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13 **Society of Indian Psychologists**

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

17 Stephen C., a minor, by Frank C., guardian ad)
18 litem, et al.,)
19 Plaintiffs,)
20 v.)
21 Bureau of Indian Education, et al.,)
22 Defendants.)

CASE NO.: 3:17-cv-08004-SPL
**BRIEF OF SOCIETY OF INDIAN
PSYCHOLOGISTS AS
AMICUS CURIAE IN SUPPORT
OF PLAINTIFFS' OPPOSITION
TO DEFENDANTS' PARTIAL
MOTION TO DISMISS**

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INTRODUCTION

1
2 Students at Havasupai Elementary School embody the legacy and future of their
3 tribe, yet they have not received even minimally sufficient public education. This
4 educational deprivation has exponential consequences—generation after generation has
5 been deprived of learning basic academic and problem-solving skills, which has
6 continually decreased educational opportunities and support for later generations. Bryan
7 McKinley Jones Brayboy, Address at Arizona American Indian Chamber of Commerce:
8 Considering The Power Of College And Education For American Indians (Dec. 2014).

9 In addition, the Student Plaintiffs, like many Native students, live “in a world far
10 worse than that of the typical non-[Native] child.” Ryan Seelau, *Regaining Control Over*
11 *the Children*, 37 AM. INDIAN L. REV. 63, 66, 72 (2012-2013). As a group, Native children
12 suffer one of the highest rates of psychological trauma in the U.S. *Id.* This results in a
13 greater prevalence of psychological dysfunction and functional impairments, which in turn
14 increases the need for special accommodations in education. Yet despite this increased
15 need, and despite the Federal Government’s responsibility for educating members of this
16 historically marginalized group, the state of public education provided to Native children
17 falls far short of even minimum standards. This case offers the Court an opportunity to
18 correct this deficiency.

19 The lack of education provided at Havasupai Elementary School is independently
20 devastating, as it leaves individuals ill-equipped to succeed in the world at large. In effect,
21 it has perpetuated the population’s preexisting trauma, resulting in troubling and persistent
22 injuries to the Student Plaintiffs and others like them. For these children to have any hope
23 of overcoming adversity and thriving, they must be given compensatory and culturally
24 responsive education. While this remedy is not perfect, it can remedy some of the more
25 egregious educational deprivations suffered by the students of Havasupai Elementary
26 School.

27 The Society of Indian Psychologists (“SIP”) as amicus writes to place before the
28 Court two important facts that it believes are overlooked by Defendants’ partial motion to

1 dismiss the Second Amended Complaint. First, educational deficits have long-lasting,
2 post-school-age consequences. Second, repeated exposure to severe trauma, absent the
3 basic education needed to develop resiliency, impairs an individual's ability learn,
4 communicate, and participate in society.

5 INTEREST OF THE AMICUS

6 Society of Indian Psychologists ("SIP") is a non-profit organization for Native
7 American indigenous people. SIP advocates for the mental well-being of Native peoples
8 by increasing the knowledge and awareness of issues impacting Native mental health.
9 SIP's main goal is to come together as Native psychologists who work in support of
10 professionals, researchers, graduate students, and undergraduate students. As a
11 community, SIP shares ideas, and disseminates knowledge and new information relevant
12 to Native people. United by a common core of values, it seeks to be a resource for Native
13 communities by increasing the knowledge and awareness of issues impacting Native
14 mental health. As community psychologists, members of SIP look for root causes of
15 problems in a community and, in turn, for ways to rehabilitate the health of the community
16 as a whole from the ground up. They are leaders in promoting wellness models that build
17 on community resiliency.

18 The issues in this case are of particular importance to SIP. SIP has a vested interest
19 in supporting Native American people and in ensuring that Native American people
20 receive resources that are responsive to their unique needs, and to which they are entitled
21 by law. SIP also has a vested commitment to improving the mental well-being of Native
22 people, including by educating the public about the needs of the population and by
23 identifying and implementing solutions and responses to those needs. As psychologists,
24 SIP studies how children learn and how a lack of educational opportunity impacts children.
25 SIP thus has specific expertise about both (1) the importance of access to education and the
26 psychological impact of educational deprivation; and (2) the impact of trauma on learning,
27 specifically in the context of Native children. SIP understands that public elementary
28

1 schools are a critical community resource for addressing these issues and delivering
2 appropriate accommodations.

3 The Court’s decision in this case has the potential to ensure that the Student
4 Plaintiffs are provided with the minimally sufficient education that they have been
5 promised. A basic education in turn will foster their mental and emotional stability and
6 provide them with the foundation necessary for them to grow into thriving and
7 contributing members of their communities.

8 ARGUMENT

9 **I. THE DEPRIVATION OF ADEQUATE EDUCATION AMONG NATIVE 10 AMERICANS IS PERPETUALLY DEVASTATING BUT CAN BE 11 IMPROVED OVER TIME**

12 Defendants contend in their partial motion to dismiss that five of the Student
13 Plaintiffs cannot show an impending injury that can be remedied by the Court because they
14 are no longer students at Havasupai Elementary School. *See* ECF No. 67 at 4-7. This
15 unfounded argument profoundly misunderstands the ongoing and self-perpetuating nature
16 of injuries that result from an educational deficit and overlooks compensatory education
17 solutions that have been proven to successfully, if partially, correct these injuries.

17 **A. An Adequate Education Is Indispensable To Healthy Psychological 18 Development**

19 Education is a human right. Angelina E. Castagno & Bryan McKinley Jones
20 Brayboy, *Culturally Responsive Schooling for Indigenous Youth: A Review of the
21 Literature*, 78 REV. EDUC. RES. 941, 949 (2008). As the Supreme Court recognized more
22 than sixty years ago, “[i]t is doubtful that any child may reasonably be expected to succeed
23 in life if he is denied the opportunity of an education.” *Brown v. Bd. of Educ.*, 347 U.S.
24 483, 493 (1954); *see also Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972) (some “degree of
25 education is necessary to prepare citizens to participate effectively and intelligently in our
26 open political system if we are to preserve freedom and independence”).

27 As a result, failing to provide a child with a primary education is like taking a
28 backhoe and digging a trench through a tree’s roots—the effects of being deprived of a

1 basic education persist throughout a child's life. When individuals do not receive the
2 education to which they are entitled (*see* 25 U.S.C. § 2000 (promising Native Americans
3 education that meets their "unique educational and cultural needs")), they have no
4 foundation upon which to succeed or set their children up for success. Without any
5 foundation, children have no hope to grow, much less to thrive.

6 The advantages of an adequate education are so fundamental that they almost elude
7 identification and quantification. However, psychologists and social scientists understand
8 that primary education serves three critical purposes: *First*, and most immediately, primary
9 education teaches academic fundamentals, such as how to read and how to solve basic
10 mathematical problems. *Second*, primary education equips students with critical problem-
11 solving skills (i.e., higher order executive functioning), including organizational and
12 critical thinking, which collectively inform a lifetime of decision-making. *Third*, perhaps
13 less evidently, primary education engenders an understanding of how one fits into society.
14 It encourages civic participation and "shapes life chances." Catherine E. Ross & Marieke
15 Van Willigen, *Education and the Subjective Quality of Life*, 38 J. HEALTH & SOC. BEHAV.
16 275, 292 (1997).

17 These skills do not teach themselves. Primary education gives individuals an
18 essential framework necessary to address troubles at home and in their communities. As a
19 result, educational attainment also is inversely correlated to levels of distress. *Id.* at 290.
20 "Education correlates positively with [a] sense of control, and the sense of personal control
21 mediates a large part of the negative association between education and distress." *Id.* at
22 278. Distress, or the effects of deprivation, manifests as "depression, anxiety, anger, aches
23 and pains, and malaise." *Id.* at 276.

24 **B. Native American Children Widely Suffer Ongoing Injuries As A Result**
25 **Of Being Deprived Of An Adequate Education**

26 Native American communities feel the effects of an education deficit particularly
27 acutely. Lauren Camera, *Native American Students Left Behind*, U.S. NEWS & WORLD
28 REPORT, Nov. 6, 2015, <https://tinyurl.com/ybmdgwpo>. As a group, Native Americans

1 “attain the lowest level of education of any racial or ethnic group in the United States.”
2 Ctr. for Native Am. Youth at the Aspen Inst., *Native American Youth 101*, at 6,
3 <https://tinyurl.com/ycbpeo5k>. They are more than twice as likely as Caucasian students to
4 score at the lowest levels on standardized tests. Castagno & Brayboy, *supra* p. 3, at 942.
5 Drop-out rates among Native children are over 30%. Robert Stillwell & Jennifer Sable,
6 U.S. Dep’t of Educ., *Public School Graduates and Dropouts from the Common Core of*
7 *Data: School Year 2009-10* (Jan. 2013), <https://tinyurl.com/yb345jpc>; *see also* Exec.
8 Office of the President, *2014 Native Youth Report*, at 5, 15 (Dec. 2014),
9 <https://tinyurl.com/m2v8l2p>; Susan C. Faircloth et al., *The Dropout/Graduation Crisis*
10 *Among American Indian and Alaska Native Students*, at 3 (Jan. 2010),
11 <https://tinyurl.com/yblbvwp>. And their reading levels are well below grade level.
12 Heather J. Chapman, *Factors Affecting Reading Outcomes Across Time in Bureau of*
13 *Indian Education Reading First School*, Doctoral Dissertation – Utah State University, at
14 5-6 (2010), <https://tinyurl.com/ybkuvfkg>. These low levels of educational attainment
15 among Native Americans have remained flat, ensuring that the problem persists among
16 generations. The Educ. Tr., *The State of Education for Native Students*, at 6 (Aug. 2013),
17 <https://tinyurl.com/ybfq6hpb>.

18 Native students who receive deficient primary instruction are thus left unprepared to
19 contribute to society and vulnerable to future harms. *See* Human Rights Watch, *The*
20 *Education Deficit* (June 2016), <https://tinyurl.com/ycqaj7lg>. For example, sociologists
21 have identified a number of distinct injuries suffered by individuals without an adequate
22 education, all of which run rampant in Native communities:

23 • **Incomes are low.** *See, e.g.,* Nat’l Educ. Ass’n, *Voices of Native Educators:*
24 *Strategies that Support Success of Native High School Students*, at 15 (June 2011),
25 <https://tinyurl.com/y9gntfmt>; Faircloth et al., *supra*, at 22; *see also* Eduardo Porter, *A*
Simple Equation: More Education = More Income, N.Y. TIMES, Sept. 10, 2014,
26 <https://tinyurl.com/yc8g3zz4>; Forum on Child & Family Statistics, *America’s Children:*
Key National Indicators of Well-Being, 2017: High School Completion,
27 <https://tinyurl.com/y8tadspu> (last visited Aug. 29, 2017);

28 • **Unemployment is close to 10%.** Bureau of Labor Statistics, *Labor Force*
Characteristics by Race and Ethnicity, 2015 (Sept. 2016), <https://tinyurl.com/jc9tjye>; *see also* Bureau of Labor Statistics: *Employment Projections*, <https://tinyurl.com/ln9p4pk> (last

1 visited Aug. 22, 2017). **By 2020, an estimated 86% of jobs will be out of reach to the**
 2 **majority of the Havasupai tribe, which lacks a high school degree.** See SAC ¶ 185;
 3 Anthony P. Carnevale, Nicole Smith & Jeff Strohl, Georgetown Pub. Policy Inst.,
 4 *Recovery: Job Growth and Economic Requirements Through 2020*,
<https://tinyurl.com/jdzfyx9>;

5 • **Incarceration rates are high**, see, e.g., Lakota People's Law Project,
 6 *Natives Live Matter*, at 7 (Feb. 2015), <https://tinyurl.com/yce13zvc>; Nat'l Educ. Ass'n,
 7 *supra*, at 15, **including within the Havasupai community**, see, e.g., Press Release, U.S.
 8 Dep't of Justice, Supai Man Sentenced to 5 Years in Prison for Robbery (Dec. 13, 2016),
 9 <https://tinyurl.com/y7nhcvba>; Press Release, U.S. Dep't of Justice, Supai Village Man
 10 Sentenced to 37 Months for Assaulting Federal Officer (Apr. 14, 2017),
<https://tinyurl.com/y82jyrg6>; see also, e.g., Caroline Wolf Harlow, U.S. Dep't of Justice,
Bureau of Justice Statistics Special Report: Education and Correctional Populations (Jan.
 2003), <https://tinyurl.com/kpsgzx4>; All. for Excellent Educ., *Saving Futures, Saving*
Dollars (Sept. 2013), <https://tinyurl.com/kx5sw9k>; and

11 • **Health is poor, with death rates nearly 40% higher than the general**
 12 **population.** Michelle Sarche & Paul Spicer, *Poverty and Health Disparities for American*
 13 *Indian and Alaska Native Children: Current Knowledge and Future Prospects*, 1136
 14 ANNALS N.Y. ACAD. SCI. 126, 128 (2008); see also David M. Cutler & Adriana Lleras-
 15 Muney, Nat'l Bureau of Econ. Research, *Education and Health: Evaluating Theories and*
 16 *Evidence*, at 1 (2006), <https://tinyurl.com/y8mezbcq> ("in 1999, the age-adjusted mortality
 17 rate of high school dropouts ages 25 to 64 was more than twice as large as the mortality
 18 rate of those with some college"); Emily B. Zimmerman, Steven H. Woolf, & Amber
 19 Haley, U.S. Dep't of Health & Human Servs., *Understanding the Relationship Between*
 20 *Education and Health* (Sept. 2015), <https://tinyurl.com/kf8lyuw>. **In addition, Native**
 21 **communities suffer high incidences of chronic diseases**, Indian Health Service:
 22 *Disparities*, <https://tinyurl.com/hdxu54m> (last visited Aug. 22, 2017), **and high rates of**
 23 **depression and other mental illnesses.** Ross & Van Willigen, *supra* p. 4, at 286; Sarche
 24 & Spicer, *supra*, at 129. **Compounding all of these problems, over 20% of the Native**
 25 **American population lacks health insurance.** U.S. Census Bureau, *FFF: American*
 26 *Indian and Alaska Native Heritage Month: November 2016* (Nov. 2, 2016),
 27 <https://tinyurl.com/yckkte3f>.

28 As these trends show, the education deficit in Native communities sets children up
 for failure at every step. Without a proper education, individuals may not even be able to
 complete an employment application or use the Internet to search for employment or
 training opportunities, if they are even aware such resources exist. Moreover, individuals
 who have been neglected by their community and deprived of a minimally adequate
 education are more likely to be conditioned to give up at the first obstacle. Likewise, if
 individuals are deprived of the basic abilities to problem-solve and rationally assess and

1 respond to risk, they will be led to riskier behavior, are more likely to engage in crime, and
2 are more likely to end up incarcerated, further compounding their employment limitations.
3 *See generally* All. for Excellent Educ., *supra* p. 6. In short, because individuals who have
4 not received a minimum level of basic education are ill-equipped to think critically,
5 problem-solve, and seek support, their ability to succeed in life is severely limited if not
6 entirely foreclosed. The consequences of a deficient education take hold and endure long
7 after these individuals have left school.

8 Primary schools by definition should be safe, nurturing environments; they should
9 provide a network of support and stability and form the foundation of a child's sense of
10 self and community. Yet many Bureau of Indian Education schools have entirely failed to
11 provide even a minimal standard of elementary education. Havasupai Elementary School
12 already has delivered generations of impoverished educational services. This failure has
13 left Native students without essential support or guidance on how to cope with the crises
14 already common to their communities. The Office of the President of the United States
15 summed up the Native American education deficit crisis succinctly in 2014:

16 Low rates of educational attainment perpetuate a cycle of limited opportunity
17 for higher education or economic success for American Indians and Alaska
18 Natives. This crisis has grave consequences for Native nations, who need an
19 educated citizenry to lead their governments, develop reservation economies,
20 contribute to the social well-being of Native communities, and sustain Indian
21 cultures.

22 Exec. Office of the President, *supra* p. 5, at 14, 19.

23 Indeed, the enduring effects of this deficit are evident in the simplest of ways—
24 individuals deprived of basic elementary education are less likely to read to their kids, and
25 less likely to take their kids to the library or encourage them to read independently. Forum
26 on Child & Family Statistics, *America's Children: Key National Indicators of Well-Being,*
27 2017: Family Reading to Young Children, <https://tinyurl.com/y9dmn8u6> (last visited Aug.
28 29, 2017). Similarly, children with uneducated parents are less likely to grow up in
economically-stable environments or in households that nurture and encourage education
and learning. Forum on Child & Family Statistics, *America's Children: Key National*

1 Indicators of Well-Being, 2017: Secure Parental Employment,
2 <https://tinyurl.com/y733fowr> (last visited Aug. 29, 2017). These circumstances are all the
3 more devastating in communities that lack even minimum standard educational
4 opportunities. Absent intervention, the effects of the education deficit in the Native
5 community will continue to snowball, leaving tribes without a generation in the pipeline to
6 take over leadership roles.

7 In sum, there is little doubt that, contrary to Defendants' arguments, *all* of the
8 Student Plaintiffs—including those no longer enrolled at Havasupai Elementary School—
9 have shown they are likely to suffer ongoing and impending injuries as a result of the
10 deficient education they have received at Havasupai Elementary School.

11 **C. Compensatory Education Can Remedy The Ongoing Effects Of An**
12 **Education Deficient**

13 Contrary to Defendants' assertion, compensatory education will assist the Student
14 Plaintiffs who are no longer enrolled at Havasupai Elementary School. *See* ECF No. 67 at
15 5-6. Compensatory education “seeks to make up for ‘educational services the child should
16 have received in the first place.’” *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d
17 1117, 1125 (9th Cir. 2011). It “involves discretionary, prospective, injunctive relief
18 crafted by a court to remedy what might be termed an educational deficit.” *Reid v. District*
19 *of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005) (quoting *G. v. Fort Bragg Dependent*
20 *Sch.*, 343 F.3d 295, 309 (4th Cir. 2003)); *see also Parents of Student W. v. Puyallup Sch.*
21 *Dist., No. 3*, 31 F.3d 1489, 1497 (9th Cir. 1994) (it is a “rare case when compensatory
22 education is not appropriate”). Compensatory education is best delivered by cultural peers
23 in a culturally responsive way as students perform better when education is styled to meet
24 their needs via culturally responsive schooling (“CRS”). Castagno & Brayboy, *supra* p. 3,
25 at 955, 981. Among Native children, CRS “has been widely viewed as a promising
26 strategy for improving the education and increasing ... academic achievement.” *Id.* at 941;
27 *see also id.* at 949, 955.

28

1 In contrast, simply sending students to other schools outside their home
2 communities is unlikely to remedy their collective, historically low levels of success. This
3 is in part because public schools are unlikely to be staffed with instructors versed in
4 Indigenous culture and the issues commonly faced by Native American youth outside of
5 the school. If students understand academia in the context of their own culture and
6 experience, they are more likely to perform better. Angela A. A. Willetto, *Navajo Culture*
7 *and Family Influences on Academic Success: Traditionalism is not a Significant Predictor*
8 *of Achievement Among Young Navajos*, 38 J. AM. INDIAN EDUC. 1, 4 (1999); Sarche &
9 Spicer, *supra* p. 6, at 131 (linking low educational attainment levels among Native students
10 to schools that are not culturally responsive).

11 CRS has proven successful in Native American communities. In Chickaloon
12 Village, for example, elders have initiated a weekend program to teach tribal culture,
13 which is now the Ya Ne Dah Ah (“Ancient Teachings”) school with a full-time teacher and
14 many volunteers. At this school, where “culture practices have been revived,” test scores
15 are higher than state and national averages and students are no longer drop-out risks.
16 Seelau, *supra* p. 1, at 100-03. As another example, the Coeur d’Alene tribe is tracking at-
17 risk youth to monitor them for risk of “drop-out ..., suicide and substance abuse.” Eric
18 Holder, Jr. et al., U.S. Dep’t of Justice, *Ending Violence so Children Can Thrive*, at 102
19 (Nov. 2014), <https://tinyurl.com/ya4dm5ur>. This program “is community based, and
20 various organizations come together to collaborate and focus on tribal youth, sharing data
21 and information. As a result ..., the tribe reports no drop-outs, no gangs, and no suicides.”
22 *Id.* Further, Kognito Interactive, Inc is creating digital training simulations that allow users
23 to learn through a personalized and situated experience, progressing through realistic case
24 scenarios at an individual pace. At-Risk Modules have been created to reduce the impact
25 of stigma, performance anxiety, and cultural factors related to training on taboo topics and
26 can be adapted to support tribal communities. See Kognito: Products,
27 <https://tinyurl.com/y97u2wbk> (last visited Aug. 29, 2017). For example, one Avatar, Ms.
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1 Yazzi (common name for Navajo), is a virtual American Indian school-teacher supporting
2 suicide prevention training in the southwest.

3 These examples may serve as useful tools and models for designing an effective
4 compensatory education program for Student Plaintiffs—one that is tailored both to their
5 cultural experience as well as to their specific areas of educational deficit.

6 * * *

7 As the Federal Government has recognized, “[e]ducation is a key component in
8 improving the life trajectories in Native youth and ultimately rebuilding strong tribal
9 nations.” Exec. Office of the President, *supra* p. 5, at 28. Indeed, the foundation provided
10 by elementary education is particularly important in Native communities because they see
11 high levels of drug and alcohol abuse, crime, and suicide. *See infra* § II; Nat’l Inst. on
12 Drug Abuse, *Substance Use in American Indian Youth is Worse than We Thought* (Sept.
13 11, 2014), <https://tinyurl.com/gogfmdh>; Holder et al., *supra* p. 9, at 36; Nat’l Indian Child
14 Welfare Ass’n, *Trauma-Informed Care Fact Sheet*, at 2 (Apr. 2014),
15 <https://tinyurl.com/ycrrey7n>. Without this foundation, Native children are ill-equipped to
16 mitigate the damage caused by the persistent and systemic problems in their
17 communities—much less to correct those problems. In fact, the deprivation of a basic
18 education independently perpetuates these problems, depriving generation after generation
19 of basic skills necessary to lead healthy and fulfilling lives, and prolonging the levels of
20 unemployment, poverty, incarceration, and illness already wreaking havoc in Native
21 communities. Schools that serve as safe and supportive zones and teach students how to
22 cope with what is going on outside of school can help stave off negative mental health
23 consequences and allow communities to heal. *E.g.*, Sarche & Spicer, *supra* p. 6. In short,
24 basic, primary education is vital and the consequences of its deprivation among Native
25 students are particularly grave and long-lasting.

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1 **II. WITHOUT EDUCATION TO DEVELOP RESILIENCY, EXPOSURE TO**
2 **TRAUMA RESULTS IN DISABILITY**

3 In another misguided foray, Defendants mistakenly argue that exposure to adversity
4 and trauma does not result in disability warranting special accommodations in education.
5 This position disregards well-documented evidence that repeated exposure to trauma
6 impairs individuals' ability to perform major life activities where, as here, individuals have
7 been deprived of adequate education and meaningful community support, leaving them
8 without the resiliency necessary to recover from severe and recurring trauma.

9 **A. Native Children Are At A Greater Risk Of Exposure To Trauma**

10 Not only do Native children collectively receive a primary education that is
11 exponentially worse than the education received by their non-Native peers, Native children
12 also are 2.5 times more likely to experience trauma. Janice L. Cooper, Nat'l Ctr. for
13 Children in Poverty, Columbia Univ., *Facts About Trauma for Policymakers: Children's*
14 *Mental Health* (July 2007), <https://tinyurl.com/y83szpr2>.

15 Trauma is defined as an event that “dramatically and negatively disrupts
16 homeostasis”—that is, the brain’s base equilibrium state. Bruce D. Perry & Ronnie
17 Pollard, *Homeostasis, Stress, Trauma, and Adaptation: A Neurodevelopmental View of*
18 *Childhood Trauma*, 7 CHILD ADOLESC. PSYCHIATRIC CLINICS N. AM. 33, 36 (1998). It
19 can take the form of a single event, or a series of events, often involving injury, threat,
20 death or other loss. Nat’l Indian Child Welfare Ass’n, *supra* p. 10, at 1. When exposed to
21 trauma, an individual enters into a “flight or fight” state by engaging a set of nervous
22 system, neuroendocrine, and immune responses in reaction to stresses or threats, and
23 returns to the state of calm when the threat passes. Bruce D. Perry, *The Child Trauma*
24 *Acad., Effects of Traumatic Events on Children*, at 3 (2003), <https://tinyurl.com/y7a9ulao>.
25 Repeated exposure to trauma evokes the “flight or fight” response over and over again,
26 making the over-activated brain harder to return to homeostasis. Bruce D. Perry et. al.,
27 *Childhood Trauma, the Neurobiology of Adaption, and “Use-Dependent” Development of*
28 *the Brain: How “State” Becomes “Traits,”* 16 INFANT MENTAL HEALTH J. 271, 279-80

1 (1995). Such hyperarousal changes a child’s physical and mental development. *Id.*; Perry
2 & Pollard, *supra* p. 11, at 36. Traumatized children may be overly fearful, vigilant, or
3 tense. Or, by contrast, they may be too fatigued to respond to stress and develop another
4 extreme state, appearing numb, detached, or avoidant. Perry & Pollard, *supra* p. 11, at 36.

5 Numerous different forms of trauma have been identified in Native communities
6 through centuries of exposure to racism, discrimination, violence, and poverty. The
7 Adverse Childhood Experience Study (“ACEs”) is the largest and most robust study
8 examining the long-term impacts and outcomes of childhood trauma. *See, e.g.*, Shanta R.
9 Dube et al., *Childhood Abuse, Neglect, and Household Dysfunction and the Risk of Illicit*
10 *Drug Use: The Adverse Childhood Experiences Study*, 111 PEDIATRICS 564 (Mar. 2003).
11 According to a recent chapter by Dr. Dolores Subia BigFoot and colleagues, American
12 Indian and Alaska Native children have higher exposure to all nine trauma related areas in
13 the ACEs. Dolores Subia BigFoot et al., *Child Maltreatment in Indian Country, in*
14 *AMERICAN INDIANS AT RISK* 257 (Jeffrey Ian Ross ed., 2014). Any one of these adverse
15 childhood experiences places a child at risk. However, for tribal youth, this status is
16 exacerbated by the collective historical trauma, the heightened exposure to violence, and
17 the extreme poverty conditions.

18 In particular, Native communities face higher rates of violence, poverty, and child
19 neglect. Violence alone accounts for 75 percent of deaths of Native American Indian and
20 Alaska Native (“AI/AN”) youth ages twelve to twenty. The prevalence of violence is so
21 high that service providers and policy makers are advised by the Department of Justice to
22 assume that *all* AI/AN children have been exposed to violence. Holder et al., *supra* p. 9, at
23 36. Compounding this epidemic violence is a 27% poverty rate for Native families with
24 children, a rate that doubles the national average, and a family unemployment rate ranging
25 from 14.4% overall to 35% in some reservation communities. Sarche & Spicer, *supra* p. 6,
26 at 127. Both violence and poverty contribute to a high rate of child neglect and abuse.
27 Native children are more likely to have a parent incarcerated for violence or to be victims
28 of family violence themselves. And approximately sixteen per one thousand Native youth

1 have experienced child abuse compared to less than eleven per one thousand for Caucasian
2 youth. Holder et al., *supra* p. 9, at 38.

3 The marginalization of Native populations by federal and state governments lingers
4 and harms the generations of Native people. Studies have shown that Native Americans
5 suffer “pervasive and cataclysmic collective, intergenerational massive group trauma and
6 compounding discrimination, racism, and oppression.” See Maria Yellow Horse Brave
7 Heart et al., *Historical Trauma Among Indigenous Peoples of the Americas: Concepts,*
8 *Research, and Clinical Considerations*, 43 J. PSYCHOACTIVE DRUGS 282 (2011). As
9 recognized in 2014 by the Executive Office of the President, “[t]he trauma of shame, fear
10 and anger has passed from one generation to the next.” Exec. Office of the President,
11 *supra* p. 5, at 13 (quoting former Assistant-Secretary of Indian Affairs Kevin Gover
12 (Pawnee)). This unresolved group trauma poses greater risk for further complications and
13 risk for additional individual trauma. Indian Law & Order Comm’n, *Chapter 6: Juvenile*
14 *Justice: Failing the Next Generation, A Roadmap for Making America Safer*, at 153
15 (2015), <https://tinyurl.com/yafwy2wj>.

16 Thus, Native children are juggling both traumatic events on an individual basis and
17 chronic, historical traumatic experience shared by the community. Relatedly, because their
18 families and communities often fail to provide the support children need to develop
19 resiliency and cope with trauma, Native children also are more vulnerable to suffering the
20 effects of that trauma. As discussed above, Native children who have been deprived of
21 minimum primary education are especially vulnerable because they never learned basic
22 skills or experienced basic support necessary to coping with recurring traumatic events.

23 **B. The Impairments That Result From Repeated Exposure To Trauma**
24 **Qualify As Disabilities**

25 Trauma can result in long- and short-term problems, including physical and
26 emotional health conditions, difficulties with learning, impaired relationships, behavioral
27 and mood-related problems, and poor social and emotional competence. Cooper, *supra* p.
28 11. Repeated exposure to severe trauma in many cases will result in both physical

1 impairments that affect “[m]ajor bodily functions,” including but not limited to functions
2 of the immune system, neurological system, or brain, 42 U.S.C. § 12102(2)(A)-(B), as well
3 as mental impairments that limit life activities such as “learning, reading, concentrating,
4 thinking, communicating, and working.” In turn, these physiological and psychological
5 impairments induced by trauma often “substantially limits one or more major life
6 activities.” *Id.* § 12102(1)(A).

7 **1. Traumatized Children Experience Palpable, Physiological Harm**
8 **To Their Developing Brain**

9 Impairments that result from trauma can become “hard-wired.” Perry & Pollard,
10 *supra* p. 11, at 36. The human brain is plastic and adaptable especially at the developing
11 stage, allowing it to learn, grow, and respond to various stimuli. *Id.* Traumatic stimuli can
12 induce physiological changes to the developing brain and in some sense rewire the neural
13 connections in the brain. *Id.*

14 Brain imaging of traumatized brains reveals smaller or abnormal prefrontal cortex
15 and a less active hippocampus. Victor G. Carrion & Shane S. Wong, *Can Traumatic*
16 *Stress Alter the Brain? Understanding the Implications of Early Trauma on Brain*
17 *Development and Learning*, 51 J. ADOLESC. HEALTH S23 (2012). These structures
18 regulate a range of basic cognitive functions including memory, attention, and decision
19 making. *Id.* Children with deficits in their prefrontal cortex may have difficulty
20 associating stimuli with rewards, which is reflected in a lack of ability to guide their
21 actions with clear goals. *Id.* They may also react abnormally to emotional cues and fail to
22 process trauma therapeutically. *Id.* Children with an abnormal hippocampus may process
23 memories abnormally, because hippocampus plays a key role in storing and retrieving
24 information. *Id.* Trauma can increase cortisol levels in the hippocampus and ultimately
25 cause it to decrease in volume, leading to symptoms such as intrusive thoughts,
26 nightmares, or selective amnesia. *Id.*

27 These neurobiological deficits impinge on nearly all life activities and every aspect
28 of child development. For example, children living with chronic traumatic stress are less

1 efficient at processing verbal cues because they are constantly “[c]onsumed with a need to
2 monitor nonverbal cues for threat.” Child Welfare Info. Gateway, U.S. Dep’t of Health &
3 Human Servs., Children’s Bureau, *Understanding the Effects of Maltreatment on Brain*
4 *Development*, at 8 (Apr. 2015), <https://tinyurl.com/ycrqdx4t>. An alarmed, threatened
5 student can rarely achieve “a state of attentive calm,” and therefore fails to activate
6 portions of her frontal and related cortical areas necessary for verbal learning. Bruce D.
7 Perry, The Child Trauma Acad., *Memories of Fear: How the Brain Stores and Retrieves*
8 *Physiologic States, Feelings, Behaviors and Thoughts from Traumatic Events*,
9 <https://tinyurl.com/y8u43crr>.

10 When a child’s facility to learn and use language is hampered, the child will be less
11 capable of understanding complex information or conveying abstract concepts. Bruce D.
12 Perry, *Neurodevelopmental Impact of Violence in Childhood*, in PRINCIPLES AND
13 PRACTICE OF CHILD AND ADOLESCENT FORENSIC PSYCHIATRY 21 (Diane H. Schetky &
14 Elissa P. Benedek eds., 2002). They will also encounter more barriers in building
15 interpersonal relationships as they cannot effectively express themselves. *Id.*

16 These physiological effects of trauma are well documented and widely understood
17 among psychologists and social scientists. And they are all too familiar among those who
18 serve Native communities in particular. *See, e.g.*, Brave Heart et al., *supra* p. 13, at 282-
19 90; *see also* Maria Yellow Horse Brave Heart, *The Return to the Sacred Path*, 68 SMITH C.
20 STUD. IN SOC. WORK 287 (1998); William G. Demmert, *Improving Academic Performance*
21 *Among Native American Students*, at 5-7, 42 (Dec. 2001), <https://tinyurl.com/yadj4za5>.

22 **2. Trauma Can Induce A Range Of Mental Disorders That Limit**
23 **Activities Including Learning, Reading, Communicating, And**
Self-Regulating

24 Although the current psychiatric diagnostic system does not have a single category
25 that fully captures the possible psychological consequences of trauma, trauma exposure
26 can result in children being identified with a number of recognized psychiatric disorders.
27 Some common diagnoses in abused or traumatized children include Post-Traumatic Stress
28 Disorder (“PTSD”), Depression, Attention Deficit Hyperactivity Disorder (ADHD),

1 Oppositional Defiant Disorder (ODD), Generalized Anxiety Disorder, Separation Anxiety
2 Disorder, and Reactive Attachment Disorder. Alexandra Cook et al., Nat'l Child
3 Traumatic Stress Network Complex Trauma Task Force, *Complex Trauma in Children and*
4 *Adolescents*, at 6 (2003), <https://tinyurl.com/p2k3gry>. Children with a prolonged trauma
5 history often struggle with self-regulation and impulse control because they were unable to
6 seek security and develop a sense of agency through safe attachment. Claire Gregorowski
7 & Soraya Seedat, *Addressing Childhood Trauma in a Developmental Context*, 25 J. CHILD
8 & ADOLESC. MENTAL HEALTH 105 (Oct. 2013). Chronically traumatized children lack the
9 ability to identify or modulate their feelings, and often fail to communicate their emotional
10 needs. *Id.* The resulting helplessness leads to excessive clinginess, excessive anxiety,
11 internally or externally directed aggression and dissociation. *Id.* Affect dysregulation
12 therefore renders traumatized children more likely to engage in excessive risk-taking
13 behavior and even illegal activities. *See id.* As a result, children who cannot resolve
14 intense anger or grief often resort to alcoholism, substance abuse, violence towards others
15 and themselves. Brave Heart et al., *supra* p. 13, at 284.

16 In addition, exposure to trauma hampers reasoning and analytical abilities,
17 particularly the ability to process cause-and-effect relationships. Sheryl Kataoka et al.,
18 *Violence Exposure and PTSD: The Role of English Language Fluency in Latino Youth*, 18
19 J. CHILD. FAM. STUD. 334, 335 (2009). Children growing up in an unstable and disordered
20 environment thus are deprived of adequate opportunities to appreciate causal relationships,
21 which are the building blocks of scientific inquiry, narrative forms, and elementary logic.
22 *Id.* Trauma is therefore associated with impaired academic performance, decreased IQ and
23 reading ability, increased school absenteeism, and decreased graduation rates. *Id.*

24 And these consequences are abnormally high among Native youth, which
25 collectively experience Major Depression at a rate of 14% and PTSD at a rate of 22%—the
26 same rate as veterans who served in the latest wars in Iraq and Afghanistan. Holder et al.,
27 *supra* p. 9, at 38; *see also* Nat'l Indian Child Welfare Ass'n, *supra* p. 10. In addition,
28 suicide has become the second leading cause of death among Native youth, who report a

1 higher suicide rate than other any population in the U.S. Nat'l Indian Child Welfare Ass'n,
2 *supra* p. 10, at 2.

3 **CONCLUSION**

4 The Student Plaintiffs in this case are experiencing a dire emergency—one that is
5 tragically familiar among similarly situated Native American communities. In bringing
6 this case, they have presented the Court with the opportunity and ability to partially
7 remedy generations of inadequate primary education provided at the Havasupai
8 Elementary School. SIP urges the Court to recognize that children exposed to traumatic
9 environments are impaired, that Native children who have been deprived of an adequate
10 education suffer enduring injury and hardship, and that compensatory education provides
11 a proven mechanism for partial relief. SIP supports Plaintiffs' opposition to Defendants'
12 partial motion to dismiss.

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1 Dated: September 1, 2017

Respectfully submitted,

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STATEMENT OF COMPLIANCE WITH FED. R. APP. 29(a)(4)(E)

No a party's counsel authored the brief in whole or in part; no party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person other than the amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

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CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2017, I electronically filed the above document with the Clerk of Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

By: /s/ Steven Guggenheim
Steven Guggenheim