a strong advocate for access to in-person learning for children with special needs as he and his wife have two adopted children from Haiti, both of whom have significant special needs. Mr. Bush holds an undergraduate degree from the College of William and Mary, and a Master's in Health from George Washington University.

Let me also share with our witnesses that I am an individual with a significant disability, and I was very happy to have Chaired our State Rehabilitation Council for 4 years before learning to become a politician, but thank you everyone for joining us today, so I'd like to first invite Mr. Hager, did I say that right Hager?

Mr. HAGER. Yes, thank you.

Chairman SABLON. OK Mr. Hager you have five minutes sir.

**STATEMENT OF RONALD M. HAGER, MANAGING ATTORNEY,
NATIONAL DISABILITY RIGHTS NETWORK**

Mr. HAGER. Thank you. Good afternoon, Chair Sablan, Ranking Member Allen, and Members of the Subcommittee. My name is Ron Hager and I'm a managing attorney at the National Disability Rights Network, NDRN.

Thank you for the opportunity to appear before you to discuss the impact of COVID-19 on K-12 students with disabilities. The Protection and Advocacy and Client Assistance Programs the P&A's and CAP's comprise a nationwide network of congressionally mandated disability organizations operating in every State and territory.

NDRN believes in the right of all students, including those with disabilities, to an equitable and appropriate education in a safe environment. NDRN seeks to accomplish this goal for the P&A network. We believe this work has become even more important in the face of the COVID-19 pandemic. Students with disabilities already faced many challenges in schools which COVID has exacerbated.

As schools transition back to in-person learning, it is critical that our schools are prepared to meet the academic and social and emotional needs of all of our students, especially those with disabilities.

Unfortunately, parents of children with disabilities have long lacked the resources needed to help them understand and navigate the educational system. Throughout the pandemic the P&A net-

work has worked to ensure students receive the services they are entitled to.

This work has included meeting with State agencies to develop policies to support students with disabilities with other stakeholders, including the Parent Training and Information Centers. Our network has represented clients and individual and systemic cases all over the country.

While the path to recovery is long, we know that we owe it to students with disabilities and all students to rebuild a system that is inclusive, individualized, and responsive to their needs.

While students with disabilities have faced particular challenges during the pandemic, the students most negatively impacted are those at the intersection of disability in other marginalized identities, including students with disabilities who are also students of color, of low income, English language learners, experiencing homelessness, and in institutional settings such as juvenile justice and juvenile detention and residential treatment.

Throughout the pandemic many schools fail to provide the individualized services students with disabilities needed. For example, some schools that recently reopened were unwilling to allow immunocompromised students to continue to learn and receive services in home.

On the other hand, some schools that were closed refused to provide in-person instruction to students who needed it. Both students with significant disabilities and less significant disabilities started in the remote learning environment. You also continued to encounter overly punitive discipline imposed on students with disabilities during remote learning.

Students with behavioral, emotional, and mental health needs were suspended from virtual instruction. In one instance a student with a disability became involved with the juvenile justice system for failing to complete her online schoolwork.

Finally, we encountered schools changing IEP services and distance learning plans without changing the IEP. Here are two examples of the work the P&A's have been doing during the pandemic. In New Hampshire, the P&A successfully obtained guidance from the Governor that despite school closures, students with disabilities would be eligible for in-person services if needed.

Nevertheless, the P&A was forced to advocate in several school districts who refused to provide in-person services. The P&A in California conducted successful systemic advocacy against two school districts for failing to comply with the IDEA. The most pressing concern for students is how to make up for the loss they have experienced we recommend the following:

Schools should implement the multi-tier system of approach, or MTSS model, which provides a floor for remedial services that will benefit all students. Students with disabilities may need to be considered for additional individualized services pursuant to the IEP process for compensatory education.

Schools must also consider the emotional and behavioral needs of students and how to anticipate how to address those needs. In addition to students who have already been identified through the IEP process, we anticipate more students becoming eligible for services under IDEA in Section 504.

Finally, we urge Congress to pass dedicated additional funding for the P&A Network to address the educational needs of students with disabilities impacted by COVID. In closing, we urge the Department of Education to issue guidance on making up instructional loss using the MTSS model and how to best utilize compensatory educational services.

I appreciate the opportunity to appear before you today and look forward to answering any questions you may have. Thank you.

[The prepared statement of Mr. Hager follows.]

PREPARED STATEMENT OF RONALD M. HAGER



TESTIMONY OF RONALD HAGER

**MANAGING ATTORNEY FOR EDUCATION AND EMPLOYMENT, NATIONAL
DISABILITY RIGHTS NETWORK**

**SUBCOMMITTEE ON EARLY CHILDHOOD, ELEMENTARY, AND SECONDARY
EDUCATION**

HOUSE COMMITTEE ON EDUCATION AND LABOR

May 6, 2021

Addressing the Impact of COVID-19 on Students with Disabilities

Good afternoon Chair Sablan, Ranking Member Owens, and members of the subcommittee. My name is Ron Hager and I am the managing attorney for education and employment at the National Disability Rights Network (NDRN) where I have worked as an attorney since 2007. Thank you for the opportunity to appear before you to discuss the impact of COVID-19 on K-12 students with disabilities.

NDRN is the voluntary membership association for Protection & Advocacy (P&A) and Client Assistance Program (CAP) agencies. The P&A and CAP agencies are a nationwide network of congressionally mandated, cross disability organizations operating in every state, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands). There is also a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations located in the Four Corners region of the Southwest.

There are nine separate P&A programs which provide the federal funding streams for our Network to advocate with and on behalf of people with disabilities. The nine programs give our Network the ability to advocate for all people with disabilities including those with developmental disabilities¹, mental illness², and traumatic brain injury¹. Additionally, the programs allow the Network to conduct advocacy on the acquisition and utilization of assistive technology¹, ensuring individuals with disabilities

¹ State Protection & Advocacy Systems | ACL Administration for Community Living. (2021). Retrieved from <https://acl.gov/programs/aging-and-disability-networks/state-protection-advocacy-systems>

² Welcome to Benefits.gov | Benefits.gov. (2021). Retrieved from <https://www.benefits.gov/benefit/774>

can participate in the electoral process¹, and regain or secure employment². Much of the Network's work focuses on educational advocacy for students with disabilities at both a systemic and individual level despite the absence of a dedicated funding stream for education work. In practice, this means that funds from other P&A programs must be utilized in order to meet the needs of students with disabilities seeking assistance from the P&As.

NDRN believes in the right of all students, including those with disabilities, to an equitable and appropriate education in a safe environment, based on access to the general education curriculum. NDRN seeks to accomplish this goal through federal policy work and through the Protection and Advocacy (P&A) Network, who enforce our nation's education laws at the state and territorial level. We believe this work has become even more important in the face of the COVID-19 pandemic.

Students with disabilities already faced many challenges in the educational environment, and the COVID-19 pandemic has presented several additional challenges for students with disabilities especially related to delivery of services under the Individuals with Disabilities Education Act (IDEA)⁴ and Section 504 of the Rehabilitation Act. As schools transition back to in-person learning, education issues have come to the forefront including efforts to ensure compensatory education⁵ is provided. Unfortunately, parents of children with disabilities currently have few resources to help them understand and navigate the education system. This lack of understanding has been exacerbated by the COVID-19 pandemic as much of the country has transitioned to distance or hybrid learning models. The P&A / CAP network works with staff, students, families, and education personnel to ensure students receive the supports and services they are entitled to receive under IDEA, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA).

While COVID-19 has certainly illuminated many issues facing students with disabilities, we must acknowledge that the pandemic has largely exacerbated existing inequities. For far too long, students with disabilities have faced barriers to receiving appropriate educational services. For example, in the 2018-2019 school year, 14 percent of all public school students, or 7.1 million students, received services under IDEA.⁶ Of these 7 million students, only 73 percent graduate with a high school diploma⁶ which is below the graduation rate for students without disabilities. While the path to recovery is long,

³ Client Assistance Program (CAP) | Rehabilitation Services Administration. (2021). Retrieved from <https://rsa.ed.gov/about/programs/client-assistance-program>

⁴ U.S. Government Accountability Office. (2020, November 19). Distance Learning: Challenges Providing Services to K-12 English Learners and Students with Disabilities during COVID-19. Retrieved from <https://www.gao.gov/products/GAO-21-43>

⁵ Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March 2020). (2020). Retrieved from <https://sites.ed.gov/idea/idea-files/q-and-a-providing-services-to-children-with-disabilities-during-the-coronavirus-disease-2019-outbreak/>

⁶ The Condition of Education - Preprimary, Elementary, and Secondary Education - Elementary and Secondary Enrollment - Students With Disabilities - Indicator May (2020). (2020). Retrieved from <https://nces.ed.gov/ipeds/data/indicators/coe/cog.asp>

we know that we owe it to students with disabilities and all students, to rebuild a system that is inclusive, individualized, and responsive to the needs of all students.

Education Law Overview

The Individuals with Disabilities Education Act⁷ was passed in 1975 as the Education for all Handicapped Children's Act and went into effect in 1978. The Legislative History noted that at the time 1.75 million students with disabilities were not receiving any educational services and 2.5 million students were not receiving an appropriate education.⁸ The right of students with disabilities to access an appropriate education is rooted in the Equal Protection Clause of the 14th Amendment and subsequently reaffirmed in several court cases. IDEA also recognizes that states and school districts would need additional funds to fully meet the needs of educating students with disabilities. While funding is one component of IDEA, there are some basic principles that are afforded to students and families under IDEA:

- IDEA applies to all students with disabilities.
- Students are entitled to a Free Appropriate Public Education (FAPE) designed to meet their unique individual needs.
- Students must have an Individualized Education Program (IEP) with the school and parents being equal participants in the process.
- Students should be educated in the Least Restrictive Environment (LRE) with their nondisabled peers to the maximum extent appropriate.
- Parents have the right to due process in order to question the decisions of the education agency through a formal hearing.

The parallel law to IDEA is Section 504 the Rehabilitation Act⁹. Section 504 was passed in 1973 and prohibits discrimination on the basis of disability in any program or activity receiving federal funds and by the U.S. Government. Senator Hubert Humphrey was one of the main proponents of Section 504 and he viewed this as the disability equivalent of the Civil Rights Act. Section 504 became the basis for the Americans with Disabilities Act (ADA). Regulations promulgated by the U.S. Department of Education largely parallel those under IDEA. The main difference between Section 504 and IDEA is in the flexibility of the procedures. There are less specific procedural criteria that govern the requirements of the establishment of a plan for services under Section 504. Eligibility under Section 504 is generally open to students with disabilities not eligible under IDEA. These students generally have less significant disabilities, but still require support.

⁷ 20 U.S.C. Section 1400 et seq

⁸ Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176, 191 (1982)

⁹ 29 U.S.C. Section 794

Work of the Protection & Advocacy Agencies During COVID-19

As mentioned earlier, throughout the pandemic the P&A Network has been working to ensure students receive the supports and services they are entitled to. This work has included meeting with state agencies to develop policies to support students with disabilities in conjunction with other stakeholders, including the Parent Training and Information Centers (PTIs). Our network has prepared informational materials for parents, fielded questions via intake systems, and represented clients in state complaints such as in California and Maine.

At NDRN, we helped facilitate a webinar with the Council of Chief State School Officers that highlighted the successful policies and practices that both Kentucky and Nebraska had embraced to ensure that students with disabilities receive appropriate education during school closures as a result of COVID-19.¹⁰ NDRN also facilitated regular calls with our Network to discuss issues facing students with disabilities out in the field and provide technical assistance to the P&As. While the P&A Network has risen to the challenge, they have done so without any additional dedicated funding from Congress in any of the COVID relief bills to date.

Issues Facing Students with Disabilities

While students with disabilities have faced particular challenges during the pandemic, the students most negatively impacted by the pandemic are those at the intersection of disability and other marginalized identities. These identities include students with disabilities who are also students of color, students from low-income households, English Language Learners, students experiencing homelessness, and students in institutional settings such as juvenile detention centers and residential treatment facilities.

Throughout the pandemic, some schools failed to provide individualization for students with disabilities. For example, some schools that recently re-opened were unwilling to allow immunocompromised students to continue to learn from home and receive services at home. Similarly, some schools that were closed refused to provide in-person instruction to students who needed it.

As we all know, parents and families have been expected to be far more involved in their children's education by necessity during the pandemic. Schools expected parents to serve as education supports even though it became clear early on that certain categories of students could not benefit fully in a remote environment. For example, students with significant disabilities struggled in the remote learning environment and students with attention deficit hyperactivity disorder (ADHD) in particular also struggled in the remote learning environment. To make matters worse, we continued to encounter overly punitive discipline imposed on students with disabilities during remote learning.

¹⁰ State Success in Educating Students with Disabilities during COVID-19 – Highlighting Collaboration in Kentucky and Nebraska. Retrieved from <https://www.ndrn.org/resource/educating-students-during-covid-19/>

Students with behavioral, emotional, and mental health needs were “suspended” from virtual instruction and in one instance a student with a disability became involved with the juvenile justice system and was detained as a result of failing to complete her online school work.¹¹ Finally, a number of P&A agencies also encountered schools changing IEP services through distance learning plans without changing the IEP. This has been the subject of several complaints and findings of violations initiated by P&As.

Examples

In New Hampshire, the Disability Rights Center of New Hampshire, the P&A, in collaboration with a network of other stakeholders was successful in obtaining guidance from the governor that despite school closures students with disabilities would be eligible for in-person services if they needed them. Nevertheless, the P&A was forced to initiate advocacy in several school districts who refused to provide needed in-person services.

Disability Rights California, the P&A in California conducted successful systemic advocacy against two school districts. In the first, the district was found out of compliance with the IDEA for failing to provide FAPE based on the individual needs of the students and for changing the services provided through distance learning plans instead of amending the IEPs. The second district was found to be out of compliance for failing to conduct timely evaluations or hold timely IEP meetings during the period of school closure.

Disability Rights Maine, the P&A in Maine, had successful systemic state advocacy which found the district did not follow the IEP process to change the services students were to receive but adopted remote learning plans. It also failed to provide FAPE to the students based on their individual needs.

Disability Rights Maryland, the P&A in Maryland advocated against the state itself, seeking to ensure that parents would have the ability to seek compensatory education services to remedy instructional loss during COVID.

Recommendations

The most pressing concern for students with disabilities, and all students, is the fact that a large share of instruction has been lost and how should schools and districts go about making up for that lost time. To address this issue we recommend the following:

- If they have not already, schools and districts should implement the multi-tier system of supports (MTSS) model.¹² The model provides a floor for remedial

11 ProPublica. (2021, January 29). A Teenager Didn't Do Her Online Schoolwork. So a Judge Sent Her to Juvenile Detention. Retrieved from <https://www.propublica.org/article/a-teenager-didnt-do-her-online-schoolwork-so-a-judge-sent-her-to-juvenile-detention>

12 Every Student Succeeds Act, Pub. L. No. 114-95—DEC. 10, 2015

services that will benefit all students by deploying appropriate supports and training. MTSS also lends itself to higher levels of support the greater the needs of the students, regardless of whether the student has a disability or not. Finally, students with disabilities may need to be considered for additional individualized services pursuant to the IEP process, or what we would call compensatory education. Compensatory education is an equitable remedy established by the courts to make up for the loss of services to students with disabilities who have not received a FAPE.

- Provide an extended year of eligibility for services under IDEA. This is under consideration in several states including Illinois, Virginia and Maryland.
- Schools and districts should consider the emotional and behavioral needs of all students and anticipate how to address these needs. This should be a seamless process for schools since certain students should already be identified through the IEP process. However, we anticipate more students becoming eligible for services under IDEA and 504 as more students return to in person learning after extended periods out of the classroom as a result of the pandemic.¹³
- We urge Congress to pass dedicated additional funding for the P&A Network to address the educational needs of students with disabilities impact by COVID-19. As the push for school reopening continues, education issues will come to the forefront and the P&A Network would be better positioned to meet the needs of students with disabilities with the appropriate federal funding supports.

Lessons Learned

While we are all still evaluating the lessons learned from the COVID-19 pandemic, and we will all most likely continue to do so for some time, there are a few general takeaways at this point. In our Network's experience, parents have been tremendously patient with school districts, and districts that were willing to work with parents and other stakeholders have particularly been given the benefit of the doubt. As a result, there has not been a wave of litigation against districts for failure to provide services which is important given the time and resource dedication required by litigation.

In terms of distance learning, the pandemic has revealed that in some cases the delivery of services virtually can be particularly beneficial for remote areas where specialists are scarce. This is a particularly promising model especially if school personnel can be with the student in person during the delivery of remote services. Additionally, conducting IEP meetings remotely could be a convenient option for parents who do not have the flexibility to take a large amount of time off to attend a meeting at the school. These options should be considered and examined more rigorously moving forward.

¹³ Losen, D. J., Martinez, P., & Shin, G.H.R. (2021). Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies, The Center for Civil Rights Remedies at the Civil Rights Project, UCLA: Los Angeles, CA.

U.S. Department of Education Role

While education is typically thought of as a state and local issue, there is a role for the U.S. Department of Education in addressing issues facing students with disabilities. We would urge the Department to issue guidance on making up instruction loss and how to best utilize the MTSS model. While we are grateful for the influx of money for education as part of previous COVID-19 relief bills, we would urge the Department to issue guidance on uses of this money and in particular how states can utilize the money to provide more resources to under resourced schools and districts. One of the other lessons learned was that students from low-income backgrounds and students in very rural areas did not have the ability to connect remotely due to lack of internet service, no cell phone coverage or inability to afford a computer or internet connection. There is a need to address this issue through guidance.

I hope the committee finds this information informative and useful in addressing the impact of COVID-19 on students with disabilities and has shed some light on potential lessons we can take from the pandemic. I appreciate the opportunity to appear and I look forward to answering any questions you have.

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Chairman SABLON. Yes, thank you very much Mr. Hager. Next, I will go to Ms. Littleton. Ms. Littleton you have five minutes please.

**STATEMENT OF KANIKA A. LITTLETON, PROJECT DIRECTOR,
MICHIGAN ALLIANCE FOR FAMILIES**

Ms. LITTLETON. Good afternoon, Chairman Sablan, Ranking Member Allen, and Members of the Early Childhood Elementary and Secondary Education Subcommittee. Thank you for inviting me to testify at today's hearing addressing the impact of COVID-19 on students with disabilities.

My name is Kanika Littleton, and I am the Director of Michigan's federally funded parent training and information center, Michigan Alliance for Families. Funded through Part D of IDEA, there are 94 parent centers across the country who assist parents to positively impact their children's education and post-secondary outcomes.

I am also the parent of three children receiving education, support, and services under IDEA and Section 504. My children are 16-year-old Christian, who has autism, Brittney who is 14, with anxiety and inattentive ADHD, and 6-year-old Aiden who also struggles with anxiety.

The impact of the COVID-19 pandemic is significant for students with disabilities and those from traditionally marginalized populations. The educational challenges are unprecedented and require immediate attention. Educators and families working together is vital to moving forward.

Today I'm speaking to you as a parent and a professional who has observed the challenges of the pandemic that it's created for my own children, and the students across Michigan. I wanted to highlight five areas of concern including teacher shortages, access to technology, social-emotional health, family engagement and individualized education program implementation.

Several states are facing higher teacher shortages exacerbated by reasons related to the pandemic. In Michigan, teacher resignations have increased by nearly 42 percent this school year. Often districts must rely on substitutes who lack the education and training to educate and support students with the most significant needs,

leaving these students at a greater disadvantage than their typical peers.

Inequity and resources has negatively impacted students with disabilities, especially students of color and those living in poverty in non-traditional home environments, including foster care and group homes. These students are overwhelmingly educated in districts with less financial and human resources, they have less access to educational materials and the support essential to participating in remote learning.

Moving forward, it is vital that states have the necessary resources to prioritize providing assisted technology devices, internet access and assistance with navigating learning platforms for all students. The lack of social interaction with teachers and peers during remote learning has clearly taken a toll on our young people, especially those with anxiety, depression, and other mental health conditions.

They may have loved ones who have become ill or passed away, their family may be struggling with food and housing insecurities, or they may have trouble with no support network to help them. Many days I've watched my own daughter struggle to make it out of bed, ultimately affecting her school performance.

It is necessary for districts to have the resources needed to support social and emotional health, including access to school and mental health services, and utilizing multi-tiered systems of support. Parents and caregivers of students with disabilities often found themselves in the position of implementing their children's IEP at home.

Many parents found this to be extremely challenging, often lacking the necessary skills needs to support their students. This highlights a need for educators and service providers to meaningfully engage with families during the pandemic, including recognizing family barriers, and implementing culturally responsive practices, utilizing strategies to support at home learning, and partnering with parent training and information centers to provide parent education.

As states figure out how to adequately support students with disabilities during the pandemic, many students have experienced delays in evaluations and failed implementation of their IEP, including access to specialized instruction, related services and transition supports.

For example, both of my sons will be receiving recovery services this summer to offset the loss of learning during school closures and remote learning. It is imperative that these challenges are addressed in the way that assistance and recovery of acceleration of learning, states must have the supports to hire more educators, curriculum experts, support staff, and invest in high-quality evidence-based approaches to support recruitment and acceleration of learning for all students.

I'd like to acknowledge and offer gratitude to Congress for the existing increases in funding, including 13 billion dollars through the CARES Act, 54 billion dollars through the Coronavirus Responsibility Supplemental Appropriations Act, and 130 billion dollars through the American Rescue Plan, which includes specific funding toward IDEA.

This funding will allow states to begin addressing the critical needs of students with disabilities, as they transition back to in-person learning, however, more is needed to ensure our students, regardless of disability, race, ethnicity, or socio-economic status equitable access to quality education and support during and after the pandemic.

Additionally, as more needs are identified, perhaps this time to reauthorize IDEA, so that as a nation we are prepared to continue supporting all learners under any circumstance. I hope this Committee has found this information to be helpful, and I look forward to answering any questions you may have.

[The prepared statement of Ms. Littleton follows:]

PREPARED STATEMENT OF KANIKA A. LITTLETON

Kanika A. Littleton Written Testimony-Education & Labor Committee May 6, 2021

Testimony of Kanika Littleton, Parent from Farmington Hills, MI

United States House of Representatives Early Childhood, Elementary, and Secondary Education
Subcommittee Hearing

"Addressing the Impact of COVID-19 on Students with Disabilities"

Thursday, May 6, 2021, at 2:30 p.m. (EDT)

Good afternoon, Chairman Sablan, Ranking Member Owens, and Members of the Early Childhood, Elementary, and Secondary Education Subcommittee. Thank you for inviting me to testify at today's hearing, "Addressing the Impact of COVID-19 on Students with Disabilities."

My name is Kanika Littleton, and I am the parent of three children, ages 16, 14, and 5, with various disabilities, as well as the Director of Michigan's federally funded Parent Training and Information Center, Michigan Alliance for Families.

As the world continues to navigate the wide-ranging effects of the COVID-19 pandemic, educators, families, and students have seen an educational system stretched beyond its capacity to fully serve all students. Countless students across the nation have experienced a significant loss in learning due to school closures necessitated by the health crisis and subsequent implementation of blended or fully virtual learning environments.

Unfortunately, the extent of learning loss is greater for students with disabilities and those from traditionally marginalized populations, including students of color, English Language Learners (ELL), and students living in poverty. This educational disruption will undoubtedly have negative effects on the long-term outcomes for these students, who were already at a disadvantage in terms of access to educational opportunities and exhibited higher achievement gaps in comparison to their white and more affluent peers. The idea of equity and inclusion for all students is not novel, however, the pandemic brought to the forefront, the need to invest in comprehensive education, innovative teaching strategies, professional development, and resources to adequately support all students during and after COVID-19.

As a parent of two children who receive special education supports and services, one with a Section 504 plan, and Director of Michigan's Parent Training & Information Center (PTI) I have first-hand knowledge of the impact of COVID-19 on students with disabilities, including those living with the intersectionality of race/ethnicity, poverty, and disability. In addition, my professional role has allowed for communication with other [Parent Center](#) staff across the country, who share similar experiences with their own children and the families they serve. Today, I will highlight some of those challenges and conclude with federal-level policy recommendations and actions.

I will discuss five areas of concern for students with disabilities, including: teacher shortages, health and disability related concerns, Individualized Education Program (IEP) and Section 504 implementation/evaluations, access to technology & resources, and family engagement.

Teacher Shortages:

Prior to the pandemic, Michigan was facing a critical teacher shortage, especially those certified in teaching special education. For several reasons related to the health crisis, the number of teachers

resigning has increased by nearly 42%.¹ The teacher shortage has forced Intermediate School Districts (ISD) and local districts, traditional public schools and public school academies, to rely on substitutes who lack the education, training, and pedagogical knowledge to educate and support students with the most significant academic, behavioral, and functional needs. This is an even greater concern for districts in rural and urban areas, which generally have less resources to invest in staff support and safety measures, or the ability to offer incentives to retain teachers. Additionally, remaining teachers often lack the necessary support to adapt to new virtual learning environments, teach multiple learning formats, and the ability to identify students who may need additional support while learning at a distance (virtual, remote learning); therefore, leaving students with existing IEPs/504 plans or those who may need to be identified for services at a greater disadvantage than their typical peers. Michigan has taken two significant steps to address this concern. The first is to offer temporary waivers allowing flexibility regarding appropriately certified and endorsed special education teachers in specific special education programs. This will allow ISDs and districts the opportunity to minimize the number of special education vacancies and reduce the use of substitute in special education programs. However, this is a temporary solution to what is anticipated to be a long-term problem.

Access to Technology and Resources:

Inequity in education resources has negatively impacted students with disabilities, especially students of color and those living in poverty or nontraditional home environments (i.e., foster care, group homes). These students are overwhelmingly educated in districts with less financial and human resources. These students have less access to books, materials, devices, and high-speed internet, which are essential to participating in remote learning. Additionally, they are subjected to larger class sizes, which can be difficult to manage virtually. Finally, these students often reside in homes with parents or caregivers who hold jobs which require them to continue working outside of the home during the pandemic or who may be less educated, therefore hindering their ability to assist with remote learning. Many districts in Michigan have prioritized providing devices to students who need them, as well as support families in navigating the different learning platforms used for virtual learning. Furthermore, local cable and internet companies have offered free or reduced rates for qualifying families. Districts in rural areas have used creative ways to make access to high-speed internet available, including setting up hot spots in school busses and parking lots. Still, the impact of such efforts is slow to reach all students in need. These strategies will certainly be important to maintain and bolster as many districts continue to operate under a hybrid learning environment.

Health and Disability Related Concerns:

A number of students with disabilities have medical and disability related challenges which are exacerbated by COVID-19 and its impact on instruction. For instance, some students have sensory or medical conditions which make it difficult to adhere to mask mandates or unsafe to participate in face-to-face or blended instruction. This negatively impacts the opportunity for these students to learn with typical, nondisabled peers. Additionally, students with attention-related disabilities often have challenges with executive functioning skills, including memory, cognitive flexibility, and self-control. These students often find asynchronous work, which is a major component of learning at a distance, to be challenging. My daughter with anxiety and inattentive ADHD is a prime example of this. Her inability to start and complete assignments without the oversight and support provided during in person schooling, led to several failing grades for her, which greatly impacted her emotional well-being. Studies

show that social-emotional health of students has declined since the onset of the pandemic. The effects have been even greater for students who have emotional disabilities. The greatest difficulties come from lack of face-to-face interaction with educators and peers, lack of concentration affecting online meeting attendance, lack of access to support services which are typically provided in person, for example, behavior supports, social skills groups, and other social work services. Finally, emotional well-being was adversely impacted by safety restrictions, loss of family/friends, and financial difficulties faced as a result of the pandemic. Some ways districts in Michigan are addressing this issue, include ongoing check ins with students and families, as well as opportunities to connect with others and learn strategies to support educators, students, and families during this unprecedented time.

Individualized Education Program Implementation/Evaluations:

Generally, all students experienced loss of learning since the initial school closures in March 2020. However, students with disabilities have greater losses. Individualized Education Programs (IEP) and Section 504 plans are written for the brick-and-mortar setting. IDEA does not provide rules or regulations on how to deliver special education programs and services during a major health crisis which requires long-term school/building closures. Therefore, many students experienced decreased access to specialized instruction and related supports and services which are typically provided in person. Often services were disrupted or denied altogether. Related services such as physical and occupational therapy proved to be difficult to deliver virtually, particularly without at-home parent or caregiver support. Transition age students with independent living and employment IEP goals were unable to progress in these critical skills which generally require face-to-face, hands on instruction and support. My teenage son with Autism is one such student who was impacted by the loss of community-based instruction, which focuses on teaching independent living skills to students with disabilities. With no innovative way to deliver these experiences virtually, many students suffered a decline in these skills. Furthermore, evaluations and reevaluations of students were often delayed due to the inability to perform assessments and observations virtually, many of which require providers and educators to be in the same room as the student. All of these issues prompted the Michigan Department of Education to encourage the use of Contingency Learning Plans, as well as access to recovery services. Unfortunately, districts who are heavily burdened with staff shortages and lack of financial resources, will find it difficult to provide these supports to students.

Family Engagement:

Meaningful communication with families and caregivers has proven to be critical while educating students during the pandemic. Parents and caregivers of students with disabilities often found themselves in the position of implementing components of their children's IEPs at home, including assisting with instruction and related services. Many parents found this to be extremely challenging, often lacking the necessary skills needed to support their students. Families have many barriers to supporting virtual learning, including lack of access to technology/devices and the needed academic competency to assist with assignments. Moreover, many found virtual learning to be invasive, or did not have the time to dedicate to assisting their child. With families dealing with many challenges, including loss of income, food and housing insecurities, and health concerns, the need to have ongoing communication with educators will prove to be more important than ever, particularly for students with disabilities and those from marginalized groups. It is crucial that educators and service providers work

with parents to mitigate the loss of learning experienced during the pandemic and accelerate recovery of skills.

Policy and Action Recommendations:

In February 2021, the National Center for Learning Disabilities, released a comprehensive report outlining several of the challenges I have discussed today. The report, titled, “Promising Practices to Accelerate Learning for Students with Disabilities During COVID-19 and Beyond”¹, includes a comprehensive list of recommendations Congress and the US Department of Education can do to address education of students with disabilities during and post-pandemic. **The full report can be accessed here:** [Promising Practices to Accelerate Learning for Students with Disabilities During COVID-19 and Beyond](https://www.nclld.org/reports-studies/promising-practices-to-accelerate-learning-for-students-with-disabilities-during-covid-19-and-beyond/)

Some of the recommendations outlined in the report include:

- **Provide states and districts with additional federal dollars in response to the COVID-19 crisis.**
 - This increased funding would allow districts to hire more educators, curriculum experts, and support staff, as well as invest in high quality, evidence-based approaches to support recoupment and acceleration of learning for all students.
- **Increase funding for IDEA – including Part B, Part C, and Part D.**
 - This increased funding would go to support necessary supports such as training in interventions such as MTSS, PBIS, Technical Assistance for support staff and educators, as well as parent training.
- **Increase funding for the Every Student Succeeds Act (ESSA) – especially Title I, Title II, and Title IV of ESSA.**
 - This increased funding would allow states and school districts flexibility to select and implement accelerated learning approaches that fit their particular needs and student population, including students serviced under Section 504 and IDEA.

While noting the needed additional funding to support students, I must acknowledge efforts which have already been made, including the following:

- \$13B Cares Act
- \$54B in Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA)
- \$130B American Rescue Plan (ARP) funding for K-12 education, which schools can spend towards IDEA compliance costs. This funding included \$3 billion in funding for IDEA specifically, including \$2.58 billion supporting IDEA grants for school-age children with disabilities, \$200 million for IDEA preschool grants, and \$250 million in grants to support infants and toddlers with disabilities.

This funding has allowed states to address the critical needs of students with disabilities in multiple ways. However, more is needed to ensure our students, regardless of disability, race/ethnicity, or socioeconomic status, have equitable access to a quality education and support during and after the pandemic.

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¹ Slatger, Martin. 2021, April 25. “Pandemic, workload, burnout pushes Michigan’s teacher shortage over the edge. Who will replace them?” *MLive*. Retrieved from: <https://www.mlive.com/news/ann-arbor/2021/04/pandemic-workload-burnout-pushes-michigan-teacher-shortage-over-the-edge-who-will-replace-them.html> (Accessed April, 26, 2021).

² National Center for Learning Disabilities. 2021, February 19. “Promising Practices to Accelerate Learning for Students with Disabilities During COVID-19 and Beyond”. Retrieved from: <https://www.nclld.org/reports-studies/promising-practices-to-accelerate-learning-for-students-with-disabilities-during-covid-19-and-beyond/> (Accessed April 26, 2021).

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of Michigan

May 20, 2021

U.S. House Subcommittee for Early Childhood, Elementary,
and Secondary Education Subcommittee
2176 Rayburn House Office Building
Washington, DC 20515

Re: May 6, 2021 Hearing on Addressing the Impact of COVID-19 on Students
with Disabilities

Dear Representatives:

First, we would like to thank you for taking the time to listen and learn about the struggles families of children with disabilities have endured over the past year due to the COVID-19 pandemic. We appreciate Chairman Sablan's opening statement when he specifically addressed the pre-existing inequities in our educational system for students with disabilities: "Unfortunately, even before the pandemic, far too many students with disabilities do not receive the quality education guaranteed by law."

As an organization that advocates for families of children with disabilities, we would like to express our continued support for schools in reopening, as well as share our thoughts on how federal funding should be used in our state and others. We have seen an ever-growing backlog in triennial and initial evaluations in districts across our state, as well as a need for compensatory services in areas such as social work, speech, and physical therapy as many districts reduced service times or simply did not provide them while school buildings were closed. These are the issues that have been at the front of our minds throughout the school year as the pandemic continued to impact our students.

*MiPAAC aims to educate families of children with special education needs
on topics relevant to their advocacy efforts.
<https://mipaac.org/>*

We would like to see the influx of funds states are to be receiving used to support district efforts to get in compliance with evaluations, and to provide compensatory services for those who have regressed due to the reduction or elimination of their specialized services. In addition to this, we recognize that these new funds will not be renewed so states will need to be strategic in how they are used in order to ensure they do not create new, and therefore, unsustainable programs. With this in mind, we believe using funding to pay staff for the purposes of catching up with evaluations and recoupment of lost service time makes sense as one area to be addressed.

Other areas we feel need to be addressed and that offer the potential to make a large impact in our students' education are:

- Social/emotional learning
- Recovery services
- Compensatory education
- Intervention
- Access to technology to include assistive technology
- Overdue evaluations
- Universal Design for Learning (UDL)
- Inclusion
- Teacher/staff training in evidence-based methods and practices necessary to support students in the above areas.

Cc: Hon. Gretchen Whitmer, Governor
 Michael F. Rice, Ph.D., MDE State Superintendent
 Scott Koenigsnecht, Ph.D., MDE Deputy Superintendent
 Teri Rink, Ed.S., MDE OSE Director

MIPAAC aims to educate families of children with special education needs on topics relevant to their advocacy efforts.
<https://mipaac.org/>

Chairman SABLAN. Well thank you. I'm sure your testimony and all the testimony from all the witnesses are always very useful to the Committee. Thank you, Ms. Littleton. I would like to now recognize Mr. Bush for five minutes please.

STATEMENT OF MR. READE BUSH

Mr. BUSH. Good afternoon, Chairman Sablan, Ranking Member Owens, and Members of the Early Childhood, Elementary and Secondary Education Subcommittee, and Mr. Allen. Thank you for the opportunity to share with you today as you address the impact of COVID-19 on students with disabilities.

My wife and I have two beautiful, adopted children from Haiti, both with special needs. They are 9 years old and attend public school in Arlington, Virginia. I want to highlight how destructive the last year of closed schools and virtual learning has been for our kids, as well as many other students with disabilities across the country.

Our son is diagnosed with autism and ADHD. Before school closed, he was a very happy boy who loved school, especially being around his friends. But things changed quickly after schools closed. The lack of social contact and the routine of a normal school day which are incredibly important to children with autism, caused him to create an imaginary world last spring with 52 friends as he told us.

By summer, his imaginary world had become so real to him that he struggled to differentiate real from the pretend, causing him to

have visual, auditory, and tactile hallucinations which became so bothersome to him that on his 9th birthday he asked me, “Daddy, can I die for my birthday?”

In November he was admitted to Children’s National Hospital for 4 days. The doctors told us that his symptoms were from a massive deterioration of his autism due to social isolation. He ended up on 6 medications, and the doctors said that what he needed most was to return to full-time, in-person learning so that he could begin to solidify his identify with real, in-person teachers and peers.

During the fall, as we watched him deteriorate before our eyes and not be able to engage in virtual learning, we pleaded with school administrators to open schools for in-person learning for students with disabilities, which aligned with the guidelines by the Virginia Department of Health, and Governor Northam, who allowed special learners to return for in-person school as far back as last June.

However, school administrators told us it was not safe to reopen for in-person learning. This despite the fact that many private schools throughout the D.C. area and country had successfully reopened. Eventually, in November our school system in Arlington opened for a small number of students to provide what they called “in-person support.”

This placed our son—here this, this placed our son in a classroom all by himself to learn on an iPad while being monitored by an extended day staffer. It did not give him the in-person learning and peer social contact that the doctors prescribed.

So, we requested that the school place him in a private special needs school which was open with teachers and peers 5 days a week, but the school’s IEP team Members refused. So he stayed on an iPad in a classroom, all by himself for the next 4 months.

Our daughter is in 2d grade. She has cerebral palsy, a speech disorder, and an intellectual disability, meaning her IQ is around 58. Her IEP calls for 30 hours of special education per week. In August, the Arlington school system asked us to agree to reduce her hours of support to reflect a shorter, virtual 4-day school week.

We refused to sign the IEP with reduced hours because she needs every hour of instruction that she could get. Since Arlington schools went ahead and reduced her learning hours, and because she was unable to engage in learning over an iPad, my wife was forced to quit work to home school her.

So how do things stand now? Our schools finally opened part-time in March, with shortened school days, while many private and public schools have been open in-person 5 days a week since last fall. Sadly, the learning losses continue to pile up, in fact, just in the first quarter of the year the number of failing grades was up 6 percent among students with disabilities in Arlington.

Our son is a full year behind in reading we just learned last week. Despite assurances from school administrators last year that they would provide robust learning recovery when schools reopened, the school told us last week they would give him only 30 minutes of reading recovery per week, 30 minutes a week.

We asked for more, but they flatly refused. Other than offering a 4-week summer school program, which by no means will make up for a lost year of learning, Arlington has no substantive plan to

catch-up special needs kids. They have no plans to hire additional reading, speech, or occupational therapists.

They expect existing staff to carry their full caseloads and catch kids up. Kids will never be caught up at this rate which will result in vast inequities in educational outcomes for the most-needy children.

One lesson learned from the past year is that schools should never be allowed to close long term again. For children with disabilities, schools are like hospitals in that the schools are the primary providers of rehabilitative services such as speech, occupational therapy, and social-emotional learning.

Our kids were without speech and OT services for 6 months, and these services still remain virtual for the vast majority of kids today. And the psychological and learning losses and inequities continue to pile up.

I will close by saying that in Arlington and many other places across the country, schools remain only partially open. By contrast, in Haiti, where our kids were born, schools have been open full time since the fall. Haiti, as you know, has no healthcare system, has no access to COVID vaccine, and is one of the most under-resourced countries in the world.

If Haiti can find a way to open up schools full-time, then certainly schools here in the U.S., and certainly schools in Arlington, Virginia, one of the wealthiest school systems in the country, should be able to open fully now too, especially for these special needs kids. Thank you for your time.

[The prepared statement of Mr. Bush follows:]

PREPARED STATEMENT OF READE BUSH

Testimony of Reade Bush, Parent from Arlington, Virginia
United States House of Representatives Early Childhood, Elementary, and
Secondary Education Subcommittee Hearing
“Addressing the Impact of COVID-19 on Students with Disabilities”
Thursday, May 6, 2021, at 2:30 p.m. (EDT)

Good afternoon Chairman Sablan, Ranking Member Owens and Members of the Early Childhood, Elementary, and Secondary Education Subcommittee. Thank you for the opportunity to share with you today as you address the impact of COVID-19 on students with disabilities.

My wife and I have two beautiful adopted children from Haiti, both with special needs. They are 9 years old and attend public school in Arlington, VA. I want to highlight how destructive the last year of closed schools and virtual learning have been for our kids as well as many other students with disabilities across the country.

Our son is diagnosed with Autism Spectrum Disorder and ADHD. Before school closed due to the pandemic, he was a very happy boy who loved school, especially being around his friends. But things changed quickly after schools closed. The lack of social contact and the routine of a normal school day, which are incredibly important to children with Autism, caused him to create an imaginary world last Spring with “52 friends,” as he told us. By summer, his imaginary world had become so real to him that he struggled to differentiate real from the pretend, causing him to have visual, auditory, and tactile hallucinations which became so bothersome that on his 9th birthday, he asked me, “Daddy, can I die for my birthday?” In November he was admitted to Children’s National Hospital for 4 days. The doctors told us that his symptoms were from a massive deterioration of his Autism due to the social isolation. He ended up on 6 medications and the doctors said what he needed most was to return to full time, in-person learning so that he could begin to solidify his identity with real, in-person teachers and peers.

During the Fall, as we watched him deteriorate before our eyes and not be able to engage in virtual learning, we pleaded with school administrators to open schools for in-person learning for students with disabilities, which aligned with the guidelines by the Virginia Dept of Health and Governor Northam who allowed special learners to return for in-person learning as far back as last summer. However, school administrators told us it was not safe to reopen for in-person learning - this despite the fact that many private schools throughout the DC area and country had successfully reopened. Eventually, in November, our school system opened for a small number of students to provide what they called “in-person support.” This placed our son in a classroom all by himself, to learn on an iPad while being monitored by an extended day staffer. It did not give him the in-person learning and peer social contact that the doctors prescribed. So, we requested that the school place him in a private special needs school which was open with teachers and peers 5 days a week. But, the school’s IEP team members refused. So, he stayed on an iPad in a classroom all by himself for 4 months.

Our daughter is in 2nd grade. She has cerebral palsy, a speech disorder, and an intellectual disability, meaning her IQ is around 58. Her IEP calls for 30 hours of special education per week. In August, the school asked us to agree to reduce her hours of support per week to reflect the shorter, virtual 4-day school week. We refused to sign an IEP with reduced hours because she needs every hour of instruction she can get. Since she is unable to engage in learning over an iPad, my wife was forced to quit work to stay home to home school her. With all the learning disruptions, we would have moved our kids to a private school last Fall, but they had all filled up and it would have cost us about \$90,000 a year for both kids which we could not afford.

So how do things stand now? Our schools finally opened part-time in March, with shortened school days, while many private schools have been open in-person 5 days a week since last Fall. Sadly, like many special education children across the country, learning losses continue to pile up - in fact, just in the first quarter of the year, the number of failing grades was up 6% among students with disabilities in Arlington. Our son is a full year behind in reading. Despite assurances from school administrators last year that they would provide "robust" learning recovery when schools reopened, the school told us they will give him a mere 30 minutes of reading recovery per week. We asked for more, but they flatly refused.

Other than offering a 4 week summer school, which by no means will make up for a lost year of learning, Arlington has no substantive plan to catch-up special needs kids. They have no plans to hire additional reading, speech or occupational specialists to help the kids who are behind; they expect existing staff to carry their full caseloads and catch kids up. Kids will never be caught up at this rate which will result in vast inequities in educational outcomes for the most needy children.

One lesson learned from the past year is that schools should never be allowed to close long term again. For children with disabilities, schools are like hospitals in that schools are the primary providers of rehabilitative services such as speech, occupational therapy, and physical therapy, and social-emotional learning to hundreds of thousands of kids. Our kids were without speech and OT services for 6 months, and these services still remain virtual for the vast majority of kids today. Again, the psychological and learning losses and inequities continue to pile up as the public schools remain only partially open.

I will close by saying that in Arlington and many other places across the US, schools remain only partially open. By contrast, in Haiti, where our kids were born, schools have been open full time since the Fall. Haiti, as you know, has no healthcare system, no access to the COVID vaccine, and is one of the most under-resourced countries in the world. If Haiti can find a way to open schools full time, then certainly schools here in the US should be able to open fully now too.

Chairman SABLON. Yes. Thank you, thank you very much for your testimony, including some of your personal experiences with your children Mr. Bush. Thank you. And now I'd like to recognize Dr. Kovach. Do I get that right Dr. Kovach?

Ms. KOVACH. Yes Kovach.

Chairman SABLON. OK, thank you. Yes, you now have five minutes please.

STATEMENT OF DANIELLE M. KOVACH, Ed.D., SPECIAL EDUCATION TEACHER, TULSA TRAIL ELEMENTARY SCHOOL; HOPATCONG BOARD OF EDUCATION

Ms. KOVACH. Thank you. Good afternoon, Chairman Sablan, Chairman Scott, Ranking Member Owens, Ranking Member Dr. Foxx, and Members of the Subcommittee. My name is Danielle Kovach, and I am a third-grade special education teacher at Tulsa Trail Elementary School in Hopatcong, New Jersey.

I am also the president-elect of the Council for Exceptional Children. CEC is a professional association of 22,000 educators dedicated to advancing the success of infants, toddlers, children, and youth with disabilities and/or gifts and talents. And most importantly, I am the mother of three boys, two of whom currently receive special education services.

And I am joining you from my basement that has been transformed into a classroom for virtual learning. I would like to start by thanking you for enacting emergency funds to address acute needs in K through 12 schools, and for including targeted funds for the Individuals With Disabilities Education Act in the Rescue Plan Act.

My job is to ensure that my students receive a free and appropriate public education in the least restrictive environment. When our school went remote, we had no time to prepare ourselves, or our students for virtual learning. With their kids at home from school many parents could not work, and some lost their jobs.

Several students did not have access to the internet. Without access to school lunches children were hungry, and there was the constant worry about COVID-19. It was the perfect storm.

My grade level team and I rose to the challenge. We collaborated through Google Meet and gave teacher-led mini-workshops on how to navigate Google Classroom.

I watched and shared every webinar I could find that offered credible information about effective teaching from a virtual platform. CEC also provided a wealth of information, especially through the CEC community, an on-line forum where special educators from across the country can connect and share ideas while teaching during the pandemic.

To support parents I resent their child's individual education program, or their IEP, and I walked them through agreed upon modifications to have a mutual understanding about what we could do together to support their children. I created a website for parents to engage with their children at home, both academically and social-emotionally.

When a student in my class struggled with reading, my para educator sat outside that student's home and read to her. We went into this school year better prepared thanks in large part to targeted emergency funding through the CARES Act.

All students and personnel now have devices and my school district provided technology workshops and professional development and developed a virtual hybrid learning schedule and a plan for providing instruction for each student.

In-person instruction is much different now, but we have adapted and innovated to ensure our students still receive what they need. Gone from my classroom are the sensory corner and learning stations. They have been replaced with individual sensory tools.

Learning centers went from hands-on activities to interactive activities in Google Classroom. My classroom library went virtual, and so did our class treasure chest where students can earn their rewards. We transitioned our café kids cooking and life skills program to the café kids virtual food network.

I continually worry about the impact of the pandemic on student mental health and social-emotional development. I constantly ask myself are my students getting enough? Am I giving them everything they need? These questions are the reason that I have not had a solid night sleep since March 13, 2020.

There is more that Congress can do to be sure the dollars that have been invested have a lasting impact. We are deep into an educator shortage crisis that predates the pandemic. This crisis ex-

tends beyond personal shortages. Higher education programs that prepare the Nation's special education workforce are closing.

There is a shortage of faculty to support new special education teacher candidates. And there is still much to learn about teacher early retirement and the exodus from the educator profession triggered by the pandemic.

ARP does provide flexibility to invest in educators in the short-term, but I fear most districts will forego these investments without sustainable funding to prevent layoffs when the ARP funds run dry. To truly recover from the pandemic and address long-term needs, many of which predate the pandemic, Congress must fully fund IDEA.

One thing is for certain. Special education teachers like all teachers, will do anything to help their students succeed, but they could do so much more for so many more students with sustainable investments. Thank you for having me here today to share my story.

[The prepared statement of Ms. Kovach follows.]

PREPARED STATEMENT OF DANIELLE M. KOVACH

Subcommittee Hearing: Addressing the Impact of COVID-19 on Students with Disabilities
Subcommittee on Early Childhood, Elementary, and Secondary Education
U.S. House of Representatives

Testimony by:

Danielle M. Kovach, Ed.D.
Special Education Teacher

President-elect, Council for Exceptional Children

Good afternoon Chairman Sablan, Chairman Scott, Ranking Member Owens, Ranking Member Foxx, and members of the Subcommittee. My name is Danielle Kovach, and I am a third-grade self-contained learning and language disabilities classroom teacher at Tulsa Trail Elementary School in Hopatcong, NJ. I am also the president-elect of the Council for Exceptional Children (CEC), a professional association of 22,000 educators dedicated to advancing the success of infants, toddlers, children, and youth with disabilities and/or gifts and talents. And most importantly, I am the mother of three boys, two of whom currently receive special education services.

I sincerely appreciate the opportunity to speak before you today to share my story about how the outbreak of COVID-19 has impacted my students, and to identify some strategies and make a number of recommendations that can support children with disabilities as we work collectively to recover from the pandemic.

I have been teaching for 23 years, both in general education and special education. My special education experiences range from co-teaching in an inclusive classroom to teaching in a resource room for students who spend most of the day in a general education classroom and are pulled into a smaller setting for math, English language arts, or both. I am currently teaching in a self-contained classroom where my students spend 60 percent of the school day with me and spend the remainder of the day with their general education peers for specials classes (i.e., art, music, physical education), lunch, and recess.

The last year has been a challenge that continues to test the strength of students, teachers, school personnel, and families to do whatever it takes to continue to participate in education and, in many cases, frankly, to survive. I have spent this year surrounded by the tremendous resilience of families, teachers, school teams, and my district. I have also been supported by tools and resources from CEC, as the organization sprang into action last spring to help special educators when the pandemic forced us to change our approaches to teaching.

Congress recognized the potentially devastating impact the pandemic would have on education and acted quickly to stand up emergency funds to address acute needs in K-12 schools through the CARES Act. Thank you. With the subsequent enactment of the Coronavirus Response and Relief

Supplemental Appropriations Act and the American Rescue Plan Act (ARP), we are beginning to work toward recovery for our schools and students.

I also want to thank Congress for including targeted funding for the Individuals with Disabilities Education Act in the ARP. That funding will be especially critical for early childhood and K-12 special education programs.

My job is to ensure that my students receive a free and appropriate public education in the least restrictive environment. The work of a special educator is challenging. It requires patience, care, flexibility, and a lot of student-centric individualization. While nothing could have prepared us for the last 14 months, these qualities certainly helped carry colleagues and me forward as the world evolved around us.

I will always remember March 13th as the day we shuttered our school doors. From that time until the end of the 2019-2020 school year, there was a constant barrage of new challenges that my grade level team, students, parents, the school, and the district needed to navigate. When our school went to remote learning, we had no time to prepare ourselves or our students for virtual learning. We were in uncharted waters without any experience and training for educators, students, or families. Even after 23 years in education, I felt like a first-year teacher all over again.

Because we were operating under the assumption that we would return to in-person instruction in two weeks, at first, it was a little like a field trip with the kids- we were all experiencing something new together. But very quickly, virtual learning proved to be incredibly difficult. The first challenge was getting all the kids online. Telling my students, “we’re going to go on Google Meet, and I’m going to teach you,” did not quite work as smoothly as I had hoped. Technology was not utilized frequently at the elementary level before this crisis. My class had experience using their Chromebooks when writing stories because of voice-to-text accessibility features. They also used the technology to read online stories and play educational games. But suddenly, having technology went from being an accessory to an absolute necessity.

Because I work with elementary-aged students, they do not have email accounts. All correspondence had to go through parents’ email accounts. However, not all parents had email or access to the internet. In those cases, I made phone calls to parents several times a day. I found that many parents were in distress. With their kids home from school, many parents could not work, and some lost their jobs. Several students did not have access to the internet. Without access to school lunches, children were hungry. And there was the constant worry about the virus and many unknowns. It was the perfect storm.

I met with the paraeducators in my class to create a preliminary plan for virtual learning. I made videos for the paraeducators and parents to navigate our online platform. We started with a video about how to log into the school's platform. We also printed paper learning packets and connected with parents to discuss ways to support their kids for families that could not navigate virtual learning.

It was amazing to see how everyone worked so hard to make the best of an undesirable situation. The paraeducators in my class were phenomenal. I have been working with them for years, and they stuck by our students and me. Learning to navigate new technology was a challenge. Having never been trained in online learning, we all had to learn how to use Google Classroom together. Along with the speech therapist on our team, we had a common goal to support the students, making us an even stronger force. We also included the parents on our team. The only way to make our virtual learning successful for our students was for everyone to be aligned and working together. It was truly a team effort!

My grade level team communicated through group texts every day and recognized that we needed to offer more tools to engage students in virtual learning. We created a website for parents to help their children at home. Resources included fun activities to do at home and materials to help parents assist their children with social-emotional needs.

However, as teachers, we knew that we also needed information to help us teach our students virtually. We collaborated through Google Meet and gave teacher lead mini-workshops on how to navigate Google Classroom. I watched and shared every webinar I could find that offered credible information about effective teaching from a virtual platform. CEC also provided a wealth of information, especially through the CECCommunity, an online forum where special educators connect, collaborate, and share ideas. By using this platform, I learned from other educators across the country who were also facing similar experiences during the pandemic.

Of course, there were bumps in the road. To support parents who were facilitating online learning and ensure students were receiving their instruction and supports, I re-sent parents their child's individualized education programs (IEPs). I walked them through agreed-upon modifications to have a mutual understanding about what we could do together to support their children. We all worked hard to keep the lines of communication open and did whatever we could to ensure the success of every student. For example, when a student in my class struggled with reading, my paraeducator sat outside that student's home and read to her.

I quickly found that the support my students and families needed went way beyond how to deliver academic instruction. I would get phone calls from parents after their children went to sleep. Most of the calls were not about school at all. Parents would ask for advice about securing basic needs like food or medical help or expressed fears about how they would help their children if they got sick. Many just needed someone to talk to.

In many ways, I could relate to the struggles that my student's parents were facing. I also had my three boys at home while my husband was on the front line. My husband is an emergency medical technician. He went on all his calls in full protective gear, and the personal protective equipment shortage was so acute that he had to provide his own. Stress and fear were everywhere, and the white Tyvek hazmat suit my husband hung in our garage every night after work was a constant

reminder of the grim reality our world was facing. I was trying to teach and parent, all while trying to keep my head above water. I was also trying to survive.

I continually worry about the impact of the pandemic on student mental health and social-emotional development. What our students see and hear about the pandemic on the news and in social media is overwhelming. Schools were not always equipped to support the challenges we were facing before COVID-19, and there is now an even greater need for these supports to be more rigorously offered to children and their families. Students with disabilities are particularly vulnerable. My school has a strong team, but with the additional resources provided by Congress we can adequately support the growing emotional challenges students face. I see the tireless work my school guidance counselor is facing. Every day she not only counsels the students in her charge, but her caseload has been growing exponentially since the pandemic. Students who usually do not need counseling services need help from the school to cope with the stress brought on from COVID-19. With additional resources, we can hire staff to help every student and provide teachers with a curriculum to support social-emotional learning.

On June 19, 2020, the last day of school, we did a celebratory count down. I thought it would be a huge relief for everyone that the school year ended. Shortly after school ended, a parent called me and asked if I could speak to her daughter, who was crying hysterically. She was distressed that the school year was over. That really stuck with me. Children need structure and consistency. Even with all the inconsistencies of last spring, one of the constants was still school, regardless of its changing format. She was scared to lose that.

We went into the 2020-2021 school year anticipating that virtual learning would be a possibility, so we were better prepared. Thanks in large part to targeted emergency funding through the CARES Act, all our students now have devices, and personnel who needed it could access technology from home. My school district provided technology workshops and professional development on Google Classroom and other virtual learning platforms.

Our district also developed a virtual and hybrid learning schedule and a plan for providing instruction for each. This structure provided a needed sense of organization and stability as well as more effective planning. We are currently meeting in person every day for four hours and teaching virtually every afternoon. The schedule allows the school to avoid in-person lunch and allow for our custodians to sanitize every day.

We have switched back and forth from hybrid to completely virtual several times this year based on COVID-19 outbreaks, exposures, and local infection rates. Many times, the switch happened with little to no notice. I learned quickly that taking home all of my teaching materials every day was a necessity in case we were not in-person the following day. My class was the first to quarantine in September and go virtual within the district. But we were prepared for virtual instruction because on the first day of school and each day that first week, we focused on understanding how to navigate our personal devices and our virtual platforms. Ensuring that each

student knows how to use their technology meant we could focus on instruction whenever we switched to virtual. Even though the transition was still disruptive, it was easier because students knew what to expect, which was a major improvement from last year.

In-person instruction is much different now. So much of education is group learning, especially in my classroom, where students can sit where they are comfortable, at a table, on the rug, or on a bean bag and work with their peers. Now my students sit at desks with protection barriers instead of tables. We literally have shower curtains with PVC pipes separating each desk, and the students try to talk to each other through plastic walls.

While a global pandemic changed much of how my classroom typically runs, it did not stop the learning but instead taught me how to adapt and find another way to make things work. Gone from my classroom are the sensory corner and learning stations, which are now a health hazard. Our sensory/calming corner was replaced with individual sensory kits. Learning centers went from hands-on activities to interactive activities in Google Classroom. My classroom library went virtual and students access stories online instead of reading from a book. Our class "treasure chest," where students earn rewards, turned into an online shopping experience.

The highlight of every week for my students is when we cook in Cafe Kids. Cafe Kids is a fully equipped kitchen that teaches life skills through cooking while integrating academics and speech therapy. This year, we decided the pandemic would not stop our students from cooking, so we began a "Cafe Kids Virtual Food Network." Students cook from home with their families as the special education teachers and speech teacher cook in the cafe at school. As one student described it, "I like cooking at home with mom every week because I never cooked with her before. It's cool to watch my teacher cook because I'm learning so much!"

As I continue to juggle teaching environments, I am constantly researching new ways to engage my students. My first strategy for keeping students engaged and excited to learn has been to keep things fun, no matter the setting. We dance, sing, and play games to keep my students happy and energized. My students take a "Mindful Minute" throughout the day where they use picture cards to share their feelings. This allows me to keep an eye on students who are struggling emotionally and intervene when needed. When they needed support, I had to develop innovative ways to help them in a safe environment.

But, in this constrictive environment, it is hard. I worry every day and constantly ask myself, "Are my students getting enough? Am I giving them everything they need?" These questions are the reason that I have not had a solid night's sleep since March 13, 2020.

My colleagues and I are determined to do all we can to continue directly supporting and teaching our students. Through my leadership role at the CEC I am also working at a much larger level to help impact systemic and lasting change.

There is more Congress can do to be sure the dollars that have been invested have a lasting impact. I remain concerned about the long-term effects of the pandemic on the current cohort of students and future students. We are deep into an educator shortage crisis that predates the pandemic but has been exacerbated significantly over the last year. This crisis extends beyond personnel shortages. Higher education special education programs that prepare the nation's special education workforce are closing. There is a shortage of higher education special education faculty to support new teacher candidates. And there is still much to learn about teacher early retirement and the exodus from the educator profession triggered by the pandemic. Our nation's teachers are resilient, yet they are tired. The emotional toll has prompted many of my friends in education to retire because they physically and emotionally cannot go on. Those who cannot retire survive by putting on a brave face every day and continue to provide the best education they possibly can under these extreme circumstances.

Infants, toddlers, children, and youth with disabilities deserve access to a fully prepared workforce of special educators, including teachers, paraeducators, and specialized instructional support personnel. Yet, 44 states reported special educator shortages for the 2020-2021 school year, according to the U.S. Department of Education.

ARP does provide flexibility to invest in educators in the short term, but I fear most districts will forego these investments in personnel without sustainable funding to prevent layoffs when the ARP funds run dry. To truly recover from the pandemic and address long-term needs, many of which pre-date the pandemic, Congress must fully fund IDEA. Schools and districts will especially need sustained investments in the educator pipeline to reverse the special educator shortage crisis.

Fiscal Year (FY) 2022 can be a pivotal year for significant investments in the programs that support the Individuals with Disabilities Education Act (IDEA), most of which funds enable districts to invest in special educators. That is why CEC, along with partner organizations in the disability and education fields, is seeking the following funding levels for IDEA programs for FY 2022:

IDEA Part B State Grants (Sec. 611) – Invest no less than \$15.5 billion:

Over seven million school-aged students, approximately 14% of the total student enrollment, benefit from individualized special education and related services mandated by IDEA. The law requires that schools tailor these to meet the specific needs of each child. With the enactment of IDEA came a Federal government pledge to pay 40% of the excess cost of educating a student with a disability, what is referred to as IDEA full funding. Unfortunately, in FY 2021, through regular appropriations, the Federal share was approximately 13%, leaving states and school districts to pay the balance. This causes great strain on education systems, which are forced to make difficult budget decisions to make up for the Federal shortfall. The Biden Administration's topline budget proposal for FY 2022 puts IDEA on the first step of a 10-year glidepath to full funding by providing \$15.5 billion for Section 611, carrying forward an emergency appropriation of \$2.6 billion for the program through ARP. This important increase would also enable states and

districts to provide long-term investments, namely in personnel, with their ARP dollars, knowing those investments will be sustained in FY 2022.

IDEA Part C - Invest \$732 million; IDEA Part B Section 619 - Invest \$598 million:

IDEA's early childhood programs serve over 1 million infants, toddlers, and preschool children with disabilities and their families through Part C and Part B Section 619, respectively. Over the last twenty years, both programs have increased the number of children served by approximately 50% and proven that this early intervention leads to improved outcomes. Despite this growth and positive outcomes for children, federal funding has failed to keep pace. In fact, the federal cost per child has decreased by 40% over the same period. ARP provided a one-time infusion of funds to both programs for FY 2021, for which CEC is grateful. We seek a meaningful increase for FY 2022 that would put these programs on their own glidepaths to full funding, providing a long-term impact on early childhood programs.

IDEA Part D personnel preparation (Sec. 662) - Invest \$300 million:

Special education was the highest educator shortage area in nearly all states before the pandemic struck and is the area that has endured the highest rate of job cuts during the pandemic. This shortage crisis must be addressed through a significant increase to Part D Sec. 662, which helps increase the number of qualified personnel with the skills and knowledge necessary to support infants, toddlers, children, and youth with disabilities, including support during the critical early years of a special educator's career.

NCSER - Invest \$70 million:

The National Center for Special Education Research (NCSER), within the Institute of Education Sciences is the primary driver of special education research in the nation and provides evidence-based practices for classroom teachers. NCSER is also now faced with investigating a suite of new research areas specifically related to the impact of the COVID-19 pandemic on special education which will serve as critical, informative resources as educators, schools, and districts begin to address the disproportionate impact the pandemic has placed on infants, toddlers, children, and youth with disabilities.

Providing meaningful increases to IDEA programs will support and grow the number of qualified special educators in the field and aid in the pandemic recovery. However, in the long-term, much more can be done to right the ship in a targeted and systemic way. What we truly need is visionary investments to diversify and strengthen the educator pipeline- investments that the field has been seeking for years.

President Biden's recently unveiled American Families Plan (AFP) rises to that challenge by proposing \$900 million for the development of special education teachers; the doubling of the TEACH Grants Program, scholarships for undergraduates studying to be teachers in high-needs,

low-income areas and the expansion of the grant program to early childhood educators; \$2.8 billion for Grow Your Own programs and paid, year-long residency programs, which have proven to improve educator diversity, retention in the field, and outcomes for students; \$400 million for teacher prep programs at Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority-Serving Institutions; \$1.6 billion to provide teachers with the opportunity to obtain additional certifications in high-demand subject areas including special education; and \$2 billion to support teachers as leaders, including high-quality mentorship programs to provide new teachers with the tools they need to be successful in the classroom and remain in the field of teaching.

Adequate funding through the annual appropriations process and enactment of legislation that incentivizes and invests in the educator pipeline, would be pivotal to the special educator field. Most importantly, it would help states create pathways to ensuring well qualified early education and K-12 teachers and school leaders are prepared to provide the early intervention, instruction, and specialized instructional support that our nation's infants, toddlers, children, and youth with disabilities need and deserve.

Thank you again for allowing me to share the story of my classroom's progression through the pandemic and forward-thinking recommendations to strengthen our field. If you take away one thing from my testimony, I hope it is this: special education teachers, like all teachers, will do anything to help their students succeed, but they could do so much more, for so many more students, if investments are made to strengthen the profession.

Chairman SABLAN. Thank you very much Dr. Kovach, and I also, oh it was when schools were just starting to open up face to face instructions, there is a middle school here and visited one of the teachers who happened to have a class, and then I walked up to the library because this school was badly devastated by a super typhoon, the second largest in the Nation.

And I walked in, and I found two students with special needs. And then in walked this individual who was a special ed teacher who happens to be my son also, so it was a nice meeting at a school campus but thank you very much for your—I'm getting a message.

OK. So I'd like to next start the questioning with Mr. Scott do you want to go first, or Mrs. Hayes? Jahana, Mrs. Hayes please you have five minutes.

Mrs. HAYES. Mr. Scott were you going to answer?

Chairman SABLAN. Right. Chairman?

Mr. SCOTT. I'd like to go first if possible.

Chairman SABLAN. Yes.

Mrs. HAYES. No, I don't have any problems with the Chairman.

Chairman SABLAN. OK Chairman Scott you have five minutes sir.

Mr. SCOTT. Thank you. I have to leave at 3:30 for another meeting, so I appreciate it.

Chairman SABLAN. Thank you Jahana.

Mr. SCOTT. First let me just say that democrats—the comment was made earlier about following science. The democrats have been trying to follow the CDC guidelines where we've noticed that many of the guidelines require funding.

We first looked at according to the CDC, the community spread, but also separation, including transportation which means more money for transportation, proper ventilation, which means many school systems have to fix their ventilation systems, mask wearing and testing, and contract tracing protocols which also cost money, and that money can be found in the Rescue Plan.

And so the school districts should not have any problem complying with the CDC guidelines and opening. Let me ask Mr.

Hager, we found in the Andrew F. Case that the Supreme Court said that you couldn't get away with just any old kind of services, you had to provide meaningful services based on the capabilities of the student.

What implications does that have for the students going back after the pandemic?

Mr. HAGER. Well generally speaking Andrew F. sets a high bar for the services that students with disabilities should be expected to achieve, so as students are coming back with disabilities, we need to catch them up. We need to be looking at how far behind they are and make sure that they get the services they need.

It has to be individualized. It can't be one size fits all, that's another key principle of Andrew F. It has to be individualized. Second, Andrew F. emphasizes the importance of maintaining students in the least restrictive environment. Students should be educated with their non-disabled peers to the maximum extent appropriate.

Third, Andrew F. recognized the importance that an education is not just about academics. It's also about the emotional and behavioral needs, so as students return, we cannot just look at educational loss. We have to also look at the behavioral needs of these students.

Mr. SCOTT. Thank you. And Ms. Littleton can you say a little bit about what we need to look at to deal with the fact that Department of Education's Civil Rights Division, Office of Civil Rights has pointed out that students with disabilities are disproportionately subjected to exclusionary discipline such as suspensions, expulsions, restraint, and seclusion.

What do we need to be looking at as students return to school to avoid inappropriate discipline? What do we need to do? Ms. Littleton, sorry?

Ms. LITTLETON. No sorry. I was having technical difficulty. Thank you for your question, Chairman Scott. I believe that one of the things that we need to look at, and you're correct that there are certainly going to be you know an increase in disciplinary issues as children that are coming back that may have faced trauma, you know.

So I believe that the investment again in those multi-tiered systems of support is a proactive approach for schools to take, especially implementing positive behavior interventions to supports as students come back. Of course, you know, schools will need the funding to make sure that educators and service providers have the training that is necessary for that.

Michigan actually—Michigan's multi-tiered systems of Support Technical Assistance Center is funded through Part D of IDEA and is providing technical assistance to all states on the utilization of multi-tiered systems of support. Our State has been phenomenal in providing that education to become educators, as well as families.

We actually conducted an education symposium for teachers going back to school, and one of the focuses was to make sure that we have effective learning environments as children return to school and focused on social-emotional health, including implementing those tools set forth with MTSS, and positive behavior interventions and support.

Mr. SCOTT. I'm trying to get in another question. Just very briefly.

Ms. LITTLETON. Yes.

Mr. SCOTT. For your organization, and the other two that represent organizations, do you have—are you looking at the spending? How the money from the Rescue Plan will be spent to make sure it's appropriately being spent to deal with the students with disabilities and others to eliminate achievement gaps are actually being well spent?

Do you have the capability of reviewing that on a local, especially on the local level?

Ms. LITTLETON. So on the local level we are looking at the funding that's coming. Our center again is funded through part of that Part D funding of IDEA that's coming through that was provided through the American Rescue Plan. So we are looking at that, and we're looking at how we're using those resources to again support parent training and information, as well as breaking with schools to promote you know things like multi-tiered systems of support and assistance.

Mr. SCOTT. My time is way over. I just wanted Mr. Hager to indicate whether his organization is looking at the money coming in to make sure the budget is budgeting the money appropriately?

Mr. HAGER. Thank you. Thank you, Chairman Scott.

Mr. SCOTT. Could he just please?

Chairman SABLON. Yes Mr. Hager.

Mr. SCOTT. My time is expired, so if the witnesses in written responses can just review what their organizations are doing. Look, some of the school districts are getting massive amounts of money, and we want to make sure everybody is—nobody is being left behind, and achievement gaps are being appropriately dealt with. Thank you, Mr. Chairman.

Chairman SABLON. Thank you, thank you Mr. Scott. Thank you. Mr. Allen, I recognize Mr. Allen now for five minutes sir.

Mr. ALLEN. OK thank you Mr. Chairman, and thanks to our witnesses and for the opportunity to talk about this important issue facing our Nation today. Mr. Bush, I want to thank you for your testimony. It's heartbreaking, but also inspiring to hear how you and your wife have sacrificed for your kids and fought for them.

It says in your bio that you have 17 years of experience as an emergency medicine visit physician assistant. I was just curious have you had to go into work during the pandemic?

Mr. BUSH. Yes, sir I've worked some during the pandemic, although doing a COVID testing center, however I was limited in my ability to work because both of our kids require one to one support to access their learning, and even though that is supposedly guaranteed under IDEA and FAPE they were stuck virtually at home all fall.

And so I had to sit home with my son individually. My wife worked with our daughter individually. So it was hard for me to provide medical support actually really to people during the pandemic because I was stuck at home.

Mr. ALLEN. But you would have otherwise you would have been there for your patients?

Mr. BUSH. Oh absolutely. I actually, I've worked through five pandemics. You know I understand that you know a lot of teachers were concerned you know about going back initially. But you know the reality is I was at a loss for why so many teachers just seemingly couldn't return to help these kids, especially in our school system.

There were some teachers individually that told me they wanted to come back, you know, and work, but they were not allowed to. But the irony is that you know there are just many kids out there suffering, and there was nobody really in-person to support them.

So we spent the last year basically with kids trying to learn virtually which is really, really you know impossible, almost impossible for many of these kids with special needs.

Mr. ALLEN. You said in your testimony that schools should never be closed long-term again. Can you explain your recommendation in a little more detail?

Mr. BUSH. Yes. So I understand you know back at the beginning of the pandemic there was a lot of unknowns, uncertainties, and it was necessary to close schools down for a while.

But after a while we—the science started to emerge, we saw other school systems across the world opening up, and certainly across the country we saw a lot of private schools opening up, and really it was like why can't we open up these schools for these kids?

For the kids with special needs as you mentioned, you said you have a granddaughter that has special needs, and really benefits from the physical therapy in the schools.

Mr. ALLEN. Yes.

Mr. BUSH. It's the same for our kids and many other kids. Physical therapy and occupational therapy, speech therapy, those things just you know it's very hard to deliver them virtually, so.

Mr. ALLEN. Yes. You need to know that we offered an amendment when our Committee marked up the education provisions of the so-called American Rescue Plan that would have required states to provide students education savings accounts when public schools refuse to reopen, that would allow parents to use those funds in those accounts to pay for private school tuition, and purchase additional education services and materials for their students who were not allowed to go back to school.

Would that have benefited your family?

Mr. BUSH. Absolutely. We spent about \$800.00 on home school curriculum for our daughter, and for our son as he was deteriorating psychologically and the doctor was saying he needs in-person learning, and the school system was refusing to give it to him, instead putting him in his classroom all by himself.

We were desperate. I mean we just felt like we're in a failing school system, and we really wanted to get him into a private special needs school, but around here those schools cost about \$45,000.00 a year for one child. That would have been almost \$90,000.00 for both of our kids a year.

So absolutely, any funding would have helped for us to get our kids the support, the learning that they needed because they just couldn't learn virtually.

Mr. ALLEN. Right. Well unfortunately that amendment was defeated, and that provision was not available. From your standpoint, and obviously, you represent I mean you walk the talk OK. Your real world, and like I said somehow these intellectuals sometimes try to paint a different picture.

But well I'm out of time. Listen, thank you so much for being here today. I really appreciate it and telling your story. The nation needs to hear it. My Committee Members need to hear it. And with that Mr. Chairman I will yield back.

Chairman SABLON. Thank you. Thank you very much Mr. Allen. So now I recognize the very generous Mrs. Hayes.

Mrs. HAYES. Thank you, Mr., Chair, and thank you to all the witnesses today for taking part in this very important hearing that we're having. We all care very deeply about this conversation, this topic.

Mr. Bush your story has resonated very personally with me, and I want you to know that democrats do care, which is why we voted for 122 billion dollars in education funding with 3 billion of that carved out specifically for special education because we understood and recognized what was happened, and that our children needed help.

So every single one of us voted for the package that sent much needed relief. This week I met with students in my own district at the Fresh Start School in Canton, Connecticut. Fresh Start is a school that serves students on the autism and related disordered spectrum, and it gives them a place to learn and thrive.

Much of what I heard at Fresh Start is what is being echoed in this Committee hearing today. I talked directly to the children. I also know from my own time in the classroom, 15 years working with high need students in a Title 1 school district, that those districts struggle more than others to meet the needs of their students.

And this has only gotten worse with COVID. Part of the issue, and we've heard this over and over, is that for many of our students they receive all of their services at school, which is all of these problems become school-based issues. We have to make sure that community supports are there as well.

I also cannot move on without just once again as I say in so many hearings that we hear over and over disparaging comments about teachers unions. Teachers unions are teachers. And the questions that they ask throughout this pandemic were questions that address the safety of their children.

A school building is not equipped in the same way a medical facility is, that is open to address medical emergencies that has personal protective equipment and hand-washing stations, and staff that are trained in universal precautions in all of the things that are necessary for combating a pandemic.

So teachers raising those questions was not about teachers, it was about their children. I can say that with fidelity as a certified teacher. Ms. Littleton you mention in your written testimony that you anticipate the consequences of this past year will impact multiple marginalized students, such as students of color with disabilities, the most in terms of long-term consequences.

My question is can you provide us more details on how we can prioritize these students and prevent long-term inequities stemming from this pandemic, and how do we target assistance toward districts that serve these marginalized children?

Ms. LITTLETON. Thank you for your question Representative Hayes. I believe that it first starts with looking at the family engagement is a really important piece, especially for when you're working with families who have marginalized backgrounds, whether it be students of color, in families living in poverty, so training for educators and support staff to really know and understand how to provide culturally responsive practices when engaging families.

You know that means looking at the barriers that these families have. These families have working parents who may be outside of the home who couldn't assist with remote learning while children were learning at home, so working around that to find ways to support learning at home, finding ways to support any emotional trauma that may be going on in the home, I think is greatly important.

Also I have to be honest, hiring support staff and educators who look like the people in the community is really important. So I think working with higher education institutions to really recruit and sustain people you know, teachers of color, will be very beneficial.

Mrs. HAYES. And I understand that which is why I have introduced legislation to both diversify the education profession, and to save education jobs, which is all of those support personnel that you're talking about, because I—like you, appreciate what is happening on the ground in a practical setting, and how all of these people are needed.

There was a pre-pandemic GAO study that indicated that parents from low-income school districts are less likely to file dispute resolution such as due process or mediation because they don't really understand the process.

And I think this kind of speaks to what Mr. Bush talked about, where parents are trained to advocate for their children. My question was for Mr. Hager, and my time is about to run out, so I'll ask the question and just ask that maybe you submit the answers in written testimony.

Do you believe that when parents have sufficient understanding of their rights, and sufficient access to representation and support, how are they able to advocate and provide meaningful access for their children? And what can we do at the Federal level to make that part of the process more equitable so that when parents are seeking services, every parent knows how to access those services?

My time has expired, but I would appreciate if you responded to that in writing and followup.

Mr. HAGER. Thank you, Representative Hayes.

Chairman SABLON. Thank you, Mr. Hager, and thank you Mrs. Hayes. Now I'd like to recognize who's going to go first, Ms. Letlow or Mrs. Steel? Mrs. Steel is senior, hello, Ms. Letlow has been here the whole time. Do you want to go? The two of you flip a coin.

Ms. STEEL. OK. Whoever goes first I'm fine Mr. Chairman. I am one of the freshmen, so thank you for recognizing me, and thank you Chairman, and thank you Ranking Member and all the witnesses. I'm just so grateful that you all are here.

Mr. Bush thank you for sharing your testimony with the Committee. Your family story, and what your children have gone through is heartbreaking. It is sad and unacceptable that school districts across this country turned their backs on their most vulnerable children.

We had another hearing a little over a month ago about the harm that has been done to vulnerable students over the last year. Republicans invited the parent of a child with a disability to that hearing as well, and she told us that she was forced to find alternative private school options for some of her children when her public school closed.

You mentioned that you would have done that had there been open states and that you had been able to afford it. So Mr. Bush, from what you know, what is that that these private schools managed to safely reopen when your local public school did not?

Mr. BUSH. You know thank you for that question. I think the private schools looked at the data last summer, and other school systems and saw that schools were safely opening. And so they thought outside of the box and figured out ways to make it work, and they made it work.

And unfortunately, you know a lot of the private schools have even more limited capacity than the public schools do, yet they were still able to do it. But unfortunately, you know, the public schools, even for the special needs kids where we live, couldn't even figure out a way to get a small number of special needs kids the highest priority special needs kids back to school.

So you know meanwhile parents across our county with kids with special needs are watching these kids in private schools go back, so it just was very tragic to watch that happen.

Mrs. STEEL. So you as a parent, that you know what the best for your child is, or children. Why is having access to in-person learning worth the risk?

Mr. BUSH. I think you know once we knew the data, and that the data that was especially among elementary kids, that children really weren't spreaders, and that going back would be safe. For us it was really important to get them back in because we were seeing particularly with our son, significant psychological you know decline.

So it was very important for us that he be back in an in-person environment which is really important for autistic kids, at least for him. I understand there's some parents that have special needs kids and they think it's not you know safe for them to go back and that's fine, but for the kids that need to be back, and those parents want them back, you know it really was important for schools to be open.

And we're still in a situation where our schools aren't even open full-time.

Mrs. STEEL. So do you feel like you have lost faith in your local school officials, and you have two children who still have another 10 years plus in this school district, so how can you move in trusting their decisions?

Mr. BUSH. Yes. I've heard from a lot of parents around here that they've lost faith in the leadership of the school board and the superintendent because as many people were crying out to open up

schools, especially as we saw the data coming along that showed it was safe, both for teachers and for the kids, and then ultimately even when the teachers were vaccinated, and somehow in some cases the schools are still not opening.

You start to wonder OK well who are they looking out for here. You know the kids are the ones who have no voice in this, you know, who have been suffering. And you know when are we going to open schools back up for these kids that really need it? Not just the special needs kids, I'm talking about all kids.

Mrs. STEEL. Yes, that's the reason that my first speech on the floor was let's open up all the schools because we set aside enough budget for them. In CDC guidelines we need 25 billion dollars to open up all the schools, but last year Congress set aside 72 billion dollars, but still it's not really opened.

Especially living in California, I truly agree with you because it's all shut down. So thank you very much for your testimony, and I yield back Mr. Chairman.

Mr. BUSH. Thank you.

Chairman SABLAN. Yes, thank you very much Mrs. Steel. I'm just somewhat now confused because we provided money so schools could be safe and safely reopen, and now we're complaining that some schools are not opening up. It is starting to open up, so, I now yield to Mr. Yarmuth, Chairman Yarmuth, my best friend in the Budget Committee you have five minutes sir.

Mr. YARMUTH. Thank you very much Mr. Chairman, and thanks to the witnesses for their testimony. You know so much of the last 14 months we've seen just the worst kind of politicization of a national emergency. And both parties have done it, but you know people involved in decisionmaking and trying to get through this who I think have been unjustly criticized, and this is kind of a continuation of Mrs. Hayes' comments.

I've been in more than 200 schools since I've been in Congress, and I've been in dozens and dozens of special needs classrooms. And I have to say that special needs teachers in this country, certainly in my district in Kentucky, and I'm sure everywhere are some of the greatest heroes that I've ever been exposed to.

The range of issues that they have to deal with, with their students, is just it's baffling to me how they can cope with all the challenges that they face and in coming up with individual plans for all of them. And so you know I think we should be able to stipulate, republicans and democrats, that nobody wanted this to happen.

That everybody wishes it hasn't happened. We've known that for a long time, and even still today we still don't have total information about what we're dealing with, and we're doing the best we can for the most part.

And if Gavin Newsom in California takes more steps, and then sets of steps and gets—has a recall election because of it and Ron DeSantis does other things in Florida. My Governor who I think has done an extraordinary job in almost every aspect of fighting this now has a legislature who wants to strip him of all of his emergency powers.

So I think you know we all ought to take a deep breath and say first of all let's make the best that we can of a bad situation. Mr.

Bush your story is horrific. It was called heartbreaking earlier. It truly is. But you know I don't know how to run a school. I know there are lots of different people in the school and I know they're all vulnerable.

And whether the kids are less vulnerable than older Americans is probably not the only factor that determines whether a school could open or not. As a matter of fact I know it's not. So anyway, I'll just say let's vow to learn from this the best we can, let's try to remediate the damage that's been done, particularly to our kids.

And let's make sure we do better the next time and there probably will be one. So Dr. Kovach I want to ask you what you see in terms of relating to all of the remediation that's going to have to be done with our kids, what can we do in terms of particularly when people with IEP's and 504 plans have not been able to get the services they needed for those and the support they've needed.

What do we do with the funds that come out under the American Rescue Plan to provide extended services, or additional services are extended in terms of school? What would be your recommendation?

Ms. KOVACH. Thank you so much for that question. So you know ARP was designed to provide additional supports too all students, including our students with disabilities. So recognizing that, we can anticipate some learning loss across the board. I know that in my district we'll be offering the extended school year for our students with disabilities who are receiving services, and there's also plans in the works to help students who are not receiving services who do have that learning loss to help them again over the summer as well.

They're short-term fixes, but I strongly support the long-term investments, like fully funding IDEA and addressing the teacher shortage to provide students with disabilities the supports that they are entitled to.

Mr. YARMUTH. Something that occurred to me was in terms of trying to facilitate IEP's and 504 plans is it seemed like feedback would be a real big problem. You know in terms of developing those plans, if you're not getting the constant feedback day to day in person, does that make things much more challenging?

Ms. KOVACH. Well my job is to educate my students in the free and appropriate education in the least restrictive environment whether it's virtual or it's in-person, and I can say that I do get feedback from my students regardless of the setting that we're in, and then taking that information and making changes and adjusting their IEP is necessary.

So it really to me it doesn't matter what setting that we're in. I'm able to get feedback from my students.

Mr. YARMUTH. Thank you. My time is expired.

Chairman SABLON. Thank you, Mr. Yarmuth, and talking about feedback. Actually, to be very honest, I am getting—working with staff who are 8,000 miles away from where I am, so ma'am, amazing things are happening.

And so now I'd like to recognize Ms. Letlow. I was once in your position, the last one. So please now you have five minutes Ms. Letlow.

Ms. LETLOW. Thank you, Chairman Sablan, Mr. Allen, Members of the Subcommittee and witnesses, thank you for taking the time

to discuss the impact COVID 19 has had on students with disabilities. This pandemic has been devastating to our country's school system.

It's been a trying year for our teachers, students, and working moms. And while Louisiana was one of the hardest hit of states early in the pandemic, our school systems worked with hospitals and healthcare professionals around the State to put safeguards in place, so that almost all of our schools were able to open last fall with a delayed start.

As I've traveled around all 24 parishes of my 5th District of Louisiana, I've heard of the tremendous challenges our teachers and students faces while they held classes remotely. I believe it's a huge disservice keeping our children out of school. Without in-person instruction there are significant losses in learning, social skills, and mental health.

These challenges are even greater for students with disabilities. These students need individualized learning and care that cannot be replaced virtually. In fact, only 69 percent of households in Louisiana have reliable access to internet, so students must result to learning by paper packets. This is a serious problem.

Science has shown our students can be in school. Congress has provided more than enough funding to schools so children can safely return to the classroom. Mr. Bush you mentioned in your testimony that your wife had to quit work to stay home and home school your daughter.

There are millions of parents, and particularly women who have had to make the same sacrifice. You also talk about the medical challenges your son has faced. Would you mind sharing more with us how the last nearly 14 months has impacted your family?

Mr. BUSH. Yes. I appreciate the question and condolences to you and your family because I know this has struck you very personally too. But yes, we've been devastated. This has just been devastating to watch what's happened to our son psychologically, to see him screaming and having hallucinations, screaming on end for hours.

To think that he's jumping on a trampoline and think that there's a cobra on his back. He was a normal—almost a normal, so normal of a child last year, and at least he appeared so normal that a lot of his teachers didn't even think that he was autistic. And now he's a one to one, he requires one to one support.

And the doctors have said to us all along the longer he's not in school in an in-person learning environment and engaged with teachers and peers, the more like that this will become his permanent identity.

So now we are really concerned that our child who was almost unrecognizably autistic a year ago, this could be his permanent identity, having these hallucinations and stemming constantly, it's just tragic, and it's been heartbreaking to watch. And I know this is true for many, many other parents out there with kids with special needs.

Ms. LETLOW. Thank you so much for sharing your story and the difficulties that you faced this past year, and I hope your kids can return to school soon. Chairman I yield back my remaining time.

Mr. BUSH. Thank you.

Chairman SABLON. Thank you. Well thank you very much Ms. Letlow. Mr. DeSaulnier sir you have five minutes please.

Mr. DESAULNIER. Thank you, Mr. Chairman, thank you to all the witnesses. And I guess I'm a glass half full person, that the challenges of COVID and all the suffering maybe there's an opportunity here, particularly for this population.

So Mr. Hager and Ms. Littleton, I guess first let me say that in California I have a good deal of experience in the legislature and the local government. In the DD community we have the history of Pat Brown, Governor Brown. And then Ronald Reagan, and a combination of those things helping the DD community and special needs folks.

But even in California never fully funding these programs that work in public schools realizing that private schools while they're different, and it's not apples to apples, but we can learn from one another.

So coming out of COVID with all this pressure, with an increase in the needs with autism and other issues, and because of COVID, maybe you can talk about what you're seeing in terms—and I had a bill, and I intend to reintroduce it to provide more services for advocacy for both of you. And I hate the litigious nature of this, but it's necessary in my view because we've never fully funded or met our obligations to this segment of the population.

So maybe you can help me understand how we can use this opportunity perhaps, coming out even though there will be greater needs to fully fund these programs in a way that works for the clients. Mr. Hager and then Ms. Littleton.

Mr. HAGER. Representative DeSaulnier the protection advocacy system was created in the mid-70s because of horrible, horrible exposés in institutional settings, and that was really supposed to be the focus of the Protection Advocacy Network.

We came into existence almost the same time as IDEA went into effect. So we had all these parents of children with disabilities desperate for support, desperate for representation, coming to the P&A Network.

So from the beginning we've had a tension between our mission to protect individuals that are institutionalized, but also this pressure to provide services to the families that are at special ed threat. So we don't have any dedicated funding for special ed advocacy.

We've used our other funding from other programs to do that. So one of the things that would definitely help us is the ability to get funding that would be dedicated to duly education advocacy. As I said during my testimony, we have obviously as everyone else has been stressed with trying to meet the needs of families and parents that are not getting the services they need.

And we know that it's going to increase as parents come back because there's going to be so many families there in desperate situations because the kids have lost so much. So we definitely are anticipating additional need. Thank you.

Mr. DESAULNIER. And to your point before going to Ms. Littleton, the history in California was it was an L.A. Times series that got Governor Brown's attention, Governor Pat Brown, and then came

this historic bill here that was led by a republican conservative Member of the State assembly.

But the revenue savings from for instance, selling a lot of those institutions that were higher cost that didn't serve the community well morally, ethically, or just from a cost standpoint, never went back to reinvest in the savings.

And that was somewhat Governor Reagan's fault. Ms. Littleton, I think you could add to the observations.

Ms. LITTLETON. Well similar to the P&A system, the parent centers also began in the 70s through efforts from parent advocates, and individuals with disabilities themselves. And so the key component of the parent centers is to promote parent advocacy, and we do that by educating parents and supporting parents to understand the process.

So we find that if they are educated, they can work with their school teams to get the supports needed for their individualized child. IDEA is about individualism, and IEP is going to be written specific to the needs of the specific child. So we see spectrum disorders where one kid may need one service, and another needs another one.

But if that parent can advocate for their child, then we have seen great success, even through remote learning we've seen great success with parents being able to advocate for their children's needs.

So funding the parent training and information centers is highly important so that we can continue to do that work and supporting and educating parents and creating advocates among parents and among individuals so that they can advocate for themselves, because there will never be enough educational advocates to support all families who need that supporting too.

Chairman SABLAN. Thank you. Thank you very much. Ms. Wilson, I skipped you, my sincerest apologies, but let me recognize Mr. Keller for five minutes and then you're next. Mr. Keller please you have five minutes.

Mr. KELLER. Thank you, Mr. Chairman. I was pleased to see that over half the population of Pennsylvania has had an opportunity for at least one dose of COVID-19 vaccine. We are clearly approaching the end of the emergency period of this pandemic.

However, schools should have been opened long ago the science is clear. School aged children are less likely to transmit COVID-19 to others. The frontline workers, the elderly, at-risk populations, and those with underlying health conditions have largely been given access to the vaccine.

We need to be getting students back into the classroom so they can take advantage of precious learning opportunities. Only 46 percent of the schools are currently open for in-person instruction which is unacceptable.

I thank you for sharing your story. I wish nothing but the best for your family as we begin to get students back into school full-time. Can you explain why many schools reopened back in the fall of 2020?

Mr. BUSH. So around where we lived there were many schools that opened up as far as private schools that opened up. There weren't really any public schools in the D.C. area that opened up. But I know that there were schools in other states that were open-

ing up full-time, and that was quite a mystery to us as how were these other school systems doing it and our school system can't seem to do it?

Again, we are one of the most well-funded school systems in the country. I was part of a group of parents advocating for the return. We brought in a doctor from Harvard to help the school system with ventilation. We did everything we could, but we just kept hearing every month, month after month we've got to wait another month, wait another month, wait another month.

And at some point, you see your kids suffering and it's just like you know like you sort of throw your hands up and say why can't we open the schools when so many other schools are doing it successfully?

And so you know where we're at right now there is this projected 12 million dollar surplus coming on to the end of the school year, and that's before the American Rescue Plan, yet the schools still are only open in a hybrid fashion, that's 2 days a week for the majority of the kids.

Monday is a remote day, and Tuesday through Friday are shortened days where kids mostly go only 2 days a week. And so to me it's a mystery that so many private schools have been able to open up, and some other public schools in the country, but our school system here, and a lot of the schools in the D.C. area haven't.

Mr. KELLER. Did they give you any specifics as to why they've been so hesitant to reopen the Arlington County schools?

Mr. BUSH. I mean I think initially there was a lot of concern about how the disease spread, and the safety for kids returning, and I certainly understood that. But as I said, there was a lot of systems that had the ability to do it. Then we heard there were logistical issues, and most recently so it's just too logistically complicated to open up the schools.

I think that's kind of selling you know, selling things sort. The kids need schools to be open, and logistically you know, it is again they opened up schools in Haiti last fall. If they can open up schools in Haiti, why can't they open up schools in Arlington, Virginia, one of the most well-funded school systems in the whole country?

Mr. KELLER. Yes, I would agree with that. And another question I guess I would like to get your perspective on is what do individual education programs or IEP's for students with disabilities look like in the part-time schooling environment you described?

Mr. BUSH. Well for kids that have high number of hours like 30 hours of service, reduced school weeks being reduced hours of services. And these are reduced learning hours that they will never be able to get back. So and then as far as application of things like PT and OT, speech therapy, these things done over a virtual environment.

I'll say the speech therapist working with our kids has really done a phenomenal job of trying to do it virtually, but you know for the kids doing physical therapy, you just can't replicate that in a virtual environment. And then certainly for doing things like reading.

My son if you sit there and read next to him, he's engaged. But when the teacher reads to him over an iPad, he's completely

unengaged. So reading, that's one of the reasons he's fallen behind with reading is he just cannot engage virtually. So kids with special needs, they don't have typical—a lot of them don't have what we call typical brains, they're neural atypical and it's very hard for them to engage with their IEP's.

So you know from a standpoint of IEP's in the law, of the school systems really are not meeting the law for these kids for their IEP's.

Mr. KELLER. Well thank you for that and I wish that we can get everybody back, but I'm hopeful that we can get everybody back, all our students in the classroom so they can get the education they need and deserve. With that I thank you and I yield back.

Mr. BUSH. Thank you.

Chairman SABLON. Thank you. Thank you, Mr. Keller. And now the very patient, my apologies, Ms. Wilson please.

Ms. WILSON. No worries, Mr. Chair. I just want to remind everyone that we are in the midst of a very serious pandemic. And I live in Miami, and our schools are half open, half closed, but it's parental choice. And those children who do go to school they can't even go for a long period of time because a quarantine happens in the school every week.

So they have to close down certain classes. So I have a granddaughter who caught COVID because her mother's a principal, and she tried to go to school with her, and she brought COVID home to the whole family. So this is very dangerous. This isn't something that we're just playing with and deciding that schools must be closed.

People died. Grandmothers died because children brought the COVID home. And so teachers had to be very cautious about this. Our school district was very cautious. We tried to accommodate our Governor who is not very well, who made the schools open, but it didn't help because the children were back and forth because of quarantine.

However, we passed the American Rescue Plan to try to remedy all of this, so that all of our children could go back to school, and not one single republican, Mr. Bush, voted for the plan to help your children go back to school. All the democrats had to do all of the work and pass this plan.

So I have lots of questions that I need to ask, so I'm going to submit them for the record. But I do want to ask Ms. Kovach now that we have 3 billion dollars in IDEA funding, what other resources should we consider offering to ensure that the social and emotional needs of students are met as they transition back into in-person learning very carefully.

Ms. KOVACH. Thank you so much for that question. And I do want to say first that I think we can all agree that we do want our students back in school, but I think we all do know that school should be a place for students where they feel safe, where they feel loved, and they feel cared for.

And I agree with you by saying you know COVID is dangerous, and this is because of COVID and there are so many unknowns. And I do have concerns about my students and their social emotional health, and we do need to as we get back into school, focus on our students.

We need to make sure that we are putting money into personnel that can be equipped to handle our students. And this is not just students with disabilities. This is students across the board who are going to need assistance when they come back into school, and they do now.

Also to provide teachers with the training on how to help their students dealing with what they have been through over this pandemic. So there's definitely you know those resources alone, the training for teachers, more professionals in the classroom to help them are certainly ways that we can help our students as we transition back.

Ms. WILSON. Ms. Littleton would you please tell us more about the experiences of low-income students with disabilities who may have had limited access to technology or high-speed internet, and how we can best support them as they transition back.

Ms. LITTLETON. Well thank you for that question Representative Wilson. Some of the barriers that we saw for low-income students was again the lack of devices, lack of access to internet and things like that and also a lack of support to help them during remote learning.

So we did see in Michigan a lot of districts being very innovative in the way that they service those students whether it was recording lessons on a flash drive and sending that home, so that they didn't need internet access. Whether it was providing assistive technology and educational materials through paper packet, where the parent could come and pick it up, and then they also provided training on how to navigate learning platforms, or how to work with children at home.

So I think investing in you know different ways, innovative, creative strategies for educators to use to support students would be very beneficial for low-income students as well.

Ms. WILSON. OK Mr. Hager can you tell us why you think it's important to provide an extended year of eligibility for service under IDEA?

Mr. HAGER. Well it's going to take a long time for students to catch up. Thank you for the question Representative Wilson, sorry, and for students who are nearing the edge of their education eligibility it's probably going to need a good year for them to catch up, so that is I think one of the important things to look at.

Ms. WILSON. Thank you I yield back. I have questions for the record to submit to the Committee Mr. Sablan.

Chairman SABLAN. Thank you. All right, thank you Ms. Wilson. I now recognize Mrs. McBath please, five minutes Lucy.

Mrs. MCBATH. Thank you so much Mr. Chair and thank you to each of our witnesses for being with us today and helping us to kind of really understand the impact that this pandemic has had on our students with disabilities. And I know that we realize that even though some students have been successful in a virtual learning environment, you know, that's not the case for everyone.

That's not the case for every student. And we need to understand how best to support all of our students as they transition back to the in-person classroom. In March this Subcommittee, we had a hearing on what educational equity should look like post-COVID-19.

And one of our witnesses at the hearing, it was Ms. Selene Almazan, told us how the Department of Education's Secretary Cardona reached out to the disability community within the first week of his confirmation, and has worked with organizations such as Center for Learning Equity, and we'll call it COPA, and National Center for Learning Disabilities to ensure students with disabilities are our priority in school reopening plans.

Ms. Kovach because Secretary Cardona has really stressed the importance of prioritizing returning students with disabilities to the classroom as soon as it's safe to do so in accordance with the public health guidelines, many school districts across the country brought students with disabilities back to the classroom even before other students were able to do so.

So in fact this was the case for students in Cobb County, in my district. Part of you know Cobb County which is in my district. And when did your students actually begin to return to in-person learning, and how was that transition? How has that been so far for the students that you're taking the time and effort to teach?

Ms. KOVACH. Thank you so much for that question. My school district, the entire district opened up in September, and for students in general education they had an alternating A-B week schedule, so where one group of students was in class, the other group was hybrid.

For our students in special education which would be my classroom as well, we came back because we have a smaller group. We were in-person fully, and the goal was to have all of our students in special education in school fully.

Unfortunately, within the first I think it was 7 days, my class was the first that had to quarantine because of COVID exposure. So from that time until now we have been in-person quarantined, in-person and quarantined. So there definitely was some inconsistencies for my students which was difficult to adapt to, but we took each moment as a learning moment, and we focused on the importance of our health and our safety.

We were not happy with the situation of going virtual, but that was the world that we were in. And you know making sure that my students were instructed in the technology that we were using was key. And when it was safe for us to return to the classroom we did so, and we tried very hard. We focused on the positive.

And you know we're back in person now in a half day, and my students are with me virtual from my classroom in the afternoon. So I'm hoping, and I'm staying positive that we will be able to stay in-person until the end of the school year.

Mrs. MCBATH. Well thank you for that. And I hope that does really happen. And Ms. Littleton, the American Rescue Plan provides significant Federal funding to districts for elementary and secondary schools, about 130 billion dollars I believe. And Congress was clear that these funds should be used to address the academic, the social and emotional and mental health impacts of the pandemic on our Nation's children's students.

And so particularly with those groups of students that were disproportionately impacted, and how do you think those funds should be used to address students' needs?

Ms. LITTLETON. Thank you for that question Representative McBath. Again speaking as not only you know the Director of a parent training and information center, but also the parent of three students who have experienced challenges during this pandemic. I believe that investing in high school curriculums that focus on acceleration of learning, not just recovery of learning, but acceleration of learning is one step.

Also investing in hiring more educators as we face a significant teacher shortage, you know, recruiting educators back into the field to work with students, especially our students who are receiving special education. And also, professional development and training for current existing support staff and professional educators on again implementing the use of multi-tiered systems and supports will be so beneficial because there are a number of different challenges that students are going to face, whether they're learning virtually, or and as they transition back into the classroom.

And in Michigan we are transitioning back into the classroom and identifying the barriers that students have faced from remote learning. And we are doing our best to address those challenges with the additional funding. I think the additional funding, especially for IDEA is important.

Mrs. MCBATH. Thank you for that, but my time, I yield back the balance of my time if there's any.

Chairman SABLAN. Thank you. Thank you, Mrs. McBath. And now for the most patient Member of this Subcommittee Mr. Bowman. Sir you have five minutes. Thank you.

Mr. BOWMAN. And I used to be a middle school principal, so I know how to be patient, so thank you very much. And I'm asking these questions and making my comments both as a parent of three children, one with special needs, as a former middle school principal, and as a public school educator for 20 years.

I just first want to acknowledge that you know I hate to politicize anything relating to our children, but I think we should acknowledge that when the Coronavirus first hit our shores, the Administration did not take it seriously initially, and if we did take it seriously and respond accordingly, maybe we would have been able to get our schools open more quickly and more safely, but unfortunately there was lag time, and we're still seeing the ramification of those struggles.

So my question is to Dr. Hagar, Ms. Kovach, and Ms. Littleton OK. I'm putting the three of you in charge of designing the perfect learning environment for our children when they return. I'm so excited that we passed the American Rescue Plan, we have a lot of resources coming in.

But as you all know, as we all know, it's not just money. It's about the design of the learning spaces. And you've all mentioned things like individualization, social and emotional learning, acceleration of learning, MTSS.

I would like you all to speak to and try to be brief because I know we don't have as much time. Speak to what an ideal learning environment might look like once we fully open for our kids, assuming everyone is safe, and the resources are there. We'll go Littleton, Kovach, Hager.

Ms. LITTLETON. Thank you Representative. I think the ideal learning environment would be one that focuses on universal design on equal learning and has staff who are fully trained to support all students' needs, whether they be students who are receiving special education, or our typical general education students. So having a fully trained staff of educators and support staff would be ideal.

Mr. BOWMAN. In 10 seconds, what is universal designed for learning. Please tell us that.

Ms. LITTLETON. It is a technique that offers strategies for teachers to teach learners of all abilities. So whether they have a cognitive impairment, or behavioral issue, we are using strategies and techniques that will help all students.

Mr. BOWMAN. Awesome. Thank you. Ms. Kovach?

Ms. KOVACH. So I think that based on what we've been through in the past, we need to look toward the future because I think education will look very different, and one of the things is access to technology for our students, especially for our students with disabilities to have the assistive technology that they need. Hopefully, we won't, but if the chance that we need to go virtually again, that they do have that access that they need to learn virtually and to be successful.

And also again, focusing on our students, their social emotional learning and making sure that we have support for them in way of personnel and also training for everyone to help our students to be successful.

Mr. BOWMAN. Ms. Kovach what does focusing on social and emotional learning look like? Can you give me a real concrete specific look at that in the classroom in the school, in the community?

Ms. KOVACH. I can. Actually one of the things I do with my students, and I brought it with me is we take a "my full minute," every half hour, in between transition, my students have face cards where they are able to tell me how they're feeling matching the face. And then what we can do to help them keep going.

And honestly, sometimes it's just a student will have the picture of I'm hungry. And I know, OK, I'm going to feed you. And that plays into their social and emotional learning. If the student is hungry, they're not going to be able to learn because they're focused on their growling tummy.

So if something like this just to be in tune with how our students are feeling, and then knowing what I can give them to support them to make their education the best it could possibly be.

Mr. BOWMAN. Thank you. Mr. Hager?

Mr. HAGER. Thank you for that question. First of all we have a lot of resources available in money. We need to get the personnel on the ground. So the support specialists, the mental health counselors, others that can provide that underlying support for the students is a critical one.

We've heard about the lack of teachers. I would also say that teacher training is critical. One of the things I've seen over the years is that the students aren't really getting their individualized needs met because many of the teachers don't have the training to really know how to identify what is the learning style for that child. What is it when a student is acting out?

What does that behavior communicate? How can we address that behavior in a way that's appropriate as opposed to using punitive approaches, whether it's discipline, it's suspension, or you stay in seclusion?

So the teachers need the training so that they can appropriately interact with their students.

Mr. BOWMAN. I will yield back, thank you.

Mr. HAGER. Thank you.

Chairman SABLON. Thank you, Mr. Bowman. So I'm going to ask, I have several questions I want to ask the witness. Dr. Kovach because you have alluded to this in more than one instance. I was told with one set that I think it's educating the mind, educating the heart is no education at all.

And I try to remind myself that I, and— have to maybe because I have two teachers in my family, we should be celebrating the never-ending selflessness of our amazing teachers. And so we have heard about how difficult distance learning was for many teachers, parents, and most of all students, particularly students with disabilities.

However, the pandemic has demonstrated that in some cases remote learning can be an effective teaching tool. So what lessons Dr. Kovach, what lessons can we learn about utilizing remote learning and the ways that it could potentially improve education in the future, particularly for our students with disabilities?

Ms. LITTLETON. Thank you for that question. And the one thing that I found over this pandemic, and of course with education it's about building relationships. It's an entire community in order to help our students. And you know in a virtual world I've found that I've been able to connect with parents more than traditionally.

So my virtual back to school night I had just about 100 percent participation. IEP meetings virtually, all parents were there. Even our ways of communication now, just within this meeting that we're having I've gotten four or five messages from parents with questions on their student's homework.

So our ability to communicate has been heightened, and building that family relationship as well, and parents being able to reach out and feel comfortable asking for help you know has really, I just love the bond that has brought us together, because we're all you know, we're in different boats, but we're in the same storm.

So it's really brought us together. And I have seen so many successes with the virtual learning as well. It's not that we have not had any. You know working in small group one on one, even when the pandemic first started, and being able to work with my students virtually, I've had students that have gained you know levels in their reading because of you know us being able to go back and forth one on one, so there is definitely some progress as well.

Chairman SABLON. Thank you. Right and I can imagine being a student, I'd probably like you a teacher, you have heart Ms. Kovach. It's also halfway virtual. Also, actually if I may I think we have two Teachers of the Year in this virtual room, yes Dr. Kovach and Congresswoman Hayes, wow we're lucky.

So let me also ask Ms. Littleton, in your testimony you talked about the challenges many parents face when implementing components of their child's individualized education program, their IEP

plan at home. What ongoing supports do you think would be helpful to aid, to assist, in the transmission back to in-person learning?

Ms. LITTLETON. Thank you, Chairman Sablan. I believe that the supports that will be successful to helping parents are some of the things that we've seen Michigan do which is to create trainings and webinars for families on implementing at home teaching strategies, working on literacy, and then working with schools as the children transition back into the building.

Also training provided by the parent training and information center, including communicating with your school's IEP team, making sure that your student has individualized needs, working on dispute resolution if there is a situation that comes up and that you don't agree with.

Our center offers one on one support to families to be able to do this. So we have been fortunate enough to partner with our Department of Education to really provide training, information, resources to families as we all try to navigate this pandemic.

Chairman SABLAN. Thank you. Thank you very much. So that basically concludes our Member questions. And so, I want to first thank our witnesses, let me see, Mr. Hager, Dr. Kovach, Ms. Littleton, and Mr. Bush. I want to thank our witnesses for taking the time to share their experiences and expertise.

The compelling testimony we heard today shed a helpful light on the wide range of challenges that students with disabilities have endured during the pandemic. And it reminded us that like nearly every consequence of the pandemic, this challenge has existed long before COVID-19.

However, we also heard how for some students with disabilities and their families, the pandemic and transition to remote learning have revealed unexpected opportunities for learning and collaboration.

Whether negative or positive, all of these experiences are critical lessons, not only for future, national emergencies, but to better understand how we can meet the needs of students with disabilities moving forward.

I am pleased that today we identified some of the steps that districts, schools, and educators must take to learn from these lessons and uphold students with disabilities right to free and appropriate education. As schools across the country reopen for full-time in-person instruction, I look forward to working with my colleagues to ensure that those students with disabilities can access equal education opportunities and reach their full potential.

And seeing no further business before this Subcommittee I hereby adjourn and thank you again everyone for your patience.

Hold on. Hold on, I am getting a message here. OK. I've got to do one more thing please thank you. Hold on. Now I have to find it. Oh man. Please bear with me I'm working with staff who are 8,000 miles away.

Mrs. HAYES. Just so the witnesses know, the Chairman will get up at 3 a.m. sometimes to make our hearings, so we are always happy to be patient with him. He makes every hearing even though he's in a time zone halfway across the world.

Chairman SABLAN. Yes, actually I started at midnight. I'm trying to find something here. OK. I remind my colleagues that pursuant

to Committee practice materials for submission for the hearing record must be submitted to the Committee Clerk within 14 days following the last day of the hearing, so by close of business on May 20, 2021, preferably in Microsoft Word format.

The materials submitted must address the subject matter of the hearing. Only a Member of the Subcommittee or an invited witness may submit materials for inclusion in the hearing record. Documents are limited to 50 pages each. Documents longer than 50 pages will be incorporated into the record via an internet link that you must provide to the Committee Clerk within the required time-frame.

But please recognize that in the future that link may no longer work. Pursuant to House rules and regulations items for the record should be submitted to the Clerk electronically by emailing submissions to *edandlabor.hearings@mail.house.gov*.

Yes, so wow we did it in four hours. If there is no further business without objection the Subcommittee stands adjourned. Thank you everyone.

[Additional submissions by Chairman Sablan follow:]

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

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

3 **I. INTRODUCTION**

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

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

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COMMENT

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

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

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

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

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

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

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

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

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

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

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

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

20
21
22 ³ In passing the IDEA, Congress promised to cover up to 40 percent of the states' annual average
23 per pupil expenditure ("AAPE"). See DANIEL J. LOSEN, PAUL MARTINEZ & GRACE HAE RIM SHIN,
24 THE CENTER FOR CIVIL RIGHTS REMEDIES AT CIVIL RIGHTS PROJECT OF UCLA, DISABLING
25 INEQUITY: THE URGENT NEED FOR RACE-CONSCIOUS RESOURCE REMEDIES 8 (2021) (hereafter
26 "CCRR Expert Report"). Congress has consistently fallen short of that number. From 2010 to
27 2021, federal average per pupil expenditure has never risen above 16 percent. See *id.* at 81, Table
28 B1. The best year on record was 2009 due to federal stimulus funding, and even then it was only
33 percent for one year. *Id.* & n. 178. With the sole exception of 2009, Congress "has never
provided more than 20 [percent] of the additional costs." *Id.* at 57.

⁴ *Id.* at Part III, 49-53.

⁵ *Id.* at 49-50 (emphasis supplied).

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

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

4 II. EDUCATIONAL EXPERIENCES FROM ACROSS THE NATION

5 Parents and Students

6 Markel M.

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

10
11
12 & ELAINE WEISS, ECONOMIC POLICY INSTITUTE, THE TEACHER SHORTAGE IS REAL, LARGE AND
13 GROWING, AND WORSE THAN WE THOUGHT (2019), [https://www.epi.org/publication/the-teacher-](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/)
14 [shortage-is-real-large-and-growing-and-worse-than-we-thought-the-first-report-in-the-perfect-](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/)
15 [storm-in-the-teacher-labor-market-series/](https://www.epi.org/publication/the-teacher-shortage-is-real-large-and-growing-and-worse-than-we-thought-the-first-report-in-the-perfect-storm-in-the-teacher-labor-market-series/). The educators most in demand and with the smallest
16 available labor pool were special education teachers; in California, the shortage is especially
17 pressing, according to the [Learning Policy Institute \(LPI\) report](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/) released in February 2020. *See*
18 NAOMI ONDRASEK, DESIREE CARVER-THOMAS, CAITLIN SCOTT & LINDA DARLING-HAMMOND,
19 LEARNING POLICY INSTITUTE, CALIFORNIA’S SPECIAL EDUCATION TEACHER SHORTAGE (2020),
20 [https://learningpolicyinstitute.org/product/pace-california-special-education-teacher-shortage-](https://learningpolicyinstitute.org/product/pace-california-special-education-teacher-shortage-report)
21 [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
22 inadequate and dangerous governmental inaction during the pandemic. According to one report, a
23 third of districts throughout the country saw a significantly higher number of retirements and
24 resignations in Fall 2020 than in the year before the pandemic. *See* Madeline Will, *The Teaching*
25 *Profession in 2020 (in Charts)*, EDUCATION WEEK (Dec. 18, 2020),
26 <https://www.edweek.org/teaching-learning/the-teaching-profession-in-2020-in-charts/2020/12>.
27 Illinois saw a drastic jump in teacher retirement with a 50 percent increase in retirements for
28 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
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)
[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*
Longer Relevant, ATLANTIC (Jan. 4, 2021),
<https://www.theatlantic.com/ideas/archive/2021/01/schools-staff-shortages/617465/>. In 2020,
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,
2021), <https://www.sacbee.com/news/politics-government/the-state-worker/article249161175.html>.
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.*

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1 & 3. They are Black.⁷ *Id.* ¶ 2. Markel, a 17 year high school junior with an IEP for
2 speech and behavioral issues, enjoys football, basketball, and hip hop dance. *Id.* ¶¶ 4 & 9.
3 Markel’s two older brothers also had IEPs to assist them with their academics. *Id.* ¶ 5.
4 Despite their IEPs, they did not get the individualized attention or the services described in
5 their IEPs, including tutoring. *Id.* Laquana was repeatedly told that there was not enough
6 funding for her sons to receive services. *Id.* ¶ 6. As a result, Markel’s oldest brother
7 graduated with a certificate of completion instead of a high school diploma. *Id.* ¶ 5.
8 10. Markel has difficulty with reading comprehension. *Id.* In first grade, the
9 school requested that Markel receive a formal evaluation for speech. *Id.* ¶ 15. The school
10 identified Markel with a general speech and processing issue, but not dyslexia. *Id.* After
11 Markel’s evaluation, Laquana had to repeatedly follow up in order to create an IEP. *Id.* ¶
12 16. When Markel struggled academically and did not receive assistance, he would become
13 frustrated and lash out. *Id.* ¶ 13. In elementary school, Markel had a behavioral aide who
14 would attend classes with him and help him stay focused, but this service was discontinued
15 in junior high without explanation. *Id.* ¶ 12. When Markel acted out, he would be
16 suspended, causing him to fall further behind. *Id.* In elementary school, the school
17 reached out to Laquana to discuss a 504 plan for Markel that allowed him to step out of
18 class and calm down in a designated location, and this led to fewer suspensions. *Id.* ¶¶ 19
19 & 21. By junior high, the school became more focused on punishment for manifestations
20 of his disabilities. *Id.* From 2008 until 2016, Markel was suspended between a day and a
21 month every other month. *Id.* ¶ 13. In 2016, Markel transferred to a school with a Black
22

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

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

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

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

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

20 **Jeremy H.**

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

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

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

11 **Nathaniel B.**

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

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

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

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

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

11 **C.A.**

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

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

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

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

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

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

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

8 25. Although C.A. has never been suspended for manifestations of her disability,
9 she was often sent to BASE when teachers or staff could not manage her. *Id.* ¶ 28. For
10 example, her IEP states that C.A. finds it difficult to process general announcements. *Id.*
11 ¶ 29. On at least one occasion, a staff member who was unaware of C.A.'s IEP attempted
12 to reprimand her for not following an announcement, resulting in an emotional outburst.
13 *Id.* In another one of C.A.'s classes, other students would agitate her because they thought
14 it was funny when she had an emotional reaction. *Id.* ¶ 31. Because her teacher did not
15 have much experience in managing these situations, C.A. was frequently sent to BASE.
16 *Id.* C.A.'s emotional outbursts embarrassed her and led to her missing class. *Id.* ¶ 30.
17 26. C.A.'s anxiety prevents her from wearing a mask for more than 30 minutes.
18 *Id.* ¶ 8. Melina decided to homeschool C.A. until it is safe to return to in-person learning.
19 *Id.* ¶ 39. Homeschooling C.A. requires constant one-on-one attention. *Id.* ¶¶ 33; 38. As a
20 family of educators, Melina's family has been able to divide up C.A.'s schooling. *Id.* ¶ 36.
21 Melina does not see it as a permanent solution, but is the only safe way for C.A. to be
22 educated currently. *Id.* ¶ 39.

23 **Isaiah G.**

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

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

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

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

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

4 **Rourke K.**

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

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

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

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

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

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

27 **Zavier H.**

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

1 funny, and he loves to read Percy Jackson books and listen to pop and rock music. *Id.* ¶ 4.
2 **Anna H.** is the mother of three children, Xavier H., Brogan H., and Leora I., in MMSD.
3 *Id.* ¶¶ 1- 2. Anna, Xavier, Brogan, and Leora are white. *Id.* ¶ 2.
4 36. Xavier has an IEP for his spastic quadriplegia cerebral palsy and dystonia,
5 which results in his muscles contracting uncontrollably. *Id.* ¶ 5. He is non-vocal, is
6 legally blind with low vision, has trouble with his lungs and breathing, does not eat by
7 mouth, and does not walk or use cerebral palsy switches. *Id.* ¶¶ 5-6. Xavier has no
8 cognitive disability, but because he cannot speak or use ASL, until recently much of his
9 communication has been based on the ways he moves his eyes, his affect, or through
10 lifting a finger. *Id.* ¶¶ 7-8. Anna recently obtained Eye Gaze technology that allows
11 Xavier to select letters and words from a grid to form words and sentences. *Id.* ¶¶ 7-10; 13.
12 Xavier's school did not recommend or pay for this technology; rather, he obtained the
13 technology through the WC. *Id.* ¶ 10.
14 37. Prior to the pandemic, Xavier received occupational, speech, and vision
15 therapy as well as special education, nursing services, and an aide. *Id.* ¶ 12. Once remote
16 learning began, Anna began acting as Xavier's one-on-one and performing all of his
17 nursing and therapies. *Id.* ¶ 16. Because Xavier has limited mobility, Anna must log
18 Xavier into each class and assist him to physically complete any assignment. *Id.* ¶¶ 16-20.
19 Xavier is immunocompromised and is unable to return to school or even have an aide assist
20 in the home until, at a minimum, his family and the aide are able to receive vaccines. *Id.*
21 ¶ 21.
22 **Brogan H.**
23 38. **Brogan H.** is 12 years old, is homeschooled, is in sixth grade, and uses they/
24 them pronouns. *Id.* ¶ 24. Brogan loves to make people laugh, is outgoing, inquisitive, and
25 loves to play video games. *Id.* ¶ 25. Prior to homeschooling Brogan attended public
26 schools, where they had a 504 plan to assist with focus and attention issues. *Id.* ¶ 27.
27 When Brogan was in kindergarten they were diagnosed with ADHD and autism and
28 obtained an IEP to assist with executive functioning, word ordering, and prioritizing

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

7 **Leora I.**

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

19
20 40. Leora has been hesitant to join Zoom classes. Because they are a
21 perfectionist who feels behind from illness-related absences they feel put on the spot and
22 anxious on Zoom. *Id.* ¶ 43. Leora’s gym teacher started kicking Leora out of class when
23 they would not turn on their camera or talk in class. *Id.* ¶ 44. Anna explained that Leora is
24 uncomfortable using their camera and asked whether the teacher could enable the chat
25 function. *Id.* ¶ 45. The gym teacher declined Anna’s requests and stated that other
26 children would abuse the chat. *Id.* Despite Leora’s absences from class the school has not
27 reached out to provide Leora assistance. *Id.* ¶ 46.
28

1 **Darlin P.**

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

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

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

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

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

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

18 **Anthony P.**

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

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

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

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

18 **Charly T.**

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

late or misses class. *Id.* Charly has had difficulties completing assignments on time. *Id.*
 ¶ 16. Prior to March 2020, Charly was obtaining As and Bs in all classes and functioning
 at grade level. *Id.* ¶ 11. As of January 5, 2021, her assessment indicates that she is
 performing at one grade level below her current grade for reading and between one and
 three grade levels below her grade in math. *Id.* ¶ 12. Before the pandemic, Charly also
 had therapy once a week for emotional and behavioral issues. *Id.* ¶ 18. Charly's therapy
 has been discontinued, even though extended social isolation has taken a toll. *Id.*
Adalberto T.
 50. Adalberto is nine years old, in fourth grade, has an IEP for ADHD, and is
 considered to have high spectrum Asperger's syndrome and to be on the autism spectrum.
Id. ¶ 3. Although Adalberto behaved similarly to Charly in pre-school and kindergarten,
 his school repeatedly denied requests for an evaluation. *Id.* ¶ 21. Karla obtained an
 independent ADHD and Asperger's diagnosis at the end of kindergarten. *Id.*
 51. Once he enrolled in first grade, Karla again requested an evaluation and IEP
 for Adalberto. *Id.* ¶ 22. The school performed an assessment and determined Adalberto
 was entitled to services for ADHD, but stated that it could not assess him for Asperger's.
Id. The school indicated that Adalberto needed a BI but could not find one for over a year.
Id. ¶ 23. When the school still could not find a BI in second grade, Karla went to
 Adalberto's class every day for an hour to act as his aide. *Id.* At the beginning of third
 grade, when another child with a BI moved schools, Adalberto finally received a BI. *Id.*
 ¶ 26. With the BI accompanying him in special education classes, Adalberto began
 making significant strides in November 2019. *Id.* ¶ 27. These changes transformed
 Adalberto. *Id.* ¶¶ 27-28. He was more excited to go to school, and his grades and
 behavior improved until the pandemic halted his progress. *Id.* ¶¶ 27; 33.
 52. Since transitioning to remote learning, Adalberto has been easily distracted
 and sometimes refuses to get out of bed or log into Zoom. *Id.* ¶ 33. Adalberto still has a
 BI, but they can only communicate through chat and Adalberto needs assistance focusing
 and engaging with his assignments. *Id.* ¶ 34. Sometimes Adalberto is muted or has his

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

5 **Jasmine S.**

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

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

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

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

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

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

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

2 A.S.

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

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

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

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

Educators

Kari Brennan

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

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

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

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

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

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

19
20
21 ⁸ While Kari shares one example of a charter school success story, other charter schools not
22 adequately serving students with moderate to severe disabilities is well-documented. See CTA
23 and UTLA, *State of Denial: California Charter Schools and Special Education Students* (Aug.
24 2019), https://www.utla.net/sites/default/files/state_of_denial_brief_-_final.pdf, at 5 (noting that in
25 LAUSD, students with intellectual disability, orthopedic impairment, or visual impairment were
26 enrolled in charter schools at roughly one quarter the rate at which they were enrolled in LAUSD
27 schools); ACLU of Southern California & Public Advocates, *Unequal Access: How Some*
28 *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).

Georgia Flowers Lee

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

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

Virginia Glass

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

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

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

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

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

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

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

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

16 **Amy Mizialko**

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

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

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

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

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

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

27 **Julian Canek Pena-Vargas**

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

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

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

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

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

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

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

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

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

23 ⁹ A community school is built upon partnerships between the school and community resources,
24 integrating academics, health, social services, youth and community development, and community
25 development. See *What is a Community School?*, COALITION FOR COMMUNITY SCHOOLS,
26 http://www.communityschools.org/aboutschools/what_is_a_community_school.aspx (last visited
27 Mar. 15, 2021); Katie 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 trauma can derail a student’s learning without necessarily qualifying them for an IEP. *Id.*

2 **Alyssa Potaszniak**

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

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

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

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

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

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

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

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

3 **III. FACTS**

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

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

17 93. The depth of the current crisis in educational access for students of color
18 with disabilities is in no small part due to the former Education Secretary DeVos's view
19 that it was not her responsibility or that of the federal government to track school districts
20 and their coronavirus infection rates or to assist with how schools are to reopen.¹² But the
21 disproportionate deleterious racial impact extends well before 1973, and although the
22 passage of Section 504 and the IDEA helped, chronic underfunding and the Department's
23 inadequate monitoring and enforcement have contributed to the inequity in the delivery of
24 special education and related supports and services for students with disabilities who have
25

26 ¹⁰ CCRR Expert Report at 4.

27 ¹¹ *Id.* at 15-20.

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

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

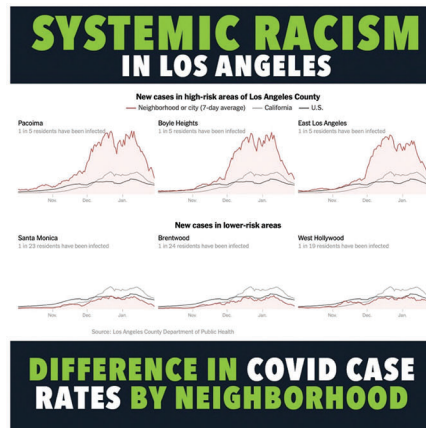


Figure 1 Systematic Racism in Los Angeles: Difference in COVID case Rates by Neighborhood¹³

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

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

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

- 15 (a) Students have fallen behind or regressed since March 2020 due to not
- 16 receiving services and supports identified in their IEPs.
- 17 (b) Students have been transferred between different special education
- 18 teachers or substitutes because of the special education teacher shortage and

19
20 <https://censusreporter.org/profiles/16000US0670000-santa-monica-ca/>. Brentwood, where 1 in 24
21 residents have been infected, is 52 percent white, 8 percent Black, 10 percent Asian, and 23
22 percent Latinx, and the median household income is \$108,994. *Brentwood*, CENSUS REPORTER
(2019), <https://censusreporter.org/profiles/16000US0608142-brentwood-ca/>. West Hollywood,
23 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
24 REPORTER (2019), <https://censusreporter.org/profiles/16000US0684410-west-hollywood-ca/>.
¹⁴ Joseph Shapiro, *COVID-19 Infections And Deaths Are Higher Among Those With Intellectual*
25 *Disabilities*, NPR MORNING EDITION (Jun. 9, 2020)
[https://www.npr.org/2020/06/09/872401607/covid-19-infections-and-deaths-are-higher-among-](https://www.npr.org/2020/06/09/872401607/covid-19-infections-and-deaths-are-higher-among-those-with-intellectual-disabilities)
26 [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)
27 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7245650/> (“COVID-19 appears to present a
28 greater risk to people with [intellectual and developmental disabilities], especially at younger
ages.”).

recent retirements.

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

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

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

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

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

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

B. Challenges identifying disabilities and necessary services

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

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

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

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

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

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

27
28 ¹⁶ CCRR Expert Report at 13.

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

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

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

25 ¹⁷ *Id.* at 15, Table 1.

26 ¹⁸ *Id.* at 15-16, Figure 2.

27 ¹⁹ *Id.* at 16; 20.

28 ²⁰ *Id.* at 16.

²¹ *Id.* at 56 & n. 170.

²² *Id.* at 25, Figure 5.

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

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

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

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

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

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

25 _____
26 ²³ *Id.* at 12.

27 ²⁴ *Id.* at 13.

28 ²⁵ See Michelle K. Decl. ¶¶ 10-20.

²⁶ See Melina E. A. Decl. ¶¶ 19-20.

²⁷ CCRR Expert Report at 54 & n. 153.

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

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

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

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

25 ²⁸ *Id.* at 55 & n. 165.

26 ²⁹ *Id.* at 55 & n. 161.

27 ³⁰ *Id.* at 54 & n. 155.

28 ³¹ *Id.* at 54 & n. 156.

³² *Id.* at 55 & n. 159.

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

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

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

14 **E. Racial disproportionality**

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

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

25 ³⁴ Laquana A. Decl. ¶ 29.

26 ³⁵ CCRR Expert Report at 54.

27 ³⁶ *Id.* at 54 & n. 157.

28 ³⁷ *Id.* at 10-15.

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

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

8 111. Students of color are both over-identified and under-identified in terms of
9 special education.⁴³ This dual-track phenomenon leads to injury in both directions:
10 segregation and stigma in the former scenario (with insufficient support provided
11 notwithstanding the identification), and then failure to provide support and necessary
12 education services in the latter. The evaluation process—which has subjective elements—
13 is complicated, and highly affected by state and local contextual factors, including but not
14 limited to access to effective reading instruction in general education, discipline
15 disparities, implicit racial bias, and availability of early intervention supports and services
16

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

18 ⁴⁰ 20 U.S.C. § 1418(d).

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

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

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

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

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

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

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

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

24 ⁴⁶ *Id.* at 383.

25 ⁴⁷ *Id.*

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

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

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

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

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

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

24 ⁵⁰ *Id.* ¶ 20.

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

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

⁵³ *Id.* at 29-30.

⁵⁴ *Id.* at 29.

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

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

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

24 ⁵⁵ *Id.* at 30.

25 ⁵⁶ *Id.* at 32 & n. 73.

26 ⁵⁷ *Id.* at 33.

27 ⁵⁸ *Id.* at 32, Figure 5.

28 ⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 32-34.

⁶² *Id.* at 41; 43, Figure 8.

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

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

22 ⁶³ *Id.* at 41.

23 ⁶⁴ *Id.*

24 ⁶⁵ *Id.*

25 ⁶⁶ *Id.* at 39 & n. 102.

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

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

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

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

13 – Corbett O’Toole, Disability Rights Activist

14 **IV. CONGRESSIONAL ACTION**

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

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

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

⁷⁰ See *Build Back Better: Joe Biden’s Jobs and Economic Recovery Plan for Working Families*,
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 ARP Act provides \$122.7 billion for the existing Elementary and Secondary School
2 Emergency Relief fund. School districts must reserve 20 percent of these funds for
3 programs that address learning loss and the remaining funds can be used for a variety of
4 purposes including reducing class sizes and hiring additional teachers, specialized
5 instructional support personnel and other educational staff. In addition, \$3 billion is
6 provided as additional IDEA funding for fiscal year 2021. But because it is one-time
7 funds, the ARP Act does not go far enough in the long term.

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

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

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

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

22 123. To be clear, the Coalition is not asserting that FAPE cannot occur in a
23 remote environment for students with disabilities. To the contrary, as the declarations of
24 Alicia B., Tiffany G., Martha S., and Anna H. illustrate, the remote learning may
25

26
27 ⁷¹ *Bd. of Educ. of Hendrick Hudson Ctr. Sch. Dist. v. Rowley*, 458 U.S. 176, 181 (1982) (holding
that IDEA’s use of “individualized” requires an IEP to be tailored to each student’s unique needs).

28 ⁷² 20 U.S.C. §§ 1401(26)(A) and (29).
⁷³ 20 U.S.C. §§ 1401(14) and (26)(A).

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

13 124. As of the filing of this Comment, over 575,000 Americans have died from
14 COVID-19,⁷⁵ directly impacting millions across the country, including students. And even
15 students who have not directly experienced the death of a family member, friend or
16 educational aid, those students still have lost over a year of social interactions under
17 normal conditions without restrictions. Before academic instruction and learning can be
18 effective, the enormous social and emotional needs of students must be met. The
19 Department has correctly directed school districts to use their ARP funds to meet these
20 needs through a process that is anchored in the input of educators and other stakeholders.
21 Given the high toll the pandemic has taken on communities of color in particular,
22 proactively addressing pandemic trauma is crucial to racial equity. ARP funds should be
23 used to provide the tools to do so including engaging stakeholders, providing high-quality
24 professional development for the entire district on implicit racial bias, trauma-informed
25

26 ⁷⁴ See, e.g., Alicia B. Decl. ¶ 3; Tiffany G. Decl. ¶¶ 5-10; Martha S. Decl. ¶ 3; Anna H. Decl. ¶¶ 5-
27 7; 23; 38-39; 49.

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

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

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

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

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

⁷⁸ *Dear Colleague Letter: Nondiscriminatory Administration of School Discipline*, U.S.
DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS (Jan. 8, 2014),
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>, *repealed by Dear*
Colleague Letter, U.S. DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS (Dec. 21, 2018),
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201812.pdf>.

⁷⁹ CCRR Expert Report at 67.



The Center for Civil Rights Remedies
at The Civil Rights Project | *Proyecto Derechos Civiles*

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

by Daniel J. Losen, Paul Martinez and Grace Hae Rim Shin
March 22, 2021

EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

However, more funding is needed because fully funding the IDEA still leaves no federal funding earmarked for the 504-only students.¹ Nor did we find any states that earmarked state funds to provide supports and services to 504-only eligible students. We conclude that under federal law the 504-only students have rights, but there are no resources specific to meeting their needs. We recommend beginning with at least one billion dollars per year with some of those funds dedicated to more accurate counts and estimates of the additional costs of meeting the needs of 504-only students. State educational agencies should also earmark additional funding to meet the needs of 504-only students. Legislative solutions might include amending the Every Student Succeeds Act, or creating a new statute that would specify additional funds to provide mental health services and effective behavioral supports and interventions for students who have a disability pursuant to 504-only, as well as for students who have experienced trauma.

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

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

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

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

¹ None of the additional funding that Congress has suggested for COVID-19 relief has been specifically earmarked for students with disabilities who are not eligible for special education, but still entitled by law to receive supports and services. See email correspondence with Ron Hager, Managing Attorney for Education and Employment, and Eric Buehlmann, Deputy Director for Policy Director, National Disabilities Rights Network (2021, January 12) [on file with author].

[Additional submission by Mr. Scott follow:]



National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

Statement for the Record
U.S. House of Representatives
Committee on Education & Labor, Subcommittee on Early Childhood, Elementary, and
Secondary Education
"Addressing the Impact of COVID-19 on Students with Disabilities"
May 6, 2021

Chairman Scott, Ranking Member Foxx, Subcommittee Chair Member Sablan, Ranking Subcommittee Member Owens, and Members of the Subcommittee, thank you for the opportunity to submit this Statement for the Record. On behalf of the National Council on Disability (NCD), we thank the subcommittee for the inclusion of critically needed additional funding in the American Rescue Plan of 2021, to support students with disabilities under the Individuals with Disabilities Education Act (IDEA) for the duration of the COVID-19 public health emergency. As a federal voice for the over 61 million Americans with disabilities, including students with disabilities and their families, NCD is committed to advancing policy solutions that create a more inclusive society for people with disabilities.

Throughout the COVID-19 pandemic, disability advocates have been outspoken about well-founded concerns over the educational needs of students with disabilities during widespread and prolonged school closures. The full extent of the effects of school closures and remote learning upon students with disabilities is not fully understood and requires deeper investigation. For this reason, since last year, NCD has been conducting a comprehensive study to examine the effects of the pandemic on people with disabilities across a range of policy topics that will include examination of students' experiences. We would like to present our findings before this subcommittee at the conclusion of our research in late summer.

The full integration of children with disabilities into society cannot be accomplished without access to a free and appropriate public education. Under ordinary circumstances, students with disabilities – about 14 percent of students from kindergarten to 12th grade, and more than 7 million children – already experienced enormous barriers in their education. Prior to the public health emergency, as we documented in our 2018 report, *Broken Promises: The Underfunding of IDEA*, IDEA funding was sorely inadequate, causing delays and denials of services, and triggering unfair social resentment and discrimination.¹

Statement for the Record
 U.S. House Committee on Education & Labor – Subcommittee Hearing
 “Addressing the Impact of COVID-19 on Students with Disabilities”
 May 6, 2021
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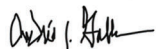
While the COVID-19 pandemic caused significant disruptions to the educational experiences of all students, it was especially disruptive for students with disabilities. School districts’ sudden reliance on distance learning as the sole option for education exacerbated the exclusion and isolation of students with disabilities. While some students are thriving in a remote classroom,² and some have fewer challenging behaviors at home, many more are losing out on educational opportunities during the protracted periods of lockdown and school closures.

The often overlapping problems experienced by students with disabilities include: barriers to accessing remote education related to equipment, technology and broadband; the inability of some students with disabilities to focus and learn during remote learning; the failure of schools to accommodate the needs of students with disabilities on remote platforms; the inability to receive services and supports that were provided in person or on school campuses, such as occupational therapy, speech and language therapy, behavioral and mental health supports, small group instruction, and one-on-one aides; among others. Those and other issues will be addressed in NCD’s report this summer.

Given the detrimental effects that students with disabilities have experienced as a result of the extended school closures, future federal responses to the COVID-19 pandemic must include additional IDEA funding, as well as provide compensatory education services to allow students with disabilities to regain the skills that were disrupted, delayed or completely lost. This funding should specifically allow students with disabilities to receive support services while at home and as they return to in-person learning safely.

As there are likely to be future national emergencies, it is of critical importance for students with disabilities that we understand the barriers they encountered during this pandemic and commit to making internet access more widely available especially to families that cannot afford it or are in rural areas; expand access to state-of-the-art computer equipment; and improve the accessibility of on-line educational platforms. Doing so is imperative not only for students with disabilities to have an equal opportunity to engage and succeed in remote learning, if that is the only option, but also to ensure they continue to receive the services and supports that are essential for their academic success.

Most Respectfully,



Andrés J. Gallegos
 Chairman

Statement for the Record
U.S. House Committee on Education & Labor – Subcommittee Hearing
“Addressing the Impact of COVID-19 on Students with Disabilities”
May 6, 2021
Page 3 of 3

¹ See National Council on Disability, *Broken Promises: The Underfunding of IDEA* 1, 13 (Washington, D.C.: Feb. 7, 2018) (describing how the federal government funds only 18 percent of IDEA costs, and how funding issues can cause delays in evaluations or rejection of requests for independent educational evaluations, inappropriate changes in placement and/or services, and failures to properly implement individualized education programs (IEPs), together with resentment and discrimination against children with disabilities in their public schools), https://nacd.gov/sites/default/files/NCD_BrokenPromises_508.pdf.

² See GAO, *Distance Learning*, *supra* n. __, at 18 (discussing students with social anxiety or other mental health conditions).

[Questions submitted for the record and the responses by Mr. Hager follow:]

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May 14, 2021

Ronald M. Hager
Managing Attorney
National Disability Rights Network
820 First Street NE, Suite 740
Washington, D.C. 20002

Dear Mr. Hager,

I would like to thank you for testifying at the May 6, 2021 Subcommittee on Early Childhood, Elementary, and Secondary Education hearing entitled "*Addressing the Impact of COVID-19 on Students with Disabilities*."

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Friday, May 21, 2021, for inclusion in the official hearing record. Your responses should be sent to Mariah Mowbray and Phoebe Ball of the Committee staff. They can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Subcommittee on Early Childhood, Elementary, and Secondary Education Hearing
"Addressing the Impact of COVID-19 on Students with Disabilities"
Thursday, May 6, 2021
2:30 p.m. (Eastern Time)

Chairman Robert C. "Bobby" Scott (D – VA)

1. Is your organization looking at how the funding that Congress has already provided is being allocated at the state and local level and if so, how it is being spent to make sure no students are left behind and that achievement gaps are dealt with?

Representative Jahana Hayes (D – CT)

1. Mr. Hager, a GAO report from before the pandemic indicates that parents from low-income school districts are less likely to file for dispute resolution such as due process or mediation.

Do these parents have sufficient information about their rights and do they have sufficient access to representation and support to provide meaningful access to these processes?
What can we do on a federal level to make this process better, and more equitable?



May 21, 2021

Representative Bobby Scott
Chair
Committee on Education and Labor
United States House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chair Scott:

Thank you for the opportunity to testify at the May 6, 2021 Subcommittee on Early Childhood, Elementary, and Secondary Education hearing entitled "Addressing the Impact of COVID-19 on Students with Disabilities." Also thank you for the additional questions you sent to me. My answers are below.

Chairman Robert C. "Bobby" Scott (D – VA)

1. Is your organization looking at how the funding that Congress has already provided is being allocated at the state and local level and if so, how it is being spent to make sure no students are left behind and that achievement gaps are dealt with?

Response:

Thank you for your question, Chairman Scott. The nationwide network of Protection and Advocacy (P&A) agencies has not been systematically tracking how the federal funding is being spent. The National Disability Rights Network (NDRN) has gathered some information from P&A agencies which I can share with you and P&As have been working in many states with other stakeholders to try to ensure the federal funding is being well spent, especially to support the needs of traditionally marginalized communities.

For example, several P&As, including Disability Rights Michigan are urging that additional resources be provided to meet the social/emotional needs of students as they return to in-person learning. As I reported in my written testimony, several states are exploring an extended period of eligibility for students close to aging out, but states are struggling with how to fund this extra year. Disability Rights New Jersey, the New Jersey P&A, is supporting the effort of the state legislature in considering a bill that would extend services for a year past 21 and would use funds from COVID relief for the costs of the services.

Specific State Education Funding Efforts that P&As have been following

Florida

820 FIRST STREET NE, SUITE 740 • WASHINGTON, DC 20002-4243
TEL: 202.408.9514 • FAX: 202.408.9520 • TTY: 202.408.9521
WEBSITE: WWW.NDRN.ORG • E-MAIL: INFO@NDRN.ORG

The Florida legislature has required Elementary and Secondary School Emergency Relief (ESSER) II funds be spent in 3 categories (and the remainder is unrestricted). Those are: finding students who went missing in school year 2020-21 (4%); technology (approx. 8%); and learning loss (approx. 31%). The state and districts must write detailed plans for the fund use for both ESSER II and American Rescue Plan (ARP) before it can be allocated. The state has advanced some of ESSER II to districts that had spent at least 55% of their ESSER I funds to allow for continuity.

New Jersey

Under ESSER II the New Jersey Department of Education has designated \$30 million from the State set-aside for the provision of mental health services and supports. These funds will support schools in building a continuum of school-based mental health services and supports for students and educators, in coordination with existing county and local services. Allocations for these funds were based upon total LEA enrollment with a minimum of \$45,000 per Local Education Agency (LEA). The allocations are also available on the CRRSA Fund Allocations PDF.

Each LEA will spend at least 10% of the allocation on professional development that supports the provision of school-based mental health supports and services. The remaining amount can be invested in the further development of mental health supports and services within the school district and/or partnerships with community agencies to ensure that additional programming and supports can be provided to students, educators, and families.

This is the link to the guidance for the mental health set aside funds
<https://www.nj.gov/education/esser/crrsa/docs/Examples%20of%20Ways%20to%20Use%20Funds%20for%20MH%20Supports%20and%20Services.pdf>

Texas

Texas is using \$30 million of CARES Act funding to provide up to \$1,500 to students with a qualifying disability. Eligibility is based on the student's disability and educational setting. If they meet these criteria, they are entitled to supplemental funds. No need to show a delay or denial. It establishes a good strict liability approach for students who have been harmed.

Additional Thoughts

Many of the P&As are not seeing a lot of new spending. They are seeing new extended school year (ESY) services and some services designed to start to catch students up. We believe it may be premature to fully see how this money is being spent because of the process of State allocation to LEAs and budget adoption.

We fully agree with the call for a Government Accountability Office study to investigate exactly where the money is going.

Representative Jahana Hayes (D – CT)

1. Mr. Hager, a GAO report from before the pandemic indicates that parents from low-income school districts are less likely to file for dispute resolution such as due process or mediation.

Do these parents have sufficient information about their rights and do they have sufficient access to representation and support to provide meaningful access to these processes? What can we do on a federal level to make this process better, and more equitable?

Response:

Thank you for your question Representative Hayes. The lack of parent information about the IDEA and due process rights has long been a concern for us. This is the case regardless of socio-economic status, but it is particularly true of parents in low-income communities. Likewise, these families do not have adequate access to representation to enable them to meaningfully exercise their rights.

Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs) are federally funded to provide training and support to families, but they do not have the resources to fully meet the need. The nationwide network of Protection and Advocacy (P&A) agencies is also federally funded and does a lot of outreach to underserved communities, often in concert with the PTIs and CPRCs. The P&A network is available both to provide training and other information to families as well as to provide legal representation. However, as I mentioned during my testimony, there is no dedicated funding for the P&As to do this work so they must divert resources from other priorities to do so.

Additionally, as with the PTIs and CPRCs, the P&As do not have the resources to meet the need. For higher income families, they have the option of seeking a private attorney to represent them, but most private attorneys require a retainer, up front, putting them out of reach for the majority of families. The P&As do not charge for their services.

One of the concrete things the federal government can do at this point is to increase the funding for the PTIs, CPRCs and the P&As. A second item would be to establish and fund a dedicated Education P&A program.

Thank you again for the opportunity to provide input on this very important issue.

Sincerely,

Ronald M. Hager

Ronald M. Hager, Managing Attorney
National Disability Rights Network

[Questions submitted for the record and the responses by Ms. Littleton follow:]

MAJORITY MEMBERS:
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May 14, 2021

Kanika A. Littleton
Project Director
Michigan Alliance for Families
25363 Elizabeth Way
Farmington Hills, MI 48336

Dear Ms. Littleton,

I would like to thank you for testifying at the May 6, 2021 Subcommittee on Early Childhood, Elementary, and Secondary Education hearing entitled "*Addressing the Impact of COVID-19 on Students with Disabilities*."

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Friday, May 21, 2021, for inclusion in the official hearing record. Your responses should be sent to Mariah Mowbray and Phoebe Ball of the Committee staff. They can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Subcommittee on Early Childhood, Elementary, and Secondary Education Hearing
"Addressing the Impact of COVID-19 on Students with Disabilities"
Thursday, May 6, 2021
2:30 p.m. (Eastern Time)

Chairman Robert C. "Bobby" Scott (D – VA)

1. Is your organization looking at how the funding that Congress has already provided is being allocated at the state and local level and if so, how it is being spent to make sure no students are left behind and that achievement gaps are dealt with?

Representative Frederica S. Wilson (D-FL)

1. Ms. Littleton, the development of Individualized Education Program plans and 504 plans, which help ensure that students receive a free, appropriate public education, are collaborative processes. As we seek ways to recover learning loss, what can be done to ensure that this collaborative process is used to help students recover academically, functionally and social-emotionally? Is there anything that the Department of Education can provide to aid in this process for parents across the board?



c/o The Arc Michigan • 1325 S. Washington Ave. • Lansing, MI 48910-1652
 (800) 552-4821 • (517) 487-5426 • Fax (517) 487-0303 • www.michiganallianceforfamilies.org

Kanika A. Littleton, Parent & Project Director for Michigan Alliance for Families
 Written Responses for the Record
 Subcommittee on Early Childhood, Elementary, and Secondary Education Hearing
 “Addressing the Impact of COVID-19 on Students with Disabilities”
 Thursday, May 6, 2021 2:30 p.m. (Eastern Time)

Chairman Robert C. “Bobby” Scott (D – VA)

1. Is your organization looking at how the funding that Congress has already provided is being allocated at the state and local level and if so, how it is being spent to make sure no students are left behind and that achievement gaps are dealt with?

Response:

Michigan Alliance for Families is part of several stakeholder groups advising the Michigan Department of Education (MDE) and State Board of Education on the unmet needs of students, including those with disabilities and from traditionally marginalized groups. This includes providing suggestions on the use of funding to equitably support these students. However, we have no decision-making authority in how funding is allocated.

Several steps have been taken to address the needs of students during the COVID-19 pandemic, particularly those at a greater disadvantage. Here are examples of how MDE has allocated funds to ISDs and local districts:

- Provide devices to all students who need them for remote learning
- Provide internet hot spots for students without access to broadband
- Provide learning platforms so districts may implement remote learning
- Provide professional development on implementing remote classrooms, as well as addressing needs for in-person learning during the pandemic (i.e., MTSS, PBIS, Social-emotional, academic)
- Provide meals to all students, regardless of income
- Provide bonuses for recently retired teachers to return to the classroom, hiring new staff (addresses teacher/support staff shortage)
- Provide PPE and other safety equipment for students and educators who have returned to in-person learning
- Address structural challenges in certain school buildings (i.e., ventilation systems)
- Providing recovery/compensatory services to address loss of learning
- Invest in high quality curriculums and specialists to address achievement gaps, recovery, and acceleration of learning
- Provide parent training, information, and resources to support learning for all students

The Michigan Alliance for Families is a Michigan Department of Education *Individuals with Disabilities Education Act* (IDEA) Grant Funded Initiative and our state's federally funded Parent Training and Information Center.

Representative Frederica S. Wilson (D-FL)

1. Ms. Littleton, the development of Individualized Education Program plans and 504 plans, which help ensure that students receive a free, appropriate public education, are collaborative processes. As we seek ways to recover learning loss, what can be done to ensure that this collaborative process is used to help students recover academically, functionally, and social-emotionally? Is there anything that the Department of Education can provide to aid in this process for parents across the board?

Response:

The Parent Center Program, including Parent Training & Information Centers (PTI) and Community Parent Resource Centers (CPRC) are funded through IDEA Part D to provide information, education, and support to parents/caregivers to understand their rights, navigate early intervention, special education, and transition for children and youth with disabilities. This includes education on school-parent-community collaboration.

As Michigan's PTI, we work collaboratively with the Special Education Mediation Services (SEMS) another IDEA funded initiative to specifically address positive communication and dispute resolution related to special education. Both organizations receive additional funding through IDEA funds provided to the MDE to support families. The work of Michigan Alliance for Families is specifically aligned with Part C Indicator 4: Family Involvement: Percent of families participating in Part C that report early intervention services have helped the family: know their rights; effectively communicate their children's needs; and help their children develop and learn and Part B Indicator 8: Facilitated Parent Involvement: Percent of parents with a child receiving special education services who report schools facilitated parent involvement of Michigan's State Performance Plan (a requirement of IDEA).

We work closely with MDE to develop information, resources, and training for families across the state, with particular attention given to families from underserved populations. This training and support is critical to parents understanding IDEA and Section 504, advocating for their students, and becoming actively involved in their students' education. However, we have limited capacity to support every family who needs assistance. Additional funding for the PTIs and CPRCs would make it possible to service more families and increase positive outcomes for students.

In order to address challenges related to learning during COVID-19, in collaboration with SEMS, MDE and other organizations, Michigan Alliance for Families has offered the following trainings to families, educators, and service providers (this list is not exhaustive):

- Special Education and COVID-19: First Steps
- Distance Learning: Monitoring Your Child's Progress at Home
- PBIS: Supporting Your Child's Learning at Home
- Participating in a Virtual IEP Meeting
- Return to School Considerations
- FAPE and COVID-19: What Families Need to Know
- Special Education and Eligibility During COVID-19
- Parent Advocacy During Unprecedented Times
- Working Together When We Don't Agree
- Mental Health & Special Education

Additionally, Michigan Alliance for Families is a member of a larger advocacy group to support students with disabilities in the state of Michigan. Michigan Parent Advocacy & Attorney Coalition (MiPAAC) has provided input to address questions related to funding and the needs of students with disabilities during and following the COVID-19 pandemic (please see attached letter).

The Michigan Alliance for Families is an *Individuals with Disabilities Education Act (IDEA)*

Mandated Activities Project of the Michigan Department of Education.

[Questions submitted for the record and the responses by Ms. Kovach follow:]

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 MICHELLE STEEL, CALIFORNIA
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 VAGANCY

May 14, 2021

Danielle M. Kovach, EdD
 Special Education Teacher
 Tulsa Trail Elementary School
 Hopatcong Board of Education
 21 Longfellow Drive
 Succasunna, NJ 07876

Dear Dr. Kovach,

I would like to thank you for testifying at the May 6, 2021 Subcommittee on Early Childhood, Elementary, and Secondary Education hearing entitled "*Addressing the Impact of COVID-19 on Students with Disabilities*."

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Friday, May 21, 2021, for inclusion in the official hearing record. Your responses should be sent to Mariah Mowbray and Phoebe Ball of the Committee staff. They can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
 Chairman

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1. Is your organization looking at how the funding that Congress has already provided is being allocated at the state and local level and if so, how it is being spent to make sure no students are left behind and that achievement gaps are dealt with?

Representative Frederica S. Wilson (D-FL)

1. Dr. Kovach, research has shown that black students with more black teachers are less likely to experience exclusionary discipline. We also know that IDEA eligible students of color, which make up a disproportionate share of all students with disabilities, tend to be disciplined more harshly than their peers. Given this, please speak specifically to the need to increase the share of qualified special education teachers of color, who are dramatically underrepresented in the workforce?

May 21, 2021

Chairman Kiliili Sablan
House Education and Labor
Subcommittee on Early Childhood,
Elementary, and Secondary Education
Washington DC 20515

Ranking Member Burgess Owens
House Education and Labor
Subcommittee on Early Childhood,
Elementary, and Secondary Education
Washington, DC 20151

Dear Chairman Sablan and Ranking Member Owens,

Thank you for the invitation to participate as a witness in the May 6 Subcommittee hearing “Addressing the Impact of COVID-19 on Students with Disabilities.” Below, please find responses to questions that were posed following the hearing, which are intended for inclusion the hearing record. I would like to thank Chairman Scott and Representative Wilson for posing these questions, which are of urgent and critical importance to our field.

Chairman Robert C. “Bobby” Scott (D – VA)

1. Is your organization looking at how the funding that Congress has already provided is being allocated at the state and local level and if so, how it is being spent to make sure no students are left behind and that achievement gaps are dealt with?

The Council for Exceptional Children (CEC) is pleased that Congress has provided funding through the Coronavirus Aid, Relief and Economic Security Act, the Coronavirus Response and Relief Supplemental Appropriations Act, and the American Rescue Plan (ARP), the latter of which included targeted funding for the Individuals with Disabilities Education Act (IDEA). The pandemic has been detrimental to the special educator profession, which has been facing dire shortages for years. More K-12 public education jobs were lost in April 2020 than during the Great Recession, and half of the losses between March and April last year were among special education teachers, and teaching assistants.

To ensure learning recovery for children with disabilities and to support their social and emotional developmental and mental health needs, it is imperative that intensive instruction, services, and supports are delivered by qualified personnel. Qualified special educators must also be intentionally included as states and districts develop plans to provide programs designed to address learning loss such as summer learning/summer enrichment, extended day, comprehensive afterschool, or extended school year programs. To support these critical needs, CEC has engaged with state and district leaders and its membership to provide information and strategies to increase district teaching ratios with the targeted IDEA funding provided through the ARP and supporting the special educator pipeline as institutions of higher education examine ways to improve teacher education programs considering the massive shortages each state is experiencing.

While the ARP IDEA funds are essential to districts and schools this year, Congress must also continue to invest in IDEA through the Fiscal Year 2022 appropriations process and future Fiscal Years so that all parts of IDEA, including Part D, which supports the recruitment and training of special educators, can be used to ensure more special educators are recruited and trained. CEC has made specific recommendations for FY 2022 under the IDEA which I referenced in my written testimony.

It is through these imperative appropriations investments that states will be better situated to restore the jobs lost during the pandemic, strengthen the educator pipeline for the future, and ensure all infants, toddlers, children, and youth with disabilities have access to a quality education.

Representative Frederica S. Wilson (D-FL)

1. Dr. Kovach, research has shown that black students with more black teachers are less likely to experience exclusionary discipline. We also know that IDEA eligible students of color, which make up a disproportionate share of all students with disabilities, tend to be disciplined more harshly than their peers. Given this, please speak specifically to the need to increase the share of qualified special education teachers of color, who are dramatically underrepresented in the workforce?

Attracting, preparing, and retaining a diverse, qualified special education workforce fully reflective of the racial, cultural, and linguistic diversity of infants, toddlers, children, and youth with exceptionalities is an urgent priority for our field. Lack of teachers of color thwarts efforts to provide inclusive, culturally-sustaining settings for all infants, toddlers, children, and youth, including those with exceptionalities. Persistent shortages, high rates of turnover and attrition, and uneven distribution make attracting and retaining an adequate, diverse special educator workforce challenging. The CEC is committed to expanding the special educator workforce and the share of qualified special educators of color.

Investments from local, state, and federal sources offer some assistance with attracting and preparing individuals to special education but fall short of fully staffing needs in all settings, from early childhood through post-secondary education. Long-standing federal programs, such as the Personnel Preparation Grants, the Teacher Quality Partnership Grants, and Federal loan payback opportunities help increase the supply of well-prepared educators but fall short of meeting considerable personnel needs. CEC supports expanding these programs to attract more individuals from diverse backgrounds to the profession.

Finally, emerging evidence of grow-your-own programs to attract and prepare individuals of color into the teaching profession is promising. Unlike traditional preparation, grow-your-own programs often include articulation agreements between Institutes of Higher Education and focus on recruiting high school students and paraprofessionals into the workforce. Increased, long-term investment in such initiatives can considerably impact the availability of well-prepared racially, culturally, and linguistically diverse special educators to meet the demand. Federal funding for research and implementation of grow-your-own programs is urgently needed.

Thank you again for inviting me to testify, and for raising these questions for the record.

Sincerely,



Danielle M. Kovach, EdD
Special Education Teacher, Tulsa Trail Elementary School
President-Elect, Council for Exceptional Children

[Whereupon, at 4:24 p.m. the Subcommittee was adjourned.]

