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15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA

17 E.E by and through her *guardian ad litem* A.J.  
 18 and L.N. by and through his *guardian ad litem*  
 19 K.N., on behalf of themselves and a class of  
 20 those similarly situated; and DISABILITY  
 21 RIGHTS EDUCATION & DEFENSE FUND,  
 22 Plaintiffs,

21 vs.

22 STATE OF CALIFORNIA; CALIFORNIA  
 23 STATE BOARD OF EDUCATION; and  
 24 CALIFORNIA DEPARTMENT OF  
 25 EDUCATION,

25 Defendants

CASE NO.: 4:21-cv-7585

**CLASS ACTION**

**COMPLAINT FOR INJUNCTIVE AND  
 DECLARATORY RELIEF FOR  
 VIOLATIONS OF:**

Americans with Disabilities Act, 42 U.S.C. §  
 12131 et seq.

Section 504 of the Rehabilitation Act of 1973,  
 29 U.S.C. § 794.

1 ADDITIONAL COUNSEL CONTINUED FROM PREVIOUS PAGE

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**INTRODUCTION**

1  
2 1. This is a civil rights complaint concerning discrimination by the State of  
3 California against its students with disabilities. California has adopted a new state law –  
4 Assembly Bill 130 - that sharply limits alternatives to in-person classes, leaving families whose  
5 children are at higher risk from COVID-19 with only one option: Independent Study.  
6 Alarming, families of students with disabilities have found that California’s Independent  
7 Study program is effectively closed to them because of the program design or absence of needed  
8 accommodations.

9 2. The new State statute requires school districts to automatically enroll non-  
10 disabled students in distance learning through Independent Study if their parents determine that  
11 their “health would be put at risk by in-person instruction.” Cal. Educ. Code § 51745(a)(6). In  
12 contrast, students with disabilities face multiple hurdles in attempting to access the same  
13 program.

14 3. Plaintiff L.N. is nine years old and has multiple disabilities, including a severely  
15 compromised immune system and chronic lung disease that put him at much higher risk from  
16 exposure to COVID-19. Nonetheless, he was able to access his educational program last year  
17 safely and effectively through distance learning. When his school started in August 2021, his  
18 mother asked for distance learning through Independent Study. However, the new State law  
19 bans students who are in special education, such as L.N., from participating in Independent  
20 Study “unless the pupil’s individualized education program [IEP] specifically provides for this  
21 participation.” Cal. Educ. Code § 51745(c). L.N. and his mother are still waiting for the school  
22 district to convene an IEP meeting to consider his eligibility for Independent Study or any other  
23 alternative to in-person classes. In the interim, school district personnel told L.N.’s mother that  
24 he is unlikely to qualify for Independent Study, that they will not provide any of his special  
25 education services and supports even if he were to qualify, and until then, he is expected to  
26 attend in-person despite his health conditions. To protect his health, he remains at home but has  
27 already missed a month of school.

28 4. Plaintiff E.E. is six years old and has Down syndrome and associated medical

1 conditions that make her highly susceptible to infection and at heightened risk of serious  
2 complications if she is exposed to COVID-19. Her mother requested Independent Study for  
3 both E.E. and her twin sister, who is typically developing. The school district enrolled E.E.'s  
4 non-disabled sister immediately. E.E. had to wait several weeks with no instruction until the  
5 school could convene an IEP meeting because of Cal. Educ. Code § 51745(c). When the IEP  
6 team finally met, school district staff said E.E. would not be able to access Independent Study  
7 successfully due to her need for significant adult support, and that regardless, they would only  
8 provide her with the support services in her IEP if she attended in person, not through  
9 Independent Study. E.E. is still at home with no educational program, even though school  
10 started more than a month ago.

11 5. Other disabled students have been allowed to enroll in Independent Study, but  
12 only if they sign a written waiver, agreeing to give up their right to the accommodations and  
13 supports they need to learn. As a result of the new state law, California's state education system  
14 denies disabled students the alternative to in-person classes that it provides to other students,  
15 and denies them accommodations they need in the Independent Study program.

16 6. The exclusion of students with disabilities from access to distance learning  
17 through Independent Study constitutes unlawful discrimination in violation of Title II of the  
18 Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131 et seq., and Section 504 of the  
19 Rehabilitation Act, 29 U.S.C. § 794(a). Disabled students and their families now face an  
20 intolerable choice: to attend in-person classes (despite the danger of the Delta Variant to  
21 vulnerable children), or remain at home without access to their schools and the educational  
22 services they need to learn and succeed.

23 7. Defendants State of California, the State Board of Education and the California  
24 Department of Education ("CDE") are collectively responsible for implementing California's  
25 public education program. By adopting and implementing the new Independent Study statute,  
26 they are administering the statewide public education program in a manner that discriminates  
27 against disabled students, and perpetuates discriminatory actions by local school districts, which  
28 are their agents and contractors.

1           8.       Plaintiffs, and thousands of similarly situated students with disabilities, need  
2 urgent relief in the form of a Temporary Restraining Order and Preliminary injunction. With the  
3 spread of the Delta Variant, in-person classrooms can quickly and silently become hotbeds of  
4 infection. Students under twelve years of age cannot be vaccinated, and face increased risk of  
5 illness from the Delta Variant than from earlier forms of COVID-19. Students who are  
6 medically compromised risk debilitating illness from exposure. Family members who are  
7 medically compromised also face life-threatening risks if students attend in-person classes and  
8 contract COVID. But these students also face serious risks if their families refuse to send to  
9 them to in-person classes. They will lose precious instructional time and risk truancy citations if  
10 they fail to attend. If they attempt to participate in Independent Study without the  
11 accommodations they need, they will not be able to access the curriculum and will be  
12 effectively excluded from full and equal access to their educational program.

13           9.       During the 2020-21 school year, the students with IEPs had “distance learning  
14 plans” that reflected how the services in their IEPs would be provided during the COVID-19  
15 pandemic. This is the status quo – the last uncontested state between the parties in this matter.  
16 While not perfect, many students, including Plaintiffs E.E. and L.N., adapted and were able to  
17 make educational progress during distance learning. The pandemic is not over. For a significant  
18 subset of students with disabilities, being forced to attend in-person classes would put them at  
19 serious risk of harm. Allowing them to be denied access to any distance learning program, or  
20 forcing them to accept an online program with few or none of the services they require to access  
21 their education, ensures that the very students who have been harmed the most by the pandemic  
22 are now put in a position which will inevitably exacerbate their learning loss.

23           10.      Plaintiffs seek a temporary restraining order and preliminary injunction to restore  
24 the status quo by (a) enjoining the requirement in the new Independent Study statute, Cal. Educ.  
25 Code § 51745, that students with disabilities must obtain prior approval from their IEP team,  
26 and (b) ordering Defendants to ensure that disabled students receive the accommodations they  
27 require in Independent Study, including implementation of their existing Distance Learning  
28 Plans. Only such an order will protect the health and safety of the Student Plaintiffs and enable

1 them and the putative class to continue their education until they are safe to resume in-person  
2 classes. Plaintiffs also seek a permanent injunction and declaratory relief against all Defendants.

3 **JURISDICTION AND VENUE**

4 11. This action for declaratory and injunctive relief arises under Title II of the  
5 Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131 et seq., and Section 504 of the  
6 Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794.

7 12. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331  
8 and 1343, because the matters in controversy arise from federal questions under the Constitution  
9 or laws of the United States. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction  
10 to declare the rights of the parties and to grant all further relief deemed necessary and proper.

11 13. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b). The actions and  
12 omissions that are the subject of this complaint took place within the Northern District, Plaintiff  
13 Disability Rights Education and Defense Fund is located in the Oakland Division of the  
14 Northern District, and the Attorney General for the Defendant State of California has an office  
15 in Oakland.

16 **PARTIES**

17 14. Plaintiff E.E. is six years old and lives in California with her family. She has  
18 Down syndrome and associated medical conditions, and qualifies as an individual with a  
19 disability for purposes of the ADA and Section 504 of the Rehabilitation Act of 1973. She also  
20 qualifies for special education services on the basis of intellectual disability and has an  
21 Individual Education Plan (IEP). Plaintiff brings this action through her parent and guardian ad  
22 litem, A.J.

23 15. Plaintiff L.N. is nine years old and lives in California with his family. He has  
24 multiple disabilities and qualifies as an individual with a disability for purposes of the ADA and  
25 Section 504 of the Rehabilitation Act of 1973. He also qualifies for special education services  
26 on the basis of Other Health Impairment and Speech or Language Impairment. He is in the  
27 fourth grade and has an IEP. He brings this action through his parent and guardian ad litem,  
28 K.N.

1           16. Plaintiff Disability Rights Education and Defense Fund (DREDF), founded in  
2 1979, is a national nonprofit civil rights law and policy center located in Berkeley, California,  
3 dedicated to protecting and advancing the civil rights of people with disabilities. DREDF is  
4 directed by individuals with disabilities and parents who have children with disabilities, and  
5 pursues its mission through education, advocacy and law reform efforts. As a Parent Training  
6 and Information Center funded by the U.S. Department of Education, DREDF serves families of  
7 children with disabilities and disabled young adults in 33 California counties. The Parent  
8 Training Institute provides free assistance to families to help them understand their education  
9 rights, support their participation in special education processes at public schools, and resolve  
10 problems. DREDF provides training, technical assistance through phone and email, and  
11 referrals to support families on securing educational rights and entitlements under laws  
12 including the ADA, the Individuals with Disabilities Education Act (IDEA), and Section 504 of  
13 the Rehabilitation Act. DREDF also responds to calls and emails from across the state.

14           17. Since the amended Cal. Educ. Code § 51745 went into effect, Plaintiff DREDF  
15 has been forced to divert organizational resources to respond to a substantial number of contacts  
16 from families with children with disabilities who are heightened risk of complications if  
17 exposed to COVID-19. DREDF staff have prepared “know your rights” materials about  
18 Independent Study, but more has been required. DREDF has fielded increased numbers of calls  
19 from families are struggling to find a placement for their student with a disability that meets  
20 their student’s educational needs and keeps them safe from COVID-19 and its effects. These  
21 families are reporting that they are being delayed and denied access to Independent Study based  
22 on disability, and are being told that they must waive educational rights to access the program.  
23 The families with students with disabilities who are contacting DREDF about their problems  
24 finding alternatives to in-person classes are DREDF’s constituents.

25           18. Defendant State of California is the legal and political entity with plenary  
26 responsibility for educating all California public school students, including the responsibility to  
27 establish and maintain the system of common schools and a free education, under Article IX,  
28 section 5 of the California Constitution, and to assure that all California public school students

1 receive their individual and fundamental right to an equal education, under the equal protection  
2 clauses of the California Constitution, Article I, section 7(a), and Article IV, section 16(a).

3 19. Defendant State Board of Education and its members are responsible for  
4 determining the policies governing California’s schools and for adopting rules and regulations  
5 for the supervision and administration of all local school districts. Pursuant to California  
6 Education Code sections 33030-32, the State Board of Education is required to supervise local  
7 school districts to ensure that they comply with State and federal law requirements concerning  
8 educational services.

9 20. Defendant California Department of Education (“CDE”) is the department of  
10 California’s state government responsible for administering and enforcing laws related to  
11 education. Cal. Educ. Code § 33308. Pursuant to California Education Code sections 33300–16,  
12 CDE is also responsible for ensuring that children with disabilities in California receive a free  
13 appropriate public education (“FAPE”). 20 U.S.C. §§ 1412(a)(1)(A), (a)(11)(A).

14 **CLASS ALLEGATIONS**

15 21. Pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure,  
16 Student Plaintiffs bring this action for injunctive and declaratory relief on their own behalf and  
17 on behalf of all similarly situated students. Student Plaintiffs seek to represent the following  
18 class in this matter, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), as follows:  
19 All California students who, now or in the future, have an Individual Education Plan and whose  
20 parent, guardian or education rights holder has determined that in-person instruction would put  
21 the student at risk.

22 22. This action is an appropriate class action under Rule 23(b)(2), as the Defendants  
23 have acted or refused to act on grounds that apply generally to the Class, so that final injunctive  
24 relief or corresponding declaratory relief is appropriate.

25 23. The members of the Class are so numerous that joinder of all such persons is  
26 impracticable. Approximately 721,000 students in California have disabilities and make up  
27 11.7% of the school population. CDE California School Dashboard,  
28 <https://www.caschooldashboard.org/reports/ca/2020>.



1           24. Individual action by class members is impracticable. Class members face  
2 significant barriers to asserting their rights, including misinformation and intimidation from  
3 their school districts and their inability to join the State Defendants and to assert ADA claims in  
4 administrative hearings.

5           25. There are questions of law and fact common to the Class identified above,  
6 namely:

- 7           A. By limiting the type of distance learning programs which Local Educational  
8 Agencies may offer to a single format which is, by definition, inaccessible to  
9 most students with disabilities, the statute at issue discriminates against all class  
10 members.
- 11           B. All members of the proposed class have been denied timely enrollment in  
12 Independent Study programs because of the requirement that an IEP be convened  
13 prior to allowing them to enroll.
- 14           C. All members of the proposed class are denied equal access to Independent Study  
15 programs because the services, supports, and accommodations which they  
16 require to access them are being denied.
- 17           D. All members of the proposed class have been denied the ability to access a public  
18 education program safely and in a manner that protects them from undue risk of  
19 adverse health consequences, which is equal to that afforded to their non-  
20 disabled peers.

21           26. The claims of the Student Plaintiffs are typical of the claims of the Class  
22 identified above, in that they are students with a disability and have an IEP and their parent or  
23 guardian has determined that in-person instruction will place them at risk.

24           27. The Student Plaintiffs are adequate class representatives because they suffer the  
25 same injury as other class members. They will fairly and adequately protect the interests of the  
26 Class. The Student Plaintiffs do not have any interests antagonistic to the members of any Class.  
27 The relief sought by Plaintiffs will inure to the benefit to the members of each Class.  
28

1 28. Plaintiffs’ counsel are experienced, skilled, and knowledgeable about special  
2 education, civil rights litigation, disability rights, and class action litigation.

3 29. Prosecution of separate actions by individual class members would create a risk  
4 of inconsistent or varying adjudication with respect to individual class members, which would  
5 establish incompatible standards of conduct for Defendants or could be dispositive of the  
6 interests of the other members or substantially impair or impede the ability to protect their  
7 interests.

8 30. A class action is superior to other available methods for the fair and efficient  
9 adjudication of the controversy. A multiplicity of suits with consequent burden on the courts  
10 and Defendants should be avoided. It would be impossible for all class members to intervene as  
11 parties in this action.

12 **STATEMENT OF FACTS**

13 31. In 2020, at the beginning of the COVID-19 pandemic, California enacted new  
14 statutes to ensure that school districts offered students access to distance learning. Cal. Educ.  
15 Code § 43500 et seq. Under this program, “Distance learning shall include ... [a]cademic and  
16 other supports designed to address the needs of pupils who are not performing at grade level, or  
17 need support in other areas, such as English learners, *pupils with exceptional needs*, pupils in  
18 foster care or experiencing homelessness, and pupils requiring mental health supports.” *Id.*  
19 § 43503(b)(3)(emphasis added).

20 32. Consequently, in the 2020-21 school year, students with IEPs had “Distance  
21 Learning Plans” that explained how their school district would provide the supports and related  
22 services they needed to learn. Some disabled students, such as Plaintiffs E.E. and L.N., adapted  
23 to distance learning and made educational progress.

24 33. The distance learning provisions that California adopted in 2020 had a sunset  
25 date of June 30, 2021. *Id.*, § 43511.

26 34. In July 2021, California adopted a new statute that allowed funding for distance  
27 learning only for students enrolled in the State’s Independent Study program. Assembly Bill  
28 (AB) 130 (Chapter 44, Statutes of 2021), approved on July 9, 2021. The new statute provides

1 that Independent Study will be offered to students “whose health would be put at risk by in-  
2 person instruction, as determined by the parent or guardian of the pupil.” Cal. Educ. Code §  
3 51745(a)(6). No funding is available to school districts to provide distance learning other than  
4 through Independent Study.

5 35. However, the new statute also provides that students with disabilities “shall not  
6 participate in independent study, unless the pupil’s individualized education program [IEP] ...  
7 specifically provides for that participation.” Id. § 51745(c) (emphasis added). Cal. Educ. Code  
8 § 57149.5(a)(7) includes similar language: “An individual with exceptional needs, as defined in  
9 Section 56026, shall not participate in course-based independent study, unless the pupil’s [IEP]  
10 developed pursuant to [the state special education statute] specifically provides for that  
11 participation.”

12 36. As the Delta Variant surged in California and the beginning of school  
13 approached, more parents and caregivers determined that their children were at risk from in-  
14 person classes. Due to the new state law, the only way to access the distance learning these  
15 families had in the 2020-21 school year was through Independent Study.

16 37. Families of disabled children with IEP plans have faced multiple barriers to  
17 accessing distance learning through Independent Study. These include (a) an outright denial of  
18 Independent Study, (b) an offer of distance learning but without the services and  
19 accommodations that the student needs to learn and which were previously included in their  
20 distance learning plans, and (c) long delays in convening required IEPs that leave families in  
21 limbo for weeks and months.

22 **Plaintiffs and other similarly situated children are denied**  
23 **the alternatives to in-person classes available to non-disabled students**

24 38. Plaintiff E.E. is six years old and has Down syndrome, an intellectual disability  
25 with associated medical conditions. Her IEP provides extensive services such as a full-time  
26 behavior aide and speech, language and occupational therapy. E.E. has a twin sister who is  
27 typically developing and does not have a disability. Like many other children with Down  
28 syndrome, E.E. is at higher risk of health complications if exposed to COVID-19, so the twin’s

1 mother, A.J., requested distance learning for both children. The school district approved  
2 Independent study for her non-disabled twin, but required prior approval from E.E.'s IEP team.  
3 At the IEP meeting, district staff said that E.E. would lose all her support services if she  
4 enrolled in Independent Study. When A.J. protested that E.E. needed these to learn, school staff  
5 said her only choice was to take E.E. to in-person classes, regardless of the risk. Because of this  
6 impasse, E.E. has been home with no access to classes since school began. In contrast, her non-  
7 disabled twin has been enrolled in Independent Study from the beginning.

8 39. Plaintiff L.N. is nine years old, and has developmental disabilities secondary to  
9 significant medical conditions. He is at extreme risk of complications if he contracts COVID-  
10 19. During the 2020-2021 school year, L.N. was able to safely access his educational program  
11 through distance learning, and his mother believed this would continue in current school year.  
12 But shortly before the school year began, she was informed that an IEP meeting had to be  
13 convened prior to his enrollment and that, even if L.N. qualified for Independent Study, he  
14 would not receive any of his special education services. A meeting was convened on the first  
15 day of school but ended without the District making an offer of FAPE. District staff suggested  
16 that K.N obtain a doctor's note authorizing Home Hospital Instruction for her son, but cautioned  
17 that if approved, he would not receive any of his IEP services and only 1 hour a day of  
18 instruction. To date, the school district has not offered a date to reconvene L.N.'s IEP, and has  
19 not offered any form of interim instruction. School staff have also told K.N. that they expect her  
20 son to attend school in person until his IEP is held, despite their acknowledgement that it is not  
21 safe for him to do so because of his medical conditions.

22 40. On August 25, 2021, L.N.'s mother watched a virtual town hall and recorded  
23 webinar from L.N.'s school district about Independent Study. District staff stated that students  
24 with special needs were unlikely to qualify, but to request an IEP meeting to see if their child  
25 was an exception to this general rule. School staff also said that none of the required IEP  
26 meetings would be held prior to school starting, since the district had 30 days to convene the  
27 IEP meeting after the start of school.

28 //

1           41. Other similarly situated disabled students face the same barriers to distance  
2 learning as do the Student Plaintiffs. These children and their families are all constituents of  
3 DREDF and its special education advocacy.

4           a. M.G. is 10 years old and in the 5<sup>th</sup> grade in a California school district. He has  
5 Down syndrome; his IEP provides educational supports, including access to an  
6 alternative curriculum, so that he was able to participate successfully in distance  
7 learning last year. M.G.'s disability and additional respiratory problems put him  
8 at higher risk of health complications if exposed to COVID-19, and he is too  
9 young to be vaccinated. His mother asked for distance learning as an alternative  
10 to in-person classes. The IEP team told her that the only option was Independent  
11 Study, but that they could not provide the alternative curriculum that her son  
12 needs as an accommodation. He attends the same school district as Plaintiff L.N.,  
13 and his parent saw the same recorded webinar from their school district. District  
14 staff advised the public that Independent Study is the only alternative to in-  
15 person classes, but it is only for students who "can follow a general education  
16 curriculum" and who only need a general education teacher, not a special  
17 education teacher or other special education service provider. Without an  
18 agreement on distance learning, M.G. has been home for a month with no  
19 instruction or services.

20           b. R.C. has autism and other medical conditions that place him at higher risk of  
21 health complications if exposed to COVID-19, so his parent wants him to  
22 continue in distance learning. He has an IEP and attended a non-public school  
23 last year that offered him an alternative curriculum and additional supports  
24 during distance learning. His school was ready to provide him distance learning  
25 when classes resumed in August 2021. Instead, the school district intervened,  
26 saying that R.C. could not continue in distance learning at the non-public school  
27 that had served him so well. His IEP team eventually met but refused to approve  
28 Independent Study or distance learning with her son's previous non-public

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school. R.C. is still at home with no educational services.

- c. H.H. is 21 years old and has autism, cerebral palsy, and other disabilities. She also has a tracheostomy tube for Tracheomalacia and chronic lung disease. Through her IEP, she was able to participate successfully in distance learning last year through a non-public school that offers an alternative curriculum. When she started back to school remotely in August 2021, her classes were canceled after one day. Her school explained that the state education agency would not allow non-public schools (which are only for students with disabilities) to offer virtual options. Later, the district agreed that H.H. could enroll in very limited distance learning hours through Independent Study or Home Hospital but without any of the services in her IEP. H.H. has now been at home with no educational programming for almost a month.
- d. K.H. is 13 years old and has cerebral palsy, epilepsy, and additional disabilities. She has a history of pneumonia due to her disabilities. She also struggles to consistently wear a face mask. She is at increased risk of severe outcomes from exposure to COVID-19. With adaptations to schoolwork and a 1-to-1 aide paraeducator through her IEP, she was able to participate successfully in distance learning last year. K.H.’s school district is offering independent study through a virtual academy that allows students to customize remote classes. K.H.’s parent wanted K.H. to participate in the virtual academy with her nondisabled peers, and requested an IEP. The IEP team refused to allow K.H. to enroll in the virtual academy, and said that her only option is Home Hospital Instruction, a program in which she would have no interaction with non-disabled peers.
- e. M.C. has Down syndrome and is immunocompromised, with a low count of white blood cells and “infection-fighting” cells. With modifications to the curriculum and a 1-to-1 aide, M.C. was able to participate successfully in distance learning last school year. For 2021-22, the family requested distance learning continue through Independent Study. When the district finally held an

1 IEP meeting, the IEP team found that M.C. could not learn independently. The  
2 district refused to place him in Independent Study. At this point, M.C. has been  
3 in limbo for more than a month, without any access to direct educational  
4 instruction or services, waiting to see if the district approves any other alternative  
5 to in-person classes.

6 **The design of independent study excludes students**  
7 **with intellectual and developmental disabilities.**

8 42. The design of Independent Study excludes students who need adult assistance to  
9 learn. Many children with more severe disabilities fall into this category, including those  
10 intellectual and developmental disabilities such as autism and Down syndrome. According to  
11 data from Defendant CDE, more than 150,000 students are eligible for special education based  
12 on autism or intellectual disability. California Department of Education, “Special Education –  
13 CalEdFacts,” <https://www.cde.ca.gov/sp/se/sr/cefspeced.asp>.

14 43. For example, the IEP team for Plaintiff E.E. refused to approve her for  
15 Independent Study because she needs significant adult support to learn. Many school district  
16 IEP teams across the State are refusing to approve Independent Study on this basis for other  
17 similarly situated students.

18 44. CDE supports this restriction in its Independent Study FAQ webpage, which  
19 states: “Pupils in independent study shall have the ability to work independently and maintain  
20 satisfactory educational progress” as defined under the California Education Code. Further,  
21 “success in independent study requires motivation and a strong commitment on the part of the  
22 student and, especially for a young student, his or her parents/guardians/caregivers. It also  
23 requires sufficient academic preparation to enable the student to work independently.”  
24 California Department of Education, “Independent Study: Frequently Asked Questions,”  
25 (updated August, 23, 2021), <https://www.cde.ca.gov/sp/eo/is/faq.asp>.

26 45. Other districts also take the position that students who need adult assistance to  
27 learn are not eligible for Independent Study. One FAQ from a virtual “Office Hours” with the  
28 Los Angeles County Office of Education on September 7, 2021, states flatly: “Question: ‘How

1 can a very involved student in a self-contained class requiring a one-on-one assistant  
2 "independently" be recommended for an independent study program?' Answer: 'The IEP team  
3 will need to make the determination. However, the term "Independent Study" implies that a  
4 child will be able to complete the work independently or with minimal adult help.'" Defendant  
5 CDE arranged this Office Hours session and endorsed this FAQ.

6 46. Since Independent Study is the only way to access distance learning, this  
7 framework excludes students who need adult supports and other accommodations to learn, such  
8 as those with intellectual and developmental disabilities.

9 47. The design of Independent Study also excludes disabled students who require a  
10 modified curriculum. Many students with moderate to severe disabilities, including many with  
11 intellectual and developmental disabilities, cannot access the State's "Common Core" general  
12 education curriculum without modifications, and receive instruction based on alternative  
13 achievement standards, or an "alternate curriculum." 34 C.F.R. § 200.1(d). Such curricula are  
14 "[d]esigned for students with the most significant cognitive disabilities." *Id.*

15 48. However, the new California law on Independent Study provides that it is only  
16 "designed to teach the knowledge and skills of the core curriculum. Independent study shall not  
17 be provided as an alternative curriculum." Cal. Educ. Code § 51745(a)(3).

18 49. For example, Plaintiff L.N.'s large urban school district announced in a town hall  
19 meeting that Independent Study will only offer the general education curriculum without any  
20 special education services. Many other students with IEPs have been denied Independent Study  
21 because they are on an alternate curriculum. See, e.g., Paragraph 41, *supra.*, re: M.C. (student  
22 with Down syndrome), R.C. (student with autism), H.H. (student with autism and cerebral  
23 palsy).

#### 24 **No State guidance re: denial of accommodations in Independent Study**

25 50. California's implementation of Independent Study permits school districts to  
26 enroll disabled students on the condition that they give up their rights to accommodations,  
27 including their rights under IDEA. Under the earlier distance learning statute in effect in the  
28 2020-21 school year, each student had a distance learning plan that listed the accommodations



1 they needed. IEP teams are refusing to offer these same services through Independent Study.  
2 These IEP teams make a single offer of a Free and Appropriate Public Education (“FAPE”),  
3 which is through in-person classes only.

4 51. If families insist that their child needs distance learning, districts are offering  
5 Independent Study but without the services listed in the student’s IEP. In one-sided  
6 negotiations, districts often compel families to sign agreements waiving their rights under IDEA  
7 and the ADA as a condition of participating in Independent Study.

8 52. Plaintiff DREDF and other groups that assist with special education issues have  
9 been contacted by and advised numerous families who report that they have been forced to sign  
10 such waivers.

11 53. One local school board has developed a standard waiver agreement that it  
12 announced publicly as a “proposed solution” for students when the IEP team refuses to offer  
13 distance learning: “The agreement is that the student can participate in [the school district’s]  
14 Virtual Academy (Independent Study), but the student's educational rights' holder waives all  
15 FAPE claims (since the IEP team determined Independent Study is not FAPE).<sup>1</sup>

16 54. CDE has issued minimal guidance regarding Independent Study and students  
17 with IEPs. This guidance only reiterates that a student’s IEP team must determine if  
18 Independent Study is appropriate. It fails to ensure that school districts offer disabled students  
19 equal access to distance learning through Independent Study or other means.

20 55. CDE has endorsed the use of Home Hospital Instruction as an alternative “work-  
21 around” for disabled students. This is an option under California law for students who have a  
22 “temporary disability that makes attendance in the regular day classes or alternative education  
23 program impossible or inadvisable.” Cal. Educ. Code § 48206.3. IEP teams can place students  
24 with disabilities on Home Hospital Instruction but only with a report from a medical provider  
25 “stating the diagnosed condition and certifying that the severity of the condition prevents the  
26

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27 <sup>1</sup> See Pleasanton USD Board materials, September 23, 2021, available from:  
28 [https://simbli.eboardsolutions.com/SB\\_Meetings/ViewMeeting.aspx?S=36030382&MID=8254](https://simbli.eboardsolutions.com/SB_Meetings/ViewMeeting.aspx?S=36030382&MID=8254),  
<https://simbli.eboardsolutions.com/Meetings/Attachment.aspx?S=36030382&AID=168845&MID=8254>

1 pupil from attending a less restrictive placement.” Cal. Code Regs., tit. 5, § 3051.4(d).

2 56. Home Hospital Instruction is not a workable alternative for students with IEPs  
3 who are denied access to or accommodations in Independent Study. Plaintiff L.N.’s school  
4 district held a virtual town hall in which school staff estimated that only forty children would  
5 qualify for Home Hospital Instruction, out of more than 9,000 students with disabilities. School  
6 staff also told L.N.’s mother that Home Hospital Instruction was only for students who would  
7 miss school temporarily, for up to six weeks.

8 57. Even those students approved for Home Hospital Instruction receive little  
9 benefit. Most districts offer Home Hospital Instruction for only one hour per day, which is the  
10 minimum required in the statute. Cal. Educ. Code § 48206.3(c)(1). L.N.’s example is typical.  
11 His school district told his parent that, even if he qualified, he would get only one hour of  
12 instruction per day. School districts are also telling families that students in Home Hospital  
13 Instruction will receive few or none of the services in the child’s IEP. The mother of Plaintiff  
14 L.N. was repeatedly told by school personnel that he will not be provided any of his special  
15 education services and supports if he is approved for the Home Hospital program.

16 58. Home hospital is also more isolating because it provides no opportunity for  
17 interaction with nondisabled peers. For example, the school district where student K.H. attends  
18 has arranged for a “Virtual Academy” for the many students who are choosing Independent  
19 Study. The IEP team for student K.H. would not approve the Virtual Academy and instead  
20 referred her to Home Hospital Instruction. Her mother has not agreed, because Home Hospital  
21 does not provide the opportunity for interaction with nondisabled peers that the virtual academy  
22 does. Interaction with friends and peers is critical to emotional and social growth for children  
23 with disabilities.

24 **No rationale for giving disabled students fewer protections**  
25 **in Independent study, versus distance learning or quarantines**

26 59. The State treated students with disabilities far better during distance learning and  
27 in emergency quarantines, both of which mandate special education rights. From March 2020-  
28 June 2021, the State guaranteed that students with disabilities could participate in distance

1 learning with special education and related services required by the student’s IEP. Cal. Educ.  
2 Code § 43503(b)(4); Cal. Educ. Code § 43511(b). The State also required all IEPs include a  
3 plan for service delivery in the event of qualifying emergencies where schools cannot deliver  
4 services in person. Cal. Educ. Code § 56345(a)(9).

5 60. Now, the State requires that students with disabilities who quarantine may  
6 participate in Independent Study and must have access to their distance learning emergency  
7 plan. Cal. Educ. Code § 46393. This already-existing distance learning system for quarantined  
8 students demonstrates that it is a reasonable modification to provide distance learning to all  
9 students with disabilities. There is no justifiable rationale for denying this to students who are  
10 not quarantined but still need distance learning to ensure their health and safety from the  
11 pandemic.

12 **Discriminatory delays in accessing distance learning**

13 61. Disabled students also face discriminatory delays in enrollment. Such delays are  
14 inevitable given that the Independent Study law requires that an IEP team be convened to  
15 consider the request for Independent Study before any student with an IEP can be enrolled.  
16 This process can take up to 30 days and has caused many students with disabilities to miss the  
17 first weeks of school. Some students are still awaiting an IEP team meeting, more than a month  
18 after the start of school. Non-disabled students were permitted to register immediately, did not  
19 face this delay, and were not denied an education while waiting for a meeting. For students who  
20 were permitted by their IEP teams to enroll in Independent Study, this built-in delay resulted in  
21 disabled students registering for Independent Study later than non-disabled students, thereby  
22 increasing the odds that they would end up on waiting lists for access to Independent Study.

23 62. In addition, with Independent Study, students do not have the benefit of “stay  
24 put,” the IDEA provision that enables students to remain in their placement until a dispute is  
25 resolved. The new law explicitly bans students from participating in Independent Study until  
26 they have an IEP that “specifically provides for that participation.” Cal. Educ. Code § 51745(c).

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**Plaintiffs will suffer irreparable injury**

63. The Student Plaintiffs, DREDF constituents and other similarly situated children face irreparable injury from Defendants’ actions if they fail to attend in-person classes – this can include truancy citations and hearings, loss of educational progress and isolation from their peers.

64. However, attending in-person classes is an even greater threat. The Student Plaintiffs and other similarly situated students have underlying or associated medical conditions that place them at much higher risk from a COVID-19 infection. “All people with serious underlying chronic medical conditions like chronic lung disease, a serious heart condition, or a weakened immune system seem to be more likely to get severely ill from COVID-19,” according to the U.S. Centers for Disease Control & Prevention (CDC).<sup>2</sup> The Student Plaintiffs and others profiled here display all these characteristics. Many children, such as Plaintiff E.E., have Down syndrome and are at risk of serious, life-threatening complications from COVID-19.<sup>3</sup> About half of all children with Down syndrome have heart defects that also diminish lung capacity.<sup>4</sup> Other students who need Independent Study have asthma and lung disease. According to the CDC, people with moderate to severe asthma are also more likely to get severely ill from COVID-19.<sup>5</sup>

65. A return to in-person classes poses a serious risk of infection for these students, many of whom are too young to be vaccinated. Unfortunately, schools across the state continue to experience COVID-19 outbreaks and exposure of thousands of students statewide.<sup>6</sup> The risk

<sup>2</sup> CDC, “COVID -19 Information and Resources,” <https://www.cdc.gov/ncbddd/humandevelopment/covid-19/people-with-disabilities.html>.

<sup>3</sup> *Id.*

<sup>4</sup> National Down Syndrome Society, “The Heart and Down Syndrome,” <https://www.ndss.org/resources/the-heart-down-syndrome> (heart defects in children with Down syndrome lead to narrowed arteries in the lungs and increased pressure and constriction of blood flow).

<sup>5</sup> CDC, “COVID -19 Information and Resources,” <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

<sup>6</sup> *See, e.g.*, Los Angeles Times, “Coronavirus outbreaks in L.A. schools increase,” September 2, 2021, <https://www.latimes.com/california/story/2021-09-02/la-county-coronavirus-outbreaks-increase-in-l-a-county-schools>; Los Angeles Times, “Tracking the coronavirus in LAUSD

1 of exposure to COVID-19 during in-person classes is real, even with masks.

2           66. The Student Plaintiffs and DREDF constituents described above are also  
3 irreparably injured by their forced absence from their school program. Research shows that  
4 absences from school have a disproportionate impact on student well-being, even after a short  
5 period of time.<sup>7</sup> Although many students struggled with distance learning in the 2020-21 school  
6 year, others made educational progress, including the Student Plaintiffs and other similarly  
7 situated DREDF constituents. Their distance learning plans were effective in delivering the  
8 services in their IEP plans. Consequently, the interruption of their access to distance learning,  
9 whether through Independent Study or other means, has left them far behind where they would  
10 otherwise be.

11           67. Home Hospital Instruction, if offered to some students, does very little to  
12 ameliorate the injury they experience, especially as compared to more robust distance learning  
13 programs they had last school year, or to Independent Study. At least through Independent  
14 Study, students have access to some live and classroom-style instruction. Cal. Educ. Code §  
15 51747(e).

16           68. The Student Plaintiffs, DREDF constituents and others similarly situated are  
17 irreparably injured, even though they have the right to seek “compensatory education” in the  
18 form of in-kind educational services through the State special education administrative appeal  
19

20 \_\_\_\_\_  
21 schools, “September 26, 2021, <https://www.latimes.com/projects/lausd-covid-19-cases-tracking-spread-outbreaks/> (“There are currently 12 schools under investigation for an outbreak,  
22 which is defined as three or more cases transmitted at school over 14 days. In total, 502 of the 888 campuses on the district’s dashboard have an active case, 57% of the total.”); EdSource,  
23 “COVID closes rural California schools as Delta variant spreads,” September 3, 2021,  
<https://edsource.org/2021/covid-closes-rural-california-schools-as-delta-variant-spreads/660712>;  
24 CBS News, “More Schools Closing Due To COVID Outbreaks,” September 6, 2021,  
<https://sacramento.cbslocal.com/2021/09/06/covid-outbreaks-schools-closing/>; EdSource,  
25 “Covid testing was supposed to keep schools safe. What happened?” September 7, 2021,  
26 <https://edsource.org/2021/covid-testing-was-supposed-to-keep-schools-safe-what-happened/660721> (shortages of testing and inconsistent protocols lead to outbreaks and  
27 quarantines).

28 <sup>7</sup> See, e.g., Attendance Works, “Key Research: Why Attendance Matters for Achievement and How Interventions Can Help,” (2016), available from  
<https://awareness.attendanceworks.org/wp-content/uploads/Research2016.pdf>.

1 system. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 1496-97 (9th Cir.  
 2 1994). This remedy cannot restore the time that these children have lost. With limited hours in  
 3 the day, children can only absorb so much at one time. More services later will not make up for  
 4 the lost weeks of education that these children have and will continue to experience.

5 69. Plaintiff DREDF is also irreparably injured by Defendants' actions, including  
 6 from the diversion of resources required to respond to families facing barriers to distance  
 7 learning, and by the harmful impact on DREDF's constituents.

### 8 **FIRST CAUSE OF ACTION**

#### 9 **Violations of the Americans with Disabilities Act, 42 U.S.C. §12131, et seq.**

10 70. Plaintiffs incorporate by reference every allegation contained in the foregoing  
 11 paragraphs.

12 71. Congress enacted the ADA, 42 U.S.C. § 12101 et seq., to provide a clear and  
 13 comprehensive national mandate for the elimination of discrimination against individuals with  
 14 disabilities and to provide strong and consistent standards for identifying such discrimination.  
 15 42 U.S.C. § 12101(b)(1)&(2).

16 72. The ADA is based on Congress's findings that, inter alia, (i) "historically, society  
 17 has tended to isolate and segregate individuals with disabilities, and, despite some  
 18 improvements, such forms of discrimination against individuals with disabilities continue to be  
 19 a serious and pervasive social problem," 42 U.S.C. § 12101(a)(2). In addition, "individuals with  
 20 disabilities continually encounter various forms of discrimination, including ... relegation to  
 21 lesser services, programs, activities, benefits, jobs, or other opportunities." 42 U.S.C.  
 22 § 12101(a)(5).

23 73. In enacting the ADA, Congress also found that "discrimination against  
 24 individuals with disabilities persists in such critical areas as ... education." 42 U.S.C.  
 25 § 12101(a)(3).

26 74. Title II of the ADA mandates that "no qualified individual with a disability shall,  
 27 by reason of such disability, be excluded from participation in or be denied the benefits of the  
 28 services, programs, or activities of a public entity, or be subjected to discrimination by any such

1 entity.” 42 U.S.C. § 12132; see also 28 C.F.R. § 35.130.

2 75. Title II of the ADA applies to all of the activities of public entities, including  
3 providing education. Each Defendant is either a public entity subject to Title II of the ADA or  
4 an official responsible for supervising the operations of a public entity subject to Title II of the  
5 ADA. 42 U.S.C. § 12131(1).

6 76. The ADA directs the Attorney General to promulgate regulations enforcing Title  
7 II of the ADA and provides guidance on their content. The regulations promulgated by the  
8 Attorney General require public entities to “make reasonable modifications” to their programs  
9 and services “when the modifications are necessary to avoid discrimination.” 28 C.F.R. §  
10 35.130(b)(7).

11 77. The regulations also specify that it is unlawful discrimination for a public entity  
12 to:

- 13 a. “Afford a qualified individual with a disability an opportunity to  
14 participate in or benefit from the aid, benefit, or service that is not equal  
15 to that afforded others,” 28 C.F.R. § 35.130(b)(1)(ii);
- 16 b. “Provide a qualified individual with a disability with an aid, benefit, or  
17 service that is not as effective in affording equal opportunity to obtain the  
18 same result, to gain the same benefit, or to reach the same level of  
19 achievement as that provided to others,” 28 C.F.R. § 35.130(b)(1)(iii);
- 20 c. Fail to “administer services, programs, and activities in the most  
21 integrated setting appropriate to the needs of qualified individuals with  
22 disabilities,” 28 C.F.R. § 35.130(d), which the Attorney General has  
23 defined as “a setting that enables individuals with disabilities to interact  
24 with non-disabled persons to the fullest extent possible,” 28 C.F.R. pt. 35,  
25 App. A, p. 450; or
- 26 d. “[U]tilize criteria or methods of administration ... [t]hat have the purpose  
27 or effect of defeating or substantially impairing accomplishment of the  
28 objectives of the public entity’s program with respect to individuals with

1 disabilities,” 28 C.F.R. § 35.130(b)(3)(ii).

2 78. Plaintiffs E.E. and L.N are qualified individuals with a disability within the  
3 meaning of the ADA. Both have disabilities that substantially limit one of more major life  
4 activities, including communication, cognitive functioning, ability to learn and developing and  
5 maintaining relationships.

6 79. As school-aged children, both are qualified to participate in Defendants’  
7 educational programs and services. 42 U.S.C. § 12131(2).

8 80. Defendant State of California, the State Board of Education and the California  
9 Department of Education are all “public entit[ies]” within the meaning of Title II of the ADA.

10 81. During the 2020-21 school year, the Student Plaintiffs were able to participate  
11 safely in a virtual classroom with their non-disabled peers through distance learning, and made  
12 educational progress. However, because of their disabilities, they require accommodations and  
13 modifications to access educational materials.

14 82. Defendants have administered the State’s Independent Study program so as to  
15 discriminate against and exclude the Student Plaintiffs and others similarly situated.

16 83. The State’s discriminatory Independent Study program directly resulted in the  
17 Student Plaintiffs’ unequal access to the benefits of a public education, and which denied them  
18 and others similarly situated from equal opportunities to benefit from their education.

19 84. The injury experienced by the Student Plaintiffs and others similarly situated due  
20 to their exclusion from distance learning and from safe alternatives to in-person instruction is  
21 directly traceable to Defendants’ administration of the state educational program, its adoption of  
22 a discriminatory Independent Study program, and its failure to ensure that Defendants and other  
23 school districts comply with the ADA.

24 85. Under the ADA, public entities are liable for discrimination in the programs they  
25 administer, even if they are not directly engaged with the disabled individuals who participate in  
26 these programs. The ADA applies to “all services, programs, and activities provided or *made*  
27 *available* by public entities.” 28 C.F.R. 35.102(a) (emphasis added).

28 //



1           86. Here, Defendants have “made available” public educational services through  
2 their local educational agencies. “A public entity, in providing any aid, benefit, or service, may  
3 not, directly or *through contractual, licensing, or other arrangements*, on the basis of disability”  
4 discriminate against individuals with disabilities. 28 C.F.R. § 35.130(b)(1) (emphasis added).

5           87. Further, a public entity may not “[a]id or perpetuate discrimination . . . by  
6 providing significant assistance to an agency, organization, or person that discriminates on the  
7 basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity’s  
8 program[.]” 28 C.F.R. § 35.130(b)(1)(v).

9           88. Under state and federal law, CDE is responsible for the oversight and supervision  
10 of local school districts. 20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a); *see also* Cal. Ed.  
11 Code §§ 56100 and 56205.

12           89. Defendants, including CDE, have failed to instruct the local school districts that  
13 they oversee about the application of the ADA to Independent Study, including their obligation  
14 to provide needed accommodations to enable disabled students to participate in the public  
15 educational programs they offer.

16           90. Defendants have adopted a method of administration that results in  
17 discrimination by local education agencies in access to distance learning and the denial of safe  
18 alternatives to in-person learning, and by its failure to monitor and supervise local districts,  
19 which are part of its educational program.

20           91. In addition, Defendants’ Independent Study program perpetuates discrimination  
21 by local districts, which also provide services to the disabled students who are beneficiaries of  
22 California’s public education program.

23           92. CDE has failed to ensure that the local school districts that it oversees comply  
24 with the ADA regarding distance learning and Independent Study.

25           93. Through its acts and omissions described above, Defendants are violating the  
26 ADA with regard to the Student Plaintiffs and others similarly situated by:

- 27           a. Denying them an opportunity to participate in and benefit from  
28           educational services that is equal to that afforded other students;

- 1           b.       Failing to provide educational services that are as effective in affording
- 2                   equal opportunity to obtain the same result, gain the same benefit, or
- 3                   reach the same level of achievement as that provided other students;
- 4           c.       Denying the opportunity to receive educational programs and services in
- 5                   the most integrated setting appropriate to their needs;
- 6           d.       Failing to reasonably modify its programs and services as needed to avoid
- 7                   discrimination;
- 8           e.       Utilizing methods of administration that have the effect of defeating or
- 9                   substantially impairing the accomplishment of the objectives of
- 10                  Defendants’ educational programs; and
- 11          f.       Perpetuating the discrimination of local school districts.

12           94.       Other district courts in California have held Defendant CDE accountable for  
13 discriminatory actions by school districts, including violations of the ADA. *Emma C. v. Eastin*,  
14 985 F. Supp. 940, 948 (N.D. Cal. 1997). There, the court found that CDE “failed to monitor [the  
15 district’s] compliance with state and federal laws,” denied the state’s motion to dismiss and  
16 found that the complaint adequately alleged that the state agency “perpetuated this  
17 discrimination.” *Id.*

18           95.       Congress specifically provided for a private right of action to enforce Title II. 42  
19 U.S.C. § 12133 (incorporating the remedies and enforcement procedures available under Title  
20 VI of the Civil Rights Act, which includes a private right of action).

21           96.       The Title II regulations upon which Plaintiffs rely were promulgated at the  
22 specific direction of Congress and do not impose obligations beyond the reach of Title II. 42  
23 U.S.C. § 12134(a).

24           97.       As a result of Defendants’ actions and inaction, Plaintiffs and others similarly  
25 situated have suffered injury, including, but not limited to, denial of meaningful access to the  
26 benefits of a public education. As a direct and proximate result of the aforementioned acts, the  
27 Student Plaintiffs have suffered, and continue to suffer loss of equal educational opportunity,  
28 denial of their access to appropriate programs, accommodations, modifications, services and

1 access required for Plaintiffs’ disabilities, and its exclusion of Student Plaintiffs.

2 98. Plaintiff DREDF has also suffered injury from the diversion of its limited  
3 resources to respond to the consequences of Defendants’ actions and inaction.

4 99. Because Defendants’ discriminatory and wrongful conduct is ongoing,  
5 declaratory and injunctive relief are appropriate remedies. Further, as a direct result of  
6 Defendants’ actions, Plaintiffs and others similarly situated continue to suffer harm and  
7 therefore speedy and immediate relief is appropriate.

8 100. Plaintiff seeks injunctive and declaratory relief, damages and attorneys’ fees and  
9 costs as a result.

10 **SECOND CAUSE OF ACTION**

11 **Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a)**

12 101. Plaintiffs incorporate by reference each and every allegation contained in the  
13 foregoing paragraphs.

14 102. Section 504 of the Rehabilitation Act of 1973 provides in relevant part: “No  
15 otherwise qualified individual with a disability . . . shall, solely by reason of her or his  
16 disability, be excluded from the participation in, be denied the benefits of, or be subjected to  
17 discrimination under any program or activity receiving Federal financial assistance . . . .” 29  
18 U.S.C. § 794(a).

19 103. The regulations implementing Section 504 provide protections that parallel those  
20 under the ADA. 45 C.F.R. §§ 84.4(b), 84.21, 84.52.

21 104. All Defendants are recipients of federal financial assistance within the meaning  
22 of Section 504, and its implementing regulations.

23 105. Special education services are a “program or activity receiving Federal financial  
24 assistance” because Defendants receive federal financial assistance for these services.

25 106. The Student Plaintiffs are qualified individuals with disabilities within the  
26 meaning of Section 504. They have impairments that limit their life activities. They are  
27 otherwise qualified to participate in and receive benefits from Defendants’ programs and  
28 services. 29 U.S.C. § 794(b).

1           107. At all times relevant, Defendants received federal financial assistance for the  
2 public educational services and programs they provide.

3           108. Under Section 504, a qualified individual with a disability may not, solely by  
4 reason of his/her disability, be subjected to discrimination, excluded from participation in, or  
5 denied the benefits of, any program or activity receiving Federal financial assistance. 29 U.S.C.  
6 § 794(a).

7           109. Under Section 504, the phrase “program or activity” includes state and local  
8 educational agency. 29 U.S.C. § 794(b)(2)(B).

9           110. Recipients of federal financial assistance are prohibited from denying a qualified  
10 person with a disability any health, welfare, or other social services or benefits on the basis of  
11 disability. 45 C.F.R. § 84.52(a)(1).

12           111. Recipients of federal financial assistance may not afford a qualified individual  
13 with a disability an opportunity to receive health, welfare, or other social services or benefits  
14 that is not equal to that afforded people without disabilities. 45 C.F.R. § 84.52(a)(2).

15           112. Recipients of federal financial assistance may not, on the basis of disability,  
16 provide a qualified person with a disability health, welfare, or other social services or benefits  
17 that are not as effective as the benefits or services provided to others. 45 C.F.R. § 84.52(a)(3).

18           113. Recipients of federal financial assistance may not provide any health, welfare, or  
19 other social services or benefits in a manner that limits or has the effect of limiting the  
20 participation of qualified individuals with disabilities. 45 C.F.R. § 84.52(a)(4).

21           114. Recipients of federal financial assistance must ensure that the aids, benefits and  
22 services provided “afford handicapped persons equal opportunity to obtain the same result, to  
23 gain the same benefit, or to reach the same level of achievement.” 34 C.F.R. §104.4(b)(2).

24           115. Recipients of federal financial assistance may not “[p]rovide a qualified  
25 handicapped person with an aid, benefit, or service that is not as effective as that provided to  
26 others,” *Id.* at §104.4(b)(1)(iii), and may not “[a]fford a qualified handicapped person an  
27 opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that  
28 afforded others.” *Id.* at §104.4(b)(1)(ii); see also 34 CFR § 104.43 & 104.44.

1           116. Like the regulations implementing the ADA, the regulations implementing  
2 Section 504 also prohibit discriminatory methods of administration. “A recipient may not,  
3 directly or through contractual or other arrangements, utilize criteria or methods of  
4 administration (i) that have the effect of subjecting qualified handicapped persons to  
5 discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or  
6 substantially impairing accomplishment of the objectives of the recipient's program or activity  
7 with respect to handicapped persons, or (iii) that perpetuate the discrimination of another  
8 recipient if both recipients are subject to common administrative control or are agencies of the  
9 same State.” 34 C.F.R. § 104.4(b)(4); 45 C.F.R. § 84.4(b)(4).

10           117. Defendants have violated Section 504 by adopting and implementing a new  
11 Independent Study law that discriminates against the Student Plaintiffs and other students with  
12 disabilities.

13           118. Defendants have adopted methods of administering this statute that result in and  
14 perpetuate discrimination, that exclude Plaintiffs from participation in distance learning and safe  
15 alternatives to in-person learning, and that provide them with a benefit that is not equal to and  
16 less effective than that provided to others.

17           119. Defendants violated Section 504 through adopting, approving and implementing  
18 a practice that the only alternative to in-person learning is Independent Study, a practice that  
19 results in discrimination against students with disabilities, and by failing to oversee local school  
20 districts to ensure that they do not discriminate.

21           120. Defendants have adopted methods of administration that result in discrimination  
22 by local education agencies in the provision of safe alternatives to in-person learning, and by  
23 allowing districts to deny students accommodations in Independent Study. Defendants have  
24 failed to monitor and supervise local districts, which are part of its educational program.

25           121. In addition, Defendants’ Independent Study program perpetuates discrimination  
26 by local districts, which are also agencies of the State of California within the meaning of  
27 Section 504. See, e.g., *Emma C. v. Eastin*, 985 F. Supp. 940, 948 (N.D. Cal. 1997) (holding that  
28 a recipient of federal funds discriminates on the basis of disability when it perpetuates

1 discrimination by providing assistance to another entity that in turn discriminates).

2 122. Defendants committed the acts and omissions alleged herein with intent and/or  
3 deliberate indifference to Plaintiffs’ rights, particularly given the length of time the problems  
4 persisted and the severity of the problems.

5 123. The Student Plaintiffs and others similarly situated suffered injury in fact,  
6 including, but not limited to, denial of meaningful access to the benefits of a public education.  
7 As a direct and proximate result of the aforementioned acts, Plaintiffs have suffered, and  
8 continues to suffer loss of equal educational opportunity. Plaintiff DREDF has suffered injury in  
9 fact as a result of the diversion of its resources to respond to Defendants’ illegal acts.

10 124. Because Defendants’ discriminatory and wrongful conduct is ongoing,  
11 declaratory and injunctive relief are appropriate remedies. Further, as a direct result of  
12 Defendants’ actions, Plaintiffs are suffering irreparable harm and therefore speedy and  
13 immediate relief is appropriate.

14 125. Plaintiffs seek injunctive and declaratory relief, damages and attorneys’ fees and  
15 costs as a result.

16 **PRAYER FOR RELIEF**

17 Plaintiffs pray this Court to enter judgment and provides the following relief:

18 1. A declaration that Defendants’ conduct violates the Americans with Disabilities  
19 Act, 42 U.S.C. § 12101, et seq. and 28 C.F.R. §§ 35.104, 36.104 (the “ADA”) and Section 504  
20 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 et seq. (“Section 504”).

21 2. An order certifying the class set out above.

22 3. An injunction ordering Defendants to comply with Title II of the ADA and  
23 Section 504 of the Rehabilitation Act, and to ensure that their contractors, agents and assign also  
24 comply.

25 4. An injunction requiring Defendants to establish a process for providing  
26 compensatory education in an amount to be determined by proof, including but not limited to  
27 damages under 42 U.S.C. § 12133, 29 U.S.C. § 794(a), including all applicable statutory  
28 damages to Plaintiffs and class members.

1           5.       Any other such damages as may be allowed under all the above federal and state  
2 laws.

3           6.       Plaintiffs' reasonable attorneys' fees and costs incurred in litigating both the  
4 administrative due process complaint and the instant action, including, but not limited to, fees  
5 arising under 42 U.S.C. §12205, 29 U.S.C. §794(b), and 20 U.S.C. § 1415(i)(2)(B).

6           Such other and further relief as the Court deems just and proper.

7  
8 Dated: September 28, 2021

Respectfully submitted,

/s/Melinda Bird (as authorized on Sept. 28, 2021)

Melinda Bird

Disability Rights California

/s/David German (as authorized on Sept. 28, 2021)

David German

Vanaman German LLP

/s/Claudia Center (as authorized on Sept. 28, 2021)

Claudia Center

DREDF

*Attorney for Plaintiffs*