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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 L.N. by and through his *guardian ad litem*
19 K.N., M.G. by and through his *guardian ad*
20 *litem*, S.G., H.H. by and through her *guardian*
21 *ad litem* M.H., and K.H. by and through her
22 *guardian ad litem* C.H., on behalf of
23 themselves and a class of those similarly
24 situated; DISABILITY RIGHTS EDUCATION
25 & DEFENSE FUND; and The ARC OF
26 CALIFORNIA,

23 Plaintiffs,

24 vs.

25 STATE OF CALIFORNIA; CALIFORNIA
26 STATE BOARD OF EDUCATION; and
27 CALIFORNIA DEPARTMENT OF
28 EDUCATION,

28 Defendants.

CASE NO.: 3:21-cv-07585-SI

CLASS ACTION

**FIRST AMENDED 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.

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INTRODUCTION

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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. Plaintiff M.G. is eleven years old and has Down syndrome. His IEP provides
12 educational supports, including access to an alternative curriculum, that allowed him to
13 participate successfully in distance learning last year. M.G.'s disability and additional
14 respiratory problems put him at higher risk of health complications if exposed to COVID-19,
15 and he is too young to be vaccinated. His mother asked for distance learning as an alternative to
16 in-person classes. The IEP team told her that the only option was Independent Study, but that
17 they could not provide the alternative curriculum that her son needs as an accommodation. This
18 is because of Cal. Educ. Code § 51745(a)(3), which expressly states that Independent Study
19 "shall not be provided as an alternative curriculum." The District also rejected his application
20 for Home Hospital Instruction on the basis that his disability is not temporary.

21 6. Plaintiff H.H. is twenty-one years old and has autism, cerebral palsy, and other
22 disabilities. She also has associated medical conditions, including Tracheomalacia, which
23 requires use of a tracheostomy tube, and chronic lung disease. Through her IEP, H.H. was able
24 to participate successfully in distance learning last year through a non-public school that offers
25 an alternative curriculum. When she started back to school remotely in August 2021, her classes
26 were canceled after one day. Her school explained that the state education agency would not
27 allow non-public schools to offer virtual options. Later, the district agreed that H.H. could enroll
28 in very limited distance learning hours through Independent Study or Home Hospital but

1 without any of the services in her IEP. H.H. has now been at home with no educational
2 programing for almost a month.

3 7. Plaintiff K.H. is 13 years old and has cerebral palsy, epilepsy, and additional
4 disabilities. She has a history of pneumonia due to her disabilities. She also struggles to
5 consistently wear a face mask. She is at increased risk of severe outcomes from exposure to
6 COVID-19. With adaptations to schoolwork and a 1-to-1 aide paraeducator through her IEP, she
7 was able to participate successfully in distance learning last year. K.H.'s school district is
8 offering independent study through a virtual academy that allows students to customize remote
9 classes. K.H.'s parents wanted her to participate in the virtual academy with her nondisabled
10 peers, and requested an IEP meeting. The IEP team refused to allow K.H. to enroll in the virtual
11 academy, and said that her only option is Home Hospital Instruction, a program in which she
12 would have no interaction with non-disabled peers.

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

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

25 10. Defendants State of California, the State Board of Education and the California
26 Department of Education ("CDE") are collectively responsible for implementing California's
27 public education program. By adopting and implementing the new Independent Study statute,
28 they are administering the statewide public education program in a manner that discriminates

1 against disabled students, and perpetuates discriminatory actions by local school districts, which
2 are their agents and contractors.

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

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

25 13. Plaintiffs seek a temporary restraining order and preliminary injunction to restore
26 the status quo by (a) enjoining Assembly Bill 130 to the extent it limits or otherwise prohibits
27 school districts’ ability to provide special education instruction and related services virtually;
28 and (b) ensuring students with disabilities have meaningful access to distance learning programs

1 that are comparable to the programs they received during the 2020-21 school year. Only such an
2 order will protect the health and safety of the Student Plaintiffs and enable them and the
3 putative class to continue their education until they are safe to resume in-person classes.
4 Plaintiffs also seek a permanent injunction and declaratory relief against all Defendants.

5 **JURISDICTION AND VENUE**

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

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

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

18 **PARTIES**

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

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

1 19. Plaintiff H.H. is twenty-one years old and lives in California with her family. She
2 has multiple disabilities and qualifies as an individual with a disability for purposes of the ADA
3 and Section 504 of the Rehabilitation Act of 1973. She also qualifies for special education under
4 the categories of multiple disability and hard of hearing and has an IEP. She is under a
5 conservatorship and brings this action through her parent and guardian ad litem, M.H.

6 20. Plaintiff M.G. is eleven years old and lives in California with his family. He has
7 Down syndrome and asthma and qualifies as an individual with a disability for purposes of the
8 ADA and Section 504 of the Rehabilitation Act of 1973. He also qualifies for special education
9 under the categories of Intellectual Disability and has an IEP. He brings this action through his
10 parent and guardian ad litem, S.G.

11 21. Plaintiff K.H. is thirteen years old and lives in California with her family. She
12 has cerebral palsy, epilepsy, and other medically-related disabilities, and qualifies as an
13 individual with a disability for purposes of the ADA and Section 504 of the Rehabilitation Act
14 of 1973. She qualifies for special education under the categories of orthopedic impairment and
15 visual impairment and has an IEP. She brings this action through his parent and guardian ad
16 litem, C.H.

17 22. Plaintiff Disability Rights Education and Defense Fund (DREDF), founded in
18 1979, is a national nonprofit civil rights law and policy center located in Berkeley, California,
19 dedicated to protecting and advancing the civil rights of people with disabilities. DREDF is
20 directed by individuals with disabilities and parents who have children with disabilities, and
21 pursues its mission through education, advocacy and law reform efforts. As a Parent Training
22 and Information Center funded by the U.S. Department of Education, DREDF serves families of
23 children with disabilities and disabled young adults in 33 California counties. The Parent
24 Training Institute provides free assistance to families to help them understand their education
25 rights, support their participation in special education processes at public schools, and resolve
26 problems. DREDF provides training, technical assistance through phone and email, and
27 referrals to support families on securing educational rights and entitlements under laws
28 including the ADA, the Individuals with Disabilities Education Act (IDEA), and Section 504 of

1 the Rehabilitation Act. DREDF also responds to calls and emails from across the state.

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

13 24. The Arc of California is the state office of the nation’s largest and oldest
14 community-based organization providing services, supports, and advocacy with and for people
15 with intellectual and developmental disabilities and their families. The state office represents 19
16 smaller chapters throughout California that serve thousands of individuals with disabilities, their
17 families, and services providers. The mission of The Arc of California is to promote and protect
18 the rights of individuals with intellectual and developmental disabilities and actively support
19 their full inclusion and participation in the community throughout their lifetime. The Arc of
20 California represents the public interest, supporting and acting with and on behalf of all people
21 with intellectual and developmental disabilities and their families regardless of the type of
22 disability or membership in The Arc.

23 25. Since the enactment of Assembly Bill 130 in July 2021, The Arc of California
24 has been forced to divert organizational resources to respond to a substantial number of calls
25 and inquiries from families regarding denial, delays, and limitations of educational services.
26 Families reported that school districts either denied their children Independent Study or
27 informed them that in order to be placed in the Independent Study program their children would
28 have to forgo the services and supports afforded to them in their current IEPs. The Arc of

1 California has also conducted “know your rights” trainings for families and disseminated
2 guidance on Assembly Bill 130 to its Chapters and affiliated service providers. The families
3 with students with disabilities who are contacting The Arc of California about their problems
4 finding alternatives to in-person classes are The Arc of California’s constituents.

5 26. Defendant State of California is the legal and political entity with plenary
6 responsibility for educating all California public school students, including the responsibility to
7 establish and maintain the system of common schools and a free education, under Article IX,
8 section 5 of the California Constitution, and to assure that all California public school students
9 receive their individual and fundamental right to an equal education, under the equal protection
10 clauses of the California Constitution, Article I, section 7(a), and Article IV, section 16(a).

11 27. Defendant State Board of Education and its members are responsible for
12 determining the policies governing California’s schools and for adopting rules and regulations
13 for the supervision and administration of all local school districts. Pursuant to California
14 Education Code sections 33030-32, the State Board of Education is required to supervise local
15 school districts to ensure that they comply with State and federal law requirements concerning
16 educational services.

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

22 **CLASS ALLEGATIONS**

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

1 the student at risk.

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

5 31. The members of the Class are so numerous that joinder of all such persons is
6 impracticable. Approximately 721,000 students in California have disabilities and make up
7 11.7% of the school population. CDE California School Dashboard,
8 <https://www.caschooldashboard.org/reports/ca/2020>.

9 32. Individual action by class members is impracticable. Class members face
10 significant barriers to asserting their rights, including misinformation and intimidation from
11 their school districts and their inability to join the State Defendants and to assert ADA claims in
12 administrative hearings.

13 33. There are questions of law and fact common to the Class identified above,
14 namely:

- 15 A. By limiting the type of distance learning programs which Local Educational
16 Agencies may offer to a single format which is, by definition, inaccessible to
17 most students with disabilities, the statute at issue discriminates against all class
18 members.
- 19 B. All members of the proposed class have been denied timely enrollment in an
20 educational program that is safe and provides then meaningful access to the
21 benefits and opportunities for California's public education system.
- 22 C. All members of the proposed class are denied safe and equal access to the public
23 education system because the services, supports, and accommodations which
24 they require to access them are being denied.
- 25 D. All members of the proposed class have been denied the ability to access a public
26 education program safely and in a manner that protects them from undue risk of
27 adverse health consequences, which is equal to that afforded to their non-
28 disabled peers.

1 services they needed to learn. Some disabled students, such as Plaintiffs E.E., L.N., M.G., H.H.,
2 and K.H. adapted to distance learning and made educational progress.

3 41. The distance learning provisions that California adopted in 2020 had a sunset
4 date of June 30, 2021. *Id.*, § 43511.

5 42. In July 2021, California adopted a new statute that allowed funding for distance
6 learning only for students enrolled in the State’s Independent Study program. Assembly Bill
7 (AB) 130 (Chapter 44, Statutes of 2021), approved on July 9, 2021. The new statute provides
8 that Independent Study will be offered to students “whose health would be put at risk by in-
9 person instruction, as determined by the parent or guardian of the pupil.” Cal. Educ. Code §
10 51745(a)(6). No funding is available to school districts to provide distance learning other than
11 through Independent Study.

12 43. However, the statute also provides that students with disabilities “shall not
13 participate in independent study, unless the pupil’s individualized education program [IEP] ...
14 specifically provides for that participation.” *Id.* § 51745(c) (emphasis added). Cal. Educ. Code
15 § 57149.5(a)(7) includes similar language: “An individual with exceptional needs, as defined in
16 Section 56026, shall not participate in course-based independent study, unless the pupil’s [IEP]
17 developed pursuant to [the state special education statute] specifically provides for that
18 participation.”

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

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

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

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2
3 46. Plaintiff E.E. is six years old and has Down syndrome, an intellectual disability
4 with associated medical conditions. Her IEP provides extensive services such as a full-time
5 behavior aide and speech, language and occupational therapy. E.E. has a twin sister who is
6 typically developing and does not have a disability. Like many other children with Down
7 syndrome, E.E. is at higher risk of health complications if exposed to COVID-19, so the twin's
8 mother, A.J., requested distance learning for both children. The school district approved
9 Independent study for her non-disabled twin, but required prior approval from E.E.'s IEP team.
10 At the IEP meeting, district staff said that E.E. would lose all her support services if she
11 enrolled in Independent Study. When A.J. protested that E.E. needed these to learn, school staff
12 said her only choice was to take E.E. to in-person classes, regardless of the risk. Because of this
13 impasse, E.E. has been home with no access to classes since school began. In contrast, her non-
14 disabled twin has been enrolled in Independent Study from the beginning.

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

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

7 49. Plaintiff M.G. is eleven years old and has Down syndrome. Like many other
8 students with cognitive disabilities, M.G. has an IEP that provides access to an alternative
9 curriculum. M.G. attends the same school district as Plaintiff L.N., and his parent saw the same
10 recorded webinar from their school district. District staff advised the public that Independent
11 Study is the only alternative to in-person classes, but it is only for students who “can follow a
12 general education curriculum” and who only need a general education teacher, not a special
13 education teacher or other special education service provider.

14 50. Plaintiff H.H. is 21 years old and has developmental disabilities and related
15 medical conditions. Her non-public school provided her with a virtual learning program at the
16 start of the school year but stopped after one day. The school district explained that Assembly
17 Bill 130 did not permit non-public schools to offer virtual learning programs. H.H.’s mother,
18 M.H., filed a Complaint Resolution Procedure (“CRP”) complaint against her district. In its
19 Investigation Report, the CDE verified M.H.’s factual allegation that on August 27, 2021, the
20 non-public school discontinued their remote learning program pursuant to AB 130. Despite this
21 finding, Defendant CDE did not identify any violations related to the discontinuation of H.H.’s
22 remote learning program or order any individual relief for H.H.

23 51. Plaintiff K.H. is 13 years old and has cerebral palsy, epilepsy, and a history of
24 pneumonia due to her disabilities. K.H.’s school district launched a virtual academy program for
25 the 2021-22 school year that allows students to customize remote classes to fit their needs.
26 K.H.’s parent filled out an application for the program but had to call an IEP meeting to get
27 formal approval. The IEP team refused to allow K.H. to enroll in the virtual academy, and said
28 that her only option is Home Hospital Instruction, a program in which she would have no

1 interaction with non-disabled peers.

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

5 a. R.C. has autism and other medical conditions that place him at higher risk of
6 health complications if exposed to COVID-19, so his parent wants him to
7 continue in distance learning. He has an IEP and attended a non-public school
8 last year that offered him an alternative curriculum and additional supports
9 during distance learning. His school was ready to provide him distance learning
10 when classes resumed in August 2021. Instead, the school district intervened,
11 saying that R.C. could not continue in distance learning at the non-public school
12 that had served him so well. His IEP team eventually met but refused to approve
13 Independent Study or distance learning with her son's previous non-public
14 school. R.C. is still at home with no educational services.

15 b. M.C. has Down syndrome and is immunocompromised, with a low count of
16 white blood cells and "infection-fighting" cells. With modifications to the
17 curriculum and a 1-to-1 aide, M.C. was able to participate successfully in
18 distance learning last school year. For 2021-22, the family requested distance
19 learning continue through Independent Study. When the district finally held an
20 IEP meeting, the IEP team found that M.C. could not learn independently. The
21 district refused to place him in Independent Study. At this point, M.C. has been
22 in limbo for more than a month, without any access to direct educational
23 instruction or services, waiting to see if the district approves any other alternative
24 to in-person classes.

25 **The design of independent study excludes students**
26 **with intellectual and developmental disabilities.**

27 53. The design of Independent Study excludes students who need adult assistance to
28 learn. Many children with more severe disabilities fall into this category, including those

1 intellectual and developmental disabilities such as autism and Down syndrome. According to
2 data from Defendant CDE, more than 150,000 students are eligible for special education based
3 on autism or intellectual disability. California Department of Education, “Special Education –
4 CalEdFacts,” <https://www.cde.ca.gov/sp/se/sr/cefspeced.asp>.

5 54. For example, the IEP team for Plaintiff E.E. refused to approve her for
6 Independent Study because she needs significant adult support to learn. Many school district
7 IEP teams across the State are refusing to approve Independent Study on this basis for other
8 similarly situated students.

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

17 56. Other districts also take the position that students who need adult assistance to
18 learn are not eligible for Independent Study. One FAQ from a virtual “Office Hours” with the
19 Los Angeles County Office of Education on September 7, 2021, states flatly: “Question: ‘How
20 can a very involved student in a self-contained class requiring a one-on-one assistant
21 “independently” be recommended for an independent study program?’ Answer: ‘The IEP team
22 will need to make the determination. However, the term “Independent Study” implies that a
23 child will be able to complete the work independently or with minimal adult help.’” Defendant
24 CDE arranged this Office Hours session and endorsed this FAQ.

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

28 58. The design of Independent Study also excludes disabled students who require a

1 modified curriculum. Many students with moderate to severe disabilities, including many with
2 intellectual and developmental disabilities, cannot access the State’s “Common Core” general
3 education curriculum without modifications, and receive instruction based on alternative
4 achievement standards, or an “alternate curriculum.” 34 C.F.R. §§ 200.1(d), 300.160(c). Such
5 curricula are “[d]esigned for students with the most significant cognitive disabilities.” *Id.*

6 59. However, California law on Independent Study provides that it is only “designed
7 to teach the knowledge and skills of the core curriculum. Independent study shall not be
8 provided as an alternative curriculum.” Cal. Educ. Code § 51745(a)(3).

9 60. For example, Plaintiff L.N.’s large urban school district announced in a town hall
10 meeting that Independent Study will only offer the general education curriculum without any
11 special education services. Many other students with IEPs have been denied Independent Study
12 because they are on an alternate/alternative curriculum. See, e.g., Paragraphs 5-7, *supra*, re:
13 Plaintiffs M.G., H.H., and K.H.; Paragraph 47, *supra*, re: M.C. (student with Down syndrome)
14 and R.C. (student with autism).

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

16 61. California’s implementation of Independent Study permits school districts to
17 enroll disabled students on the condition that they give up their rights to accommodations,
18 including their rights under IDEA. Under the earlier distance learning statute in effect in the
19 2020-21 school year, each student had a distance learning plan that listed the accommodations
20 they needed. IEP teams are refusing to offer these same services through Independent Study.
21 These IEP teams make a single offer of a Free and Appropriate Public Education (“FAPE”),
22 which is through in-person classes only.

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

27 63. Plaintiffs DREDF, The Arc of California, and other groups that assist with
28 special education issues have been contacted by and advised numerous families who report that

1 they have been forced to sign such waivers.

2 64. One local school board has developed a standard waiver agreement that it
3 announced publicly as a “proposed solution” for students when the IEP team refuses to offer
4 distance learning: “The agreement is that the student can participate in [the school district’s]
5 Virtual Academy (Independent Study), but the student's educational rights' holder waives all
6 FAPE claims (since the IEP team determined Independent Study is not FAPE).¹

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

11 66. CDE has endorsed the use of Home Hospital Instruction as an alternative “work-
12 around” for disabled students. This is an option under California law for students who have a
13 “temporary disability that makes attendance in the regular day classes or alternative education
14 program impossible or inadvisable.” Cal. Educ. Code § 48206.3. IEP teams can place students
15 with disabilities on Home Hospital Instruction but only with a report from a medical provider
16 “stating the diagnosed condition and certifying that the severity of the condition prevents the
17 pupil from attending a less restrictive placement.” Cal. Code Regs., tit. 5, § 3051.4(d).

18 67. Home Hospital Instruction is not a workable alternative for students with IEPs
19 who are denied access to or accommodations in Independent Study. Plaintiffs L.N.’s and M.G.’s
20 school district held a virtual town hall in which school staff estimated that only forty children
21 would qualify for Home Hospital Instruction, out of more than 9,000 students with disabilities.
22 School staff also told L.N.’s mother that Home Hospital Instruction was only for students who
23 would miss school temporarily, for up to six weeks.

24 68. Even those students approved for Home Hospital Instruction receive little
25 benefit. Most districts offer Home Hospital Instruction for only one hour per day, which is the
26

27 ¹ 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/Meetings/Attachment.aspx?S=36030382&AID=168845&MID=8254>

1 minimum required in the statute. Cal. Educ. Code § 48206.3(c)(1). L.N.’s example is typical.
2 His school district told his parent that, even if he qualified, he would get only one hour of
3 instruction per day. School districts are also telling families that students in Home Hospital
4 Instruction will receive few or none of the services in the child’s IEP. The mother of Plaintiff
5 L.N. was repeatedly told by school personnel that he will not be provided any of his special
6 education services and supports if he is approved for the Home Hospital program.

7 69. Home hospital is also more isolating because it provides no opportunity for
8 interaction with nondisabled peers. For example, the school district where Plaintiff K.H. attends
9 has arranged for a “Virtual Academy” for the many students who are choosing Independent
10 Study. The IEP team for student K.H. would not approve the Virtual Academy and instead
11 referred her to Home Hospital Instruction. Her mother has not agreed, because Home Hospital
12 does not provide the opportunity for interaction with nondisabled peers that the virtual academy
13 does. Interaction with friends and peers is critical to emotional and social growth for children
14 with disabilities.

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

17 70. The State treated students with disabilities far better during distance learning and
18 in emergency quarantines, both of which mandate special education rights. From March 2020-
19 June 2021, the State guaranteed that students with disabilities could participate in distance
20 learning with special education and related services required by the student’s IEP. Cal. Educ.
21 Code § 43503(b)(4); Cal. Educ. Code § 43511(b). The State also required all IEPs include a
22 plan for service delivery in the event of qualifying emergencies where schools cannot deliver
23 services in person. Cal. Educ. Code § 56345(a)(9).

24 71. Now, the State requires that students with disabilities who quarantine may
25 participate in Independent Study and must have access to their distance learning emergency
26 plan. Cal. Educ. Code § 46393. This already-existing distance learning system for quarantined
27 students demonstrates that it is a reasonable modification to provide distance learning to all
28 students with disabilities. There is no justifiable rationale for denying this to students who are

1 not quarantined but still need distance learning to ensure their health and safety from the
2 pandemic.

3 **Discriminatory delays in accessing distance learning**

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

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

18 **Plaintiffs will suffer irreparable injury**

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

23 75. However, attending in-person classes is an even greater threat. The Student
24 Plaintiffs and other similarly situated students have underlying or associated medical conditions
25 that place them at much higher risk from a COVID-19 infection. “All people with serious
26 underlying chronic medical conditions like chronic lung disease, a serious heart condition, or a
27 weakened immune system seem to be more likely to get severely ill from COVID-19,”
28

1 according to the U.S. Centers for Disease Control & Prevention (CDC).² The Student Plaintiffs
 2 and others profiled here display all these characteristics. Many children, such as Plaintiffs E.E.
 3 and M.G., have Down syndrome and are at risk of serious, life-threatening complications from
 4 COVID-19.³ About half of all children with Down syndrome have heart defects that also
 5 diminish lung capacity.⁴ Other students who need Independent Study have asthma and lung
 6 disease. According to the CDC, people with moderate to severe asthma are also more likely to
 7 get severely ill from COVID-19.⁵

8 76. A return to in-person classes poses a serious risk of infection for these students,
 9 many of whom are too young to be vaccinated. Unfortunately, schools across the state continue
 10 to experience COVID-19 outbreaks and exposure of thousands of students statewide.⁶ The risk
 11 of exposure to COVID-19 during in-person classes is real, even with masks.

12
 13
 14 _____
 15 ² CDC, “COVID -19 Information and Resources,”
 16 <https://www.cdc.gov/ncbddd/humandevlopment/covid-19/people-with-disabilities.html>.

17 ³ *Id.*

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

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

23 ⁶ *See, e.g.*, Los Angeles Times, “Coronavirus outbreaks in L.A. schools increase,” September 2,
 24 2021, [https://www.latimes.com/california/story/2021-09-02/la-county-coronavirus-outbreaks-](https://www.latimes.com/california/story/2021-09-02/la-county-coronavirus-outbreaks-increase-in-l-a-county-schools)
 25 [increase-in-l-a-county-schools](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
 26 schools,” September 26, 2021, [https://www.latimes.com/projects/lausd-covid-19-cases-](https://www.latimes.com/projects/lausd-covid-19-cases-tracking-spread-outbreaks/)
 27 [tracking-spread-outbreaks/](https://www.latimes.com/projects/lausd-covid-19-cases-tracking-spread-outbreaks/) (“There are currently 12 schools under investigation for an outbreak,
 28 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,
 “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>;
 CBS News, “More Schools Closing Due To COVID Outbreaks,” September 6, 2021,
<https://sacramento.cbslocal.com/2021/09/06/covid-outbreaks-schools-closing/>; EdSource,
 “Covid testing was supposed to keep schools safe. What happened?” September 7, 2021,
[https://edsource.org/2021/covid-testing-was-supposed-to-keep-schools-safe-what-](https://edsource.org/2021/covid-testing-was-supposed-to-keep-schools-safe-what-happened/660721)
[happened/660721](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
 quarantines).

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

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

15 79. The Student Plaintiffs, DREDF constituents, The Arc of California constituents,
16 and others similarly situated are irreparably injured, even though they have the right to seek
17 “compensatory education” in the form of in-kind educational services through the State special
18 education administrative appeal system. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31
19 F.3d 1489, 1496-97 (9th Cir. 1994). This remedy cannot restore the time that these children
20 have lost. With limited hours in the day, children can only absorb so much at one time. More
21 services later will not make up for the lost weeks of education that these children have and will
22 continue to experience.

23 80. Plaintiffs DREDF and The Arc of California are also irreparably injured by
24 Defendants’ actions, including from the diversion of resources required to respond to families
25 facing barriers to distance learning, and by the harmful impact on DREDF’s and The Arc of
26 California’s constituents.

27 _____
28 ⁷ 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>.

FIRST CAUSE OF ACTION

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

81. Plaintiffs incorporate by reference every allegation contained in the foregoing paragraphs.

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

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

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

85. Title II of the ADA mandates that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132; see also 28 C.F.R. § 35.130.

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

87. The ADA directs the Attorney General to promulgate regulations enforcing Title II of the ADA and provides guidance on their content. The regulations promulgated by the

1 Attorney General require public entities to “make reasonable modifications” to their programs
2 and services “when the modifications are necessary to avoid discrimination.” 28 C.F.R. §
3 35.130(b)(7).

4 88. The regulations also specify that it is unlawful discrimination for a public entity
5 to:

- 6 a. “Afford a qualified individual with a disability an opportunity to
7 participate in or benefit from the aid, benefit, or service that is not equal
8 to that afforded others,” 28 C.F.R. § 35.130(b)(1)(ii);
- 9 b. “Provide a qualified individual with a disability with an aid, benefit, or
10 service that is not as effective in affording equal opportunity to obtain the
11 same result, to gain the same benefit, or to reach the same level of
12 achievement as that provided to others,” 28 C.F.R. § 35.130(b)(1)(iii);
- 13 c. Fail to “administer services, programs, and activities in the most
14 integrated setting appropriate to the needs of qualified individuals with
15 disabilities,” 28 C.F.R. § 35.130(d), which the Attorney General has
16 defined as “a setting that enables individuals with disabilities to interact
17 with non-disabled persons to the fullest extent possible,” 28 C.F.R. pt. 35,
18 App. A, p. 450; or
- 19 d. “[U]tilize criteria or methods of administration ... [t]hat have the purpose
20 or effect of defeating or substantially impairing accomplishment of the
21 objectives of the public entity’s program with respect to individuals with
22 disabilities,” 28 C.F.R. § 35.130(b)(3)(ii).

23 89. Plaintiffs E.E., L.N., M.G., H.H., and K.H. are qualified individuals with a
24 disability within the meaning of the ADA. All have disabilities that substantially limit one of
25 more major life activities, including communication, cognitive functioning, ability to learn and
26 developing and maintaining relationships.

27 90. As school-aged children, all are qualified to participate in Defendants’
28 educational programs and services. 42 U.S.C. § 12131(2).

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

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

7 93. Defendants have administered the State’s public education program so as to
8 discriminate against and exclude the Student Plaintiffs and others similarly situated.

9 94. The State’s discriminatory administration of its public education program
10 directly resulted in the Student Plaintiffs’ unequal access to the benefits of a public education,
11 and which denied them and others similarly situated from equal opportunities to benefit from
12 their education.

13 95. The injury experienced by the Student Plaintiffs and others similarly situated due
14 to their exclusion from distance learning and from safe alternatives to in-person instruction is
15 directly traceable to Defendants’ administration of the state educational program, its adoption of
16 a discriminatory state law, and its failure to ensure that Defendants and other school districts
17 comply with the ADA.

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

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

26 98. Further, a public entity may not “[a]id or perpetuate discrimination . . . by
27 providing significant assistance to an agency, organization, or person that discriminates on the
28 basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity’s

1 program[.]” 28 C.F.R. § 35.130(b)(1)(v).

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

5 100. Defendants, including CDE, have failed to instruct the local school districts that
6 they oversee about the application of the ADA to Assembly Bill 130, including their obligation
7 to provide needed accommodations to enable disabled students to participate in the public
8 educational programs they offer.

9 101. Defendants have adopted a method of administration that results in
10 discrimination by local education agencies in access to distance learning and the denial of safe
11 alternatives to in-person learning, and by its failure to monitor and supervise local districts,
12 which are part of its educational program.

13 102. In addition, Defendants’ Independent Study program perpetuates discrimination
14 by local districts, which also provide services to the disabled students who are beneficiaries of
15 California’s public education program.

16 103. CDE has failed to ensure that the local school districts that it oversees comply
17 with the ADA regarding distance learning and Independent Study.

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

- 20 a. Denying them an opportunity to participate in and benefit from
21 educational services that is equal to that afforded other students;
- 22 b. Failing to provide educational services that are as effective in affording
23 equal opportunity to obtain the same result, gain the same benefit, or
24 reach the same level of achievement as that provided other students;
- 25 c. Denying the opportunity to receive educational programs and services in
26 the most integrated setting appropriate to their needs;
- 27 d. Failing to reasonably modify its programs and services as needed to avoid
28 discrimination;

- 1 e. Utilizing methods of administration that have the effect of defeating or
2 substantially impairing the accomplishment of the objectives of
3 Defendants’ educational programs; and
4 f. Perpetuating the discrimination of local school districts.

5 105. Other district courts in California have held Defendant CDE accountable for
6 discriminatory actions by school districts, including violations of the ADA. *Emma C. v. Eastin*,
7 985 F. Supp. 940, 948 (N.D. Cal. 1997). There, the court found that CDE “failed to monitor [the
8 district’s] compliance with state and federal laws,” denied the state’s motion to dismiss and
9 found that the complaint adequately alleged that the state agency “perpetuated this
10 discrimination.” *Id.*

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

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

17 108. As a result of Defendants’ actions and inaction, Plaintiffs and others similarly
18 situated have suffered injury, including, but not limited to, denial of meaningful access to the
19 benefits of a public education. As a direct and proximate result of the aforementioned acts, the
20 Student Plaintiffs have suffered, and continue to suffer loss of equal educational opportunity,
21 denial of their access to appropriate programs, accommodations, modifications, services and
22 access required for Plaintiffs’ disabilities, and its exclusion of Student Plaintiffs.

23 109. Plaintiffs DREDF and The Arc of California have also suffered injury from the
24 diversion of its limited resources to respond to the consequences of Defendants’ actions and
25 inaction.

26 110. Because Defendants’ discriminatory and wrongful conduct is ongoing,
27 declaratory and injunctive relief are appropriate remedies. Further, as a direct result of
28 Defendants’ actions, Plaintiffs and others similarly situated continue to suffer harm and

1 therefore speedy and immediate relief is appropriate.

2 111. Plaintiff seeks injunctive and declaratory relief, damages and attorneys' fees and
3 costs as a result.

4 **SECOND CAUSE OF ACTION**

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

6 112. Plaintiffs incorporate by reference each and every allegation contained in the
7 foregoing paragraphs.

8 113. Section 504 of the Rehabilitation Act of 1973 provides in relevant part: "No
9 otherwise qualified individual with a disability . . . shall, solely by reason of her or his
10 disability, be excluded from the participation in, be denied the benefits of, or be subjected to
11 discrimination under any program or activity receiving Federal financial assistance" 29
12 U.S.C. § 794(a).

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

15 115. All Defendants are recipients of federal financial assistance within the meaning
16 of Section 504, and its implementing regulations.

17 116. Special education services are a "program or activity receiving Federal financial
18 assistance" because Defendants receive federal financial assistance for these services.

19 117. The Student Plaintiffs are qualified individuals with disabilities within the
20 meaning of Section 504. They have impairments that limit their life activities. They are
21 otherwise qualified to participate in and receive benefits from Defendants' programs and
22 services. 29 U.S.C. § 794(b).

23 118. At all times relevant, Defendants received federal financial assistance for the
24 public educational services and programs they provide.

25 119. Under Section 504, a qualified individual with a disability may not, solely by
26 reason of his/her disability, be subjected to discrimination, excluded from participation in, or
27 denied the benefits of, any program or activity receiving Federal financial assistance. 29 U.S.C.
28 § 794(a).

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

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

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

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

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

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

18 126. Recipients of federal financial assistance may not “[p]rovide a qualified
19 handicapped person with an aid, benefit, or service that is not as effective as that provided to
20 others,” *Id.* at §104.4(b)(1)(iii), and may not “[a]fford a qualified handicapped person an
21 opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that
22 afforded others.” *Id.* at §104.4(b)(1)(ii).

23 127. Like the regulations implementing the ADA, the regulations implementing
24 Section 504 also prohibit discriminatory methods of administration. “A recipient may not,
25 directly or through contractual or other arrangements, utilize criteria or methods of
26 administration (i) that have the effect of subjecting qualified handicapped persons to
27 discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or
28 substantially impairing accomplishment of the objectives of the recipient's program or activity

1 with respect to handicapped persons, or (iii) that perpetuate the discrimination of another
2 recipient if both recipients are subject to common administrative control or are agencies of the
3 same State.” 34 C.F.R. § 104.4(b)(4); 45 C.F.R. § 84.4(b)(4).

4 128. Defendants have violated Section 504 by adopting and implementing a new
5 Independent Study law that discriminates against the Student Plaintiffs and other students with
6 disabilities.

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

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

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

19 132. In addition, Defendants’ Independent Study program perpetuates discrimination
20 by local districts, which are also agencies of the State of California within the meaning of
21 Section 504. See, e.g., *Emma C. v. Eastin*, 985 F. Supp. 940, 948 (N.D. Cal. 1997) (holding that
22 a recipient of federal funds discriminates on the basis of disability when it perpetuates
23 discrimination by providing assistance to another entity that in turn discriminates).

24 133. Defendants committed the acts and omissions alleged herein with intent and/or
25 deliberate indifference to Plaintiffs’ rights, particularly given the length of time the problems
26 persisted and the severity of the problems.

27 134. The Student Plaintiffs and others similarly situated suffered injury in fact,
28 including, but not limited to, denial of meaningful access to the benefits of a public education.

1 As a direct and proximate result of the aforementioned acts, Plaintiffs have suffered, and
2 continues to suffer loss of equal educational opportunity. Plaintiffs DREDF and The Arc of
3 California have suffered injury in fact as a result of the diversion of its resources to respond to
4 Defendants' illegal acts.

5 135. Because Defendants' discriminatory and wrongful conduct is ongoing,
6 declaratory and injunctive relief are appropriate remedies. Further, as a direct result of
7 Defendants' actions, Plaintiffs are suffering irreparable harm and therefore speedy and
8 immediate relief is appropriate.

9 136. Plaintiffs seek injunctive and declaratory relief, damages and attorneys' fees and
10 costs as a result.

11 **PRAYER FOR RELIEF**

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

13 1. A declaration that Defendants' conduct violates the Americans with Disabilities
14 Act, 42 U.S.C. § 12101, et seq. and 28 C.F.R. §§ 35.104, 36.104 (the "ADA") and Section 504
15 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 et seq. ("Section 504").

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

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

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

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

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

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

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