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15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 E.E., et al,
 18 Plaintiffs,
 19 vs.
 20 STATE OF CALIFORNIA, et al,
 21 Defendants.

CASE NO.: 3:21-cv-07585-AGT
CLASS ACTION
**DECLARATION OF DR. ALICE KUO IN
 SUPPORT OF PLAINTIFFS' EX PARTE
 MOTION FOR TEMPORARY
 RESTRAINING ORDER AND ORDER
 TO SHOW CAUSE RE PRELIMINARY
 INJUNCTION**

Hearing date: TBD
 Hearing time: TBD
 Judge: Hon. Alex G. Tse
 Courtroom: A, 15th Floor

Date Action Filed: September 28, 2021

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1 **DECLARATION OF DR. ALICE KUO**

2 I, Alice Kuo, M.D., Ph.D., declare the following:

3 1. I hereby declare and would so testify competently from first-hand
4 knowledge if called as a witness in this action, as follows:

5 2. I am a practicing physician, with additional advanced degrees including a
6 Master's of Education and a Ph.D in Educational Psychology. I am a Professor of
7 Internal Medicine, Pediatrics, and Health Policy and Management at UCLA, and Chief
8 of the Division of Medicine-Pediatrics. I am also Director of the University of California
9 Leadership Education in Neurodevelopmental Disabilities (UC-LEND), and Principal
10 Investigator of the Autism Intervention Research Network on Physical Health, both
11 federally funded projects. My curriculum vitae is Attachment A to this declaration.
12 Attachment B is a list of the documents that I reviewed in preparing this statement.

13 3. I am extremely familiar with the medical and educational needs of students
14 with neurodevelopmental conditions, especially those with intellectual and
15 developmental disabilities (I/DD), and am regarded as an expert in this field. I have been
16 asked whether there is evidence that students with I/DD are at heightened risk from the
17 SARS-CoV-2 virus (COVID-19). As I explain below, having an intellectual disability is
18 the strongest independent risk factor for contracting COVID-19 and the second strongest
19 risk factor for mortality, with rates almost double the general population and highest in
20 younger ages. Individuals with I/DD also have co-morbidities that may further increase
21 their risk and also impair their ability to keep on a mask. Parents are justified in taking
22 strong steps to ensure that students with such diagnoses avoid exposure to COVID-19.
23 Because of the significantly greater risk of serious illness or death if their children are
24 exposed during in-person classes, these parents are justified in requesting a continuation
25 of distance learning or another form of virtual instruction.

26 **BACKGROUND AND CREDENTIALS**

27 4. In my clinical practice, I see patients of all ages, mainly with
28 neurodevelopmental conditions including autism, attention-deficit hyperactivity

1 disorder, learning disabilities and intellectual disability, in two clinical locations for
2 UCLA Health: Santa Monica Medicine-Pediatrics Comprehensive Care Center and
3 Redondo Beach Medicine-Pediatrics Primary Care office. I also lead a multi-disciplinary
4 care coordination clinic at UCLA for more complicated neurodevelopmental cases I am
5 board-certified in internal medicine, pediatrics, and preventive medicine. My preventive
6 medicine training was with the Centers for Disease Control and Prevention (CDC).

7 5. During the first six weeks of the COVID-19 pandemic, from early March
8 until the end of April, I oversaw the implementation of a COVID-19 surveillance system
9 at UCLA Health. I was responsible for implementing symptom screening of all campus
10 employees, contact tracing of all employees, and determining return to work guidelines.

11 6. From May 2020 through June 2021, I worked closely with the Los
12 Angeles County Department of Public Health (LAC DPH) as an academic partner on
13 COVID-19 issues. I conducted site visits of skilled nursing facilities with LAC DPH and
14 CDC personnel. I also provided technical assistance to staff at Department of Child and
15 Family Services and conducted site visits of foster care residential facilities.

16 7. From August 2020 through February 2021, I was a pediatrician consultant
17 to a coalition of school leaders who met with LAC DPH weekly on protocols to re-open
18 schools. I also conducted a surface swab pilot for LAC DPH from March to May 2021 in
19 ten classrooms in an elementary school to detect viral particles on students' desks.

20 8. I have published 14 papers on autism, three papers on COVID-19, and one
21 paper specifically on prioritization of the COVID-19 vaccine for I/DD populations
22 because of their increased risk for negative outcomes.

23 9. Throughout the COVID-19 pandemic, I have actively followed the efforts
24 of school districts in California to respond to the needs of students with I/DD.

25 **MANY STUDENTS WITH I/DD ARE AT HEIGHTENED RISK**
26 **FROM COVID-19 EXPOSURE IF THEY ATTEND IN-PERSON CLASSES**

27 10. I am familiar with the CDC guidelines regarding the heightened risk to
28 children and youth with disabilities from COVID-19

1 ([https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html)
2 [medical-conditions.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html)).

3 11. A cross-sectional study of 64,858,460 patients across 547 health care
4 organizations reveals that having an intellectual disability was the strongest independent
5 risk factor for presenting with a Covid-19 diagnosis and the strongest independent risk
6 factor other than age for Covid-19 mortality. Screening for Covid-19, care coordination,
7 and vaccination efforts should be intense within this population that is less able to
8 consistently use masks and socially distance (Gleason, J., Ross, W., Fossi, A., Blonsky,
9 H., Tobias, J., & Stephens, M. (2021). The devastating impact of Covid-19 on
10 individuals with intellectual disabilities in the United States. *NEJM Catalyst Innovations*
11 *in Care Delivery*, 2(2)).

12 12. People with I/DD have higher prevalence of specific comorbidities
13 associated with poorer COVID-19 outcomes. Distinct age-related differences in COVID-
14 19 trends are present among those with I/DD, with a higher concentration of COVID-19
15 cases at younger ages (Turk, M. A., Landes, S. D., Formica, M. K., & Goss, K. D.
16 (2020). Intellectual and developmental disability and COVID-19 case-fatality trends:
17 TriNetX analysis. *Disability and Health Journal*, 13(3), 100942).

18 13. People with I/DD were at greater risk of severe COVID-19 outcomes: case
19 rates – 7,841 per 100,000 for people with I/DD compared to 1,910 for New York State;
20 case-fatality – 15.0% for people with I/DD compared to 7.9% for New York State; and
21 mortality rate – 1,175 per 100,000 for people with I/DD compared to 151 per 100,000
22 for New York State. Differences in cases and mortality rate were confirmed across
23 regions of the state, but case-fatality rate was only higher for people with I/DD in and
24 around the New York City region (Landes, S. D., Turk, M. A., Formica, M. K.,
25 McDonald, K. E., & Stevens, J. D. (2020). COVID-19 outcomes among people with
26 intellectual and developmental disability living in residential group homes in New York
27 State. *Disability and Health Journal*, 13(4), 100969).

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1 14. In Los Angeles County, during the time period from August 15 to 29,
2 2021, over 5,300 students tested positive for COVID-19, based on data from LAC DPH
3 ([https://www.nbclosangeles.com/news/coronavirus/southern-california-](https://www.nbclosangeles.com/news/coronavirus/southern-california-coronavirus/covid-coronavirus-k-12-education-la-county-schools-lausd-pandemic/2684544/)
4 [coronavirus/covid-coronavirus-k-12-education-la-county-schools-lausd-](https://www.nbclosangeles.com/news/coronavirus/southern-california-coronavirus/covid-coronavirus-k-12-education-la-county-schools-lausd-pandemic/2684544/)
5 [pandemic/2684544/](https://www.nbclosangeles.com/news/coronavirus/southern-california-coronavirus/covid-coronavirus-k-12-education-la-county-schools-lausd-pandemic/2684544/)).

6 15. The 7-day daily average number of cases among all public school districts
7 in Los Angeles County for September 1, 2021 (based on the latest data that is publicly
8 available) was 3,014
9 ([http://publichealth.lacounty.gov/media/coronavirus/docs/education/LAC-DPH-](http://publichealth.lacounty.gov/media/coronavirus/docs/education/LAC-DPH-SchoolDistrict.pdf)
10 [SchoolDistrict.pdf](http://publichealth.lacounty.gov/media/coronavirus/docs/education/LAC-DPH-SchoolDistrict.pdf)).

11 16. The CDC has recognized that the delta variant of the SARS-CoV-2 virus
12 which causes COVID-19 is much more transmissible (about twice more transmissible
13 than the ancestral strain and comparable to chicken pox)
14 (<https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>). As a result,
15 unvaccinated individuals including school-aged children under 12 years are more
16 susceptible to the delta variant (Siegel DA, Reses HE, Cool AJ, et al. Trends in COVID-
17 19 Cases, Emergency Department Visits, and Hospital Admissions Among Children and
18 Adolescents Aged 0–17 Years — United States, August 2020–August 2021. *MMWR*
19 *Morb Mortal Wkly Rep* 2021;70:1249–1254).

20 17. Because of the points raised above, the risk of exposure in a school
21 environment is still very real, despite mask requirements.

22 18. I have reviewed declarations from the families of students submitted in
23 support of this lawsuit. These students have diagnoses of Down syndrome, autism,
24 cerebral palsy, Sotos syndrome, hemiparesis, and respiratory weakness as a result of
25 extreme prematurity. Some of these students cannot keep on a mask. Many parents
26 report that their children have ongoing respiratory problems and one student has a
27 tracheostomy tube. All of these children are at greater risk for poorer outcomes from
28 COVID-19 based solely on these diagnoses.

1 19. Because SARS-CoV-2 is a novel coronavirus and science is still ongoing to
2 characterize this virus and resulting disease, parents and health care providers much
3 balance the latest information available with each child's unique and individual medical
4 situation. In my opinion, parents are justified in taking strong steps to ensure that
5 students with such diagnoses avoid exposure to COVID-19 because of the significantly
6 greater risk of serious illness or death if they contract it attending in-person classes.

7 20. Parents with children with these and similar conditions are fully justified in
8 requesting that they continue with virtual instruction.

9 **MANY STUDENTS WITH DISABILITIES NEED A VIRTUAL LEARNING**
10 **ALTERNATIVE OTHER THAN THROUGH INDEPENDENT STUDY**

11 21. Independent study is a form of educational activity undertaken by an
12 individual student with little to no supervision. According to the California Department
13 of Education website, independent study was originally intended to serve students whose
14 schedules precluded regular classroom attendance, such as child actors and aspiring
15 athletes (<https://www.cde.ca.gov/sp/eo/is/>). Even in the expanded Independent Study
16 offered this year, students have very few hours of direct instruction from a teacher per
17 week.

18 22. Students with I/DD generally require more support in addition to regular
19 classroom instruction to access the curriculum in school, not less. Individualized
20 education plans (IEPs) for students with I/DD often include additional therapies,
21 resource teachers or specialized classroom placements with a smaller ratio of pupils to
22 teachers (fewer students in a classroom).

23 23. As a result, independent study is not an appropriate format for students with
24 I/DD who have special education services. Forcing students with I/DD who have IEPs to
25 choose independent study if parents elect to keep them home because of the increased
26 risk from COVID-19 unfairly places the burden of educational instruction on these
27 parents. Most families with disabled children already carry many burdens; substituting
28 for the public education system should not be one of them.

1 24. Although there were many challenges from the COVID-19 pandemic during
2 the 2020-2021 academic year, one of the positive outcomes was that school districts did
3 master the ability to teach students virtually. While the quality of virtual instruction was
4 variable, almost all California teachers and students experienced substantial amounts of
5 educational instruction using a virtual format.

6 25. In my own practice of patients with neurodevelopmental disabilities, I did
7 have some students, particularly those with social challenges such as autism, who did
8 better with virtual instruction than in-person education.

9 26. A virtual option for educational instruction – other than independent study -
10 should be available from public school districts to serve those students for whom virtual
11 education is better or safer.

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13 I declare under penalty of perjury under the laws of the state of California that the
14 foregoing is true and correct. Executed this 18th day of October, 2021, in Los Angeles
15 County, California.

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