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18 ⁺ Application for admission *Pro Hac Vice* forthcoming

19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF ARIZONA**

21 Stephen C., a minor, by Frank C., guardian ad
litem; Anna D., a minor, by Elsa D., guardian
22 ad litem; Durell P., a minor, by Billie P.,
guardian ad litem; Taylor P., a minor, by Billie
23 P., guardian ad litem; Levi R., a minor, by
Laila R., guardian ad litem; Leo R., a minor, by
24 Laila R., guardian ad litem; Jenny A., a minor,
by Jasmine A., guardian ad litem; Jeremy A., a
25 minor, by Jasmine A., guardian ad litem;
Jordan A., a minor, by Jasmine A., guardian ad
26 litem; and The Native American Disability Law
Center,

27 *Plaintiffs,*

28 v.

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No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Bureau of Indian Education; United States
2 Department of The Interior; Sally Jewell, in her
3 official capacity as Secretary of the Interior;
4 Lawrence Roberts, in his official capacity as
5 Principal Deputy Assistant Secretary - Indian
6 Affairs; Tony Dearman, in his official capacity
7 as Director of the Bureau of Indian Education;
8 Jeff Williamson, in his official capacity as
9 Principal of Havasupai Elementary School,

Defendants.

INTRODUCTION

10 1. Federal law requires that the federal government provide Native children with
11 educational opportunities that equal or exceed those for all other students in the United
12 States. The government must provide for not only the basic elementary and secondary
13 education needs of Native students, but also the unique educational and cultural academic
14 needs of these children. Further, the government must ensure that Native students with
15 disabilities are not deprived of meaningful access to education. The U.S. government has
16 dismally failed to fulfill these responsibilities.

17 2. Nine Havasupai students and the Native American Disability Law Center
18 (collectively, “Plaintiffs”) bring this suit to hold the U.S. government accountable for these
19 failures and to correct longstanding educational deprivations that have for years denied
20 Havasupai children meaningful and equitable educational opportunity. Defendants—the
21 federal government agencies and officials responsible for administering and ensuring the
22 provision of education to Native students in the United States¹—have knowingly failed to
23 provide basic general education, a system of special education, and necessary wellness and
24 mental health support to Havasupai students, resulting in indefensible deficits in academic
25 achievement and educational attainment.

25 ¹ Defendants are the United States Department of the Interior (“DOI”), United States
26 Bureau of Indian Education (“BIE”), Defendant Sally Jewell, in her official capacity as
27 U.S. Secretary of the Interior, Lawrence Roberts, in his official capacity as Principal
28 Deputy Assistant Secretary—Indian Affairs, Tony Dearman, in his official capacity as
Director of the Bureau of Indian Education, and Jeff Williamson, in his official capacity as
Principal of Havasupai Elementary School (collectively, “Defendants”).

1 3. Havasupai Elementary School (“the School”), which serves students in
2 kindergarten through the eighth grade, is operated by the federal Bureau of Indian
3 Education (“BIE”) and is the only option available to Plaintiffs to obtain elementary
4 education in their community. In direct violation of the numerous federal statutes and
5 regulations that prescribe with specificity the content and form of the general and special
6 education that must be provided in BIE-administered schools, federal government officials
7 have systemically deprived Plaintiffs of meaningful access to education:

8 • **Failure to Provide General Education Curriculum:** *The only subject*
9 *areas in which Havasupai Elementary School provides instruction are math, reading, and*
10 *writing.* There is no science, history, social studies, foreign language, arts, or physical
11 education curriculum. Nor does the School provide culturally relevant instruction, such as
12 instruction in the Havasupai language.

13 • **Persistent Understaffing and Vacancies:** The longstanding failure to
14 adequately staff Havasupai Elementary School has caused persistent teacher and staff
15 vacancies. *These vacancies have caused the school to shut down for weeks at a time, and*
16 *the vacancies are covered by non-certificated personnel, such as the school janitor or*
17 *secretary, or by temporary staff who rotate in and out on two-week details.*

18 • **Denial of Basic Educational Resources:** Havasupai Elementary School
19 lacks adequate numbers of textbooks, a functioning school library, and any extracurricular
20 activities, such as sports, arts, music, or clubs.

21 • **No System to Provide Special Education:** Although approximately one-
22 half of the students at the school have been identified as students with disabilities,
23 Havasupai Elementary School has no system for delivering the specialized instruction,
24 related services, and accommodations necessary to access public education. Instead,
25 students with disabilities are routinely physically excluded from school and subjected to
26 punitive discipline and police prosecution on the basis of their disabilities.

27 • **Failure to Provide a Full Day of Public Education to Students with**
28 **Disabilities:** Students with disabilities are excluded from the school and denied a full day

1 of public education by placement on “restricted hours” or “homebound” schedules,
2 pursuant to which *they receive as few as three hours of education per week*. Plaintiffs Levi
3 R. and Durell P. have each been limited to such restricted-hours schedules continuously for
4 over three and five years, respectively.²

5 • **Excessive Exclusionary Discipline:** Students, including students with
6 disabilities, are repeatedly removed from the classroom, suspended, and expelled, causing
7 them to miss significant instructional time. Plaintiff Stephen C. is sent home from school,
8 on average, three to four times per week such that he misses approximately 50% of
9 instructional time. When he was only eight years old, Plaintiff Durell P. was permitted to
10 attend school for only approximately 20% of a school year due to repeated exclusionary
11 discipline.

12 • **Abusive Law Enforcement Involvement:** Instead of providing support, the
13 school routinely refers children, including children with disabilities, to Bureau of Indian
14 Affairs (“BIA”) law enforcement in response to minor incidents of misbehavior. Eleven-
15 year-old Plaintiff Stephen C. was prosecuted in federal court for pulling the cord out of the
16 back of a computer monitor.

17 • **Failure to Provide Necessary Wellness and Mental Health Support:**
18 Despite the clear need for wellness promotion and mental health support, Havasupai
19 Elementary School has no system for addressing the needs of students whose ability to
20 learn is impacted by exposure to childhood adversity. The counselor position at the school
21 was long vacant until it was filled in December 2016, and the operation of Havasupai
22 Elementary School contributes to these problems as well. For example, Plaintiff Levi R.
23 was forcibly restrained in the classroom when he was ten years old. A teacher sat and laid
24 down on Levi R. while he cried out and yelled, “I can’t breathe. Get off of me, you’re
25 hurting me.”

26 _____
27 ² Plaintiffs have filed, concurrently with the complaint, a motion for leave to proceed under
28 the fictitious first names and last initials used to refer to Plaintiffs and their parents or
guardians in the complaint.

1 • **Exclusion of the Community from School Decision-Making**: Defendants
2 have effectively precluded the Havasupai Advisory School Board from operating and have
3 established a pattern of retaliation against teachers, staff, community members, and parents
4 who have sought to advocate on behalf of students. Moreover, Defendants have failed to
5 provide families and community members adequate access to student data, achievement
6 records, and other metrics that would allow them to evaluate the performance of the
7 school.

8 4. The consequences of these educational deprivations for Havasupai children are
9 devastating and enduring. Students perform many years below grade level: The most
10 recent publicly-available BIE data reflects that in the 2012-2013 school year, Havasupai
11 Elementary School students performed at only the **1st percentile in reading and 3rd**
12 **percentile in math**, based on a median percentile rank from 1 up to 100.³ This places the
13 School dead last—by a large margin—in both reading and math achievement among BIE
14 schools. Moreover, the longer students remain at Havasupai Elementary School, the
15 farther behind they fall. BIE data reflects that Havasupai Elementary School students
16 experienced a *large negative growth index* of **-.72** and **-.71** in reading and math,
17 respectively, meaning that the academic progress made by individual students as they
18 continued to attend the School was approximately 0.7 standard deviations lower than
19 expected. As the BIE has acknowledged, this indicates “*well-below average gains made*
20 *by the student[s].*”⁴

21 5. Plaintiff Stephen C., a sixth grader, struggles to read and write. Plaintiff Levi
22 R. was reading at a second grade level when he was in fifth grade. Many Havasupai
23 Elementary students have never learned basic information, such as what the states are and
24 where they are located, the difference between North America and South America, and
25 how to spell simple words.

26 _____
27 ³ Northwest Education Evaluation Association, *BIE Report on Student Achievement and Growth* at
56, 58 (Feb. 2014), <http://www.bie.edu/cs/groups/webteam/documents/document/idc1-028067.pdf>

28 ⁴ *Id.* at 17.

1 6. Because Havasupai Elementary School provides instruction only in grades
2 kindergarten through eight, students have no option to attend secondary school on the
3 Havasupai reservation and must leave their community to attend high school. But, because
4 of the substandard education provided at Havasupai Elementary School, students cannot
5 meet entrance and proficiency requirements for admission to BIE secondary schools.
6 Those who are admitted are not prepared to succeed. Only an estimated 20% of Havasupai
7 Elementary School students ultimately graduate from high school.

8 7. Havasupai families and community members have advocated for years to
9 address these longstanding and well-known deprivations and secure the educational
10 opportunities their children deserve. But when students and families have sought to assert
11 their educational rights, federal government officials have repeatedly disclaimed any
12 obligation for providing equal educational opportunity and an effective system for delivery
13 of special education to students with disabilities in BIE-administered schools like
14 Havasupai Elementary School.

15 8. Defendants' abdication of responsibility defies unmistakably clear federal law.
16 The federal government has specific statutory and regulatory obligations to provide Native
17 students with a basic education and to meet the needs of Native students with disabilities.
18 These obligations, grounded in the federal government's "undisputed . . . trust relationship
19 [with] the Indian people,"⁵ are assigned to Defendants, the federal government agencies
20 and officials charged with administering and overseeing the education of Native students.

21 9. Numerous federal statutes and regulations, including the Indian Education Act
22 and its implementing regulations, expressly require Defendants to provide an education to
23 Native American children that meets basic educational standards and enables students to
24 access post-secondary educational opportunities.⁶ Congress and the BIE have detailed the
25 content of the federal government's robust duties to Native students attending BIE-funded
26 and operated schools. Binding regulations describe with specificity the content and form

27 _____
28 ⁵ See *United States v. Navajo Nation*, 537 U.S. 488, 506 (2003).

⁶ See, e.g., 25 U.S.C. §§ 2000, 2001; 25 C.F.R. §§ 32.3-32.4.

1 of the education that must be provided in BIE schools, including the subject areas that
2 must be taught and the educational resources that must be available.⁷

3 10. Defendants are likewise directly responsible for enforcing federal statutes that
4 prohibit discrimination on the basis of disability in schools funded and administered by the
5 BIE. Since at least as early as 1978, Congress has made clear that Defendants bear the
6 obligation to ensure that all Bureau-administered schools are in compliance with Section
7 504 of the Rehabilitation Act of 1973 (“Section 504”), which prohibits discrimination on
8 the basis of disability in federally-funded programs.⁸

9 11. Despite these legal mandates, Defendants have failed to provide basic general
10 education to students at Havasupai Elementary School and to establish a system to deliver
11 specialized instruction, related services, and accommodations necessary for students with
12 disabilities—including but not limited to students whose ability to learn has been impacted
13 by exposure to childhood adversity—to access the benefits of a public education. These
14 deprivations violate the federal government’s substantive obligations under the Indian
15 Education Act as amended, Section 504 of the Rehabilitation Act of 1973, and their
16 implementing regulations. Defendants’ neglect of and indifference to the educational
17 rights of Havasupai children has systemically excluded Plaintiffs from the opportunity to
18 attain economic self-sufficiency and meaningfully participate in our democratic society.⁹

19 12. To redress the deprivation of rights secured to students attending Havasupai
20 Elementary School, Plaintiffs bring this complaint under the Administrative Procedure Act
21 and Section 504 of the Rehabilitation Act for declaratory and injunctive relief. Plaintiffs
22 seek a declaration of the rights and obligations of Defendants with respect to the delivery
23 of general and special education to Havasupai Elementary School students. They also seek

24 ⁷ 25 C.F.R. §§ 36.11-36.51.

25 ⁸ Pub. L. No. 95-561, § 1125, 92 Stat. 2143, 2319 (1978); 25 U.S.C. § 2005(b)(1); Exec. Order
26 No. 13,160, 65 Fed. Reg. 39775 (June 23, 2000).

27 ⁹ *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955); *see also Wisconsin v. Yoder*,
28 406 U.S. 205, 221 (1972) (“[S]ome degree of education is necessary to prepare citizens to
participate effectively and intelligently in our open political system if we are to preserve freedom
and independence.”).

1 injunctive relief to ensure that Defendants comply with those rights and obligations, and do
2 so in a way that is culturally relevant. Exhaustion of administrative remedies is not
3 required because, among other reasons explained below, it would be futile. In addition,
4 Plaintiffs seek compensatory and remedial education to provide them access to the benefits
5 of a general education, along with any needed special education and related services.

6 13. Plaintiffs’ allegations against Defendants are based upon information and
7 belief. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it
8 arises under federal law. Venue is appropriate in this Court under 28 U.S.C. § 1402(a)
9 because Plaintiffs reside in the District of Arizona.

10 **FACTUAL ALLEGATIONS**

11 **I. PARTIES**

12 **Plaintiffs**

13 14. **Plaintiff Stephen C.** is an eleven-year-old Havasupai boy who resides on the
14 Havasupai reservation in Supai, Arizona. Stephen C. is enrolled in the sixth grade at
15 Havasupai Elementary School and is legally required to attend school. Stephen C. has
16 attended Havasupai Elementary School since kindergarten. The guardian of Stephen C.,
17 Frank C., has concurrently filed a petition with the Court to act as his guardian *ad litem* in
18 connection with this litigation.

19 15. As a direct result of Defendants’ failure to ensure that Havasupai Elementary
20 School has the capacity to deliver access to basic education, Plaintiff Stephen C. has been
21 deprived of access to required general education curriculum and culturally relevant
22 instruction and has been subject to school conditions—including lack of access to
23 textbooks, a functioning library, and extracurricular activities—that prevent him from
24 learning.

25 16. Plaintiff Stephen C. is a student who has been identified with Attention Deficit
26 Hyperactive Disorder (“ADHD”) and is eligible to receive special education services. In
27 addition to needing special education services, Stephen C. requires positive behavior
28 support and counseling services to address his behaviors and mental health needs. As a

1 direct result of Defendants’ failure to ensure that Havasupai Elementary School has a
2 system in place to deliver special education, Stephen C. has not been provided with the
3 specialized instruction, related services, and accommodations necessary for him to access
4 the benefits of a public education. Plaintiff Stephen C. has also been deprived of education
5 as a result of Defendants’ failure to establish a system to deliver specialized instruction,
6 related services, and accommodations necessary for students whose ability to access the
7 benefits of a public education is affected by exposure to adversity and complex trauma.

8 17. **Plaintiff Anna D.** is an eight-year-old Havasupai girl who resides on the
9 Havasupai reservation in Supai, Arizona. Anna D. is enrolled in the third grade at
10 Havasupai Elementary School and is legally required to attend school. Anna D. has
11 attended Havasupai Elementary School since kindergarten. The mother of Anna D., Elsa
12 D., has concurrently filed a petition with the Court to act as her guardian *ad litem* in
13 connection with this litigation.

14 18. As a direct result of Defendants’ failure to ensure that Havasupai Elementary
15 School has the capacity to deliver access to basic education, Plaintiff Anna D. has been
16 deprived of access to required general education curriculum and culturally relevant
17 instruction and has been subject to school conditions—including lack of access to
18 textbooks, a library, and extracurricular activities—that prevent her from learning.
19 Plaintiff Anna D. has also been deprived of education as a result of Defendants’ failure to
20 establish a system to deliver specialized instruction, related services, and accommodations
21 necessary for students whose ability to access the benefits of a public education is affected
22 by exposure to adversity and complex trauma.

23 19. **Plaintiff Durell P.** is a thirteen-year-old Havasupai boy who resides on the
24 Havasupai reservation in Supai, Arizona. Durell P. is enrolled in the seventh grade at
25 Havasupai Elementary School and is legally required to attend school. Durell P. has been
26 enrolled at Havasupai Elementary School since kindergarten, except for a 45-day period
27 when the school compelled him to enroll in a residential placement because the school
28 could not meet his educational needs. The mother of Durell P., Billie P., has concurrently

1 filed a petition with the Court to act as his guardian *ad litem* in connection with this
2 litigation.

3 20. As a direct result of Defendants’ failure to ensure that Havasupai Elementary
4 School has the capacity to deliver access to basic education, Plaintiff Durell P. has been
5 deprived of access to required general education curriculum and culturally relevant
6 instruction and has been subject to school conditions—including lack of access to
7 textbooks, a library, and extracurricular activities—that prevent him from learning.

8 21. Plaintiff Durell P. is a student identified with Oppositional Defiant Disorder,
9 ADHD, and significant mental health needs and is eligible to receive special education
10 services. In addition to needing special education services, Durell P. requires positive
11 behavior support and counseling to address his behaviors and mental health needs. As a
12 direct result of Defendants’ failure to ensure that Havasupai Elementary School has a
13 system in place to deliver special education, Durell P. has not been provided with the
14 specialized instruction, related services, and accommodations necessary for him to access
15 the benefits of a public education. Plaintiff Durell P. has also been deprived of education
16 as a result of Defendants’ failure to establish a system to deliver specialized instruction,
17 related services, and accommodations necessary for students whose ability to access the
18 benefits of a public education is affected by exposure to adversity and complex trauma.

19 22. **Plaintiff Taylor P.** is a six-year-old Havasupai girl who resides on the
20 Havasupai Reservation in Supai, Arizona. Taylor P. is enrolled in kindergarten at
21 Havasupai Elementary School and is legally required to attend school. The mother of
22 Taylor P., Billie P., has concurrently filed a petition with the Court to act as her guardian
23 *ad litem* in connection with this litigation.

24 23. As a direct result of Defendants’ failure to ensure that Havasupai Elementary
25 School has the capacity to deliver access to basic education, Plaintiff Taylor P. has been
26 deprived of access to required general education curriculum and culturally relevant
27 instruction and has been subject to school conditions—including lack of access to
28 textbooks, a library, and extracurricular activities—that prevent her from learning.

1 Plaintiff Taylor P. has also been deprived of education as a result of Defendants’ failure to
2 establish a system to deliver specialized instruction, related services, and accommodations
3 necessary for students whose ability to access the benefits of a public education is affected
4 by exposure to adversity and complex trauma.

5 24. **Plaintiff Levi R.** is a 13-year-old Havasupai boy who resides in Yavapai
6 County, Arizona. Levi R. attended Havasupai Elementary School from kindergarten
7 through the beginning of the eighth grade, except for a two-month period in 2014 when he
8 was receiving online education services because the school could not meet his educational
9 needs. Levi R. is legally required to attend school. Due to the inadequacy of the education
10 provided at the school, Levi R.’s mother, Laila R., recently moved her family out of Supai,
11 Arizona when Levi R. was in the eighth grade. Levi R. is currently enrolled in the eighth
12 grade at a public school in Yavapai County. Laila R. has concurrently filed a petition with
13 the Court to act as his guardian *ad litem* in connection with this litigation.

14 25. As a direct result of Defendants’ failure to ensure that Havasupai Elementary
15 School has the capacity to deliver access to basic education, Plaintiff Levi R. has been
16 deprived of access to required general education curriculum and culturally relevant
17 instruction and has been subject to school conditions—including lack of access to
18 textbooks, a library, and extracurricular activities—that prevent him from learning.

19 26. Plaintiff Levi R. is a student identified with ADHD and a specific learning
20 disability and is eligible to receive special education services. In addition to needing
21 special education services, Levi R. requires positive behavior support and counseling
22 services to address his behaviors and mental health needs. As a direct result of Defendants’
23 failure to ensure that Havasupai Elementary School has a system in place to deliver special
24 education, Levi R. has not been provided with the specialized instruction, related services,
25 and accommodations necessary for students whose ability to access the benefits of a public
26 education is affected by exposure to adversity and complex trauma.

27 27. **Plaintiff Leo R.** is a 15-year-old Havasupai boy who resides in Yavapai
28 County, Arizona. Leo R. attended Havasupai Elementary School from kindergarten

1 through the eighth grade. Because Havasupai Elementary School does not provide a high
2 school education, Leo R. left his family in Supai, Arizona in order to attend a public school
3 in Arizona in the ninth grade. Leo R. is currently enrolled in the tenth grade at a public
4 school in Yavapai County, and is legally required to attend school. Leo R.'s mother, Laila
5 R., has concurrently filed a petition with the Court to act as his guardian *ad litem* in
6 connection with this litigation.

7 28. As a direct result of Defendants' failure to ensure that Havasupai Elementary
8 School has the capacity to deliver access to basic education, Plaintiff Leo R. has been
9 deprived of access to required general education curriculum and culturally relevant
10 instruction and has been subject to school conditions—including lack of access to
11 textbooks, a library, and extracurricular activities—that prevent him from learning.
12 Plaintiff Leo R. has also been deprived of education as a result of Defendants' failure to
13 establish a system to deliver specialized instruction, related services, and accommodations
14 necessary for students whose ability to access the benefits of a public education is affected
15 by exposure to adversity and complex trauma.

16 29. **Plaintiff Jenny A.** is a 14-year-old Havasupai girl who resides on the
17 Havasupai Reservation in Supai, Arizona. Jenny A. attended Havasupai Elementary
18 School from kindergarten through the sixth grade. Due to the inadequacy of the education
19 provided at the school, Jenny A.'s mother, Jasmine A., decided to enroll her daughter at a
20 BIE boarding school in Oklahoma. Jenny A. is currently enrolled in the ninth grade, and
21 she is legally required to attend school. The mother of Jenny A., Jasmine A., has
22 concurrently filed a petition with the Court to act as her guardian *ad litem* in connection
23 with this litigation.

24 30. As a direct result of Defendants' failure to ensure that Havasupai Elementary
25 School has the capacity to deliver access to basic education, Plaintiff Jenny A. has been
26 deprived of access to required general education curriculum and culturally relevant
27 instruction and has been subject to school conditions—including lack of access to
28 textbooks, a library, and extracurricular activities—that prevent her from learning.

1 31. Plaintiff Jenny A. is a student identified with significant mental health needs
2 and is eligible to receive special education services as a student with an emotional
3 disturbance (“ED”). In addition to needing special education services, Jenny A. requires
4 positive behavior support and counseling to address her behaviors and mental health needs.
5 As a direct result of Defendants’ failure to ensure that Havasupai Elementary School has a
6 system in place to deliver special education, Jenny A. has not been provided with the
7 specialized instruction, related services, and accommodations necessary for her to access
8 the benefits of a public education. Plaintiff Jenny A. has also been deprived of education
9 as a result of Defendants’ failure to establish a system to deliver specialized instruction,
10 related services, and accommodations necessary for students whose ability to access the
11 benefits of a public education is affected by exposure to adversity and complex trauma.

12 32. **Plaintiff Jeremy A.** is a 12-year-old Havasupai boy who resides on the
13 Havasupai Reservation in Supai, Arizona. Jeremy A. attended Havasupai Elementary
14 School from kindergarten through the fifth grade. Due to the inadequacy of the education
15 provided at the school, Jeremy A.’s mother, Jasmine A., decided to enroll Jeremy A. at a
16 BIE boarding school in Oklahoma. Jeremy A. is currently enrolled in the seventh grade,
17 and he is legally required to attend school. The mother of Jeremy A., Jasmine A., has
18 concurrently filed a petition with the Court to act as his guardian *ad litem* in connection
19 with this litigation.

20 33. As a direct result of Defendants’ failure to ensure that Havasupai Elementary
21 School has the capacity to deliver access to basic education, Plaintiff Jeremy A. has been
22 deprived of access to required general education curriculum and culturally relevant
23 instruction and has been subject to school conditions—including lack of access to
24 textbooks, a library, and extracurricular activities—that prevent him from learning.
25 Plaintiff Jeremy A. has also been deprived of education as a result of Defendants’ failure to
26 establish a system to deliver specialized instruction, related services, and accommodations
27 necessary for students whose ability to access the benefits of a public education is affected
28 by exposure to adversity and complex trauma.

1 34. **Plaintiff Jordan A.** is a 10-year-old Havasupai boy who resides on the
2 Havasupai Reservation in Supai, Arizona. Jordan A. attended Havasupai Elementary
3 School from kindergarten through the third grade. Due to the inadequacy of the education
4 provided at the school, Jordan A.’s mother, Jasmine A., decided to enroll Jordan A. at a
5 BIE boarding school in Oklahoma. Jordan A. is currently enrolled in the fourth grade, and
6 he is legally required to attend school. The mother of Jordan A., Jasmine A., has
7 concurrently filed a petition with the Court to act as his guardian *ad litem* in connection
8 with this litigation.

9 35. As a direct result of Defendants’ failure to ensure that Havasupai Elementary
10 School has the capacity to deliver access to basic education, Plaintiff Jordan A. has been
11 deprived of access to required general education curriculum and culturally relevant
12 instruction and has been subject to school conditions—including lack of access to
13 textbooks, a library, and extracurricular activities—that prevent him from learning.

14 36. Plaintiff Jordan A. is a student identified with a specific learning disability
15 (“SLD”), and is eligible to receive special education services. In addition to needing
16 special education services, Jordan A. requires additional supports to address his SLD. As a
17 direct result of Defendants’ failure to ensure that Havasupai Elementary School has a
18 system in place to deliver special education, Jordan A. has not been provided with the
19 specialized instruction, related services, and accommodations necessary for him to access
20 the benefits of a public education. Plaintiff Jordan A. has also been deprived of education
21 as a result of Defendants’ failure to establish a system to deliver specialized instruction,
22 related services, and accommodations necessary for students whose ability to access the
23 benefits of a public education is affected by exposure to adversity and complex trauma.

24 37. **Plaintiff Native American Disability Law Center** (“NADLC”) is a 501(c)
25 nonprofit organization based in Farmington, New Mexico that advocates for the legal
26 rights of Native Americans with disabilities. NADLC has worked extensively with
27 members of the Havasupai community, including representing families and engaging in
28 education advocacy on behalf of Havasupai children with disabilities. NADLC’s mission

1 is to advocate so that the rights of Native Americans with disabilities in the Four Corners
2 area are enforced, strengthened, and brought in harmony with their communities. Further
3 details about the NADLC and its interests are discussed below, *see infra* para. 228-244.

4 **Defendants**

5 38. **Defendant Bureau of Indian Education (“BIE”)** is a bureau within the U.S.
6 Department of the Interior. Pursuant to Department of the Interior regulations, the
7 Assistant Secretary—Indian Affairs has delegated to the BIE the authority to provide
8 education services to Native American children, including children with disabilities. The
9 BIE is responsible for meeting the requirements of Section 504 of the Rehabilitation Act
10 and the educational needs of Native American children residing on reservations and
11 attending elementary and secondary schools funded by the Department of the Interior.

12 39. **Defendant United States Department of the Interior (“DOI”)** is a federal
13 agency. As the parent agency of the BIE, the DOI is responsible for meeting the
14 requirements of Section 504 of the Rehabilitation Act and the educational needs of Native
15 American children residing on reservations and attending elementary and secondary
16 schools funded by the Secretary of the Interior.

17 40. **Defendant Sally Jewell**, sued here in her official capacity, is the U.S.
18 Secretary of the Interior (the “Secretary”) and as such is responsible for meeting the
19 requirements of Section 504 of the Rehabilitation Act and the educational needs of Native
20 American children residing on reservations and attending elementary and secondary
21 schools funded by the Department of the Interior.

22 41. **Defendant Lawrence Roberts**, sued here in his official capacity, is the
23 Principal Deputy Assistant Secretary—Indian Affairs within DOI. By regulation, he is
24 responsible for meeting the requirements of Section 504 of the Rehabilitation Act and the
25 educational needs of Native American children residing on reservations and attending
26 elementary and secondary schools funded by the Department of the Interior. He can
27 delegate those responsibilities only to the Director of the BIE.

1 42. **Defendant Tony Dearman**, sued here in his official capacity, is Director of
2 the BIE. As Director, he oversees all operations of the BIE. As such, he is responsible for
3 ensuring the constitutional, statutory, civil, and human rights of all Native American
4 students. By delegation of authority by the Assistant Secretary—Indian Affairs, the
5 Director of the BIE is responsible for meeting the requirements of Section 504 of the
6 Rehabilitation Act and the educational needs of Native American children residing on
7 reservations and attending elementary and secondary schools funded by DOI.

8 43. **Defendant Jeff Williamson**, sued here in his official capacity, is the Principal
9 of Havasupai Elementary School. In that capacity, he is responsible for assisting
10 Defendant Dearman in ensuring that the BIE meets the requirements of Section 504 of the
11 Rehabilitation Act and the educational needs of Native American children attending
12 Havasupai Elementary School.

13 **II. U.S. GOVERNMENT’S OBLIGATION TO PROVIDE EDUCATION TO**
14 **HAVASUPAI STUDENTS**

15 44. The historic and current government-to-government relationship between the
16 Havasupai Nation and the United States includes promises made by the United States to
17 educate Havasupai children, as well as mandates in federal statutes and regulations
18 spelling out the federal government’s obligations to fulfill these promises. Those legal
19 obligations are set forth below.

20 **A. Forced Removal of the Havasupai from Their Homelands**

21 45. The Havasupai are a federally recognized Native American tribe who has
22 resided for centuries in the Grand Canyon. The tribe has historically lived on lands that
23 include the base and rim of Havasu Canyon. The Havasupai people cultivated crops at the
24 bottom of the canyon in the spring and summer, while migrating to the plateau in the fall
25 and winter months for hunting and grazing.¹⁰

26
27 ¹⁰ For a history of the Havasupai people, including the history of public education in Supai,
28 see STEPHEN HIRST, I AM THE GRAND CANYON (3d ed. 2006).

1 46. Through a series of executive orders in 1880 and 1882, the United States
2 government established a reservation for the Havasupai on a parcel of approximately
3 518 acres of flood-prone land at the bottom of Havasu Canyon, which is within the Grand
4 Canyon. The reservation represented a mere fraction of the Havasupai’s original
5 homelands, denying them access to their ancestral homes, burial grounds, and valuable
6 hunting and grazing land on the plateau. Following the creation of Grand Canyon National
7 Park in 1919, the Havasupai reservation was largely encircled by federal lands. The
8 National Park Service forcibly removed a number of Havasupai from their homes on the
9 canyon rim, restricting the tribe’s use of their homelands to the shrunken reservation at the
10 canyon bottom.

11 47. For decades, the Havasupai fought for the return of their tribal lands in the
12 Grand Canyon and their traditional wintering grounds on the plateau. Following a
13 protracted legislative battle, the Havasupai finally won the return of a substantial portion of
14 their tribal lands through the passage of the Grand Canyon National Park Enlargement Act
15 of 1975. Through this legislation, the Havasupai Tribe received about 185,000 acres of
16 tribal land on the plateau, as well as additional acreage that was placed under the joint
17 governance of the Havasupai and the National Park Service. At the time, this was the
18 largest amount of land returned to any Native American tribe by the federal government.

19 48. The Havasupai reservation currently consists of 188,077 acres along the
20 western corner of the Grand Canyon’s South Rim. There are approximately 730 enrolled
21 members of the Havasupai Tribe. Of these, more than 160 are children under the age of
22 18, and more than 100 are in the age group eligible to attend Havasupai Elementary
23 School. About 61% of Havasupai children under the age of 18 live below the poverty
24 line.¹¹

26 ¹¹ Arizona Rural Policy Institute et al., *Demographic Analysis of the Havasupai Tribe*
27 *Using 2010 Census and 2010 American Community Survey Estimates* 32,
28 <http://azcia.gov/Documents/Links/DemoProfiles/Havasupai%20Tribe.pdf> (hereinafter
“Demographic Analysis”).

1 49. The primary residential community in the Havasupai reservation is the village
2 of Supai, which is located at the base of Havasu Canyon. The relative remoteness of the
3 reservation, and Supai in particular, stems from a history of federal government
4 discrimination toward the Havasupai people and their right to reside on their once-
5 expansive tribal homelands. To access Supai, one must descend down eight miles of dirt
6 trails or arrive by helicopter. The population of Supai, according to the 2010 census, totals
7 more than 200 individuals.

8 **B. History of the School in Havasupai**

9 50. A public schoolhouse has existed in Supai since 1895, when the first school
10 building was constructed after the creation of the Havasupai reservation.¹² Instruction was
11 initially led by church missionaries, before the BIA, and later the BIE, took over operation
12 of the school.¹³

13 51. Because the public school in Supai offered instruction only in limited grades,
14 Havasupai children were compelled to attend BIE boarding schools to complete their
15 education. The nearest boarding school was located in Fort Apache, 350 miles away. At
16 these schools, tribal culture was forcibly suppressed, and Havasupai children were
17 forbidden from speaking their native languages. Children were often abused or
18 malnourished, and their belongings stolen.

19 52. For decades, Havasupai families strove to resist sending their children away
20 from home into the rampant abuse and neglect of the boarding schools. Along with their
21 struggle to regain their tribal homelands, the Havasupai fought to have their children
22 educated in the communities and on the lands that form an inseparable part of their identity

23 ¹² See STEPHEN HIRST, I AM THE GRAND CANYON 73 (3d ed. 2006).

24 ¹³ Where appropriate, the term “BIE” will also denote its predecessor agencies within DOI,
25 including the Office of Indian Education Programs (“OIEP”) and OIEP’s parent agency the
26 BIA. The BIE was created in 2006 when OIEP was elevated to bureau status, taken outside
27 of the umbrella of the BIA, and renamed the Bureau of Indian Education. Currently, the
28 BIA and the BIE are two separate sister bureaus within Indian Affairs at DOI. Prior to the
creation of the BIA in 1947, responsibility for Native American education fell to the Office
of Indian Affairs or the Indian Service, both within DOI.

1 as a people. They rejected the flawed proposition that a public education required the
2 dilution of their culture, which remains deeply rooted in their ancestral homelands in the
3 Grand Canyon.

4 53. Rather than submit their children to the uncertain fate of the boarding schools,
5 Havasupai families attempted to secure admission for their children at public schools in
6 neighboring communities or at the nearby Grand Canyon Village School, which served the
7 families of National Park Service employees. Despite their repeated efforts, the Havasupai
8 were denied admission to these neighboring schools, and they were told that no federal
9 funds were available to construct a new school to serve their community.

10 54. In the 1950s, as part of the Eisenhower administration’s Indian termination
11 policy, the Havasupai were encouraged to leave their reservations and assimilate into
12 majority culture. In addition to Native American boarding schools, the federal government
13 sponsored relocation programs, which unsuccessfully attempted to resettle Havasupai
14 members in large urban centers far from their communities. These coercive federal
15 policies were designed to systematically dismantle tribal allegiances and “civilize” tribal
16 members.

17 55. By 1955, the BIA closed the school in Supai and required that Havasupai
18 children attend the boarding schools for all grades.¹⁴ To receive an education, Havasupai
19 children attending distant boarding schools were separated from their families for nine
20 months out of the year, with some children remaining away from home for years at a time.
21 Other children dropped out of school altogether.

22 56. Over time, these federal policies inflicted long-lasting trauma and suffering on
23 Havasupai children, who were separated from their families to attend assimilationist
24 boarding schools, as well as on their families and community. Rates of suicide,
25 alcoholism, and truancy rose, and few Havasupai youth ever managed to graduate from
26 high school.

27
28 ¹⁴ See STEPHEN HIRST, I AM THE GRAND CANYON 189 (3d ed. 2006).

1 57. Yet the Havasupai persisted in their struggle to ensure access to tribal
2 education. In 1964, the Havasupai successfully lobbied for the reopening of the Supai Day
3 School.¹⁵ With only one teacher, the school provided education on the reservation for
4 young children from kindergarten through second grade.¹⁶ After the age of 8 or 9,
5 however, children were still required to leave home to complete their education at the
6 boarding schools.

7 58. In 1976, the BIA shut down the Supai Day School until further notice.¹⁷
8 With no alternative other than a complete return to the boarding school system, the
9 Havasupai Tribe intervened and requested permission to operate the school. The
10 Havasupai Tribe was one of the first in the nation to submit a “638” proposal under the
11 Indian Self-Determination Act, P.L. 93-638, which provided it with federal funding to run
12 the school. The BIA in turn agreed to issue the Havasupai Tribe a contract to manage the
13 school.

14 59. The new Supai Day School offered kindergarten through eighth grade and
15 finally opened its doors in 1982. Tribal operation of the school encouraged community
16 engagement and improved student outcomes while providing many Havasupai children
17 with a culturally relevant education for the first time. Members of the tribe created primers
18 and storybooks to teach schoolchildren Havasupai culture. Others helped develop a
19 language curriculum to teach the Havasupai language. In 2006, the Havasupai language
20 was spoken fluently by over 90% of tribal members, one of the highest rates among any
21 Native American tribe in North America at the time.¹⁸

22
23 ¹⁵ See STEPHEN HIRST, *I AM THE GRAND CANYON* 194 (3d ed. 2006).

24 ¹⁶ Department of the Interior, Office of the Secretary, *Report on the Social and Economic*
25 *Conditions of the Havasupai Tribe of the Havasupai Reservation, Arizona, Beneficiary of*
26 *an Award Granted in the Indian Claims Commission Docket Numbered 91*, at 6 (Jan. 6,
1972).

27 ¹⁷ See STEPHEN HIRST, *I AM THE GRAND CANYON* 241 (3d ed. 2006).

28 ¹⁸ See STEPHEN HIRST, *I AM THE GRAND CANYON* 243 (3d ed. 2006). The percentage has
declined in the intervening years, which is not surprising because Havasupai Elementary

1 60. In 2002, the Havasupai transferred the operation of the school back to the BIA
2 due to inadequate financial resources and a lack of administrative and technical support
3 from the BIA in implementing the new requirements of the No Child Left Behind Act of
4 2001.

5 61. Today, the school in Supai—renamed Havasupai Elementary School—serves
6 approximately 70 students in grades kindergarten through eight. There continues to be no
7 high school instruction provided to Havasupai students; students who wish to pursue
8 secondary education must leave their community to attend public schools or BIE-operated
9 boarding schools outside of the canyon.

10 **C. The U.S. Government’s Historic Failure to Provide Education to Native**
11 **Students**

12 62. Defendants’ failure to provide education to students in Havasupai is consistent
13 with Defendants’ long history of failing to provide meaningful education to Native
14 students. For over a century, the boarding school system described above was used in an
15 attempt to dismantle Native families, tear apart communities, eradicate Native culture, and
16 “civilize” Native children. Indeed, an early stated purpose of “Indian schools” made no
17 effort to obscure this objective; it was to “rescue [Native Americans] from their troubled
18 lifestyle,”¹⁹ or, more bluntly, to “kill the Indian . . . and save the man.”²⁰

19 _____
20 School does not provide any instruction in the Havasupai language, despite a legal
21 obligation to do so.

22 ¹⁹ Nizhone Meza, *Indian Education: Maintaining Tribal Sovereignty Through Native*
23 *American Culture and Language Preservation*, 2015 B.Y.U. Educ. & L.J. 353, 354 (2015)
(quoting Aaron J. Stewart, *Acting for the Left Behind: How the Native Class Act Could*
24 *Close the Gaps in American Indian Education*, 36 Am. Indian L. Rev. 347, 350 (2012)).

25 ²⁰ Geoffrey D. Strommer, Stephen D. Osborne, *The History, Status, and Future of Tribal*
26 *Self-Governance Under the Indian Self-Determination and Education Assistance Act*,
27 39 Am. Indian L. Rev. 1, 27-28 (2015) (alteration in original) (quoting Richard H. Pratt,
28 *The Advantages of Mingling Indians with Whites* (1892), in *Americanizing the American*
Indians: Writings by the “Friends of the Indian” 1880-1900, at 261 (Francis Paul Prucha
ed., 1973)). “Captain Pratt was the founder of the Carlisle Indian School in Pennsylvania.”
Id. at n.175.

1 63. Starting in the 19th century, large numbers of Native youth were forcibly
2 removed from their families and homes and sent outside their communities to these
3 boarding schools, where they were punished for speaking their own languages or
4 practicing their own religions, and where they were frequently subjected to corporal
5 punishment, sexual assault, and hard labor.²¹ As recently as the 1970s, up to 17% of
6 Native American children still resided in such schools.²² As a federal court summarized
7 this history:

8 [t]he legacy [of the federal government’s involvement in Native American
9 education] is characterized by inadequate resource allocation, systematic
10 exclusion of Indian parents and communities from any role in the education
11 of their children, and a one-way transmission of white American education
12 to the Indian child as a means to remove the child from his aboriginal
13 culture and assimilate him into the dominant white culture. Put another
14 way, Native Americans²³ have endured generations of inadequate and
15 inappropriate education.

16 64. Through the activism of Native communities and their allies, federal attention
17 began to coalesce around the magnitude of the educational failure of Native American
18 boarding schools. These efforts spurred the release of national reports on the dire state of
19 Native education and eventually led to the closure or wholesale reform of many boarding
20 schools.

21 65. In 1969, a Special Senate Subcommittee Report on Native education titled
22 “Indian Education: A National Tragedy - A National Challenge” was published.²⁴ The
23 authors summarized the subcommittee’s research as “a major indictment of the [federal
24

25 ²¹ Ann Murray Haag, *The Indian Boarding School Era and Its Continuing Impact on Tribal Families and the Provision of Government Services*, 43 Tulsa L. Rev. 149, 154 (Fall 2007).

26 ²² *Id.* at 161.

27 ²³ *Cheyenne River Sioux Tribe v. Kempthorne*, 496 F. Supp. 2d 1059, 1066 (D.S.D. 2007) (citations omitted).

28 ²⁴ *Indian Education: A National Tragedy - A National Challenge (Kennedy Report), 1969 Report of the Committee on Labor and Public Welfare, United States Senate, Made by its Special Subcommittee on Indian Education Pursuant to Sen. Res. 80. S. Rep. No. 91-501, 91st Cong., 1st Sess., available at <http://files.eric.ed.gov/fulltext/ED034625.pdf>.*

1 government's] failure" to "live up to its responsibility" to educate Native American
2 children and admonished, "[t]hese cold statistics illuminate a national tragedy and a
3 national disgrace."²⁵ The Report's conclusions were bleak:

4 We have developed page after page of statistics. These cold figures mark a
5 stain on our national conscience, a stain which has spread slowly for
6 hundreds of years. They tell a story to be sure. But they cannot tell the
7 whole story. They cannot, for example, tell of the despair, the frustration,
8 the hopelessness, the poignancy, of children who want to learn but are not
9 taught; of adults who try to read but have no one to teach them; of families
10 which want to stay together but are forced apart; or of 9-year old children
who want neighborhood school [*sic*] but are sent thousands of miles away
to remote and alien boarding schools. . . . We have concluded that our
national policies for educating American Indians are a failure of major
proportions. They have not offered Indian children—in years past or
today—an educational opportunity anywhere near equal to that offered the
great bulk of American children.²⁶

11 66. In an attempt to redress the stark reality depicted in the Report,²⁷ Congress
12 passed the Indian Education Act of 1972 ("IEA"),²⁸ which forms the basis for current
13 federal policy concerning the education of Native American students. This landmark
14 legislation, the first "comprehensive approach to meeting the unique needs" of Native
15 students,²⁹ established the National Advisory Council on Indian Education, created the
16 Office of Indian Education (the predecessor to today's BIE), and authorized a number of
17 grants targeted at improving Native American educational opportunities and addressing the
18 unique educational needs of Native American students.³⁰ In his opening statement at the
19 hearings before the Senate Subcommittee on Education, Senator Ted Kennedy, one of the

20 ²⁵ *Id.* at ix-x.

21 ²⁶ *Id.* at xi.

22 ²⁷ To Amend The Higher Education Act Of 1965, The Vocational Educational Act Of
23 1968. And Related Acts, And For Other Purposes, Hearing on S. 659, Before the
24 Subcommittee on Education of the Committee on Labor and Public Welfare, 92nd Cong.
1-4, (April 28, 1971) (statement of Senator Edward Kennedy) pp. 1710-11 (hereinafter
"1972 Hearings").

25 ²⁸ Education Amendments of 1972, Pub. L. 92-318, tit. IV, 86 Stat. 334 (1972).

26 ²⁹ U.S. Department of Education, Office of Elementary and Secondary Education, *History of*
27 *Indian Education*, available at <http://www2.ed.gov/about/offices/list/oese/oie/history.html> (last
visited May 20, 2016).

28 ³⁰ Pub. L. 92-318, *supra* note 28, 86 Stat. at 334-45.

1 Act’s sponsors, proclaimed, “[t]he time is now ripe for Congress to undertake the job of
2 providing substance behind its own often-voiced commitment to improving Indian
3 education.”³¹ Affirming this mandate, a 1976 pamphlet released by the Department of
4 Health, Education, and Welfare described the “[c]ongressional intent in enacting the Indian
5 Education Act” as “to give all Native American students equal educational opportunity.”³²

6 **D. Federal Responsibility to Provide General and Special Education in**
7 **BIE-Funded Schools**

8 67. In response to the federal government’s troubled legacy of neglect, oppression,
9 and cultural eradication in Native education, the federal government has committed to
10 providing education for Native American students attending schools funded or operated by
11 the BIE. Title XI of the Education Amendments of 1978, as amended by the Native
12 American Education Improvement Act of 2001 (“Title XI”), expressly states that in order
13 to fulfill the federal government’s “unique and continuing trust responsibility . . . for the
14 education of Indian children,” the “Federal Government has *the sole responsibility* for the
15 operation and financial support of the [BIE] funded school system. . . .”³³ The Act further
16 “vests in the Assistant Secretary for Indian Affairs all functions with respect to formulation
17 and establishment of policy and procedure and supervision of programs and expenditures
18 of Federal funds for the purpose of Indian education administered by the Bureau.”

19 68. In this respect, the governance and administration of BIE-funded schools is
20 distinct from the traditional public school system, in which education is primarily the
21 responsibility of the state. Unlike a traditional public school, Havasupai Elementary
22 School—one of 57 schools that is both funded and operated by the BIE—is not controlled
23
24

25 ³¹ 1972 Hearings, *supra* note 27, at 1711.

26 ³² National Institute of Education, U.S. Department of Health, Education & Welfare, *The*
27 *Indian Education Act: Reformation in Progress* 5 DHEW Publication No. (OE) 76-02403
(1976), <http://files.eric.ed.gov/fulltext/ED136990.pdf>.

28 ³³ 25 U.S.C. § 2000 (emphasis added).

1 or operated by the Havasupai government and is not subject to the jurisdiction of any State
2 Educational Agency (“SEA”) other than the BIE.³⁴

3 **69. General Education:** Numerous federal statutes and regulations expressly
4 obligate Defendants to provide an education to Native American children that meets basic
5 educational standards and enables students to access post-secondary educational
6 opportunities. Indeed, Congress has made clear that the BIE must provide Native
7 American children “with educational opportunities that *equal or exceed those for all other*
8 *students in the United States.*”³⁵ Other statutes and regulations similarly refer to
9 Defendants’ obligation to provide education that is “adequate,”³⁶ “comprehensive,”³⁷ “of
10 the highest quality,”³⁸ and that meets “the basic elementary and secondary educational
11 needs.”³⁹ These statutory and regulatory obligations are reinforced by the federal
12 government’s “trust” responsibility for Native American students.⁴⁰

13 **70.** Federal statutes likewise recognize Defendants’ obligation to meet the distinct
14 educational and cultural needs of Native students attending BIE schools. Title VI of the
15 Elementary and Secondary Education Act, for example, requires the federal government to
16 work to ensure “that programs that serve Indian children are of the highest quality and
17 provide for not only the basic elementary and secondary educational needs, but also the
18 unique educational and culturally related academic needs of these children.”⁴¹

19 **71. Special Education:** Defendants are likewise tasked with complying with
20 federal statutes that prohibit discrimination against students with disabilities—including
21 Section 504 of the Rehabilitation Act (“Section 504”)—in the administration and operation
22

23 ³⁴ 20 U.S.C. § 7801(30)(C).

24 ³⁵ 25 U.S.C. § 2001(a)(1) (emphasis added).

25 ³⁶ 25 C.F.R. § 32.4(r).

26 ³⁷ 25 C.F.R. § 32.3 (codified into law under 25 U.S.C. § 2003).

27 ³⁸ 25 U.S.C. § 2000.

28 ³⁹ *Id.*

⁴⁰ *See Navajo Nation*, 537 U.S. at 506.

⁴¹ 20 U.S.C. § 7401.

1 of all BIE schools. Beginning in 1978, Congress directed the Secretary of the Interior to
2 bring all schools operated by the Bureau into compliance with Section 504. In enacting the
3 No Child Left Behind Act of 2001, Congress once again directed the Secretary to bring all
4 schools operated by the Bureau into compliance with Section 504.⁴² Similarly, Executive
5 Order 13160, signed in 2001, specifically applies Section 504's non-discrimination
6 principles to federal education programs, including those at BIE schools.

7 **III. DEFENDANTS' FAILURE TO DELIVER BASIC EDUCATION AT**
8 **HAVASUPAI ELEMENTARY SCHOOL**

9 72. Under Defendants' control and operation, Havasupai Elementary School has
10 failed to deliver the basic education required by federal statute and Defendants' own
11 regulations. It does not even purport to provide a comprehensive general education
12 curriculum, depriving students of instruction in numerous required subject and content
13 areas, including culturally relevant instruction. Defendants have failed to provide students
14 with basic instructional materials and resources like textbooks, a functioning library, and
15 extracurricular activities, and to ensure that Havasupai Elementary School is adequately
16 staffed such that it can effectively deliver basic education. Additionally, Defendants have
17 actively excluded the community from school decision-making and discouraged advocacy
18 to improve the school and secure student rights.

19 **A. Defendants' Failure to Provide Required**
20 **Instruction at Havasupai Elementary School**

21 (1) Legal Obligations of Defendants

22 73. The BIE has issued binding regulations detailing the content and form that a
23 basic education must take. The regulations governing curricula in BIE-operated schools
24 are comprehensive. For each age group, the regulations articulate the governing
25 educational philosophy, enumerate the instructional content that must be covered, and
26 describe the educational concepts that must be incorporated into the curriculum. For
27 example:

28 ⁴² 25 U.S.C. § 2005(b)(1).

1 • **25 C.F.R. § 36.21** outlines the minimum requirements for kindergarten,
2 including, *inter alia*, a curriculum that emphasizes language development and the
3 development of positive feelings as well as instruction in “exploration of the environment
4 (number, space and time relationships, natural science)” and “psychomotor and
5 socialization development.”

6 • **25 C.F.R. § 36.22** outlines the elementary curriculum, covering grades one
7 through six, and listing six subject areas that the instructional programs must offer—
8 language arts, mathematics, social studies, sciences, fine arts, and physical education—as
9 well as five content areas that must be integrated into the curriculum—career awareness,
10 environmental and safety education, health education, metric education, and computer
11 literacy.

12 • **25 C.F.R. § 36.23** outlines the junior high/middle school instructional
13 program, listing seven instructional subject areas—language arts, social studies,
14 mathematics, science, fine arts and practical arts, computer literacy, and physical
15 education—as well as five content areas that must be integrated into the curriculum—
16 career exploration and orientation, environmental and safety education, metric education,
17 consumer economics (including personal finances), and health education—along with
18 minimum units, such as that “one unit [of science] shall be required of each student every
19 year.”

20 • **25 C.F.R. § 36.24** outlines the “secondary instructional program,”
21 enumerating nine subject areas—language arts, sciences, mathematics, social studies, fine
22 arts and practical arts, physical education, languages other than English, driver education,
23 and vocational education— four general content areas to be integrated into the curriculum
24 (consumer economics, metric education, safety education, and health education), and a
25 number of guiding principles to promote graduation.

26 74. There also are regulations generally applicable to all grade levels that take into
27 account the cultural, ethnic, and linguistic needs of Native students. The educational
28 program must “include multi-culture and multi-ethnic dimensions designed to enable

1 students to function effectively in a pluralistic society.”⁴³ Specifically, each “school’s
2 language arts program shall assess the English and native language abilities of its students
3 and provide instruction that teaches and/or maintains both the English and the primary
4 native language of the school population,” and each such program must “meet local tribal
5 approval.”⁴⁴ Additionally, “[t]he school program shall include aspects of the native culture
6 in all curriculum areas” and the content of the program must “meet local tribal approval.”⁴⁵
7 Each school must “assess the learning styles of its students and provide instruction based
8 upon that assessment” and provide “for at least one field trip per child per year to broaden
9 social and academic experiences.”⁴⁶

10 (2) Defendants’ Failure to Provide a Culturally Relevant, General
11 Education Curriculum at Havasupai Elementary School

12 75. The instruction provided at Havasupai Elementary School is limited to the
13 subject areas of reading, writing, and math. Plaintiffs do not receive instruction in the
14 subject areas of science, social studies, any language other than English, arts, or physical
15 education. The school provides no culturally relevant instruction, such as instruction in
16 Havasupai history, culture, arts, or language. Nor does it provide instruction in the
17 “content areas” required by BIE regulations to be integrated into the curriculum.⁴⁷

18 76. Defendants have also failed to ensure that the school provides instruction in
19 the Havasupai language, which is necessary to promote the goals of language preservation,
20 enhanced educational outcomes, cultural familiarity, and community pride. Defendants
21 have equally failed to provide appropriate bilingual education to students who speak

22 ⁴³ 25 C.F.R. § 36.20(b).

23 ⁴⁴ 25 C.F.R. § 36.20(b)(1).

24 ⁴⁵ 25 C.F.R. § 36.20(b)(2).

25 ⁴⁶ 25 C.F.R. §§ 36.20(b)(3), (b)(4).

26 ⁴⁷ For students in first through sixth grade, these areas are career awareness, environmental
27 and safety education, health education, metric education, and computer literacy. For
28 students in seventh and eighth grade, these areas are career exploration and orientation,
environmental and safety education, metric education, consumer economics (including
personal finances), and health education.

1 primarily the Havasupai language and are learning English as a second language. No
2 members of the teaching staff speak the Havasupai language. No assessment has been
3 made of the English and Havasupai language skills of students at the School. No
4 comprehensive program of multicultural and multilingual education—including the
5 creation and use of culturally appropriate instructional materials, methodologies, and
6 assessments—exists at the school. Defendants have not engaged in collaboration or
7 consultation with Havasupai families, community members, or tribal officials to enact such
8 culturally relevant language programs.

9 (3) Consequences of Defendants’ Failure to Provide a Culturally
10 Relevant, General Education Curriculum

11 77. The consequences of the school’s failure to provide a comprehensive general
12 education curriculum are profound. Denial of access to basic instruction in subjects like
13 science and social studies deprives Plaintiffs of foundational knowledge critical to success
14 in secondary and post-secondary education and in the twenty-first century workplace.
15 Additionally, limiting the curriculum in this manner holds students back in
16 English/Language Arts as well. Particularly after third grade, age-appropriate literacy
17 development is dependent not merely on skills like phonics and word recognition, but on
18 knowledge capabilities like reading comprehension, vocabulary, composition, and
19 analysis. Developing these higher-level literacy skills relies on appropriate subject-matter
20 instruction: a child who has never been introduced to basic biological or environmental
21 terms and concepts in science class, for example, will be unable to recognize the
22 vocabulary or understand written materials relying on these words and concepts.
23 Moreover, education research shows that culturally relevant instruction and engaging
24 activities like the arts and physical education are directly linked with motivation and
25 engagement.⁴⁸

26 _____
27 ⁴⁸ In recognition of the important role of physical education, the BIA Manual enumerates internal
28 agency requirements regarding the provision of physical education and other physical activities at
BIE schools. See Indian Affairs Manual, Part 30, Chapter 7: Education (Management) Health and
Wellness Policy, <https://www.indianaffairs.gov/cs/groups/xraca/documents/text/idc016046.pdf>.

1 (4) Remedy

2 78. Defendants have an obligation to provide students in Havasupai Elementary
3 School access to all required subjects and required content areas as well as to appropriate
4 curriculum and instruction in these subject and content areas. Defendants must also assess
5 the language capabilities of Havasupai students and offer opportunities to maintain and
6 enhance both the English and Havasupai language skills of students.

7 79. Requiring Defendants to consult with the Havasupai Tribe, already a legal
8 requirement, and Native education experts will ensure that students are provided with
9 opportunities to learn meaningful, relevant, and culturally grounded content and to
10 establish an appropriate program of multicultural and multilingual education—including
11 the adoption of culturally relevant instructional materials, methodologies, and assessments.

12 80. Culturally relevant education refers to a holistic approach that “infuses the
13 history, values, and language—or ways of knowing—of Native people into the contents of
14 the curriculum, the language of instruction, the delivery of instruction, and the interaction
15 with Native students.”⁴⁹ This integration of Native culture into mainstream educational
16 frameworks does not detract from traditional curricular areas, and it serves as a critical and
17 complementary component of educational success.⁵⁰ By encouraging cultural continuity
18 between a child’s home community and the school, culturally relevant practices are critical
19 to “motivating students, promoting a positive sense of identity and self, stimulating
20 positive attitudes about school and others . . . and supporting improved academic
21

22 ⁴⁹ Nat’l Indian Educ. Ass’n (“NIEA”) and Nat’l Educ. Ass’n, *Voices of Native Educators: Strategies that Support Success of Native High School Students* 23 (2011),
23 <http://files.eric.ed.gov/fulltext/ED528946.pdf>.

24 ⁵⁰ See, e.g., NIEA, *Using Culturally Based Education to Increase Academic Achievement and Graduation Rates* 2 (2008), <http://files.eric.ed.gov/fulltext/ED523558.pdf>; Teresa L. McCarty, *The Role of Native Languages and Cultures in American Indian, Alaska Native, and Native Hawaiian Student Achievement* 2 (2011),
25 [https://static1.squarespace.com/static/52cf1070e4b048ae22d972b2/t/54aac6b3e4b0c309d027948a/1420478131256/McCarty+\(2011\).+Role+and+Impact+of+Native+Languages+and+Cultural+Cont](https://static1.squarespace.com/static/52cf1070e4b048ae22d972b2/t/54aac6b3e4b0c309d027948a/1420478131256/McCarty+(2011).+Role+and+Impact+of+Native+Languages+and+Cultural+Cont)
26 [ext.pdf](https://static1.squarespace.com/static/52cf1070e4b048ae22d972b2/t/54aac6b3e4b0c309d027948a/1420478131256/McCarty+(2011).+Role+and+Impact+of+Native+Languages+and+Cultural+Cont) (“The issue, then, is not whether schooling based on Native students’ tribal language and
27 culture is beneficial, but rather which approaches are most effective and under what conditions.”).
28

1 performance.”⁵¹ In fact, research has shown robust linkages between culturally relevant
2 instruction and educational benefits such as “improved academic performance, decreased
3 dropout rates, improved school attendance rates, decreased clinical symptoms, and
4 improved student behavior.”⁵² By promoting educational practices that are relevant to and
5 reflective of Native students’ home communities, Defendants can ensure that Native
6 students are equipped with the skills needed to excel in their tribal communities and
7 beyond.

8 **B. Failure to Adequately Staff the School**

9 (1) Legal Obligations of Defendants

10 81. Defendants are subject to a series of regulations specifying the staffing and
11 administrative requirements at BIE schools in order to ensure both the quality and quantity
12 of instruction and educational support received by Native students. Among other things,
13 these regulations provide that “in the absence of a regular teacher,” schools must guarantee
14 “a certified substitute teacher who meets the State substitute teacher qualifications,”⁵³ and
15 that “[i]n the event that such a substitute is not available . . . a class cannot have as a
16 teacher an employee without teaching credentials for more than 20 school days during any
17 one school year.”⁵⁴ Similarly, BIE regulations guarantee the provision of a professional
18 student counselor at each school “concerned with physical, social, emotional, intellectual,
19 and vocational growth for each individual,” and “familiar with the unique tribal, social,
20 and economic characteristics of students.”⁵⁵

21
22 ⁵¹ William G. Demmert, Jr., *Improving Academic Performance Among Native Students: A*
23 *Review of the Research Literature* 42 (2001), <http://files.eric.ed.gov/fulltext/ED463917.pdf>.

24 ⁵² *Id.* at 17; see also Angela E. Castagno & Bryan McKinley Jones Brayboy, *Culturally*
25 *responsive schooling for Indigenous youth: A review of the literature*, 78 *Review of*
26 *Educational Research* 941, 958 (2008), [http://www.mn-](http://www.mn-indianed.org/docs/CulturallyResponsiveSchoolingForIndigenousYouth.pdf)

27 ⁵³ 25 C.F.R. § 36.11(a)(5).

28 ⁵⁴ *Id.*

⁵⁵ 25 C.F.R. § 36.42.

1 82. To ensure an adequate amount of instruction, BIE regulations further provide
2 that any day that meets only “three-fourths of the instructional hours” may not be counted
3 as a full school day except in the rare case of emergencies arising from “an uncontrollable
4 circumstance during the school day.”⁵⁶ Federal statutes underscore Defendants’ obligation
5 to provide educational programs that “are of the highest quality” and “provide for the basic
6 elementary and secondary educational needs of Indian children.”⁵⁷ Such educational
7 obligations cannot be fulfilled without adequate learning conditions, including the basic
8 elements of learning time and quality instruction.

9 (2) Defendants’ Longstanding Failure to Adequately Staff Havasupai
10 Elementary School

11 83. Defendants have consistently failed to ensure that Havasupai Elementary
12 School is adequately staffed such that it can effectively deliver basic education.
13 Defendants have failed to fill teacher and staff positions at the school, resulting in near-
14 constant vacancies. Teacher and staff vacancies have lasted for months and even years.
15 Teacher vacancies have been covered by adults who lack teaching credentials—including
16 the school janitor and the school secretary—and temporary BIE instructors on two-week
17 details who rotate through the position and by combining students from multiple grade
18 levels into a single classroom. Instead of certified teachers or trained aides, older children
19 at the school sometimes help “teach” in these classrooms.

20 84. For example, the current 2016-2017 school year began on August 16, 2016
21 with the principal, counselor, and first-grade teacher positions all vacant. Because there
22 was no first-grade teacher hired, the kindergarten and first-grade classes were combined.
23 A general education teacher who lacks an administrative credential and has a full-time
24 teaching load served as the acting principal for approximately the first 12 weeks of the
25 school year. The counselor position remained vacant until December 2016.

26
27 ⁵⁶ 25 C.F.R. § 36.20(a).

28 ⁵⁷ 25 U.S.C. § 2000.

1 85. The 2015-2016 academic year was scheduled to begin on August 25, 2015, but
2 due to a severe staffing shortage students did not begin attending school until September
3 15. For the remainder of the school year, most classrooms were covered by temporary BIE
4 instructors who rotated through two-week details. A general education teacher who lacks
5 an administrative credential and had a full-time teaching load served as the acting principal
6 for the entire school year.

7 86. The 2014-2015 school year likewise began with the principal position vacant.
8 In spring 2014, the staffing for the entire school consisted of: one acting principal, one
9 special education teacher, two general education teachers, one teaching assistant, and one
10 secretary.

11 87. Plaintiffs have been repeatedly subject to the effects of these chronic staffing
12 shortages. For example, Plaintiff Anna D.'s teachers have frequently left during the
13 middle of the school year. In the first grade, Anna D.'s teacher switched twice during the
14 school year. In the second grade, Anna D.'s teacher switched at least five times over the
15 course of the year. Plaintiff Stephen C.'s teachers have also repeatedly left during the
16 middle of the school year. In particular, last year, Stephen C. was taught by a series of
17 temporary teachers who stayed only two weeks at a time before a permanent teaching
18 position was filled.

19 88. Insufficient staffing has repeatedly caused the school to shut down altogether.
20 On multiple occasions, the school has been so severely understaffed that it has been unable
21 to operate. For example, due to insufficient staffing, school was not in session from
22 August 24 to September 15, 2015.

23 89. In addition, for years, Havasupai Elementary School has often closed after
24 lunch on specified Fridays, depriving students of more than a half-day of instruction. On
25 these days, the school permits teachers and staff to leave Havasu Canyon early for the
26 weekend. Students are sent home because the school has insufficient numbers of teachers
27 to operate. The learning time lost as a result of these closures alone adds up to more than
28 two weeks of instruction per year.

1 90. Making matters worse, the school remains subject to repeated closures or early
2 dismissals with little or no notice. In November 2016, Defendants shifted to a half-day
3 schedule every day. This practice began without any notice. In early and mid-November,
4 all of the students in the school were assembled together in the multipurpose room instead
5 of their regular classrooms and then sent home after only a half-day of school. Then, on
6 November 18, 2016, the School provided students with a flyer announcing that, beginning
7 on Monday, November 28, after the Thanksgiving holiday, “students will be on a half day
8 schedule till further notice.” On November 28, school was cancelled for the day. The
9 School continued on a half-day schedule on November 29 and finally resumed a full day
10 schedule on November 30, 2016.

11 91. The BIE has exacerbated its failure to hire an adequate number of teachers in
12 the first instance by creating conditions for high staff turnover. Between the 2015-16 and
13 2016-17 school years, for example, approximately one-third of the staff turned over. From
14 2005 to 2016, there have been approximately 7 to 10 different principals at the school, not
15 including those who arrived on temporary details from the BIE. This turnover has been
16 caused by the BIE’s failure to provide adequate support to teachers and staff and by the
17 termination—including termination during the school year—of teachers who have acted as
18 advocates for students and families.

19 92. For example, during the 2015-2016 school year, the BIE terminated both a
20 teacher and a counselor who were deeply committed to working with children in the
21 community and who sought to advocate for additional resources for students. The teacher
22 was removed and asked to leave the next day. The counselor was terminated on May 6,
23 2016. The school failed to fill either of these vacancies before the end of the school year,
24 resulting in approximately two months of the school year during which students were
25 deprived of the necessary services and instruction provided by these staff members.

26 93. Even when Havasupai Elementary School is considered “fully staffed,”
27 multiple grade levels are combined into a single classroom, but teachers are not provided
28 the training or support necessary to serve such combined classrooms. Grade levels are

1 typically combined in K/1, 2/3, 4/5, 6 and 7 /8 classrooms. For example, Anna D. receives
2 her third grade instruction in a combined classroom, and she also received instruction in
3 the first and second grades in a combined classroom. During periods of inadequate
4 staffing, there have been up to three grade levels in a single classroom. At present, due to
5 the lack of a dedicated sixth-grade teacher, students are being placed in a combined
6 classroom for grades 6 through 8. Along with other sixth-grade students at the School,
7 Stephen C. receives his instruction in the same classroom with seventh- and eighth-grade
8 students.

9 (3) Defendants' Failure to Adequately Staff Havasupai Elementary
10 School Directly Impacts Student Learning

11 94. The severe and persistent instability of the Havasupai School's teaching staff
12 has pernicious consequences for student learning. When the teaching staff undergoes
13 frequent turnover, or when substitute teachers regularly cover vacancies, Havasupai
14 students are deprived of valuable learning time and the guidance of a teacher who has the
15 necessary experience and understanding of specific student needs. Learning requires, at
16 minimum, consistency and stability in teaching faculties, which allows teachers to build
17 trusting relationships with students and to teach effectively and within the particular school
18 community. Even when a new teacher is hired, that teacher must spend valuable time
19 adapting to the school and its students as well as learning about the community. As a
20 result, frequent teacher turnover substantially contributes to low academic achievement.
21 Moreover, vacant positions are often filled by a series of substitutes, who typically lack
22 expertise and experience in the curricular subject areas where they are placed. Little
23 learning takes place during these chaotic transitions, and Havasupai students subjected to
24 such practices internalize the harmful message that their learning is not an educational
25 priority.

26 95. As a result of the combined classrooms, teachers must also serve students with
27 especially wide ranges of proficiency levels, disabilities, and social-emotional needs in a
28 single classroom, but they lack the training or support to meet the needs of all students in

1 this setting. As a result, in many classrooms at Havasupai Elementary School, the teacher
2 provides instruction to only a small group of students at any one time, while the remaining
3 students wait, unsupervised and not engaged in any educational activity.

4 96. In addition to a lack of adequate classroom instruction, Defendants have also
5 failed to ensure that Havasupai Elementary School is consistently staffed with a
6 professional student counselor attuned to the individual needs of students and familiar with
7 the tribal community. As a result, Havasupai students have been deprived of access to
8 critical counselling services, ranging from academic guidance in the formation of “an
9 academic and career plan,” to “preventative and crisis counselling” to meet mental health
10 needs, as well as other important services to support student development.⁵⁸ Rather,
11 inadequately trained teachers and staff at Havasupai Elementary School must scramble to
12 meet these critical student needs in the limited time available or leave these needs wholly
13 unaddressed in the absence of a dedicated school counselor.

14 97. The lack of adequate staffing also leads to dangerous conditions at the school
15 when children are routinely left unsupervised. Recently, two children accessed a supply
16 cabinet at the school during the school day and drank hand sanitizer. One child was
17 airlifted out of the canyon for medical treatment, and the other was handcuffed and taken
18 to the local medical clinic.

19 98. Similarly, Plaintiff Taylor P. was recently pushed against a wall and choked by
20 another student while her kindergarten teacher was not watching. In her first semester at
21 the school, Taylor P. was also sexually assaulted and penetrated by another student on the
22 playground. In neither situation was Taylor P.’s mother, Billie P., informed by the school
23 of what had happened.

24 (4) Remedies

25 99. Adequate staffing of qualified teachers and staff at Havasupai Elementary
26 School, including offering sufficient instructional time for students of each grade and
27 hiring qualified counselors and administrators, is fundamental to the provision of education

28 ⁵⁸ 25 C.F.R. § 36.42(b)(3).

1 to Havasupai students. Research in Native American education reveals effective practices
2 in recruiting and retaining highly qualified teachers to work in schools located in tribal
3 communities, such as partnering new teachers with elders in the community to coach them
4 and to help the teachers as they learn how to participate in the community. Similar
5 research shows that investing in professional development and training programs for
6 teachers and offering improved living conditions helps decrease teacher attrition rates.⁵⁹
7 Defendants must adopt these and other practices to recruit, retain, and appropriately train
8 qualified teachers and staff.

9 **C. Lack of Basic Learning Materials and Activities**

10 (1) Legal Obligations of Defendants

11 100. BIE regulations mandate that Defendants provide Native students with
12 appropriate instructional resources as well as the opportunity to participate in a well-
13 balanced range of student activities. Specifically, these regulations set forth a series of
14 baseline requirements that Defendants must satisfy in the provision of learning materials,
15 such as textbooks, and student activities at BIE schools. For example:

16 • **25 C.F.R. § 36.40** specifies that “each school shall provide a library/media
17 program” meeting applicable local and state requirements, along with federal standards
18 specifying *inter alia* the numbers of grade-level appropriate books, reference and
19 periodical texts, professional texts for teachers and staff, copies of principal textbooks, as
20 well as a variety of audio-visual materials, such as maps, films, and recordings. The
21 regulation additionally provides that the library media center “shall be serviced by a
22 librarian,” and that library resources shall incorporate materials relevant to Native
23 American tribes.

24 • **25 C.F.R. § 36.41** requires that each BIE school establish a textbook review
25 committee, composed of teachers, parents, students, and school board members. This
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27 ⁵⁹ Angela E. Castagno & Bryan McKinley Jones Brayboy, *Culturally responsive schooling for*
28 *Indigenous youth: A review of the literature*, 78 *Review of Educational Research* 941, 981 (2008),
<http://www.mn-indianed.org/docs/CulturallyResponsiveSchoolingForIndigenousYouth.pdf>.

1 committee is charged with reviewing textbooks and other instructional materials to ensure
2 that they meet curricular objectives, adequately portray different cultures, are recent and in
3 good condition, and reflect varied reading levels.

4 • **25 C.F.R. § 36.43** mandates that each school “provide and maintain a well-
5 balanced student activities program” that shall function as “an integral part of the overall
6 educational program.” These activities, such as “special interest clubs, physical activities,
7 student government, and cultural affairs,” are designed to “help develop leadership
8 abilities and provide opportunities for student participation.”

9 (2) Defendants’ Failure to Provide Required Instructional Support at
10 Havasupai Elementary School

11 101. Defendants have failed to meet the most basic of these regulations to ensure
12 that Havasupai students have access to the instructional materials and activities that are
13 both necessary for learning and required by BIE regulation.

14 102. Havasupai Elementary School does not have sufficient numbers of textbooks,
15 let alone a community-based review committee, to ensure that textbooks and other
16 instructional materials are appropriate. As a result, students are unable to bring books
17 home from school. On days when Plaintiffs have homework, they typically carry home
18 photocopied sheets of paper.

19 103. Sufficient learning resources and technology are not available at the School to
20 support student education, such as the presence of a functioning school library or media
21 center. A dedicated librarian has not been assigned to the School.

22 104. Similarly, Havasupai students have been denied access to an “integral part of
23 the overall education program” through Defendants’ failure to provide access to any
24 extracurricular activities. There are no sports teams, student clubs, or art, music, or dance
25 groups. Accordingly, there exist no opportunities for student participation in organized
26 activities at the School in order to develop student leadership abilities and ensure that
27 Havasupai students are provided with appropriate educational opportunities.

28

1 (3) Defendants' Failure to Provide Instructional Resources Has Denied
2 Havasupai Students Access to Adequate Educational Opportunities

3 105. No school can function without basic instructional resources, such as
4 textbooks and technology. Defendants have denied Havasupai students access to these
5 most basic learning resources, leading to a dramatic reduction in students' opportunity to
6 learn effectively in school. Without textbooks or access to a library and media center,
7 students' educational universe is strictly limited to the pages of photocopied assignments
8 or whatever limited classroom instructional materials can be provided during the school
9 day. These constraints on their interaction with instructional material is harmful to student
10 outcomes and denies them access to adequate educational opportunities.

11 106. Access to extracurricular activities is equally critical to educational
12 achievement and student motivation. Extracurricular activities are beneficial for students
13 because they enable them to learn skills in new contexts, forge connections to peers and
14 adult mentors, and enhance their sense of identification with their schools and
15 communities.⁶⁰ In one study measuring the educational resilience of vulnerable youth,
16 frequent extracurricular participation led to high school graduation and college enrollment
17 rates two times higher than for students who participated less frequently.⁶¹ Other research
18 shows that extracurricular involvement is associated with improved educational
19 performance and social emotional health, including higher self-esteem and lower rates of
20 depression.⁶²

21 _____
22 ⁶⁰ Jennifer A. Fredricks & Jacquelynne S. Eccles, *Breadth of Extracurricular Participation*
23 *and Adolescent Adjustment Among African-American and European-American Youth*, 20
24 J. OF RESEARCH ON ADOLESCENCE 307, 307-08 (2010),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3403706/pdf/nihms386169.pdf>.

25 ⁶¹ Stephen C. Peck et al., *Exploring the Roles of Extracurricular Activity Quantity and*
26 *Quality in the Educational Resilience of Vulnerable Adolescents: Variable- and Pattern-*
27 *Centered Approaches*, 64 J. SOC. ISSUES 135 (2008),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2699299/>.

28 ⁶² Jennifer A. Fredricks & Jacquelynne S. Eccles, *Is Extracurricular Participation*
Associated With Beneficial Outcomes? Concurrent and Longitudinal Relations,

1 107. Without access to extracurricular activities, Havasupai students are denied
2 critical opportunities to cultivate their leadership abilities and develop other important
3 skills and qualities that lead to success in the classroom. For example, although Anna D.
4 has a keen interest in basketball and tribal-cultural activities, there are no opportunities for
5 her to pursue these interests through school. She has never even been offered an
6 opportunity to participate in a school-sponsored field trip. The only structured activity
7 outside of school that her mother, Elsa D. can recall was when Anna D. and her classmates
8 picked up trash outside of the school for Earth Day.

9 (4) Remedy

10 108. Defendants must ensure that students at the School have basic instructional
11 materials and resources that are both necessary for learning and required by BIE
12 regulation. These resources include access to adequate numbers of up-to-date, culturally
13 sensitive textbooks, which are regularly assessed by a community-based review board,
14 access to a library media center managed by a professional librarian and educational
15 technology, as well as an opportunity for students to participate in extracurricular
16 activities, such as sports teams, student clubs, or art, music, or dance groups.

17 **D. Exclusion of the Community from School Decision-Making**

18 (1) Legal Obligations of Defendants

19 109. Multiple statutes and regulations obligate Defendants to engage tribal
20 community members in various areas of school decision-making. Notably, this regulatory
21 regime envisions the role of a local school board that participates in setting and assessing
22 educational goals. *See, e.g.*, 25 C.F.R. § 36.10(b). Under BIE regulations, tribal
23 community members are provided with various opportunities for school involvement,
24 including but not limited to, the development of the school's mission and goals,⁶³ the
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27 42 DEVELOPMENTAL PSYCHOLOGY 698, 698 (2006),
<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.546.5178&rep=rep1&type=pdf>.
28 ⁶³ 25 C.F.R. § 36.10(b).

1 selection of appropriate curricula,⁶⁴ the integration of tribal language and culture,⁶⁵ the
2 review of instructional materials,⁶⁶ and the evaluation of educational needs.⁶⁷ Moreover, a
3 critical component of community engagement involves access to student achievement
4 information⁶⁸ and written school policies in order for parents and other community
5 members to meaningfully evaluate school performance and ensure that schools are
6 adopting and applying appropriate policies.⁶⁹

7 (2) Defendants Have Actively Excluded the Havasupai Community from
8 Participating in School Decision-Making

9 110. Defendants have repeatedly denied Havasupai community members the
10 requisite opportunities to participate in important areas of school decision-making,
11 including the development of culturally relevant curricula, the review of textbooks and
12 instructional materials, and the evaluation of educational needs and goals. Nor have
13 Defendants adequately informed parents and community members of school achievement
14 results or provided access to a written handbook of current school policies. For example,
15 in the 2015-2016 school year, the School failed to administer a routine standardized test
16 that students had taken in prior years and to notify families of its failure to do so.

17 111. Defendants have not only failed to engage the Havasupai community in school
18 decision-making. They have actively imposed barriers to such participation and
19 discouraged advocacy to improve the schools and secure student rights.

20 112. The Havasupai Advisory School Board is composed of seven members
21 appointed by the Havasupai Tribal Council. Laila R., the mother of Levi R. and Leo R.,
22 and Elsa D., the mother of Anna D., have each been appointed by the Havasupai Tribal
23

24 ⁶⁴ 25 C.F.R. §§ 36.13(a),(c), 36.12(b)(1).

25 ⁶⁵ 25 C.F.R. § 36.20(b).

26 ⁶⁶ 25 C.F.R. § 36.41(a).

27 ⁶⁷ 25 C.F.R. § 36.12(b)(1).

28 ⁶⁸ 25 C.F.R. § 36.42(a)(4).

⁶⁹ 25 C.F.R. § 36.10(e).

1 Council to serve on the Council’s Advisory School Board. Because the School is
2 administered and operated by the BIE, the Advisory School Board lacks authority to
3 establish policies or make binding decisions for the school.

4 113. The Advisory School Board has played an important advisory role in
5 overseeing the activities of the School and actively seeking to improve the education
6 provided to Havasupai students, including by identifying the needs of the school,
7 representing parent and community concerns, and participating in the hiring process for
8 school staff. For example, Advisory School Board members, including Laila R. in her
9 capacity as an Advisory School Board member and later Advisory School Board President,
10 wrote letters to BIE officials demanding that the vacant positions be filled when the School
11 was severely understaffed and requested that the BIE provide standardized testing to
12 students attending the School.

13 114. The BIE retaliated against Laila R. and other Advisory School Board members
14 for their advocacy by demanding that all members obtain burdensome FBI background
15 checks before allowing the Advisory School Board to meet, even though they do not meet
16 at the school when children are present. Advisory School Board members are prohibited
17 from entering school grounds and otherwise participating in the work of the Advisory
18 School Board until the background checks, which take many months, have cleared. No
19 other individual is prohibited from entering school grounds absent a background check.
20 The school recently called the police when one school board member and grandparent of a
21 student arrived on school grounds. As a direct result of the BIE’s retaliatory acts, the
22 Advisory School Board has effectively been disbanded. Even though the Tribal Council
23 has continued to appoint Advisory School Board members, including appointing Elsa D. in
24 August 2016, the Advisory School Board has not met since January 2015.

25 115. This is not the first time advocates seeking to improve the education to
26 Havasupai students have been subject to retaliation. Community leaders who advocated
27 on behalf of families were barred from School grounds and prohibited from participating
28 in Individualized Education Program (“IEP”) meetings. And, during the 2015-2016 school

1 year, the BIE terminated both a teacher and a counselor who were deeply committed to
2 working with children in the community and who sought to advocate for additional
3 resources for students. In addition, Defendants do not conduct outreach sufficient to
4 secure family or community involvement in the schools. The School does not hold
5 culturally relevant events or community engagement activities, such as plays, dances, or
6 sporting events. Parents are rarely invited onto school grounds except to pick up a student
7 who has been suspended or otherwise subject to exclusionary discipline.

8 (3) Defendants' Failure to Involve Havasupai Community Members in
9 Education Hurts Student Outcomes

10 116. The complete lack of opportunity for meaningful community engagement at
11 Havasupai Elementary School, in addition to violating a series of regulatory imperatives,
12 has served to undermine student educational achievement. When parents, families, and
13 community members lack meaningful avenues of participation in their children's
14 education, schools fail to enlist important sources of support and resources to promote
15 student learning. Community members, for example, can help develop culturally relevant
16 curriculum that is an integral part of Native education. Families, once engaged, can assist
17 in setting educational goals and ensuring that children have adequate support with
18 schoolwork. As a consequence, Native education becomes embedded in Native
19 communities and curricular approaches reflect the cultural identity of the community,
20 which enhances student motivation and engagement with what they are learning. Teachers
21 and staff, particularly those from outside the community, are also able to partake of the
22 support and resources offered by community members, who can help them integrate into
23 the community and develop culturally sensitive practices.

24 (4) Remedy

25 117. Defendants must fulfill their obligation to involve Havasupai community
26 members in their children's education and to participate in various areas of decision-
27 making at Havasupai Elementary School. Defendants should offer culturally relevant
28 events and community-engagement activities at the School. In addition, a coalition of

1 Native American organizations has recommended creating opportunities for families and
2 the community to be involved in developing curriculum and to provide leadership and
3 participate in school activities on an ongoing basis.⁷⁰ Defendants must also permit families
4 and members of the Advisory School Board to oversee the activities of the School and
5 participate in decision-making, including identifying the needs of the school, representing
6 parent and community concerns, and participating in the hiring process for school staff.
7 Specifically, Advisory School Board members should not be subject to burdensome and
8 lengthy federal background checks prior participating in this collaborative process. In
9 addition, Defendants must collect, analyze and disseminate data regarding student
10 achievement, as well as provide a written handbook of school policies, to parents and
11 community members so that there is sufficient information to assess student performance
12 and hold Defendants accountable for providing educational policies and school resources
13 that support an academically and culturally appropriate education.

14 **IV. DEFENDANTS' FAILURE TO IMPLEMENT A SYSTEM TO DELIVER**
15 **SPECIAL EDUCATION TO STUDENTS WITH DISABILITIES**

16 118. Defendants have failed to provide basic education to all students at Havasupai
17 Elementary School, but students with disabilities face even more formidable barriers to
18 accessing public education. Plaintiffs with disabilities have been denied access to even the
19 paltry general education that is provided at Havasupai Elementary School.

20 119. While Defendants' systemic failure to deliver a basic education severely
21 injures all Havasupai students, it disproportionately harms those with disabilities. Students
22 with disabilities are among the most vulnerable to educational deficits because they require
23 specialized instruction in order to access the same educational benefits as other students.
24 As a result of their disabilities, these students are often not able to partake of incidental

25 ⁷⁰ Nat'l Congress of Am. Indians ("NCAI, "), Nat'l Indian Child Welfare Ass'n
26 ("NICWA, "), NIEA, and Nat'l Indian Health Board, *Native Children's Policy Agenda:*
27 *Putting First Kids 1st* 17 (Aug. 2015),
28 http://www.ncai.org/attachments/PolicyPaper_UallLEyZXrEoMnjffnqPGmmCUAPanEYeDcadGqySBSMBSStvQCXo_Aug%202015%20Native%20Children's%20Policy%20Agenda.pdf.

1 learning from other sources or catch up as quickly as their peers. The denial of a system
2 for the delivery of special education to meet their needs is therefore destructive to their
3 ability to access a basic education.

4 120. For example, as a result of Defendants' failure to ensure access to basic
5 education, special education, and related services, Plaintiff Stephen C. is far behind in all
6 academic areas. Because Defendants have denied him access to basic education, Stephen
7 C. is in sixth grade but can barely read and write. And despite years of advocacy by his
8 mother, Laila R., Levi R. is also behind in all academic areas, particularly in the area of
9 reading comprehension. For example, in the fifth grade, Levi R. was reading at a second-
10 grade level.

11 121. The need for a well-functioning system of special education to address the
12 needs of students with disabilities is particularly critical at Havasupai Elementary School,
13 which serves a high proportion of students with disabilities. Defendants and school
14 officials have long been aware of the significant need for special education services at
15 Havasupai Elementary School: the School reported to the Advisory School Board in 2014
16 that approximately half of the students in the school had been identified as students with
17 disabilities.

18 122. Section 504 of the Rehabilitation Act requires schools to provide a system—
19 including procedures, teachers, and appropriate providers—for the delivery of specialized
20 instruction and related services to meet the needs of the numerous students entitled to
21 special education. Yet Havasupai Elementary School has no system for identifying those
22 students who have disabilities or for ensuring that such students receive the specialized
23 instruction, related services, and accommodations necessary for them to access a general
24 education curriculum. Instead, students with disabilities are excluded from school and
25 subjected to punitive discipline and police prosecution on the basis of their disabilities.
26 Havasupai Elementary School also has no system for meeting the procedural requirements
27 of Section 504 and its implementing regulations, including identifying and assessing
28 students with disabilities and providing notice and procedural safeguards to families.

1 **A. Section 504 of the Rehabilitation Act Prohibits Discrimination Against**
2 **Students with Disabilities**

3 123. Over forty years ago, Congress passed and the President signed Section 504 of
4 the Rehabilitation Act of 1973, the first disability civil rights law in the United States. Pub.
5 L. No. 93-112, §504, 87 Stat 355, 394 (1973). Section 504 “is designed to eliminate
6 discrimination on the basis of handicap in any program or activity receiving Federal
7 financial assistance.” 34 C.F.R. § 104.1 (2000).

8 124. Specifically, Section 504 provides that “[n]o otherwise qualified individual
9 with a disability . . . shall, solely by reason of her or his disability, be excluded from the
10 participation in, be denied the benefits of, or be subjected to discrimination under . . . any
11 program or activity conducted by any Executive agency.” 29 U.S.C. § 794(a). A “program
12 or activity” includes a school system, 29 U.S.C. § 794(b)(2)(B), and a disability is defined
13 broadly to include any “physical or mental impairment that substantially limits one or
14 more life activities,” such as (but not limited to), “caring for oneself, performing manual
15 tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking,
16 breathing, *learning, reading, concentrating, thinking, communicating,* and working.”
17 42 U.S.C. §§ 12102(1)(A), (2)(A) (emphasis added).

18 125. The protections of Section 504 are robust and include obligations on
19 Defendants to make certain that all children with disabilities have meaningful access to
20 public education. “Access” to public education for students with disabilities is understood
21 broadly to refer both to physical accessibility of the school site and the students’ ability to
22 receive a benefit from public education.

23 126. Under Section 504, Defendants must guarantee students with disabilities an
24 “equal opportunity to obtain the same result, to gain the same benefit, or to reach the same
25 level of achievement, in the most integrated setting appropriate to the person’s needs.”
26 34 C.F.R. 104.4(b)(2). Therefore, a federally funded education system may be found in
27 violation of Section 504 where the entity’s practices preclude students with disabilities
28 from obtaining system benefits realized by students without disabilities. *See New Mexico*

1 *Ass'n. for Retarded Citizens v. State of New Mexico*, 678 F.2d 847, 853 (10th Cir. 1982).

2 127. Provision of appropriate services and supports is key to students with
3 disabilities being able to access public education. Just as a ramp allows a student who uses
4 a wheelchair to get into the schoolhouse door, provision of necessary services and supports
5 allows students with disabilities to participate in their classes and to learn the academic and
6 behavioral skills they will need to progress – in short, to meaningfully access the substance
7 of public education.

8 128. A variety of federal regulations impose more specific duties and obligations on
9 Defendants to ensure full compliance with Section 504. For example, public schools that
10 receive federal funding may not, directly or through any contractual, licensing or other
11 arrangement, discriminate against students with disabilities. 34 C.F.R. § 104.4(b)(1). In
12 addition, public schools are prohibited from utilizing criteria or methods of administration
13 that have the effect of subjecting qualified persons with disabilities to discrimination on
14 the basis of disability or that have the purpose or effect of defeating or substantially
15 impairing accomplishment of the objectives of the recipient's program or activity with
16 respect to persons with disabilities. 34 C.F.R. § 104.4(b)(4).

17 129. In the public school context, Section 504's nondiscrimination mandates
18 require federal officials to ensure access to appropriate educational settings for students
19 with disabilities; establish and conduct identification, evaluation and placement procedures
20 for students with disabilities; and establish and implement procedural safeguards for any
21 actions related to the "identification, evaluation, or educational placement" of students
22 with disabilities. 34 C.F.R. §§ 104.32, 104.34, 104.35, 104.36.

23 130. Section 504 further requires Defendants to provide educational services to
24 students with disabilities in the least restrictive environment possible and appropriate to
25 meet the students' educational needs. This includes educating students with disabilities
26 alongside students *without* disabilities to the maximum extent appropriate. It also includes
27 providing education to students with disabilities in their home communities. In the rare
28 instances when the provision of needed services at school is not sufficient to meet the

1 needs of a student with a disability, Defendants must take into consideration the proximity
2 of alternative settings to the student’s home. 34 C.F.R. § 104.34.

3 131. Defendants must tailor the services made available to “meet [the] individual
4 educational needs” of students with disabilities “as adequately as the needs of” students
5 without disabilities. 34 C.F.R. § 104.33(b)(1). Defendants are prohibited from offering
6 only a predetermined universe of placement options.

7 132. Those students who receive special education services through an IEP, like all
8 other students with disabilities, are protected from discrimination on the basis of disability
9 under Section 504. Defendants are prohibited from discriminating against Havasupai
10 students who require an IEP. Otherwise, the most vulnerable students would be an
11 underclass of children with disabilities.

12 133. In order to safeguard the civil rights of students with disabilities, it is essential
13 that individuals, especially parents, be empowered to advocate on behalf of students and to
14 oppose discriminatory practices. Section 504 prohibits retaliation against individuals who
15 advocate on behalf of students with disabilities. *See* 34 C.F.R. § 104.61 (incorporating the
16 procedural provisions applicable to title VI of the Civil Rights Act of 1964).

17 **B. Defendants’ Failure to Implement a System for Delivery of Special**
18 **Education Excludes and Penalizes Students with Disabilities**

19 134. Havasupai Elementary School has no system in place to deliver special
20 education to ensure that students with disabilities have equal access to public education.
21 As a result, students with disabilities are denied the benefits of general education
22 curriculum and systemically excluded from school.

23 135. Staffing at Havasupai Elementary School is insufficient to provide the
24 specialized instruction and related services required by federal law. Havasupai Elementary
25 School does not employ, and has not employed at any time in recent years, sufficient
26 numbers of the following personnel necessary to adequately provide special education
27 services to students with disabilities: highly qualified special education teachers, mental
28 health providers, occupational therapists, physical therapists, and speech therapists. At no

1 time in recent years has the school employed sufficient numbers of paraprofessionals or
2 support staff. The staffing of Havasupai Elementary School is so inadequate that the
3 school cannot even hold IEP meetings on a timely basis. For example, Laila R., the
4 mother of Plaintiff Levi R., was told repeatedly that there was not sufficient staff to hold
5 an IEP meeting.

6 136. The failure to provide federally mandated special education services has had
7 devastating consequences for students with disabilities. Even when such students are
8 present in the classroom, Defendants' failure to provide required specialized instruction
9 and related services denies them meaningful access to general education. In addition,
10 students with disabilities are routinely physically excluded from the School in various
11 ways:

12 137. **Restricted Hours Schedules:** Havasupai Elementary School students with
13 disabilities are routinely denied a full day of public instruction. Because the school lacks
14 the capacity to meet student needs by providing adequate specialized instruction or related
15 services, students with disabilities are relegated to "homebound" placements or placed on
16 restricted-hours schedules under which students receive only 3-5 hours of instruction per
17 week.

18 138. For example, Plaintiff Durell P., who is currently in seventh grade, has been on
19 a homebound or restricted-hours schedule for over four years. He has not attended school
20 full-time since third grade because the School cannot meet his behavioral and mental
21 health needs. During the 2016-2017 school year, Durell P. was relegated to a homebound
22 placement for a significant part of the year and received only five hours of instruction per
23 week. Although he is also entitled to two hours of counseling per week, he has received
24 no counseling because Defendants have not hired a counselor at the School.

25 139. Plaintiff Levi R. has likewise been placed on a restricted-hours schedule since
26 September 2013, when he was in fifth grade. From September 2013 to January 2014, he
27 was permitted to attend school only from 3:15 to 4:15 p.m. on Monday, Tuesday, and
28 Wednesday. And, because Levi R. complied with those excessive scheduling restrictions,

1 the School informed his mother that Levi R. had been unenrolled from the School for lack
2 of attendance. From January 2014 through the remainder of the school year, Levi R. was
3 permitted to attend school for only a half day on Monday, Tuesday, and Wednesday. This
4 pattern continued for years. The School later unilaterally placed Levi R. on a shortened
5 school-day schedule in which he was permitted to attend school for only half of the school
6 day in October 2014 and again in December 2015. Although he is also entitled to
7 counseling under his IEP, he has received no counseling because, once again, the School
8 has not hired a counselor.

9 140. Plaintiff Stephen C., who is currently in the sixth grade, was recently placed
10 on a homebound schedule as well. Since November 21, 2016, Stephen C. has not received
11 any instruction, except for intermittent one-hour tutoring sessions about once per week.
12 Although he is also entitled to counseling under his IEP, he has received no counseling
13 because the School has not hired a counselor.

14 141. **Coercion to Leave Community:** Havasupai Elementary School students with
15 disabilities are also frequently compelled to choose between receiving the special
16 education services to which they are entitled and staying in their community. Defendants
17 inform families that the school has no capacity or obligation to provide necessary support
18 and services, and that the student's only option for receiving special education services is
19 to transfer out of Havasupai Elementary School and into a residential placement outside of
20 the canyon. However, those Havasupai families who move outside the canyon often
21 endure significant financial hardships upon leaving their jobs and other sources of support
22 on the reservation.

23 142. The pressure to remove children from the community for schooling is
24 particularly troubling in light of the history of abusive BIE boarding schools intended to
25 destroy native language and culture, which many adults in the community endured.
26 Moreover, residential placements have the potential to exacerbate problems by depriving
27 children of a stable and supportive home and community environment, and by denying
28 families who remain on the reservation the opportunity to fully take part in their child's

1 education or to become involved on campus. Native students living in reservation
2 communities, for example, are more likely to graduate and pursue higher education than
3 peers living in non-reservation communities.⁷¹ An education close to home is therefore
4 essential to student achievement as well as to maintaining cultural identity and community
5 well-being.

6 143. For example, Billie P., the mother of Plaintiff Durell P., was told that Durell P.
7 would not be permitted to return to Havasupai Elementary School unless Billie P.
8 consented to placing Durell P. in a residential placement in Utah for 45 days in the spring
9 and summer of 2016. Having been told that she had no other choice, Billie P. submitted,
10 even though she strongly desired for Durell P. to remain with his family in his community.
11 During the placement, Durell P. was subjected to repeated use of physical restraints and
12 was unable to communicate with his family for long periods of time. Yet, after Durell P.
13 completed his 45-day residential placement, Defendants did not live up to their end of the
14 bargain. Havasupai Elementary School again informed Billie P. that the School lacked the
15 capacity to meet Durell P.'s needs, and that the family must choose between a residential
16 placement outside of the canyon or a homebound schedule during which Durell P. would
17 receive only five hours of instruction per week.

18 144. Similarly, Plaintiff Stephen C.'s guardian, Frank C., strongly prefers to have
19 Stephen C. live with his family in his community, but Frank C. is considering sending
20 Stephen C. to a boarding school where he will have his needs met. Laila R. was compelled
21 to move her family from Havasupai in part to place both her sons Levi R. and Leo R. at a
22 public school where their needs will be met, despite the fact that Levi R. is eligible to
23 attend Havasupai Elementary School. And Jasmine A. has likewise made the difficult
24 decision to send her children with disabilities, Plaintiffs Jenny A. and Jordan A., to a BIE
25 boarding school in Oklahoma, where their educational needs will be met, even though both

26 ⁷¹ Cornel Pewewardy & Bruce Frey, *American Indian Students' Perceptions of Racial*
27 *Climate, Multicultural Support Services, and Ethnic Fraud at a Predominantly White*
28 *University*, 43 J. AM. INDIAN ED. 32, 38 (2004),
https://jaie.asu.edu/sites/default/files/431_2004_2_pewewardy_frey.pdf

1 children were eligible to attend school in their community at Havasupai Elementary
2 School.

3 145. In short, because the School does not have a system in place to ensure that
4 these students can receive the special education services necessary to access the benefits of
5 a public education, Defendants coerce Plaintiffs to leave their homes and communities in
6 pursuit of adequate educational opportunities.

7 146. **Exclusionary Discipline and Referral to Law Enforcement:** Instead of
8 receiving the specialized instruction and related services to which they are entitled, and as
9 a consequence of not receiving these services, students with disabilities in Havasupai
10 Elementary School are also excluded from the school by being referred disproportionately
11 to punitive discipline and law enforcement as a consequence for behaviors that are
12 manifestations of their disabilities.

13 147. Havasupai students with disabilities are routinely and repeatedly removed
14 from the classroom and sent to the principal's office, suspended, and expelled in response
15 to conduct that is a manifestation of the student's disability. These disciplinary referrals
16 are so pervasive that, for many students, they take place on a near-daily basis. Yet
17 Defendants fail to maintain accurate records of disciplinary action against students with
18 disabilities, in clear violation of federal regulations implementing Section 504.

19 148. For example, because the School does not have the capacity to meet Plaintiff
20 Stephen C.'s behavioral and mental health needs, he has been sent home from school four
21 days per week, on average. As a result, his grandfather and legal guardian, Frank C.,
22 estimates that he has attended school only approximately half of the time over a period of
23 years. The School regularly fails to provide Frank C. with any written records of
24 disciplinary action against Stephen C. or assign him homework or remedial work when he
25 is suspended or sent home early. Similarly, when Plaintiff Jenny A. attended the School,
26 she was sent home early most days, without homework or remedial work to make up for
27 lost instructional time.

28

1 149. Recently, the School excluded Stephen C. from attending class as a result of
2 behavior that was a manifestation of his disability. Since November 21, 2016, Stephen C.
3 has not received any instruction, except for intermittent one-hour tutoring sessions about
4 once per week.

5 150. Likewise, since third grade, Plaintiff Durell P. has been suspended so often
6 that he has attended school only approximately 20% of the time. On several occasions,
7 including a four-month period in 2012 and a six-month period in 2013, the School
8 excluded Durell P. from school altogether, without providing him with any educational or
9 related services during his exclusion. And Plaintiff Levi R. was expelled due to behavior
10 that was a manifestation of his disability in August 2013. He has been placed on a
11 shortened school day since that time, and the School has repeatedly called Laila R. to come
12 to the School to pick up Levi R. as a means of addressing his behaviors, further depriving
13 Levi R. of education.

14 151. In addition to suspensions and expulsions, children with disabilities are
15 frequently referred to law enforcement and even prosecuted in federal court for minor
16 misbehavior that is a manifestation of their disabilities. There is a pervasive BIA police
17 presence on school grounds, and BIA officers frequently escort home children who have
18 been subject to exclusionary discipline. In the past, as many as three armed BIA officers
19 have stood inside the school gate during the school day. Even very young children with
20 disabilities are prosecuted in federal court for instances of minor misbehavior at school.
21 When a school-based arrest takes place, the BIA police typically escort children to the
22 Colorado River Indian Tribes Prison (“CRIT”), more than four hours driving distance from
23 the top of the canyon—and much further from the base of the canyon where the families
24 live. Children may stay there up to a month while awaiting hearings in a tribal court
25 because those hearings are held only once per month.

26 152. For example, eleven-year-old Plaintiff Stephen C. was indicted in federal court
27 for pulling the cord out of the back of computer monitor. Twelve-year-old Plaintiff Durell
28 P., who has multiple disabilities and was the victim of sexual abuse as a young child, is

1 currently being criminally prosecuted for assault for pushing a teacher. He spent over a
2 week at the CRIT detention facility.

3 153. In spite of the numerous challenges these children face, draconian school
4 discipline threatens to stigmatize them and exacerbate the same behaviors that led to
5 disciplinary action in the first place. In Arizona alone, Native students were referred to the
6 principal's office at a rate three times that of white peers, and Native students face national
7 suspension rates that are more than one-and-a-half times that of white peers.⁷² These
8 suspensions and expulsions, in addition to depriving students of valuable instructional
9 time, hurt a child's academic performance and increase the likelihood that a child will
10 struggle and drop out of school.⁷³ Consequently, the use of such discipline on Native
11 children is counterproductive, leading to a vicious cycle of punishment, exclusion, and low
12 achievement.⁷⁴

13 154. These problems are compounded by the use of school arrests to address
14 routine student misbehavior. Although Native students make up only 1% of the nationwide
15 student population, they disproportionately receive 2% of all school arrests, and 3% of all
16 referrals to law enforcement.⁷⁵ That is, Native students are twice as likely as other
17 students to be arrested and three times as likely to be referred to law enforcement. Once

18 ⁷² Carolyn A. Brown and Catherine Di Tillio, *Discipline Disproportionality among*
19 *Hispanic and American Indian Students: Expanding the Discourse in U.S. Research*, 2 J.
20 EDUC. & LEARNING 47, 49, 52 (2013).

21 ⁷³ See, e.g., Prudence Carter et al., *Discipline Disparities Series: Overview 1* (2014),
22 [http://www.indiana.edu/~atlantic/wp-](http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/Disparity_Overview_031214.pdf)
23 [content/uploads/2014/03/Disparity_Overview_031214.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/Disparity_Overview_031214.pdf); Brea L. Perry & Edward W.
24 Morris, *Suspending Progress: Collateral Consequences of Exclusionary Punishment in*
25 *Public Schools*, 79 American Sociological R. 1067, 1079 (2014).

26 ⁷⁴ Attorney Gen.'s Advisory Comm'n on Am. Indian/Alaska Native Children Exposed to
27 Violence, *Ending Violence so Children Can Thrive* (2014) 104,
28 [https://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2014/11/](https://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2014/11/18/finalaianreport.pdf)
[18/finalaianreport.pdf](https://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2014/11/18/finalaianreport.pdf).

⁷⁵ National Congress of American Indians, *Are Native Youth Being Pushed Into Prisons?* 1
(2014), [http://www.ncai.org/policy-research-center/research-data/prc-publications/School-](http://www.ncai.org/policy-research-center/research-data/prc-publications/School-to-Prison_Pipeline_Infographic.pdf)
[to-Prison_Pipeline_Infographic.pdf](http://www.ncai.org/policy-research-center/research-data/prc-publications/School-to-Prison_Pipeline_Infographic.pdf)

1 arrested, Native youth are more likely to go to court rather than have their charges
2 dropped, compared to all other ethnic groups.⁷⁶ In comparison to their white peers, Native
3 juvenile offenders are then significantly more likely to be incarcerated or transferred to the
4 adult criminal justice system.⁷⁷ At each step of the process, Native youth are prematurely
5 and disproportionately pushed out of school and into prison.⁷⁸ The consequences of this
6 overly punitive and exclusionary school discipline for Native youth are profound and
7 devastating to Native students' educational outcomes and life chances.

8 155. This Native school-to-prison pipeline feeds into larger trends relating to the
9 disproportionate and tragic use of law enforcement against Native communities.
10 Nationwide, Native men and women are incarcerated at rates four and six times that of
11 white men and women.⁷⁹ Native individuals experience the highest rates of killings by
12 police. Tragically, as recently as mid-November, 2016 in Supai, use of force by the BIA
13 police resulted in the death of a member of the Havasupai Tribe. In addition, Havasupai
14 community members have repeatedly circulated petitions calling for the removal of BIA
15 officers who have engaged in inappropriate behavior, including the use of excessive force
16 and improper searches and seizures.

17 156. **Inadequate Procedures to Identify, Locate, Assess, and Provide**
18 **Procedural Safeguards to Students with Disabilities:** Havasupai Elementary School has
19 no system in place to identify and assess the needs of students with disabilities, nor does it
20 adequately inform families of students with disabilities of their rights under federal anti-
21 discrimination laws. Havasupai Elementary School does not have the capacity to meet its
22 obligation to identify and provide comprehensive assessments of students with disabilities.

23 ⁷⁶ *Id.*

24 ⁷⁷ *Id.* at 2.

25 ⁷⁸ See Rhonda Brownstein, *Pushed Out*, 75 Educ. Digest 23, 25 (2010); Addie C. Rolnik,
26 *Untangling the Web: Juvenile Justice in Indian Country*, 19 N.Y.U. J. LEGIS. & PUB. POL'Y
27 49, 51-54 (2016).

28 ⁷⁹ Lakota People's Law Project, *Native Lives Matter* (2015) 1,
<http://www.docs.lakotalaw.org/reports/Native%20Lives%20Matter%20PDF.pdf>.

1 This failure causes the responsibility to fall overwhelmingly on parents, and the School
2 makes matters even more challenging for parents by failing to provide information
3 required by federal statutes and regulations, including notice of procedural safeguards and
4 information necessary to understand disabilities, participate in planning, and access
5 educational records. The school also does not have an adequate record-keeping system in
6 place. And parents and community members who do assert the rights of students with
7 disabilities are often retaliated against by the School.

8 **C. Defendants Must Establish a System for Provision of Special Education**
9 **at Havasupai Elementary School**

10 157. Section 504 requires Defendants to implement an adequate system for
11 ensuring that students with disabilities receive the specialized instruction, related services,
12 and accommodations necessary to access a general education curriculum and other
13 benefits, programs, or services provided by Defendants. In particular, early identification
14 and evaluation of a disability is vital to ensuring that students are provided with needed
15 educational services and supports. Defendants must also guarantee that students have
16 access to personnel with training in delivering special education services and other
17 resources such as a special classroom for students with more intensive needs. Defendants
18 are responsible for providing a system to meet the procedural requirements of Section 504
19 and its implementing regulations, such as providing notice and procedural safeguards to
20 families. This system should be based on input from Native American education experts
21 knowledgeable about the complexities of identifying and providing appropriate education
22 to Native American students with disabilities.

23 158. Defendants must also adopt school discipline policies and practices that
24 encourage effective and culturally responsive strategies for avoiding suspension and
25 expulsion, such as restorative justice. Defendants should provide specialized training for
26 teachers and staff to appropriately and positively respond to student behavior. In
27 particular, they must ensure that students with disabilities are not excluded from school or
28 subjected to punitive discipline and police prosecution on the basis of their disabilities.

1 159. Defendants are also obligated to implement procedures to safeguard student
2 and parent rights, including, but not limited to, (1) parental notice of individual student
3 progress, (2) parental notice of injuries of students on campus, (3) parental notice of law-
4 enforcement interactions with students and law enforcement presence on campus; and
5 (4) student and parental notice of disciplinary actions and access to disciplinary records.

6 160. There is no administrative procedure for challenging Defendants’ school-wide
7 failure to provide a system for serving students with disabilities. Indeed, the BIE has not
8 even promulgated regulations for challenging individual denials of access to education for
9 students with disabilities. Even if a family could somehow obtain an individual remedy
10 through a due process proceeding or some other form of administrative process,
11 Defendants could not implement that remedy at Havasupai Elementary School because
12 they have no system in place for doing so.

13 **V. DEFENDANTS’ FAILURE TO PROMOTE WELLNESS AND MEET**
14 **MENTAL HEALTH NEEDS**

15 161. As a result of centuries of U.S. government policies that have oppressed and
16 discriminated against Native communities, Havasupai youth—like many Native youth
17 across the nation—are exposed to childhood adversity that, absent appropriate intervention
18 and support, denies students full opportunity to learn and receive the benefits of a public
19 education. Native educators have thus concluded that promoting wellness and providing
20 mental health services are required to ensure that students have meaningful access to
21 public education. Yet Havasupai Elementary School lacks programming to promote
22 wellness as well as culturally sensitive mental health and support services. Defendants
23 have also failed to provide appropriate training to ensure that teachers can support
24 students’ mental health and social-emotional needs in the classroom.

25 **A. As a Consequence of U.S. Policies, Havasupai Youth Experience**
26 **Significant Childhood Adversity and Trauma**

27 162. Like many Native communities, the Havasupai bear the burden of generations
28 of historical trauma stemming from a legacy of chronic discrimination—forced

1 relocations, loss of homes, families, and culture—and unresolved grief.⁸⁰ The term
2 “historical trauma” captures “the extensive, cumulative, and intergenerational experiences
3 of trauma” endured by Native communities.⁸¹ In particular, the historical and widespread
4 use of Native American boarding schools, as discussed above, constituted a form of
5 forcible assimilation that was designed to stamp out a child’s tribal affiliations and cultural
6 identity at an early age.

7 163. Despite the resistance and resilience of Native communities, the lengthy
8 legacy of cultural deracination, dispossession, and disenfranchisement has adversely
9 impacted these communities, and children in particular. As the Center for Native
10 American Youth (“CNAY”) has found, “[h]istorical trauma, chronically underfunded
11 federal programs, ineffective government policies, and failure to meet trust responsibilities
12 have all contributed to negative health, education, and economic disparities in Indian
13 Country relative to the general population.”⁸² Native advocacy groups, including as the
14 National Congress of American Indians (“NCAI”) Policy Research Center, the National
15 Indian Child Welfare Association (“NICWA”), and the National Indian Educators
16 Association (“NIEA”) have documented a number of concrete ways in which the
17 consequences of discriminatory U.S. government policies continue to affect Native
18 communities, including higher rates of criminal justice involvement, family disruption,
19 poverty, alcoholism and substance abuse, and violence. Overall, NICWA reports that

20 _____
21 ⁸⁰ Kathleen Brown-Rice, *Examining the Theory of Historical Trauma Among Native*
22 *Americans*, 3:3 *The Professional Counselor* 117, 119 (2013) (“The theory of historical
23 trauma has been considered clinically applicable to Native American individuals by
24 counselors, psychologists, and psychiatrists.”).

24 ⁸¹ NCAI Policy Research Center, *Resilience & Trauma 2* (Oct. 2015),
25 <http://www.ncai.org/policy-research-center/research-data/prc-publications/Backgrounder-Resilience.pdf>;
26 *see also* Maria Yellow Horse Brave Heart & Lemyra M. DeBruyn, *The American Indian holocaust: Healing historical unresolved grief*, 8 AM. INDIAN & ALASKA NATIVE RESEARCH 60, 60-61 (1998).

27 ⁸² CNAY, *Native American Youth 101 2* (2012), available at
28 https://cnayblog.files.wordpress.com/2016/06/native-american-youth-101_final_2012.pdf
(hereinafter “Native American Youth 101”).

1 Native children are 2.5 times more likely to experience one or more of these conditions as
2 compared to their non-Native peers.⁸³

3 164. As a result of the long shadow cast by centuries of discriminatory federal
4 policies, Native children are disproportionately exposed to the chronic effects of
5 unaddressed and unresolved historical trauma and adversity in their communities. Despite
6 Native communities' persistent efforts to heal, many Native children continue to grow up
7 today in conditions marked by poverty, family disruption, violence, and substance abuse.
8 These conditions are reflective of deep-seeded adversity experienced by Native people in
9 the past, and the cause of ongoing re-traumatization for Native communities in the present,
10 thereby delaying the healing process.

11 165. Native children are forced to grow up in poverty at alarming rates, and they
12 experience profound disruptions in their home environment due to the absence or death of
13 family members. Havasupai children, in particular, experience poverty at almost double
14 the rate of Native children nationally—and nearly triple that of all children. An
15 overwhelming 61% of Havasupai children under 18 live below the poverty line,⁸⁴ as
16 compared to 32.4% of all Native children,⁸⁵ and 21% of all children nationwide.⁸⁶ Native
17 children, and Havasupai children in particular, also disproportionately experience
18 disruption of their families, such as the absence or loss of a parent, leading to lowered
19
20

21
22 ⁸³ NICWA, *Trauma-Informed Care Fact Sheet*, at 1, (Apr. 2014), available at
23 [http://mecptraining.org/wp-content/uploads/2015/03/Trauma-Informed-Care-Fact-](http://mecptraining.org/wp-content/uploads/2015/03/Trauma-Informed-Care-Fact-Sheet.pdf)
24 [Sheet.pdf](http://mecptraining.org/wp-content/uploads/2015/03/Trauma-Informed-Care-Fact-Sheet.pdf) (citing Nat'l Ctr. for Children in Poverty, *Facts About Trauma for Policymakers*
(2007), www.nccp.org/publications/pub_746.html).

25 ⁸⁴ Arizona Rural Policy Institute et al., *Demographic Analysis of the Havasupai Tribe*
26 *Using 2010 Census and 2010 American Community Survey Estimates* 18, 32,
<http://azcia.gov/Documents/Links/DemoProfiles/Havasupai%20Tribe.pdf>.

27 ⁸⁵ Native American Youth 101, *supra* note 82, at 2.

28 ⁸⁶ Nat'l Ctr. for Children in Poverty, *Child Poverty*, (2016),
<http://www.nccp.org/topics/childpoverty.html>.

1 household incomes. In Supai, over 42% of all households with children are led by single
2 mothers.⁸⁷

3 166. This family disruption stems, in part, from the elevated incidents of
4 incarceration, drug or alcohol abuse, and violence experienced and witnessed by Native
5 individuals. These conditions are powerful indicators of the cumulative and
6 intergenerational impact of childhood adversity and historical trauma. Native youth,
7 themselves shaped through repeated and early exposure to these conditions, and lacking
8 adequate mental health resources or support, turn to alcohol or drugs as a coping
9 mechanism or begin to act out in school and become involved with law enforcement. The
10 NICWA has reported that alcohol abuse is more likely to be reported for Native families,⁸⁸
11 and the National Indian Education Association (“NIEA”) has reported that Native youth
12 suffer from alcohol and drug abuse rates higher than any other racial group.⁸⁹ Moreover,
13 research has shown that “abuse, domestic violence, and other family dysfunction . . . [are]
14 substantially more common in alcoholic households,” and that children growing up in
15 these contexts are more likely to experience adversity and exhibit depression or alcoholism
16 as adults.⁹⁰ This is a serious problem among Havasupai youth who live on the reservation,
17 where drinking alcohol is prohibited. Recently, two students drank alcohol-based hand
18 sanitizer at school. One was airlifted out of the canyon for medical treatment, and the
19 other was handcuffed and taken to the local medical clinic.

20 _____
⁸⁷ See Demographic Analysis, *supra* note 11.

21 ⁸⁸ See NICWA, Trauma-Informed Care Fact Sheet, *supra* note 83, at 1 (citing Earle, K. and
22 A. Cross, *Child Abuse and Neglect Among American Indian/Alaska Native Children: An*
23 *Analysis of Existing Data* (2001), available at
<http://muskie.usm.maine.edu/helpkids/rcpdfs/B060041.pdf>).

24 ⁸⁹ NIEA, *Native Nations and American Schools: The History of Natives in the American*
25 *Education System* 26 (2016), available at
<http://www.niea.org/nieaflipbook/mobile/index.html#p=26>.

26 ⁹⁰ Robert F. Anda et al. *Adverse childhood experiences, alcoholic parents, and later risk of*
27 *alcoholism and depression*. 8 PSYCHIATRIC SERVICES 1001, 1005-06 (2002); Shanta R.
28 Dube et al., *Growing up with Parental alcohol abuse: Exposure to Childhood Abuse,*
Neglect and Household Dysfunction. 25 CHILD ABUSE AND NEGLECT 1627, 1628 (2001).

1 167. Due in part to systemic discrimination and lack of access to mental health
2 resources, Native American men and women experience significantly higher numbers of
3 encounters with law enforcement. They are incarcerated at rates four to six times that of
4 other groups,⁹¹ “making it more likely that [American Indian/Alaskan Native (“AI/AN”)]
5 youth live with the trauma of having an incarcerated parent.”⁹² As discussed in paragraphs
6 146-155, *supra*, this disproportionality in the criminal justice system begins with the
7 school-to-prison pipeline, where Native children are singled out for exclusionary
8 discipline, school-based arrest, and referral to law enforcement. The NCAI has reported
9 that, “[c]ompared to white juvenile offenders, Native youth are 1.5x more likely to be
10 incarcerated and referred to the adult criminal system.”⁹³ This problem plagues the
11 Havasupai as well.

12 168. Within Native communities, violence is a manifestation of embedded
13 historical trauma, compounded by poverty, family disruption, substance abuse, and a
14 broken system of criminal justice. The NCAI reported that Native Americans are 2.5 times
15 more likely to experience violent crimes as compared to all other races,⁹⁴ and “violence is
16 more likely to be reported among AI/AN families.”⁹⁵ Native women disproportionately
17
18

19 ⁹¹ Lakota People’s Law Project, *Native Lives Matter*, *supra* note 79, at 1.

20 ⁹² NICWA, *Trauma-Informed Care Fact Sheet*, *supra* note 83, at 1 (citing The Henry J.
21 Kaiser Family Foundation, *Incarceration Rate per 100,000 men, by state and
race/ethnicity*, 2008).

22 ⁹³ NCAI, *Are Native Youth Being Pushed Into Prisons?*, *supra* note 75, at 2 (citing Arya,
23 N. & Rolnick, A., *A Tangled Web of Justice: American Indian and Alaska Native Youth in
Federal, State, and Tribal Justice Systems* (2011)).

24 ⁹⁴ NCAI Policy Research Center, *Statistics on Violence Against Native Women* 3 (Feb.
25 2013),
26 [http://www.ncai.org/attachments/PolicyPaper_tWAjznFslemhAffZgNGzHUqIWMRPkCD
jpFtxeKEUVKjubxfgYK_Policy%20Insights%20Brief_VAWA_020613.pdf](http://www.ncai.org/attachments/PolicyPaper_tWAjznFslemhAffZgNGzHUqIWMRPkCDjpFtxeKEUVKjubxfgYK_Policy%20Insights%20Brief_VAWA_020613.pdf).

27 ⁹⁵ See NICWA, *Trauma-Informed Care Fact Sheet*, *supra* note 83 at 1 (citing Earle,
28 K. and A. Cross, *Child Abuse and Neglect Among American Indian/Alaska Native
Children: An Analysis of Existing Data* (2001)).

1 experience violence, including by non-Natives.⁹⁶ Native youth between the ages of 12 and
2 17 are exposed to violence at a rate that is 32% higher than the national average,⁹⁷ and
3 violence is the leading cause of death among Native youth.⁹⁸ In spite of the efforts of
4 many Native organizations to address these incidents of violence, they are often under-
5 resourced. Moreover, these incidents are too often cumulative and intergenerational,
6 extending the cycle of suffering and making it harder for Native communities to heal.

7 169. This data is tragically consistent with the experiences of Plaintiffs. Havasupai
8 youth have been subject to violence in the classroom. Plaintiff Levi R., for example, was
9 forcibly restrained in his classroom on August 27, 2013, when he was ten years old and in
10 fifth grade. During this incident, a teacher sat and lay on Levi R. while he repeatedly cried
11 out and yelled, “I can’t breathe. Get off of me, you’re hurting me.”⁹⁹ As a young child,
12 Plaintiff Durell P. experienced sexual abuse by a family member who is now incarcerated.

13 170. Research has documented the extensive mental health needs among Native
14 children that stem from the failure to address historical trauma, discrimination and
15 oppression, and adverse childhood experiences. Suicide is the second leading cause of

16 ⁹⁶ NCAI Policy Research Center, *Human & Sex Trafficking: Trends and Responses across*
17 *Indian Country*, (2016), available at [http://www.ncai.org/policy-research-center/research-](http://www.ncai.org/policy-research-center/research-data/prc-publications/TraffickingBrief.pdf)
18 [data/prc-publications/TraffickingBrief.pdf](http://www.ncai.org/policy-research-center/research-data/prc-publications/TraffickingBrief.pdf) (“Native women experience violent
19 victimization at a higher rate than any other US population . . . more than 1 in 3 (34%) of
20 Native American and Alaska Native women will be raped in their lifetime . . . more than 6
21 in 10 (61%) will be physically assaulted.”). See also NCAI Policy Research Center,
Statistics on Violence Against Native Women, supra note 94, at 3 (“39% of American
22 Indian and Alaska Native women will be subjected to violence by an intimate partner in
23 their lifetimes.”).

24 ⁹⁷ Ryan Seelau, *Regaining Control Over the Children: Reversing the Legacy of*
25 *Assimilation Policies in Education, Child Welfare, and Juvenile Justice That Targeted*
26 *Native American Youth*, 37 AM. INDIAN L. REV., 63, 81 (2013).

27 ⁹⁸ See CNAY, *Fast Facts on Native American Youth and Indian Country 3* (2011), available at
28 <https://assets.aspeninstitute.org/content/uploads/files/content/images/Fast%20Facts.pdf>.

⁹⁹ Although the mother of Levi R., Laila R., filed a Suspected Child Abuse/Neglect
(SCAN) report in response to the incident, BIE officials have failed to comply with
internal agency procedures in investigating and responding to the SCAN report. See *BIE,*
Suspected Child Abuse/Neglect (SCAN) & Employee Incident Reporting Protocol (rev.
2009), <http://www.rrds.bie.edu/Reporting%20Protocol.pdf>.

1 death among Native youth, who take their own lives at rates at least 2.5 times the national
2 average.¹⁰⁰ This challenge affecting many Native communities unfortunately is faced by
3 the Havasupai as well. Plaintiff Leo R., Levi R.’s brother, has expressed suicidal thoughts.

4 **B. The Impact of Childhood Adversity and Trauma on Child Development**
5 **and the Ability to Learn**

6 171. As a clinical designation, trauma arises from a multitude of causes—including
7 systemic racism or discrimination; the extreme stress of poverty resulting in the absence of
8 basic necessities; family disruption, such as the absence of a parent due to incarceration,
9 alcoholism or substance abuse; and exposure to violence—and the wide-ranging, long-term
10 impacts of this exposure. Complex trauma stems from an individual child’s exposure to
11 multiple persistent sources of violence, loss, and other adverse childhood experiences
12 (“ACEs”), and describes children’s exposure to these events and the impact of this
13 exposure.¹⁰¹ Unaddressed exposure to trauma can incapacitate a child’s ability to learn by
14 altering the sensitive physiology of his or her brain. The cumulative effect of trauma is to
15 impair the core processing abilities of the brain in areas critical to learning, such as
16 thinking, reading, concentrating, communicating, and regulating emotions.

17 172. Decades of medical research has established that *unaddressed* trauma has
18 profound effects on a child’s developing brain. Research has shown that a substantial
19 percentage of children exposed to violence develop post-traumatic stress disorder
20 (“PTSD”) and has linked trauma with mental health conditions such as somatoform
21 disorders, major depression, schizophrenia, and substance abuse and dependence.¹⁰² But

22 _____
23 ¹⁰⁰ NCAI, *Alcohol & Substance Abuse*, [http://www.ncai.org/policy-issues/education-
health-human-services/alcohol-substance-abuse](http://www.ncai.org/policy-issues/education-health-human-services/alcohol-substance-abuse).

24 ¹⁰¹ The terms “trauma” and “complex trauma” are often used interchangeably in this
25 complaint. Although a child can be profoundly affected by one traumatic experience,
26 Plaintiffs have all experienced complex trauma, which is the subject of most of the
academic literature cited.

27 ¹⁰² Bradley D. Stein et al., *A Mental Health Intervention for Schoolchildren Exposed to Violence:*
28 *A Randomized Control Trial*, 290 J. AM. MED. ASS’N 603, 603 (2003); Bruce D. Perry & Ronnie
Pollard, *Homeostasis, Stress, Trauma, and Adaptation: A Neurodevelopmental View of
Childhood Trauma*, 7 CHILD ADOLESC. PSYCHIATR. CLIN. N. AM. 33, 36 (1998).

1 exposure to traumatic stressors can also cause developmental disruption and consequent
2 educational loss for children, even if they do not meet the threshold for a diagnosable
3 mental health disorder.

4 173. Researchers have concluded that youth exposed to trauma “experience
5 disrupt[ion] and interfere[nce] with emotional, behavioral, cognitive, social and physical
6 development lead[ing] to important secondary and tertiary effects on the child.”¹⁰³ In other
7 words, trauma can lead to palpable, physiological harm to a young person’s developing
8 brain.

9 174. Trauma impairs a child’s ability to learn when the resultant brain changes
10 induce behaviors that result from an inability to emotionally self-regulate—including
11 aggression, disproportionate reactivity, impulsivity, distractibility, or withdrawal and
12 avoidance.¹⁰⁴ These trauma-induced behaviors disrupt the learning environment and
13 frequently lead to exclusionary school-discipline measures or absence from school.

14 175. Students who are reliving trauma in the classroom or who cannot self-regulate
15 as a result of trauma, and who have not been given access to appropriate resources, may
16 not be able to sit still or concentrate. They may act out or overreact. Children affected by
17 trauma are far more likely to be suspended or expelled than children who are not affected
18 by trauma. As a result, untrained school administrators often suspend and expel those
19 children who most need a supportive school environment.

20 176. Medical, mental health, and education research has confirmed that
21 unaddressed trauma affects a student’s ability to participate and succeed in school.
22 Numerous studies have shown that children exposed to violence demonstrate significantly
23 lower reading ability and grade-point averages, increased absences from school, and
24 overall lower rates of high school graduation.¹⁰⁵ Research reveals that children exposed to

25
26 ¹⁰³ *Id.*

27 ¹⁰⁴ See Ray Wolpov et al., *The Heart of Learning and Teaching: Compassion, Resiliency, and Academic Success* 12, 13 (Wa. State Off. of Superintendent of Pub. Instr., 3d prtg. 2016).

28 ¹⁰⁵ E.g., Sheryl Kataoka et al., *Effects on School Outcomes in Low-Income Minority Youth: Preliminary Findings from a Community-Partnered Study of a School Trauma*

1 Adverse Childhood Experiences (“ACEs”)¹⁰⁶ are subject to an escalating array of
2 detrimental educational impacts. Exposure to two or more such traumas, for example,
3 makes a student 2.67 times more likely to repeat a grade or become disengaged with
4 school.¹⁰⁷ Exposure to three or more traumas makes a student 4 times more likely to
5 experience academic failure,¹⁰⁸ and 5 times more likely to have serious attendance
6 problems.¹⁰⁹ Students who have witnessed violence, in particular, meet state academic-
7 performance standards only half as often as peers who have not.¹¹⁰ As a result,
8 unaddressed trauma is a powerful driver of academic failure.

9 **C. Defendants’ Failure to Provide Meaningful Access to Education to**
10 **Havasupai Youth Impacted by Childhood Adversity and Trauma**

11 177. Defendants have failed to ensure that children impacted by adversity and
12 children with mental health needs are provided meaningful access to public education at
13 Havasupai Elementary School. As discussed, Havasupai Elementary School has no
14 culturally responsive programming to promote wellness. It does not train or sensitize

15 _____
16 *Intervention*, 21 ETHN. DIS. 7 (2011); Nadine J. Burke et al., *The Impact of Adverse*
17 *Childhood Experiences*, 35 CHILD ABUSE & NEGLECT 408 (2011); Jeffrey Grogger, *Local*
18 *Violence and Educational Attainment*, 32 J. OF HUMAN RESOURCES 659 (1997).

19 ¹⁰⁶ ACEs are “inherently disruptive experiences in childhood that produce significant and
20 potentially damaging level[s] of stress and associated physical changes.” Christopher
21 Blodgett, *Adopting ACES Screening and Assessment in Child Servicing Systems 1*
(working paper, July 2012), [https://del-public-files.s3-us-west-](https://del-public-files.s3-us-west-2.amazonaws.com/Complex-Trauma-Research-ACE-Screening-and-Assessment-in-Child-Servicing-Systems-7-12-final.pdf)
22 [2.amazonaws.com/Complex-Trauma-Research-ACE-Screening-and-Assessment-in-Child-](https://del-public-files.s3-us-west-2.amazonaws.com/Complex-Trauma-Research-ACE-Screening-and-Assessment-in-Child-Servicing-Systems-7-12-final.pdf)
23 [Serving-Systems-7-12-final.pdf](https://del-public-files.s3-us-west-2.amazonaws.com/Complex-Trauma-Research-ACE-Screening-and-Assessment-in-Child-Servicing-Systems-7-12-final.pdf).

24 ¹⁰⁷ Christina D. Bethel et al., *Adverse Childhood Experiences: Assessing the Impact on*
25 *Health and School Engagement and the Mitigating Role of Resilience*, 33:12 Health
26 Affairs 2106, 2111 (2014).

27 ¹⁰⁸ *Id.*

28 ¹⁰⁹ Christopher Blodgett, *No School Alone: How Community Risks and Assets Contribute*
to School and Youth Success, Report to the WA State Office of Financial Management in
response to Substitute House Bill 2739 25 (March 2015).

¹¹⁰ Christopher C. Henrich et al., *The Association of Community Violence Exposure with*
Middle-School Achievement: A Prospective Study, 25 J. APPL. DEV.
PSYCHOL. 327 (2004).

1 teachers or administrative personnel to recognize, understand, and address the complex
2 effects of childhood adversity and trauma in children. Without such training, school staff
3 are unable to appropriately identify students in need of support, notify their families, or
4 provide adequate interventions that may reduce the impact of trauma and other mental
5 health challenges on learning and student outcomes. Moreover, culturally sensitive mental
6 health and support services are either entirely unavailable or grossly insufficient to meet
7 student needs.

8 178. Instead of receiving these and other appropriate resources Havasupai children
9 are subjected to punitive and counter-productive suspensions, expulsions, and referrals to
10 law enforcement that push them out of school, off the path to graduation, and into the
11 criminal justice system.

12 **D. Section 504 Requires Defendants to Provide Culturally Responsive**
13 **Wellness Programming and Mental Health Services at Havasupai**
14 **Elementary School**

15 179. Under Section 504, schools are required to meet the needs of those students
16 who are denied meaningful access to the benefits of public education as a result of the
17 effects of childhood adversity. Appropriate efforts to ensure these children access to
18 educational opportunities must be culturally responsive and consistent with professional
19 standards to ensure childhood adversity does not determine a young person's educational
20 attainment and life chances.

21 180. Tribal communities, and the Havasupai in particular, have embraced policies
22 and practices to promote wellness which draw on indigenous knowledge and healing
23 practices and the resilience of young people. For example, Native clinicians working with
24 Havasupai youth, like Mark Standing Eagle Baez, have adopted the Sweetgrass Method,
25 which integrates traditional methodologies into a holistic approach to battling historical
26 trauma and adversity.¹¹¹ This method rests on three core pillars, including cultural

27 ¹¹¹ Mark Standing Eagle Baez, et al., *H.O.P.E. for Indigenous People Battling*
28 *Intergenerational Trauma: The Sweetgrass Method*, 5 J. Indigenous Research 1 (2016),
<http://digitalcommons.usu.edu/kicjir/vol5/iss2/2>.

1 sensitivity, community collaboration, and continuity in the development of relationships
2 between Native communities and wellness professionals.

3 181. Particularly in schools like Havasupai Elementary School that serve
4 populations of students who disproportionately have been impacted by adversity and/or
5 have significant mental health needs, comprehensive school-wide practices are required to
6 address childhood trauma and to create an environment in which all students are able to
7 learn. Such interventions can effectively address the disabling impact of adverse
8 childhood experiences and give students the meaningful access to the public education to
9 which they are entitled.

10 182. The key components of these school-wide practices include (1) training
11 educators to recognize, understand, and proactively address the effects of complex trauma
12 and childhood adversity, in part through building children’s self-regulation and social-
13 emotional learning skills; (2) developing restorative practices that build healthy
14 relationships, peacefully resolve conflicts, and avoid re-traumatizing students through
15 punitive discipline; (3) ensuring the availability of consistent mental health support to meet
16 student needs, and (4) adopting practices and interventions that are responsive to
17 Havasupai cultural beliefs and traditions and are created in partnership with community
18 members.

19 183. Together, these school-wide practices create a safe, consistent, and supportive
20 learning environment that allows students impacted by childhood adversity to learn.
21 Schools that have put such practices in place have shown impressive improvements in
22 student outcomes, with those children receiving appropriate intervention and support at
23 school receiving higher grades and demonstrating better behavior and concentration.¹¹²

24 _____
25 ¹¹² Kataoka, et al., *Effects on School Outcomes*, supra note 105, at 6-7; University of
26 California, San Francisco, *UCSF HEARTS Program: Healthy Environments and Response*
27 *to Trauma in Schools*, http://coe.ucsf.edu/coe/spotlight/ucsf_hearts.html (last visited May
28 17, 2015); Jane Ellen Stevens, *San Francisco’s El Dorado Elementary uses trauma-*
informed & restorative practices, suspensions drop 8%, ACES Too High News, (Jan. 28,
2014), <http://acestoohigh.com/2014/01/28/hearts-el-dorado-elementary>.

1 Research has also indicated that appropriate remedial methods and supports can help
2 mitigate the effects of ACEs.¹¹³ With this support, Havasupai students can partake in a
3 system of education that allows them to learn effectively in the classroom and
4 meaningfully access a public education.

5 **VI. CONSEQUENCES OF DEFENDANTS' FAILURE TO ENSURE ACCESS**
6 **TO EDUCATION AT HAVASUPAI ELEMENTARY SCHOOL**

7 184. Defendants' failure to provide basic education at Havasupai Elementary
8 School, their failure to establish a system to provide special education and related services
9 so that students with disabilities may access public education, and their failure to support
10 wellness for students who have experienced trauma has had devastating consequences for
11 the educational achievement and life chances of Havasupai students.

12 185. The federal government's failure to invest in and provide for Native education
13 and wellness in the face of trauma has resulted in stark educational deprivations for Native
14 youth in all educational settings. According to data released in 2007, an estimated "81%
15 of Indian students read below grade level"¹¹⁴ and 84% score below "proficient" in math.¹¹⁵
16 Native youth "are among the most likely of any group to drop out of school"¹¹⁶ and Native
17 American adults "have the lowest education levels of any group, and are only half as likely
18 to graduate from high school or college as other adults."¹¹⁷ Native American high school
19 graduates are also only half as likely to pursue post-secondary education.¹¹⁸ And, of the

20 _____
21 ¹¹³ Bethel, et al., *Adverse Childhood Experiences*, *supra* note 107, at 2112.

22 ¹¹⁴ S. Rep. No. 91-501, *supra* note 24, at 360.

23 ¹¹⁵ Jason Amos, *National Indian Education Study: Fewer than One in Five American*
24 *Indian and Alaska Native Eighth Graders Read at or Above Grade Level*, Alliance For
25 Excellent Education (May 19, 2008), available at <http://all4ed.org/articles/national-indian-education-study-fewer-than-one-in-five-american-indian-and-alaska-native-eighth-graders-read-at-or-above-grade-level/>.

26 ¹¹⁶ *Cheyenne River Sioux*, 496 F. Supp. 2d at 1066.

27 ¹¹⁷ *Id.*

28 ¹¹⁸ The Education Trust, *The State of Education for Native Students* 9, http://edtrust.org/wp-content/uploads/2013/10/NativeStudentBrief_0.pdf.

1 students who do attend college, only 39% complete their degrees, as compared to 62% of
2 white students.¹¹⁹

3 186. Native children at BIE schools have fallen even further behind their peers.¹²⁰
4 Data shows that students in BIE schools perform at levels “far below” Native students at
5 public schools on standardized tests, and that only 40% of BIE students satisfy English
6 proficiency standards.¹²¹ Compared to an overall Native graduation rate of 69%, only
7 slightly more than half of Native students at BIE schools graduate from high school.¹²²

8 187. Students who attend Havasupai Elementary School are among the most
9 disadvantaged and furthest behind, even among students attending BIE-funded and -
10 operated schools. Havasupai students perform many years below grade-level, even in the
11 limited content areas such as reading, writing, and mathematics in which curriculum is
12 provided. For example, Plaintiff Levi R. tested at a second-grade reading level when he
13 was in fifth grade. Plaintiff Stephen C., who is in sixth grade, can barely read or spell. It
14 is estimated that fewer than 20% of Havasupai students eventually graduate from high
15 school.

16 188. According to a graduate of the School, out of the approximately 18 to
17 21 students in his kindergarten class, only about 5 students graduated from the eighth
18 grade at Havasupai Elementary School. Of those 5 students, only 3 graduated from high
19
20

21 ¹¹⁹ Bruce Covert, *Achievement Gap Widens For Native American Students Amid Progress For*
22 *Other Groups*, Think Progress (Aug. 14, 2013),
<http://thinkprogress.org/education/2013/08/14/2465711/achievement-gap-native-americans/>.

23 ¹²⁰ BIE Study Group: *Blueprint for Reform, BIE Progress Report 2015*, 4-5, available at
24 <http://www.bie.edu/cs/groups/xbie/documents/document/idc1-030931.pdf>.

25 ¹²¹ Robert McCarthy, *The Bureau of Indian Affairs and the Federal Trust Obligation to American*
26 *Indians*, 19 *BYU J. Pub. L.* 1, 132 (2004) (citing U.S. Gen. Accounting Office, *BIA and DOD*
Schools: Student Achievement and Other Characteristics Often Differ from Public Schools, at 2
(2001)).

27 ¹²² BIE, “Blueprint for Reform Implementation: Synopsis of the Reprogramming,” available at
28 <http://www.bie.edu/BFRI/index.htm> (last visited May 20, 2016) (hereinafter “Synopsis of the
Reprogramming”).

1 school, and none attended college. Two of those 5 students have served time in prison,
2 including one who is still in prison now.

3 189. Although the BIE has failed to adequately collect and disseminate publicly
4 available performance data for the School, available BIE data shows that in the 2012-2013
5 school year, Havasupai Elementary School students performed at the **1st percentile in**
6 **reading and 3rd percentile in math**, based on a median percentile rank of 1 to 100.¹²³
7 Moreover, BIE data reflects that Havasupai Elementary School students experienced a
8 *large negative growth index* of **-.72** and **-.71** in reading and math, respectively, meaning
9 that the academic progress made by individual Havasupai Elementary School students as
10 they continued to attend the School was approximately 0.7 standard deviations lower than
11 expected.¹²⁴ The BIE itself characterizes -0.8 as “a large difference between the student’s
12 actual gains and his or her growth projections,” that is, “*well-below average gains made by*
13 *the student.*”¹²⁵ This performance placed the School dead last in both reading and math
14 achievement out of nearly 60 BIE schools surveyed. Moreover, BIE data from two
15 consecutive school years running from 2011 through 2013 indicate that only about 15% of
16 Havasupai students achieved grade-level proficiency in reading, and that not a single one
17 achieved grade-level proficiency in math.¹²⁶

18 190. As a result, Havasupai students arrive at the secondary-school level
19 unprepared for high school-level work and years behind their peers who were provided
20 appropriate education in the elementary and middle school years. Because no high school
21 instruction is available for Havasupai students in the community, students who have
22 completed eighth grade must apply to BIE high schools—most of which are boarding

23 ¹²³ Northwest Education Evaluation Association, *BIE Report on Student Achievement and*
24 *Growth*, *supra* note 3, at 56, 58.

25 ¹²⁴ *Id.*

26 ¹²⁵ *Id.* at 17.

27 ¹²⁶ BIE Division of Performance and Accountability, *Annual Report: Havasupai*
28 *Elementary School 2,3* (2013), <http://www.bie.edu/cs/groups/xbie/documents/text/idc1-026335.pdf>.

1 schools with entrance requirements—or seek transfers to public schools outside of the
2 canyon. Because of the substandard education provided at Havasupai Elementary School,
3 students have repeatedly been unable to meet coursework and credit requirements or the
4 basic proficiency standards necessary to attend BIE high schools.

5 191. Havasupai Elementary School students who are admitted to a secondary
6 school typically struggle academically because they lack basic elementary education. For
7 example, Plaintiff Leo R. is currently enrolled in an Arizona public high school, after
8 completing grades kindergarten through eighth grade at Havasupai Elementary School. In
9 ninth grade, his first year in public high school, he struggled academically, failing multiple
10 classes and passing others with D’s.

11 192. Families in the Havasupai community fear that children attending Havasupai
12 Elementary School will not be able to gain admission to a secondary school or that they
13 will not successfully complete high school as a result of the educational deprivations at
14 Havasupai Elementary School. As a result, multiple families with young children in
15 kindergarten through eighth grade who otherwise would have attended Havasupai
16 Elementary School have been compelled to leave their community in order to provide their
17 children meaningful access to education.

18 **VII. THE FEDERAL GOVERNMENT’S KNOWLEDGE OF ITS FAILURE TO**
19 **DELIVER GENERAL AND SPECIAL EDUCATION, AND ITS**
20 **DELIBERATE INDIFFERENCE TOWARD EDUCATIONAL NEEDS**

21 193. For decades, the federal government has stood witness to profound disparities
22 in the educational resources and outcomes of Native students. These disparities were
23 created and exacerbated by a long history of federal failings in tribal education, notably
24 through the systemic devastation and anguish of the boarding-school era.

25 194. In the words of a 2014 White House report, “there is a history of deeply
26 troubling and destructive federal policies and actions that have hurt Native communities,
27 exacerbated severe inequality, and accelerated the loss of tribal cultural traditions. The
28

1 repudiated federal policies regarding the education of Indian children are among those with
2 a devastating and continuing effect on Native peoples.”¹²⁷

3 195. As First Lady Michelle Obama acknowledged in a 2015 speech at the White
4 House, “given this history, we shouldn’t be surprised at the challenges that kids in Indian
5 Country are facing today. And we should never forget that we played a role in this. Make
6 no mistake about it – we own this.”¹²⁸

7 196. Numerous current and former DOI and BIE leaders have acknowledged the
8 failures in tribal education. They have also been made specifically aware of the problems
9 at Havasupai Elementary school. Yet they have not acted to meaningfully correct them.
10 This amounts to deliberate indifference to the educational needs of all Native students, and
11 particularly to the needs of Native students who require special education services.

12 **A. Defendants are aware of and have acknowledged their longstanding**
13 **failure to provide Native youth with basic education.**

14 197. The failure of BIE schools to provide Native students with adequate
15 educational opportunities is widely recognized by Defendants and the federal government
16 more broadly.

17 198. Top officials at the Department of Education have acknowledged the
18 longstanding nature of the problem. In 2015, Secretary of Education John King declared
19 that “[t]here is a painful history and a failure on the past [*sic*] of the country to serve
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25 ¹²⁷ Executive Office of the President, *2014 Native Youth Report*, 4 (Dec. 2014),
https://www.whitehouse.gov/sites/default/files/docs/20141129nativeyouthreport_final.pdf.

26 ¹²⁸ Michelle Obama, *Prepared Remarks of First Lady Michelle Obama for White House*
27 *Convening on Creating Opportunity for Native Youth* (Apr. 8, 2015.),
28 <https://www.whitehouse.gov/the-press-office/2015/04/08/prepared-remarks-first-lady-michelle-obama-white-house-convening-creatin>.

1 Native youth well.”¹²⁹ His predecessor, former Secretary Arne Duncan, declared bluntly
2 that the BIE educational system was “the epitome of broken . . . just utterly bankrupt.”¹³⁰

3 199. So, too, have BIE officials. During a 2013 hearing before the Senate Indian
4 Affairs Committee, Defendant Jewell openly acknowledged, “Indian education is an
5 embarrassment to you and us.”¹³¹ Deputy Assistant Secretary – Indian Affairs, Anne
6 Marie Bledsoe Downs, who was also until November acting director of the BIE, admitted,
7 “We have some pretty dire statistics out there on graduation rates across all of Indian
8 Country, but in particular within our schools.”¹³² As Monty Roessel, the previous director
9 of the BIE, recognized, the “BIE has been a big failure. I don’t think you can find success
10 in BIE in anything.”¹³³

11 200. The BIE acknowledged only last year, “[t]he DOI has a longstanding and
12 troubling history of failing to provide a high quality education to American Indian students
13 in BIE-funded schools.”¹³⁴ In outlining the extent of the problems facing Native students,
14 the BIE rattled off a litany of alarming facts: that “Native youth have the lowest high
15 school graduation rate of students across all schools,” that “the American Indian/Alaskan
16 Native high school graduation rate is 69 percent, far below the national average of
17 81 percent,” and that “the situation for the eight percent of Native students attending [BIE]

19 ¹²⁹ Lauren Camera, *Native American Students Left Behind*, U.S. News (Nov. 6 2015.),
http://www.usnews.com/news/articles/2015/11/06/native-american-students-left-behind.

20 ¹³⁰ Maggie Severns, *How Washington Created Some of the Worst Schools in America*, Politico
21 (Nov. 25, 2015.), http://www.politico.com/story/2015/11/how-washington-created-the-worst-
schools-in-america-215774.

22 ¹³¹ *Receiving the Views and Priorities of Interior Secretary Sally Jewell with Regard to Matters of*
23 *Indian Affairs*, 113th Cong. 113-92 (2013) (statement of Sally Jewell, Secretary of the Interior),
https://www.gpo.gov/fdsys/pkg/CHRG-113shrg85178/html/CHRG-113shrg85178.htm.

24 ¹³² Corey Mitchell, *Bureau of Indian Education Extends Search for New Leader*, Education Week
25 (Jul. 12, 2016.), http://blogs.edweek.org/edweek/learning-the-
language/2016/07/bureau_of_indian_education_ext.html.

26 ¹³³ Carrie Jung, *BIE Officials Hope School Reform Will Lead To Better Student Outcomes*, KJZZ
27 (Dec. 3, 2015.), http://kjzz.org/content/226933/bie-officials-hope-school-reform-will-lead-better-
student-outcomes.

28 ¹³⁴ BIE, *Synopsis of the Reprogramming*, *supra* note 122.

1 schools is much worse with an average graduation rate of 53 percent.”¹³⁵ It summarized
2 the problem as follows: “Failing schools, crumbling infrastructure, failure to include tribal
3 nations in the decision-making process and lack of access to broadband and teachers and
4 principals shortages contribute to the urgency of the situation.”¹³⁶

5 201. Other federal government reports have similarly recognized the problem. A
6 2014 White House report highlighted pervasive educational failures in Native education,
7 noting that “American Indians and Alaska Natives continue to have worse educational
8 outcomes than the general population by nearly all measures.”¹³⁷ According to 2014 DOE
9 data, Native kindergarteners are held back at a rate twice that of white kindergarteners.¹³⁸
10 Moreover, the report observed that “Native students score far lower than other students on
11 national tests; [and] the gap in reading and math test scores between Native and white
12 students is more than half of a standard deviation throughout their educational careers.”¹³⁹

13 202. The White House report then turned to the specific problems at BIE schools.
14 It noted that over one-third of BIE schools are in poor condition, and nearly 30% are over
15 40 years old.¹⁴⁰ In addition, a staggering 60% of BIE-funded schools still lack “adequate
16 digital bandwidth or computers to meet the requirements of new assessments aligned to
17 college and career ready standards.”¹⁴¹ As a consequence, students at BIE-funded schools
18 significantly underperformed, even compared to Native students attending public schools.

19 203. As discussed at length in the 2013 GAO report, comprehensive data from the
20 DOE’s National Center for Education Statistics reveal that “in 4th grade, BIE students on
21 average scored 22 points lower for reading and 14 points lower for math” than Native
22

23 ¹³⁵ *Id.*

24 ¹³⁶ *Id.*

25 ¹³⁷ Executive Office of the President, *2014 Native Youth Report*, *supra* note 127, at 14.

26 ¹³⁸ *Id.* at 16.

27 ¹³⁹ *Id.* at 15.

28 ¹⁴⁰ *Id.* at 16-17.

¹⁴¹ *Id.* at 17.

1 students in public schools.”¹⁴² This pattern of underperformance held true even in a range
2 of state educational assessments, where students at BIE schools consistently scored less
3 than Native students at public schools.¹⁴³

4 204. These problems are longstanding, and Defendants have been aware of them for
5 more than a decade. A 2001 investigative report by the GAO, for example, found that
6 students in BIE schools performed “far below the performance” levels of Native public
7 school students on standardized tests, that approximately 60% of BIE students had limited
8 English proficiency, and that one in five BIE students were enrolled in special
9 education.¹⁴⁴ Moreover, drop-out rates for BIE students were twice as high as the national
10 average.¹⁴⁵

11 205. At the root of these problems is a severe and recognized shortage in BIE
12 staffing. The GAO found that approximately 40 percent of BIE regional facility jobs,
13 including key administrative and technical support staff, remained vacant in 2015, forcing
14 other staff members with limited expertise and training to fill the gaps.¹⁴⁶ The result is that
15 the BIE is unequipped to provide critical administrative support services to its schools,
16 leading to “confusion among schools about whom to contact about problems, as well as
17 delays in the delivery of key educational services and supplies, such as textbooks.”¹⁴⁷

18 206. The BIE’s inability to provide administrative support to reinforce core
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20 ¹⁴² GAO Report, *Indian Affairs: Better Management and Accountability Needed to*
21 *Improve Indian Education* 6, GAO-13-774 (Sept. 2013),
22 <http://www.gao.gov/assets/660/658071.pdf> (hereinafter “2013 GAO Report”).

23 ¹⁴³ *Id.* at 8.

24 ¹⁴⁴ GAO, *BIA and DOD Schools: Student Achievement and Other Characteristics Often*
25 *Differ from Public Schools*’ 10, 12, GAO-01-934 (2001),
26 <http://www.gao.gov/new.items/d01934.pdf>.

27 ¹⁴⁵ *Id.* at 14.

28 ¹⁴⁶ GAO, *Further Actions on GAO Recommendations Needed to Address System*
Management Challenges in Indian Education, GAO-15-539T (Apr. 2015),
<http://www.gao.gov/assets/670/669784.pdf> (hereinafter, “2015 GAO Report”).

¹⁴⁷ 2015 GAO Report, *supra* note 146.

1 educational functions is particularly troubling. For example, the GAO concluded in 2015
2 that BIE schools were not complying with binding special education regulations due to the
3 BIE's failure to provide those schools with sufficient administrative guidance and
4 support.¹⁴⁸ Similarly, the 2013 GAO report highlighted the BIE's failure to provide its
5 schools with Adequate Yearly Progress (AYP) scores, which are used to measure student
6 performance and guide federal funding decisions.¹⁴⁹ In some cases, BIE officials wholly
7 failed to administer the appropriate assessments. The GAO concluded that the BIE's
8 inability to comply with these national testing and reporting requirements impaired the
9 ability of its schools to assess student progress and implement academic reforms.

10 207. For years, the GAO has also flagged the absence of effective BIE oversight or
11 accountability, leading to the misappropriation of millions of dollars in federal funds
12 earmarked for improvements to BIE schools. In a 2015 report, the GAO concluded that
13 the "BIE's oversight did not ensure that school funds were spent appropriately on
14 educational services, although external auditors had determined that there were serious
15 financial management issues at some schools. Specifically, auditors identified \$13.8
16 million in unallowable spending by 24 BIE schools as of [the first half of 2014]."¹⁵⁰

17 208. This lack of financial oversight exacerbates the severe budgetary needs of
18 many BIE schools, whose physical infrastructure is crumbling, unsafe, and unsanitary.¹⁵¹
19 The GAO reported that funding shortfalls sometimes have forced schools to spend their
20

21 ¹⁴⁸ 2015 GAO Report at 14-16.

22 ¹⁴⁹ 2013 GAO Report, *supra* note 142, at 1.

23 ¹⁵⁰ 2015 GAO Report, *supra* note 146, at 20.

24 ¹⁵¹ GAO, *Preliminary Results Show Continued Challenges to the Oversight and Support of*
25 *Education Facilities* 11-13, GAO-15-389T (2015),
26 <http://www.gao.gov/assets/670/668746.pdf> ("At another school, we observed a dormitory
27 for elementary school students built in 1941 with cramped conditions, no space for desks,
28 poor ventilation, and inadequate clearance between top bunks and sprinkler pipes in
sleeping areas. School officials noted that students had received head injuries from
bumping their heads on the pipes and some students had attempted suicide by hanging
from them.").

1 educational funds on urgent maintenance or to defer much-needed maintenance just to
2 keep the lights on and heat running in the winter.¹⁵² At one BIE school, the GAO
3 documented the existence of a leaking ceiling that continued unabated for four years,
4 causing mold to take hold in several classrooms.¹⁵³

5 209. As Defendants have been long aware, their chronic failure to deliver adequate
6 educational opportunities to Native children has devastating consequences on Native
7 communities. In 2015, the GAO specifically admonished the BIE that “[u]nless steps are
8 promptly taken to address these challenges to Indian education, it will be difficult for
9 Indian Affairs to ensure the long-term success of a generation of students.”¹⁵⁴ Yet the
10 GAO’s detailed recommendations to address these challenges, which Defendants generally
11 agreed with, still remain unimplemented. This is a textbook example of deliberate
12 indifference to student needs.

13 **B. The federal government has acknowledged the harmful impacts of**
14 **complex trauma and childhood adversity on education in Native**
15 **communities.**

16 210. The federal government has repeatedly recognized the impacts of complex
17 trauma on Native youth and the need for wellness and mental health services as a result of
18 trauma. Most recently, a BIA official testifying before the Senate Committee on Indian
19 Affairs acknowledged the persistence of these problems and the need to address trauma
20 and mental health challenges in Native communities, including historical trauma.¹⁵⁵ As
21 part of this testimony, the BIA openly declared, “[t]here is no more important issue than
22 addressing the high suicide rate in Indian Country, particularly among youth, which is
23

24 _____
152 2015 GAO Report, *supra* note 146, at 13-14.

25 153 *Id.* at 16.

26 154 *Id.* at 21.

27 155 *Senate Committee on Indian Affairs Oversight Field Hearing on “Addressing Trauma*
28 *and Mental Health Challenges in Indian Country,”* 114th Cong. (Aug. 17, 2016)
(statement of Darren Cruzan, Director, Office of Justice Services, Bureau of Indian
Affairs, DOI), <http://www.bia.gov/cs/groups/xocl/documents/text/idc2-042403.pdf>.

1 often the result of an individual’s exposure to trauma.”¹⁵⁶

2 211. As early as 2001, the BIE and the Centers for Disease Control conducted a
3 study evaluating tobacco, alcohol, and other drug use among students in BIE-funded high
4 schools and found that “a substantial number of high school students at BIA-funded
5 schools engage in behaviors that put them at risk for premature death and disability.”¹⁵⁷

6 212. Subsequent congressional findings in the 2010 Tribal Law and Order Act only
7 reinforced the urgency to combat the prevalence of sources of adversity within Native
8 communities. These findings highlighted “significant increases in instances of domestic
9 violence, burglary, assault, and child abuse as a direct result of increased
10 methamphetamine use on Indian reservations.”¹⁵⁸ In addition, the findings announced that
11 violence against Native women had “reached epidemic proportions,” declaring that
12 “34 percent of American Indian and Alaska Native women will be raped in their
13 lifetimes,” and that “39 percent of American Indian and Alaska Native women will be
14 subject to domestic violence.”¹⁵⁹

15 213. Further federal reports illustrate the harmful consequences of childhood
16 adversity for Native communities. According to a 2014 report issued by the Justice
17 Department, “[t]he immediate and long-term effects of this exposure to violence include[]
18 increased rates of altered neurological development, poor physical and mental health, poor
19 school performance, substance abuse, and overrepresentation in the juvenile justice
20 system. This chronic exposure to violence often leads to toxic stress reactions and severe
21
22

23 ¹⁵⁶ *Id.* at 3.

24 ¹⁵⁷ BIA & Centers for Disease Control, *Tobacco, Alcohol, and Other Drug Use Among*
25 *High School Students in Bureau of Indian Affairs--Funded Schools --- United States, 2001*,
(Nov. 7, 2003), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5244a3.htm>.

26 ¹⁵⁸ Tribal Law and Order Act of 2010, Pub. L. 111–211, § 202(a)(5)(A), 124 Stat. 2261,
27 2262,

<https://www.congress.gov/111/bills/hr725/BILLS-111hr725enr.pdf>.

28 ¹⁵⁹ *Id.*, § 202(a)(5)(C).

1 trauma; which is compounded by historical trauma.”¹⁶⁰ Because of the overwhelmingly
2 high rates of violence, and the lack of resources available to those communities, the report
3 concluded that “service providers and policy makers should assume that *all* AI/AN
4 children have been exposed to violence.”¹⁶¹

5 214. To address this situation, the Justice Department report specifically
6 recommended that schools conduct trauma screenings, implement culturally sensitive and
7 trauma-informed practices, and offer behavioral health services.¹⁶² A 2014 White House
8 report echoed these same recommendations and advised expanding mental health services
9 in Native communities to combat the persistence of youth suicides.¹⁶³

10 215. In light of these findings, Defendants are well acquainted with the serious
11 consequences associated with complex trauma and childhood adversity in Native
12 communities and with the critical need for improved practices and increased resources to
13 effectively address them. Defendants have not, however, adopted better practices or
14 increased resources.

15 **C. The federal government is aware of the chronic educational needs of**
16 **students at Havasupai Elementary School.**

17 216. These same widespread and longstanding problems have plagued the ability of
18 Havasupai Elementary School to provide even a basic and minimally adequate education
19 to Havasupai students.

20 217. Defendants have long been aware of the inadequacy of the education delivered
21 to students at the School. Members of the Havasupai Tribal Council have traveled to
22 Washington, D.C. to meet with top BIE and DOI officials on multiple occasions including,
23 most recently, for a face-to-face meeting in April 2016 with the then-Acting Director of
24

25 ¹⁶⁰ Attorney Gen.’s Advisory Comm’n, *Ending Violence so Children Can Thrive*,
supra note 74, at 16.

26 ¹⁶¹ *Id.*

27 ¹⁶² *Id.* at 23-24, 41.

28 ¹⁶³ Executive Office of the President, *2014 Native Youth Report*, *supra* note 127, at 35-36.

1 the BIE, Ann Marie Bledsoe Downes. The former Director of the BIE has also visited
2 Havasupai within the last several years, as have many other BIE and DOI officials from
3 Washington and regional offices. During all of these meetings, members of the Havasupai
4 Tribe have explained the problems facing the school and the need for the BIE to act.

5 218. In addition, the BIE’s Division of Performance and Accountability recently
6 engaged in a “discussion on schools with intensive needs such as Havasupai.”¹⁶⁴ Over the
7 years, Havasupai parents and families, as well as members of the School Advisory Board
8 and tribal council, have also complained to the BIE about the inadequacy of their
9 children’s education and the mismanagement of the school by BIE staff. For example,
10 Laila R., the mother of Plaintiffs Leo R. and Levi R., has helped draft and circulate written
11 grievances concerning the school to BIE officials, including former BIE director Monty
12 Roessel, Arizona BIE education program administrator Jim Hastings, and former school
13 principal Coleen Maldonado.

14 219. Although Defendants have been responsible for running the School, they have
15 taken no discernable steps to address significant disparities in the quality of the educational
16 opportunities afforded to Havasupai students.

17 220. For example, while Defendants are aware of the failure to offer a
18 comprehensive general education curriculum, including culturally relevant instruction, at
19 the School they have done nothing to provide more than basic instruction in reading,
20 writing, and math to students.

21 221. Defendants are aware, and have been aware for years, of the disproportionately
22 high teacher turnover at the School and its destructive consequences for student learning.
23 Yet they continue to allow students to lose significant learning time due to chronic
24 shortages and instability in the teaching staff.

25 222. Defendants are aware of the severe lack of textbooks and basic learning
26 materials at the School. They are aware that students must rely instead on photocopied

27 ¹⁶⁴ BIE Special Education Advisory Board, *Regular Meeting Minutes 2*, (Sept. 17-18,
28 2015), <http://www.bie.edu/cs/groups/xbie/documents/text/idc1-032733.pdf>.

1 sheet of papers for homework and that the school offers no library access for students.
2 Despite this knowledge, Defendants have taken no affirmative steps to address these
3 deficiencies.

4 223. While Defendants are aware that the School lacks a system for the
5 identification and assessment of students with disabilities and the capacity to provide
6 special education, it has done nothing to remedy the situation. Defendants are aware that
7 there are straightforward remedial measures, including employing personnel with training
8 in delivering special education services or providing a special classroom for students with
9 more intensive needs. Yet Defendants have failed to take such steps and has instead
10 allowed the loss of learning time and adequate instruction for students with disabilities to
11 continue unabated.

12 224. Defendants are aware that the School is located in an area where children
13 experience elevated rates of violence, family disruption, substance abuse, and poverty, and
14 that such adverse conditions create mental health effects on students that the School is not
15 equipped to address. Despite this knowledge, Defendants have failed to take affirmative
16 steps to address these deficiencies. Instead of providing resources to address students'
17 unmet mental and social-emotional needs, the School has often deprived those students of
18 valuable instruction through punishment, expulsion, and suspension.

19 225. Defendants' actions and inactions resulting in the creation and exacerbation of
20 these educational deficiencies are deliberate and conscious, in that they are aware of the
21 causes of these deficiencies, yet have failed to establish any system to monitor, identify,
22 and remedy identified inadequacies.

23 226. The BIE's failure to address educational disparities at Havasupai Elementary
24 School violates its duty as the ultimate guarantor of the fundamental educational rights of
25 Native children.

26 227. In February 2016, Secretary of Education King declared before the National
27 Congress of American Indians that, "We cannot afford to throw away any of our
28

1 children.”¹⁶⁵ Yet Defendants’ persistent indifference to the plight of Havasupai children
2 does precisely that. Reforms and remedial practices must be implemented by Defendants
3 to ensure that Havasupai students have access to the educational opportunities that they
4 deserve and to remedy the harmful deprivation of educational opportunities that they have
5 endured. It is equally critical that these remedial efforts are conducted in a manner that is
6 consistent with tribal beliefs, thought, and philosophy and respectful of cultural standards.

7 **STANDING OF THE NATIVE AMERICAN DISABILITY LAW CENTER**

8 228. Plaintiff NADLC has standing to sue. NADLC is a non-profit corporation
9 headquartered in Farmington, New Mexico.

10 229. NADLC is a Protection and Advocacy Organization authorized by the
11 Protection and Advocacy for Individuals with Developmental Disabilities Act,
12 42 §§ U.S.C. 15041 *et seq.*

13 230. Since 1995, the NADLC has been the only Protection and Advocacy
14 Organization in the United States established pursuant to designation by Native American
15 tribes, rather than by a State.

16 231. NADLC serves Native Americans with disabilities who reside in the Four
17 Corners area of the United States, roughly comprising the states of New Mexico, Arizona,
18 Utah and Colorado.

19 232. NADLC’s mission is to advocate for Native Americans with disabilities in
20 order to strengthen and enforce their rights and bring them into harmony with their
21 communities.

22 233. NADLC is managed and controlled by a Board of Directors. The current
23 Board includes seven persons who are enrolled members of a federally recognized Native
24 American Tribe, four persons who have least one family member with a mental illness,
25 two persons with a disability, and two persons who are mental health professionals. At
26

27 ¹⁶⁵ NCAI, *2016 Executive Council Winter Session Newsletter 2* (Feb. 22-24, 2016),
28 [http://www.ncai.org/conferences-events/ncai-
events/ECWS2016_Final_Wrap_Up_Newsletter.pdf](http://www.ncai.org/conferences-events/ncai-events/ECWS2016_Final_Wrap_Up_Newsletter.pdf).

1 least three members of NADLC’s Board have children who now receive or have in the past
2 received special education and related services.

3 234. Six members of NADLC’s Board of Directors constitute the Advisory Council
4 mandated by the Protection and Advocacy for Mentally Ill Individuals Act of 1986,
5 42 U.S.C. §§ 10801 *et. seq.* As required by law, 60% of the members of that Advisory
6 Council, including its chairperson, are individuals who have received or are receiving
7 mental health services or are family members of such individuals.

8 235. Helping students with disabilities obtain access to public education and a
9 general education curriculum, specialized instruction, and related services has always been
10 a high priority service for NADLC, and it has consumed a substantial portion of NADLC’s
11 resources. In Fiscal Year 2015, for example, more than 25% of the requests for services
12 received by NADLC related to special education. Those services have included
13 advocating for students in the school setting, representing students in administrative and
14 judicial proceedings, and other education, outreach, investigation, and advocacy efforts.

15 236. Havasupai students whose families have sought assistance from NADLC have
16 been denied access to public education by Defendants, including access to the required
17 general education curriculum, special education and related services, and needed mental
18 health services. Defendants’ practices therefore frustrate NADLC’s mission to guarantee
19 such students the right to an adequate public education.

20 237. NADLC has received at least eight requests for assistance concerning the
21 failure of Havasupai Elementary School to provide special education instruction, related
22 services, and appropriate resources to enable students with disabilities to participate in
23 public education. NADLC provided legal assistance to a student with a disability in four
24 of those cases.

25 238. NADLC has filed two administrative “due process” complaints relating to
26 Havasupai Elementary School’s failure to provide appropriate special education and
27 related services. Both of those cases were settled, and in both cases the BIE failed to
28 provide the student with the services promised in the Settlement Agreement.

1 239. NADLC then represented one of those students, Plaintiff Levi R., in filing a
2 formal complaint against the BIE for its failure to implement the Settlement Agreement.
3 The administrative body hearing that complaint found that the BIE had in fact failed to
4 honor its commitment contained in the Settlement Agreement and ordered the BIE to take
5 corrective action. To date, 13 months later, the BIE has failed to do so.

6 240. In another instance, School staff retaliated against an NADLC client for
7 advocating for her child. NADLC sent formal notice to the School's then-principal, BIE
8 officials, and the BIE's attorney in October 2015 putting the BIE on notice that it was
9 unlawful under federal law to retaliate against a parent advocating for a child.

10 241. In addition to such individual advocacy that NADLC has provided its clients,
11 NADLC filed a Freedom of Information Act ("FOIA") request to obtain public records
12 from the BIE about Havasupai Elementary School. NADLC filed the FOIA request on
13 May 21, 2015. To date, NADLC has received only a partial response from the BIE. In
14 July 2016, NADLC requested assistance from the U.S. Office of Government Information
15 Services ("OGIS") in obtaining a substantive response from the BIE. OGIS indicated in
16 August 2016 that the BIE anticipated providing a complete response to the FOIA request
17 by September 16, 2016. To date, despite the BIE's assurances to OGIS, NADLC has not
18 received anything further from the BIE in response to the FOIA request. On October 31,
19 2016, NADLC filed a formal appeal before the Department of Interior's FOIA and Privacy
20 Act Appeals Office challenging the federal government's failure to respond to its May 21,
21 2015 FOIA request.

22 242. NADLC has devoted significant organizational resources to identifying and
23 counteracting Defendants' practices, including investigation, education, outreach, and
24 advocacy. As a direct consequence, Defendants' practices have caused NADLC to divert
25 its scarce resources from other efforts to promote and protect the rights of Native
26 Americans with disabilities. Continued advocacy on behalf of Havasupai students with
27 disabilities against Defendants will significantly diminish NADLC's resources and impact
28 its ability to serve other Native Americans with disabilities in the Four Corners area.

1 243. NADLC is authorized under the Protection and Advocacy for Individuals with
2 Developmental Disabilities Act to initiate legal action designed to protect the rights of
3 persons with developmental disabilities. 42 U.S.C. §§ 15041-15045.

4 244. NADLC is also authorized under the Protection and Advocacy of Individuals
5 with Mental Illness Act to initiate legal action designed to protect the rights of persons
6 with mental illness. 42 U.S.C. §§ 10801-10807, 10821-10827. NADLC is governed by
7 representatives of its client community and is committed to ensuring access to public
8 education for Native students with disabilities.

9 **FIRST CAUSE OF ACTION**

10 **(FAILURE TO TAKE ACTION REQUIRED TO PROVIDE BASIC EDUCATION**

11 **(5 U.S.C. § 706(1))**

12 **(All Plaintiffs against All Defendants)**

13 245. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1
14 through 244 as if set forth fully here.

15 246. Under the Administrative Procedure Act, 5 U.S.C. § 706(1), a party aggrieved
16 by agency action may bring an action requiring a court to “compel agency action
17 unlawfully withheld or unreasonably delayed.”

18 247. Havasupai Elementary School is operated by the Defendants. Defendants are
19 obligated to provide an education to Havasupai children that meets basic educational
20 standards and enables students to access post-secondary educational opportunities.

21 248. Defendants must provide Native American children with “with educational
22 opportunities that equal or exceed those for all other students in the United States.” 25
23 U.S.C. § 2001(a)(1). They must also provide education that is “adequate,”¹⁶⁶
24 “comprehensive,”¹⁶⁷ “of the highest quality,”¹⁶⁸ and offers “the basic elementary and
25

26 _____
27 ¹⁶⁶ 25 C.F.R. § 32.4(r).

28 ¹⁶⁷ 25 C.F.R. § 32.3 (codified into law under 25 U.S.C. § 2003).

¹⁶⁸ 25 U.S.C. § 2000.

1 secondary educational needs.”¹⁶⁹ Providing an education meeting these standards is a
2 critical component of Defendants’ trust responsibility for Native American students. *See*
3 *Navajo Nation*, 537 U.S. at 506.

4 249. Defendants must provide a program at Havasupai Elementary School that
5 complies with regulations specifically setting forth the governing educational philosophy,
6 enumerating the instructional content that must be covered, and describing the educational
7 concepts that must be incorporated into the curriculum.

8 250. Defendants must comply with 25 C.F.R. § 36.20, which requires providing an
9 educational program including multi-culture and multi-ethnic dimensions designed to
10 enable students to function effectively in a pluralistic society; assessing students’ language
11 abilities and providing instruction in English and the primary native language of the
12 students, as appropriate; including aspects of the native culture in each aspect of the
13 curriculum; assessing the learning styles of students and providing instruction based on
14 that assessment; and scheduling at least one field trip per student per year.

15 251. Defendants must comply with 25 C.F.R. § 36.21, which outlines the minimum
16 requirements for kindergarten, including, *inter alia*, a curriculum that emphasizes language
17 development and the development of positive feelings as well as instruction in
18 “exploration of the environment (number, space and time relationships, natural science)”
19 and “psychomotor and socialization development.”

20 252. Defendants must comply with 25 C.F.R. § 36.22, which outlines the minimum
21 requirements for grades one through six. Thus, Defendants must provide instruction in six
22 subjects, including language arts, social studies, and fine arts, as well as five content areas
23 that must be integrated into the curriculum, such as computer literacy and metric
24 education.

25 253. Defendants must comply with 25 C.F.R. § 36.23, which outlines the minimum
26 requirements for grades 7 and 8. Thus, Defendants must provide instruction in five general
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28 ¹⁶⁹ *Id.*

1 content areas, such as “career exploration and orientation,” and seven instructional content
2 areas. Among other requirements, “one unit [of science] shall be required of each student
3 every year.”

4 254. Defendants must also comply with other regulations governing staffing and
5 administrative requirements,¹⁷⁰ grading requirements,¹⁷¹ student promotion
6 requirements,¹⁷² additional programming requirements (e.g. “each school shall provide a
7 library/media program”),¹⁷³ textbooks,¹⁷⁴ behavioral health services,¹⁷⁵ extracurricular
8 activities,¹⁷⁶ evaluation and monitoring requirements,¹⁷⁷ and student rights and due process
9 protections.¹⁷⁸

10 255. Defendants have failed to take required discrete actions to comply with these
11 regulations and to satisfy their obligations to provide an adequate education to Havasupai
12 children.

13 256. These unlawful failures to act include, but are not limited to, the following:

- 14 a. Defendants have not provided instruction in social studies;
- 15 b. Defendants have not provided instruction in fine arts;
- 16 c. Defendants have not provided instruction in science;
- 17 d. Defendants have not provided instruction in computer literacy;

18 ¹⁷⁰ 25 C.F.R. § 36.11.

19 ¹⁷¹ 25 C.F.R. § 36.30.

20 ¹⁷² 25 C.F.R. § 36.31.

21 ¹⁷³ 25 C.F.R. § 36.40.

22 ¹⁷⁴ 25 C.F.R. § 36.41.

23 ¹⁷⁵ 25 C.F.R. §§ 36.42, 36.42(b) (“Each school shall offer student counseling services
24 concerned with physical, social, emotional, intellectual, and vocational growth for each
25 individual. Counseling services shall be included in a school-wide assessment program”
and “each counseling program shall provide . . . [p]reventative and crisis counseling on
both individual and group bases . . .”).

26 ¹⁷⁶ 25 C.F.R. § 36.43.

27 ¹⁷⁷ 25 C.F.R. §§ 36.50, 36.51.

28 ¹⁷⁸ 25 C.F.R. § 42.1, *et seq.*

- 1 e. Defendants have not provided instruction in career exploration and
2 orientation;
- 3 f. Defendants have not provided a library/media program;
- 4 g. Defendants have not provided adequate textbooks and instructional
5 materials;
- 6 h. Defendants have not provided behavioral health services;
- 7 i. Defendants have not provided extracurricular activities;
- 8 j. Defendants have not adequately staffed Havasupai Elementary
9 School;
- 10 k. Defendants have not assessed the English and native language
11 abilities of students at Havasupai Elementary School;
- 12 l. Defendants have not provided instruction in the Havasupai language;
- 13 m. Defendants have not included aspects of the Havasupai culture in all
14 aspects of the curriculum;
- 15 n. Defendants have not evaluated the learning styles of students at
16 Havasupai Elementary School;
- 17 o. Defendants have not provided one field trip, per student, per year at
18 Havasupai Elementary School;
- 19 p. Defendants have not developed a student handbook including policies
20 and disciplinary procedures or communicated those policies and procedures to students
21 and their families;
- 22 q. Defendants have not established dispute resolution procedures to be
23 used in lieu of formal student discipline; and
- 24 r. Defendants have not established a procedure for formal disciplinary
25 hearings that provides notice and a hearing.

26 257. Plaintiffs, including NADLC, have been aggrieved by these failures to act
27 because Havasupai children have been deprived of the educational opportunities to which
28 they are entitled, and they have not been adequately prepared for the transition to high

1 school.

2 258. Plaintiffs have suffered an irreparable injury that could not be adequately
3 compensated by a remedy at law, the balance of the hardships between the parties warrant
4 an equitable remedy, and the public interest would not be disserved by an equitable
5 remedy.

6 259. Plaintiffs were not required to exhaust administrative remedies in order to
7 bring this claim. Under 5 U.S.C. § 704, agency action is final and subject to an APA
8 challenge in court, unless the agency by rule requires an administrative challenge “and
9 provides that the action meanwhile is inoperative.” BIA regulations permit administrative
10 appeals, but they do not require such appeals before filing suit, and they do not make
11 decisions inoperative pending appeal. Rather, agency decisions are final if they have not
12 been appealed within 30 days. 25 C.F.R. §§ 2.6, 2.8. Moreover, exhaustion cannot be
13 required on a claim that, like this one, arises under § 706(1) of the Administrative
14 Procedure Act. Section 706(1) is meant to address situations in which there has been no
15 formal request for agency action, whereas § 706(2) applies when agency action has been
16 requested and rejected.

17 260. Plaintiffs are entitled to appropriate relief.

18 **SECOND CAUSE OF ACTION**

19 **(FAILURE TO PROVIDE BASIC EDUCATION (5 U.S.C. § 706(2)))**

20 **(All Plaintiffs against All Defendants)**

21 261. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1
22 through 260 as if set forth fully here.

23 262. Under the Administrative Procedure Act, 5 U.S.C. § 706(2), a party aggrieved
24 by agency action may bring an action requiring a court to “hold unlawful and set aside
25 agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of
26 discretion, or otherwise not in accordance with law.”

27 263. Havasupai Elementary School is operated by Defendants. Defendants are
28 obligated to provide an education to Havasupai children that meets basic educational

1 standards and enables students to access post-secondary educational opportunities.

2 264. Defendants must provide Native American children with “with educational
3 opportunities that equal or exceed those for all other students in the United States.”
4 25 U.S.C. § 2001(a)(1). They must also provide education that is “adequate,”¹⁷⁹
5 “comprehensive,”¹⁸⁰ “of the highest quality,”¹⁸¹ and offers “the basic elementary and
6 secondary educational needs.”¹⁸² Providing an education meeting these standards is a
7 critical component of Defendants’ trust responsibility for Native American students. *See*
8 *Navajo Nation*, 537 U.S. 506.

9 265. Defendants must provide a program at Havasupai Elementary School that
10 complies with regulations specifically setting forth the governing educational philosophy,
11 enumerating the instructional content that must be covered, and describing the educational
12 concepts that must be incorporated into the curriculum.

13 266. Defendants must comply with 25 C.F.R. § 36.20, which requires providing an
14 educational program including multi-culture and multi-ethnic dimensions designed to
15 enable students to function effectively in a pluralistic society; assessing students’ language
16 abilities and providing instruction in English and the primary native language of the
17 students, as appropriate; including aspects of the native culture in each aspect of the
18 curriculum; assessing the learning styles of students and providing instruction based on
19 that assessment; and scheduling at least one field trip per student per year.

20 267. Defendants must comply with 25 C.F.R. § 36.21, which outlines the minimum
21 requirements for kindergarten, including, *inter alia*, a curriculum that emphasizes language
22 development and the development of positive feelings as well as instruction in
23 “exploration of the environment (number, space and time relationships, natural science)”
24 and “psychomotor and socialization development.”

25 _____
¹⁷⁹ 25 C.F.R. § 32.4(r).

26 ¹⁸⁰ 25 C.F.R. § 32.3 (codified into law under 25 U.S.C. § 2003).

27 ¹⁸¹ 25 U.S.C. § 2000.

28 ¹⁸² *Id.*

1 268. Defendants must comply with 25 C.F.R. § 36.22, which outlines the minimum
2 requirements for grades one through six. Thus, Defendants must provide instruction in six
3 subjects, including language arts, social studies, and fine arts, as well as five content areas
4 that must be integrated into the curriculum, such as computer literacy and metric
5 education.

6 269. Defendants must comply with 25 C.F.R. § 36.23, which outlines the minimum
7 requirements for grades 7 and 8. Thus, Defendants must provide instruction in five general
8 content areas, such as “career exploration and orientation,” and seven instructional content
9 areas. Among other requirements, “one unit [of science] shall be required of each student
10 every year.”

11 270. Defendants must also comply with other regulations governing staffing and
12 administrative requirements,¹⁸³ grading requirements,¹⁸⁴ student promotion
13 requirements,¹⁸⁵ additional programming requirements (e.g. “each school shall provide a
14 library/media program”),¹⁸⁶ textbooks,¹⁸⁷ behavioral health services,¹⁸⁸ extracurricular
15 activities,¹⁸⁹ evaluation and monitoring requirements,¹⁹⁰ and student rights and due process
16 protections.¹⁹¹

17 271. Defendants have acted in a manner that is arbitrary, capricious, an abuse of

18 ¹⁸³ 25 C.F.R. § 36.11.

19 ¹⁸⁴ 25 C.F.R. § 36.30.

20 ¹⁸⁵ 25 C.F.R. § 36.31.

21 ¹⁸⁶ 25 C.F.R. § 36.40.

22 ¹⁸⁷ 25 C.F.R. § 36.41.

23 ¹⁸⁸ 25 C.F.R. §§ 36.42, 36.42(b) (“Each school shall offer student counseling services
24 concerned with physical, social, emotional, intellectual, and vocational growth for each
25 individual. Counseling services shall be included in a school-wide assessment program”
and “each counseling program shall provide . . . [p]reventative and crisis counseling on
both individual and group bases . . .”).

26 ¹⁸⁹ 25 C.F.R. § 36.43.

27 ¹⁹⁰ 25 C.F.R. §§ 36.50, 36.51.

28 ¹⁹¹ 25 C.F.R. § 42.1, *et seq.*

1 discretion, or otherwise not in accordance with the law in their administration of
2 Havasupai Elementary School.

3 272. The actions of Defendants that are arbitrary, capricious, an abuse of discretion,
4 or otherwise not in accordance with the law include, but are not limited to, the following:

- 5 a. Defendants have not provided instruction in social studies;
- 6 b. Defendants have not provided instruction in fine arts;
- 7 c. Defendants have not provided instruction in science;
- 8 d. Defendants have not provided instruction in computer literacy;
- 9 e. Defendants have not provided instruction in career exploration and
10 orientation;
- 11 f. Defendants have not provided a library/media program;
- 12 g. Defendants have not provided adequate textbooks and instructional
13 materials;
- 14 h. Defendants have not provided behavioral health services;
- 15 i. Defendants have not provided extracurricular activities;
- 16 j. Defendants have not adequately staffed Havasupai Elementary
17 School;
- 18 k. Defendants have not assessed the English and native language
19 abilities of students at Havasupai Elementary School;
- 20 l. Defendants have not provided instruction in the Havasupai–Hualapai
21 language;
- 22 m. Defendants have not included aspects of the Havasupai culture in all
23 aspects of the curriculum;
- 24 n. Defendants have not evaluated the learning styles of students at
25 Havasupai Elementary School;
- 26 o. Defendants have not provided one field trip, per student, per year at
27 Havasupai Elementary School;
- 28 p. Defendants have not developed a student handbook including policies

1 and disciplinary procedures or communicated those policies and procedures to students
2 and their families;

3 q. Defendants have not established dispute resolution procedures to be
4 used in lieu of formal student discipline; and

5 r. Defendants have not established a procedure for formal disciplinary
6 hearings that provides notice and a hearing.

7 273. Plaintiffs, including NADLC, have been aggrieved by these actions because
8 Havasupai children have been deprived of the educational opportunities to which they are
9 entitled, and they have not been adequately prepared for the transition to high school.

10 274. Plaintiffs have suffered an irreparable injury that could not be adequately
11 compensated by a remedy at law, the balance of the hardships between the parties warrant
12 an equitable remedy, and the public interest would not be disserved by an equitable
13 remedy.

14 275. Plaintiffs were not required to exhaust administrative remedies in order to
15 bring this claim. Under 5 U.S.C. § 704, agency action is final and subject to an APA
16 challenge in court, unless the agency by rule requires an administrative challenge “and
17 provides that the action meanwhile is inoperative.” BIA regulations permit administrative
18 appeals, but they do not require such appeals before filing suit, and they do not make
19 decisions inoperative pending appeal. Rather, agency decisions are final if they have not
20 been appealed within 30 days. 25 C.F.R. §§ 2.6, 2.8.

21 276. Plaintiffs are entitled to appropriate relief.

22 **THIRD CAUSE OF ACTION**

23 **(FAILURE TO PROVIDE A SYSTEM ENABLING STUDENTS WITH**
24 **DISABILITIES TO ACCESS PUBLIC EDUCATION (29 U.S.C. § 794))**

25 **(Plaintiffs Stephen C., Durell P., Levi R., Jenny A., Jordan A., and NADLC against**
26 **Defendants Jewell, Roberts, Dearman, and Williamson)**

27 277. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1
28 through 276 as if set forth fully here.

1 278. Under Section 504 of the Rehabilitation Act, “[n]o otherwise qualified
2 individual with a disability. . . shall, solely by reason of her or his disability, be excluded
3 from the participation in, be denied the benefits of, or be subjected to discrimination under
4 . . . any program or activity conducted by any Executive agency” 29 U.S.C. § 794(a).

5 279. Havasupai Elementary School is a “program or activity,” which term is
6 defined to include school systems. 29 U.S.C. § 794(b)(2)(B).

7 280. The definition of “disability” is a “physical or mental impairment that
8 substantially limits one or more life activities,” such as (but not limited to), “caring for
9 oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing,
10 lifting, bending, speaking, breathing, *learning, reading, concentrating, thinking,*
11 *communicating,* and working.” 42 U.S.C. §§ 12102(1)(A), (2)(A) (emphasis added).

12 281. Thus, Defendants Jewell, Roberts, Dearman, and Williamson are required to
13 provide special education instruction, related services, and appropriate resources to
14 Havasupai students with physical or mental impairments that substantially limit them with
15 respect to learning, reading, concentrating, thinking, and/or communicating; and they must
16 put into place a system—including procedures, teachers, and appropriate providers—for
17 delivery of specialized instruction and services in order to ensure that those students have
18 access to the benefits of a public education.

19 282. There are a disproportionately large number of Havasupai students who have
20 physical or mental impairments that substantially limit them with respect to learning,
21 reading, concentrating, thinking, and/or communicating. Havasupai Elementary School
22 reported to the Advisory School Board in 2014 that approximately half of the students in
23 the school had been identified as students with disabilities.

24 283. Defendants Jewell, Roberts, Dearman, and Williamson have failed to establish
25 a system to ensure that students with disabilities receive the special education, related
26 services, and other resources necessary to access to the benefits of a public education.

27 284. At Havasupai Elementary School, there is not a sufficient number qualified
28 special education teachers, and there are no special education classrooms; no occupational

1 therapists, physical therapists, or speech therapists; and either no or insufficient mental
2 health staff and support staff.

3 285. Students with disabilities are also either not given a full day of instruction or
4 are channeled into residential schools. Students and their families must choose between
5 leaving home to obtain adequate schooling with the services they need, or living at home
6 in their own community without access to basic education.

7 286. Defendants have compounded their failure to provide education to students
8 with disabilities by relying on police and the criminal justice system, or repeated
9 suspension, instead of counseling and support. Students miss such a significant amount of
10 school—either while on suspension or awaiting court hearings—that they fall far behind
11 their peers from an educational perspective.

12 287. Plaintiffs, including NADLC, have been damaged by the failure to provide a
13 system for serving Havasupai students with disabilities, which has deprived those students
14 of access to public education.

15 288. Plaintiffs have suffered irreparable injury that could not be adequately
16 compensated by a remedy at law, the balance of the hardships between the parties warrant
17 an equitable remedy, and the public interest would not be disserved by an equitable
18 remedy.

19 289. Plaintiffs do not need to administratively exhaust their claim. There is no
20 administrative procedure for challenging Defendants’ school-wide failure to provide a
21 system for serving students with disabilities. Indeed, the BIE has not even promulgated
22 regulations for challenging individual denials of access to education for students with
23 disabilities. Even if a family could somehow obtain an individual remedy through a due
24 process proceeding or some other form of administrative process, Defendants could not
25 implement that remedy at Havasupai Elementary School because they have no system in
26 place for doing so.

27 290. Moreover, declaratory relief, which is essential to this claim, is not available
28 under IDEA. Thus, the exhaustion requirement in IDEA cannot be applied to this claim

1 under 29 U.S.C. § 794(a).

2 291. Plaintiffs are entitled to appropriate relief.

3 **FOURTH CAUSE OF ACTION**

4 **(FAILURE TO PROVIDE A SYSTEM ENABLING STUDENTS WHO HAVE**
5 **SUFFERED ADVERSITY AND COMPLEX TRAUMA TO ACCESS PUBLIC**
6 **EDUCATION (29 U.S.C. § 794)**

7 **(All Plaintiffs against Defendants Jewell, Roberts, Dearman, and Williamson)**

8 292. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1
9 through 291 as if set forth fully here.

10 293. Under Section 504 of the Rehabilitation Act, “[n]o otherwise qualified
11 individual with a disability . . . shall, solely by reason of her or his disability, be excluded
12 from the participation in, be denied the benefits of, or be subjected to discrimination under
13 . . . any program or activity conducted by any Executive agency” 29 U.S.C. § 794(a).

14 294. Havasupai Elementary School is a “program or activity.” 29 U.S.C.
15 § 794(b)(2)(B).

16 295. The definition of “disability” is a “physical or mental impairment that
17 substantially limits one or more life activities,” including, but not limited to, “caring for
18 oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing,
19 lifting, bending, speaking, breathing, *learning, reading, concentrating, thinking,*
20 *communicating,* and working.” 42 U.S.C. §§ 12102(1)(A), (2)(A) (emphasis added).

21 296. Experiencing complex trauma causes impairment that limits a student’s ability
22 to learn, read, concentrate, think, communicate, and generally receive an education and
23 have the opportunity to succeed in school.

24 297. Havasupai students are exposed to adversity and historical trauma within their
25 community. As a result, individual Havasupai students are at risk of experiencing complex
26 trauma, or have experienced trauma, that substantially limits them with respect to learning,
27 reading, concentrating, thinking, and/or communicating.

28 298. This historical and individual trauma requires additional behavioral and mental

1 health resources, as well as culturally relevant interventions, in order for students to have
2 meaningful access to education. In order to meaningfully access public education,
3 Havasupai students require a system that is responsive to and capable of addressing the
4 impact of complex trauma.

5 299. Defendants have failed to establish a system to ensure that students who have
6 suffered adversity and complex trauma receive the specialized instruction, related services,
7 and other resources necessary to access to the benefits of a public education.

8 300. Defendants Jewell, Roberts, Dearman, and Williamson are required to provide
9 specialized instruction, related services, and other resources to Havasupai students who
10 have suffered adversity and complex trauma, and they must put into place a system—
11 including procedures, teachers, and appropriate providers—for delivery of specialized
12 instruction and services in order to ensure that those students have access to the benefits of
13 a public education.

14 301. Plaintiffs, including NADLC, have been damaged by the failure to provide a
15 system for serving Havasupai students who have suffered adversity and complex trauma,
16 which has deprived those students of access to public education.

17 302. Plaintiffs have suffered an irreparable injury that could not be adequately
18 compensated by a remedy at law, the balance of the hardships between the parties warrant
19 an equitable remedy, and the public interest would not be disserved by an equitable
20 remedy.

21 303. Plaintiffs do not need to administratively exhaust their claim. There is no
22 administrative procedure for challenging Defendants' school-wide failure to provide a
23 system to address the needs of students who have been exposed to adversity and complex
24 trauma. Indeed, the BIE has not even promulgated regulations for challenging individual
25 denials of access to education for such students. Even if a family could somehow obtain
26 an individual remedy through a due process proceeding or some other form of
27 administrative process, Defendants could not implement that remedy at Havasupai
28 Elementary School because they have no system in place for doing so.

1 304. Moreover, declaratory relief, which is essential to this claim, is not available
2 under IDEA. Thus, the exhaustion requirement in IDEA cannot be applied to this claim
3 under 29 U.S.C. § 794(a).

4 305. Plaintiffs are entitled to appropriate relief.

5 **FIFTH CAUSE OF ACTION**

6 **(VIOLATION OF DEPARTMENT OF EDUCATION REGULATIONS**

7 **REGARDING “LOCATION AND NOTIFICATION,” 34 C.F.R. § 104.32)**

8 **(Plaintiffs Stephen C., Durell P., Levi R., Jenny A., Jordan A., and NADLC against**
9 **Defendants Jewell, Roberts, Dearman, and Williamson)**

10 306. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1
11 through 305 as if set forth fully here.

12 307. DOE regulations require a recipient of DOE funding to identify and locate
13 students who are not properly receiving an adequate public education as a result of their
14 disabilities.

15 308. DOE regulations require a recipient of DOE funding to contact the parents or
16 guardian of students who are not receiving an adequate public education as result of their
17 disabilities, including but not limited to disabilities related to complex trauma and its
18 effects, to notify them of their duty to identify students who might require a reasonable
19 accommodation.

20 309. Defendants Jewell, Roberts, Dearman, and Williamson receive DOE funding
21 to provide special education services at Havasupai Elementary School.

22 310. Defendants have not established and implemented policies or procedures to
23 identify and locate Havasupai students who are not properly receiving an adequate public
24 education on account of their disabilities, including but not limited to disabilities related to
25 complex trauma and its effects.

26 311. Defendants have failed to locate and identify Havasupai students who are not
27 properly receiving an adequate public education on account of their disabilities, including
28 but not limited to disabilities related to complex trauma and its effects.

1 312. Defendants have not established and implemented policies or procedures to
2 contact the parents or guardians of Havasupai students who are not receiving an adequate
3 public education as result of their disabilities, including but not limited to disabilities
4 related to complex trauma and its effects, to notify them of their duty to identify students
5 who might require a reasonable accommodation.

6 313. Defendants have failed to contact the parents or guardians of Havasupai
7 students who are not receiving an adequate public education as result of their disabilities,
8 including but not limited to disabilities related to complex trauma and its effects, to notify
9 them of their duty to identify students who might require a reasonable accommodation.

10 314. Plaintiffs, including NADLC, have been damaged by the failure to provide a
11 system for to locate and notify Havasupai students who are not receiving an adequate
12 public education as a result of their disabilities, which has deprived those students of
13 access to public education.

14 315. This is an irreparable injury that could not be adequately compensated by a
15 remedy at law, the balance of the hardships between the parties warrant an equitable
16 remedy, and the public interest would not be disserved by an equitable remedy.

17 316. Plaintiffs do not need to administratively exhaust their claim. There is no
18 administrative procedure for challenging Defendants' school-wide failure to provide a
19 system for serving students with disabilities. Indeed, the BIE has not even promulgated
20 regulations for challenging individual denials of access to education for students with
21 disabilities. Even if a family could somehow obtain an individual remedy through a due
22 process proceeding or some other form of administrative process, Defendants could not
23 implement that remedy at Havasupai Elementary School because they have no system in
24 place for doing so.

25 317. Moreover, declaratory relief, which is essential to this claim, is not available
26 under IDEA. Thus, the exhaustion requirement in IDEA cannot be applied to this claim
27 under the regulations implementing 29 U.S.C. § 794(a).

28 318. Plaintiffs are entitled to appropriate relief.

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SIXTH CAUSE OF ACTION

(VIOLATION OF DEPARTMENT OF EDUCATION REGULATIONS

REGARDING “PROCEDURAL SAFEGUARDS,” 34 C.F.R. § 104.36)

(Plaintiffs Stephen C., Durell P., Levi R., Jenny A., Jordan A., and NADLC against Defendants Jewell, Roberts, Dearman, and Williamson)

319. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1 through 318 as if set forth fully here.

320. DOE regulations provide that a recipient of DOE funding that “operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person’s parents or guardian and representation by counsel, and a review procedure.”

321. Defendants Jewell, Roberts, Dearman, and Williamson receive DOE funding to provide special education services at Havasupai Elementary School.

322. Defendants have not established and implemented a system of procedural safeguards with respect to actions regarding identification, evaluation, and educational placement of students who are not receiving an adequate public education as result of their disabilities, including but not limited to the fact that they have suffered complex trauma.

323. Defendants have failed to establish a system of procedural safeguards for Havasupai students that includes notice, an opportunity for parents or guardians to examine relevant records, an impartial hearing, and a review procedure. Defendants’ failure to establish such a system has resulted in negative consequences for students who were entitled to the protection of procedural safeguards, including suspension, involuntary transfer, expulsion, and law enforcement referrals.

324. Plaintiffs, including NADLC, have been damaged by the failure to provide

1 procedural Havasupai students who are not receiving an adequate public education as a
2 result of their disabilities, which has deprived those students of access to public education.

3 325. This is an irreparable injury that could not be adequately compensated by a
4 remedy at law, the balance of the hardships between the parties warrant an equitable
5 remedy, and the public interest would not be disserved by an equitable remedy.

6 326. Plaintiffs do not need to administratively exhaust their claim. There is no
7 administrative procedure for challenging Defendants' school-wide failure to provide a
8 system for serving students with disabilities. Indeed, the BIE has not even promulgated
9 regulations for challenging individual denials of access to education for students with
10 disabilities. Even if a family could somehow obtain an individual remedy through a due
11 process proceeding or some other form of administrative process, Defendants could not
12 implement that remedy at Havasupai Elementary School because they have no system in
13 place for doing so.

14 327. Moreover, declaratory relief, which is essential to this claim, is not available
15 under IDEA. Thus, the exhaustion requirement in IDEA cannot be applied to this claim
16 under the regulations implementing 29 U.S.C. § 794(a).

17 328. Plaintiffs are entitled to appropriate relief.

18 **REQUEST FOR RELIEF**

19 WHEREFORE, Plaintiffs respectfully request the following relief:

20 1. The issuance of a Declaratory Judgment that the actions and omissions of the
21 Defendants, as described above, constitute violations of the Indian Education Act, the
22 Rehabilitation Act, as well as numerous other federal laws, and violate Plaintiffs' civil
23 rights;

24 2. The issuance of a Declaratory Judgment setting forth the duties and
25 obligations of Defendants with respect to the delivery of education to students at
26 Havasupai Elementary School.

27 3. Appropriate injunctive relief requiring Defendants, their officers, agents,
28 employees, successors in office and assigns/assignees to comply with those duties and

1 obligations, and to provide Plaintiffs with access to the education Defendants are legally
2 obligated to provide, including special education services, in a manner that is culturally
3 relevant based on the unique culture, tradition, and language of the Havasupai Tribe;

4 4. Requiring Defendants to provide appropriate compensatory and remedial
5 education for all Plaintiffs, including those who previously attended but no longer attend
6 Havasupai Elementary School;

7 5. A permanent injunction enjoining Defendants, their officers, agents,
8 employees, successors in office and assigns/assignees from engaging in the actions,
9 omissions, policies, and practices that have resulted in their failure and refusal to enforce
10 the requirements of the Indian Education Act and its implementing regulations and Section
11 504 of the Rehabilitation Act of 1973 and its implementing regulations at Havasupai
12 Elementary School;

13 6. An award of costs and attorneys' fees on behalf of Plaintiffs pursuant to
14 29 U.S.C. § 794(a) and any applicable provisions of law;

15 7. A grant of such other or additional relief as this Court may deem just and
16 proper.

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1 RESPECTFULLY SUBMITTED this 12th day of January, 2017.

2 By: s/Alexis DeLaCruz w/permission

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