

1 Alexis DeLaCruz (SBN 031273)  
adelacruz@natedisabilitylaw.org  
2 NATIVE AMERICAN DISABILITY  
LAW CENTER  
3 3535 E. 30th Street, Suite 201  
Farmington, NM 87402  
4 Telephone: 505.566.5880  
5 Mark Rosenbaum (*pro hac vice*)  
mrosenbaum@publiccounsel.org  
6 Kathryn Eidmann (*pro hac vice*)  
keidmann@publiccounsel.org  
7 Anne Hudson-Price (*pro hac vice*)  
aprice@publiccounsel.org  
8 Elizabeth Song (*pro hac vice*)  
esong@publiccounsel.org  
9 PUBLIC COUNSEL  
610 South Ardmore Avenue  
Los Angeles, CA 90005  
10 Telephone: 213.385.2977  
11 Elisabeth Bechtold (*pro hac vice*)  
ebechtold@aclu-nm.org  
12 Maria Martinez-Sánchez (*pro hac vice*)  
mmartinez@aclu-nm.org  
13 AMERICAN CIVIL LIBERTIES UNION  
of NEW MEXICO  
14 1410 Coal Avenue SW  
Albuquerque, NM 87104  
15 Telephone: 505.266.5915

16 *Attorneys for Plaintiffs*

Bradley S. Phillips (*pro hac vice*)  
Brad.Phillips@mto.com  
Bryan H. Heckenlively (*pro hac vice*)  
bryan.heckenlively@mto.com  
Seth J. Fortin (*pro hac vice*)  
Seth.Fortin@mto.com  
Emily Curran-Huberty (*pro hac vice*)  
Emily.Curran-Huberty@mto.com  
MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue, 35th Floor  
Los Angeles, CA 90071  
Telephone: 213.683.9100  
Judith M. Dworkin (SBN 010849)  
Judith.Dworkin@SacksTierney.com  
David C. Tierney (SBN 002385)  
David.Tierney@SacksTierney.com  
SACKS TIERNEY P.A.  
4250 N. Drinkwater Blvd., 4th Floor  
Scottsdale, AZ 85251-3693  
Telephone: 480.425.2600  
Tara C. Ford (*pro hac vice*)  
taraford@law.stanford.edu  
Stanford Law School  
MILLS LEGAL CLINIC  
Youth and Education Law Project  
559 Nathan Abbott Way  
Stanford, CA 94305-8610  
Telephone: 650.725.8581

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

No. 3:17-cv-08004-SPL

**REDACTED**

**SECOND AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

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

*Plaintiffs,*

v.

Bureau of Indian Education; United States Department of the Interior; Ryan Zinke, in his official capacity as Secretary of the Interior; Michael Black, in his official capacity as Acting Assistant Secretary - Indian Affairs; Tony Dearman, in his official capacity as Director of the Bureau of Indian Education; Jeff Williamson, in his official capacity as Principal of Havasupai Elementary School,

*Defendants.*

**INTRODUCTION**

1. Nine Havasupai students and the Native American Disability Law Center (collectively, “Plaintiffs”) bring this Amended Complaint to correct longstanding educational deprivations that have for years denied Havasupai children meaningful and equitable educational opportunity. Defendants—the federal government agencies and officials responsible for administering and ensuring the provision of education to Native students in the United States<sup>1</sup>—have knowingly failed to provide basic general education,

---

<sup>1</sup> Defendants are the United States Department of the Interior (“DOI”); United States Bureau of Indian Education (“BIE”); Defendant Ryan Zinke, in his official capacity as U.S. Secretary of the Interior; Michael Black, in his official capacity as Acting Assistant Secretary—Indian Affairs; Tony Dearman, in his official capacity as Director of the

1 a system of special education, and necessary wellness and mental health support to  
2 Havasupai students, resulting in indefensible deficits in academic achievement and  
3 educational attainment.

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

- 12 • failure to provide general education curriculum and instruction in any  
13 content areas other than math and reading and writing;
- 14 • persistent understaffing and teaching vacancies;
- 15 • denial of basic educational resources such as textbooks, a functioning  
16 school library, and extracurricular activities;
- 17 • lack of a system to provide special education and failure to provide a full  
18 day of public education to students with disabilities;
- 19 • excessive exclusionary discipline and abusive recourse to law  
20 enforcement;
- 21 • failure to provide necessary wellness and mental health support; and
- 22 • exclusion of the community from school decision making.

23 3. Numerous federal statutes and regulations, including the Indian Education  
24 Act and its implementing regulations, expressly require Defendants to provide an  
25 education to Native American children that meets basic educational standards and enables  
26 students to access post-secondary educational opportunities. *See, e.g.*, 25 U.S.C. §§ 2000,  
27 2001; 25 C.F.R. §§ 32.3-32.4.

28 \_\_\_\_\_  
Bureau of Indian Education; and Jeff Williamson, in his official capacity as Principal of  
Havasupai Elementary School (collectively, “Defendants”).

1           4.       Binding regulations describe with specificity the content and form of the  
2 education that must be provided in BIE schools, including the subject areas that must be  
3 taught and the educational resources that must be available. 25 C.F.R. §§ 36.11-36.51.

4           5.       Defendants are likewise directly responsible for enforcing federal statutes  
5 that prohibit discrimination on the basis of disability in schools funded and administered  
6 by the BIE. Since at least as early as 1978, Congress has made clear that Defendants bear  
7 the obligation to ensure that all Bureau-administered schools are in compliance with  
8 Section 504 of the Rehabilitation Act of 1973 (“Section 504”), which prohibits  
9 discrimination on the basis of disability in federally funded programs. Pub. L. No. 95-561,  
10 § 1125, 92 Stat. 2143, 2319 (1978); 25 U.S.C. § 2005(b)(1); Exec. Order No. 13,160,  
11 65 Fed. Reg. 39775 (June 23, 2000).

12           6.       Despite these legal mandates, Defendants have failed to provide basic  
13 general education to students at Havasupai Elementary School and to establish a system to  
14 deliver specialized instruction, related services, and accommodations necessary for  
15 students with disabilities—including but not limited to students whose ability to learn has  
16 been impacted by exposure to childhood adversity—to access the benefits of a public  
17 education. These deprivations violate Defendants’ substantive obligations under the Indian  
18 Education Act as amended, Section 504 of the Rehabilitation Act of 1973, and their  
19 implementing regulations. To redress this deprivation of rights, Plaintiffs bring this  
20 complaint for declaratory and injunctive relief.

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

## **FACTUAL ALLEGATIONS**

### **I. PARTIES**

#### **Plaintiffs**

28           8.       **Plaintiff Stephen C.** is a twelve-year-old Havasupai boy who resides on the

1 Havasupai reservation in Supai, Arizona. Stephen C. recently completed the sixth grade at  
2 Havasupai Elementary School and is legally required to attend school. Stephen C. has  
3 attended Havasupai Elementary School since kindergarten. Plaintiff Stephen C. has been  
4 identified as a student with a disability and is eligible to receive special education services.  
5 The Court has granted the petition of Frank C., guardian of Stephen C., to act as  
6 Stephen C.'s guardian *ad litem* in connection with this litigation.

7       9.     **Plaintiff Anna D.** is a nine-year-old Havasupai girl who resides on the  
8 Havasupai reservation in Supai, Arizona. Anna D. recently completed the third grade at  
9 Havasupai Elementary School and is legally required to attend school. Anna D. has  
10 attended Havasupai Elementary School since kindergarten. The Court has granted the  
11 petition of Elsa D., mother of Anna D., to act as Elsa D.'s guardian *ad litem* in connection  
12 with this litigation.

13       10.    **Plaintiff Durell P.** is a thirteen-year-old Havasupai boy who resides on the  
14 Havasupai reservation in Supai, Arizona. Durell P. recently completed the seventh grade at  
15 Havasupai Elementary School and is legally required to attend school. Durell P. has been  
16 enrolled at Havasupai Elementary School since kindergarten, except for a 45-day period  
17 when the School compelled him to enroll in a residential placement because the School  
18 could not meet his educational needs. Plaintiff Durell P. has been identified as a student  
19 with a disability and is eligible to receive special education services. The Court has granted  
20 the petition of Billie P., mother of Durell P., to act as Durell P.'s guardian *ad litem* in  
21 connection with this litigation.

22       11.    **Plaintiff Taylor P.** is a six-year-old Havasupai girl who resides on the  
23 Havasupai Reservation in Supai, Arizona. Taylor P. recently completed kindergarten at  
24 Havasupai Elementary School and is legally required to attend school. The Court has  
25 granted the petition of Billie P., mother of Taylor P., to act as Taylor P.'s guardian *ad litem*  
26 in connection with this litigation.

27       12.    **Plaintiff Levi R.** is a fourteen-year-old Havasupai boy who resides in  
28 Coconino County, Arizona. Levi R. attended Havasupai Elementary School from

1 kindergarten through the beginning of the eighth grade, except for a two-month period in  
2 2014 when he was receiving online education services because the School could not meet  
3 his educational needs. Levi R. is legally required to attend school. Due to the inadequacy  
4 of the education provided at the School, Levi R.'s mother, Laila R., recently moved her  
5 family out of Supai, Arizona when Levi R. was in the eighth grade. Levi R. recently  
6 completed the eighth grade at a public school in Coconino County. Plaintiff Levi R. has  
7 been identified as a student with a disability and is eligible to receive special education  
8 services. The Court has granted the petition of Laila R., mother of Levi R., to act as Levi  
9 R.'s guardian *ad litem* in connection with this litigation.

10       13.     **Plaintiff Leo R.** is a sixteen-year-old Havasupai boy who resides in  
11 Coconino County, Arizona. Leo R. attended Havasupai Elementary School from  
12 kindergarten through the eighth grade. Because Havasupai Elementary School does not  
13 provide a high school education, Leo R. left his family in Supai, Arizona in order to attend  
14 a public school in Arizona in the ninth grade. Leo R. recently completed the tenth grade at  
15 a public school in Coconino County, and is legally required to attend school. The Court  
16 has granted the petition of Laila R., mother of Leo R., to act as Leo R.'s guardian *ad litem*  
17 in connection with this litigation.

18       14.     **Plaintiff Jenny A.** is a fourteen-year-old Havasupai girl who resides on the  
19 Havasupai Reservation in Supai, Arizona. Jenny A. attended Havasupai Elementary  
20 School from kindergarten through the sixth grade. Due to the inadequacy of the education  
21 provided at the School, Jenny A.'s mother, Jasmine A., decided to enroll her daughter at a  
22 BIE boarding school in Oklahoma. Jenny A. recently completed the ninth grade, and she is  
23 legally required to attend school. Plaintiff Jenny A. has been identified as a student with a  
24 disability and is eligible to receive special education services. The Court has granted the  
25 petition of Jasmine A., mother of Jenny A., to act as Jenny A.'s guardian *ad litem* in  
26 connection with this litigation.

27       15.     **Plaintiff Jeremy A.** is a thirteen-year-old Havasupai boy who resides on the  
28 Havasupai Reservation in Supai, Arizona. Jeremy A. attended Havasupai Elementary

1 School from kindergarten through the fifth grade. Due to the inadequacy of the education  
2 provided at the School, Jeremy A.'s mother, Jasmine A., decided to enroll Jeremy A. at a  
3 BIE boarding school in Oklahoma. Jeremy A. recently completed the seventh grade, and  
4 he is legally required to attend school. The Court has granted the petition of Jasmine A.,  
5 mother of Jeremy A., to act as Jeremy A.'s guardian *ad litem* in connection with this  
6 litigation.

7       16. **Plaintiff Jordan A.** is a ten-year-old Havasupai boy who resides on the  
8 Havasupai Reservation in Supai, Arizona. Jordan A. attended Havasupai Elementary  
9 School from kindergarten through the third grade. Due to the inadequacy of the education  
10 provided at the School, Jordan A.'s mother, Jasmine A., decided to enroll Jordan A. at a  
11 BIE boarding school in Oklahoma. Jordan A. recently completed the fourth grade, and he  
12 is legally required to attend school. Plaintiff Jordan A. has been identified as a student with  
13 a disability and is eligible to receive special education services. The Court has granted the  
14 petition of Jasmine A., mother of Jordan A., to act as Jordan A.'s guardian *ad litem* in  
15 connection with this litigation.

16       17. **Plaintiff Native American Disability Law Center ("NADLC")** is a 501(c)  
17 nonprofit organization based in Farmington, New Mexico that advocates for the legal  
18 rights of Native Americans with disabilities. NADLC is a Protection and Advocacy  
19 Organization authorized by relevant federal statutes to initiate legal action designed to  
20 protect the rights of persons with disabilities. *See* 42 §§ U.S.C. 15041 *et seq.*, 42 U.S.C.  
21 §§ 10801 *et seq.* NADLC's mission is to advocate so that the rights of Native Americans  
22 with disabilities in the Four Corners area are enforced, strengthened, and brought in  
23 harmony with their communities.

24       18. NADLC has received at least eight requests for assistance concerning the  
25 failure of Havasupai Elementary School to provide special education instruction, related  
26 services, and appropriate resources to enable students with disabilities to participate in  
27 public education. NADLC provided legal assistance in four of those cases. NADLC has  
28 filed two administrative complaints relating to Havasupai Elementary School's failure to

1 provide appropriate special education and related services. Both of those cases were  
2 settled, and in both cases the BIE failed to provide the student with the services promised  
3 in the Settlement Agreement.

4 19. NADLC has devoted significant organizational resources to identifying and  
5 counteracting Defendants' practices. As a direct consequence, Defendants' practices have  
6 caused NADLC to divert its scarce resources from other efforts to promote and protect the  
7 rights of Native Americans with disabilities. Continued advocacy on behalf of Havasupai  
8 students with disabilities against Defendants will significantly diminish NADLC's  
9 resources and impact its ability to serve other Native Americans with disabilities in the  
10 Four Corners area.

11 20. In addition to such individual advocacy that NADLC has provided its clients,  
12 NADLC filed a Freedom of Information Act ("FOIA") request to obtain public records  
13 from the BIE about Havasupai Elementary School. NADLC filed the FOIA request on  
14 May 21, 2015. To date, NADLC has received only a partial response from the BIE. On  
15 March 21, 2017, NADLC filed a complaint against the federal government in U.S. District  
16 Court for the District of Columbia to address the BIE's failure to provide documents  
17 pursuant to the 2015 FOIA request.

### 18 Defendants

19 21. **Defendant Bureau of Indian Education ("BIE")** is a bureau within the  
20 U.S. Department of the Interior. Pursuant to Department of the Interior regulations, the  
21 Assistant Secretary—Indian Affairs has delegated to the BIE the authority to provide  
22 education services to Native American children, including children with disabilities. The  
23 BIE is responsible for meeting the requirements of Section 504 of the Rehabilitation Act  
24 and the educational needs of Native American children residing on reservations and  
25 attending elementary and secondary schools funded by the Department of the Interior.

26 22. **Defendant United States Department of the Interior ("DOI")** is a federal  
27 agency. As the parent agency of the BIE, the DOI is responsible for meeting the  
28 requirements of Section 504 of the Rehabilitation Act and the educational needs of Native



1 American children residing on reservations and attending elementary and secondary  
2 schools funded by the Secretary of the Interior.

3       23. **Defendant Ryan Zinke**, sued here in his official capacity, is the U.S.  
4 Secretary of the Interior (the “Secretary”) and as such is responsible for meeting the  
5 requirements of Section 504 of the Rehabilitation Act and the educational needs of Native  
6 American children residing on reservations and attending elementary and secondary  
7 schools funded by the Department of the Interior.

8       24. **Defendant Michael Black**, sued here in his official capacity, is the Acting  
9 Assistant Secretary—Indian Affairs within DOI. By regulation, he is responsible for  
10 meeting the requirements of Section 504 of the Rehabilitation Act and the educational  
11 needs of Native American children residing on reservations and attending elementary and  
12 secondary schools funded by the Department of the Interior.

13       25. **Defendant Tony Dearman**, sued here in his official capacity, is Director of  
14 the BIE. As Director, he oversees all operations of the BIE. As such, he is responsible for  
15 ensuring the constitutional, statutory, civil, and human rights of all Native American  
16 students. By delegation of authority by the Assistant Secretary—Indian Affairs, the  
17 Director of the BIE is responsible for meeting the requirements of Section 504 of the  
18 Rehabilitation Act and the educational needs of Native American children residing on  
19 reservations and attending elementary and secondary schools funded by DOI.

20       26. **Defendant Jeff Williamson**, sued here in his official capacity, is the  
21 Principal of Havasupai Elementary School. In that capacity, he is responsible for assisting  
22 Defendant Dearman in ensuring that the BIE meets the requirements of Section 504 of the  
23 Rehabilitation Act and the educational needs of Native American children attending  
24 Havasupai Elementary School.

25 **II. DEFENDANTS’ OBLIGATION TO PROVIDE EDUCATION TO STUDENT**  
26 **PLAINTIFFS**

27       27. The Havasupai are a federally recognized Native American tribe who has  
28 resided for centuries in the Grand Canyon. The Havasupai Nation is located on a

1 reservation established by the United States government on a parcel of land along the  
2 western corner of the Grand Canyon’s South Rim. The only school on the Havasupai  
3 reservation is Havasupai Elementary School, which currently serves approximately 70  
4 students and is both funded and operated by the BIE. It is not controlled or operated by the  
5 Havasupai government and is not subject to the jurisdiction of any State Educational  
6 Agency (“SEA”) other than the BIE. 20 U.S.C. § 7801(30)(C).

7 28. The federal government has committed to providing education for Native  
8 American students attending schools funded or operated by the BIE. Title XI of the  
9 Education Amendments of 1978, as amended by the Native American Education  
10 Improvement Act of 2001 (“Title XI”), expressly states that in order to fulfill the federal  
11 government’s “unique and continuing trust responsibility . . . for the education of Indian  
12 children,” the “Federal Government has *the sole responsibility* for the operation and  
13 financial support of the [BIE] funded school system. . . .” 25 U.S.C. § 2000 (emphasis  
14 added). The Act further “vest[s] in the Assistant Secretary for Indian Affairs all functions  
15 with respect to formulation and establishment of policy and procedure and supervision of  
16 programs and expenditures of Federal funds for the purpose of Indian education  
17 administered by the Bureau.” 25 U.S.C. § 2006(a).

18 **A. Legal Requirements To Deliver Basic Education at Havasupai**  
19 **Elementary School to All Student Plaintiffs**

20 29. The BIE must provide Native American children “with educational  
21 opportunities that *equal or exceed those for all other students in the United States.*” 25  
22 U.S.C. § 2001(a)(1) (emphasis added). Federal statutes and regulations refer to  
23 Defendants’ obligation to provide education that is “adequate,” “comprehensive,” “of the  
24 highest quality,” and that meets “basic elementary and secondary educational needs.”  
25 25 C.F.R. §§ 32.4(r), 32.3; 25 U.S.C. § 2000. These statutory and regulatory obligations  
26 are reinforced by the federal government’s “trust” responsibility for Native American  
27 students. *See United States v. Navajo Nation*, 537 U.S. 488, 506 (2003).

28 30. Federal statutes recognize Defendants’ obligation to meet the distinct

1 educational and cultural needs of Native students attending BIE schools. Title VI of the  
2 Elementary and Secondary Education Act, for example, requires Defendants to work to  
3 ensure “that programs that serve Indian children are of the highest quality and provide for  
4 not only the basic elementary and secondary educational needs, but also the unique  
5 educational and culturally related academic needs of these children.” 20 U.S.C. § 7401.

6 (1) Defendants’ Legal Obligations To Provide Required Instruction

7 31. Defendant BIE has issued comprehensive binding regulations detailing the  
8 content and form that a basic education must take. For each age group, the regulations  
9 articulate the governing educational philosophy, enumerate the instructional content that  
10 must be covered, and describe the educational concepts that must be incorporated into the  
11 curriculum. *See, e.g.*, 25 C.F.R. §§ 36.21; 36.22; 36.23, 36.24.

12 32. Defendants are obligated to take into account the cultural, ethnic, and  
13 linguistic needs of Native students. Each “school’s language arts program shall assess the  
14 English and native language abilities of its students and provide instruction that teaches  
15 and/or maintains both the English and the primary native language of the school  
16 population,” and each such program must “meet local tribal approval.” 25 C.F.R.  
17 § 36.20(b)(1). Additionally, “[t]he school program shall include aspects of the native  
18 culture in all curriculum areas,” and the content of the program must “meet local tribal  
19 approval.” 25 C.F.R. § 36.20(b)(2). Each school must “assess the learning styles of its  
20 students and provide instruction based upon that assessment,” and provide “for at least one  
21 field trip per child per year to broaden social and academic experiences.” 25 C.F.R.  
22 §§ 36.20(b)(3), (b)(4).

23 (2) Defendants’ Legal Obligations To Ensure Adequate Staffing and  
24 Instruction

25 33. Defendants are subject to a series of regulations specifying the staffing and  
26 administrative requirements at BIE schools in order to ensure both the quality and quantity  
27 of instruction and educational support received by Native students. *See* 25 C.F.R.  
28 §§ 36.11(a)(5); 36.42; 36.50(a); 25 U.S.C. § 2000.

1           34. 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.” 25 C.F.R. § 36.20(a).

5                   (3) Defendants’ Legal Obligations To Provide Appropriate Instructional  
6 Resources and Activities

7           35. BIE regulations mandate that Defendants provide Native students with  
8 appropriate instructional resources as well as the opportunity to participate in a well-  
9 balanced range of student activities. Specifically, these regulations set forth a series of  
10 requirements that Defendants must satisfy in the provision of learning materials, such as  
11 textbooks, and student activities at BIE schools. *See* 25 C.F.R. §§ 36.40, 36.41, 36.43.

12           36. Multiple statutes and regulations obligate Defendants to engage tribal  
13 community members in various areas of school decisionmaking. Notably, this regulatory  
14 regime envisions the role of a local school board that participates in setting and assessing  
15 educational goals. *See* 25 C.F.R. § 36.10(b); *see also* 25 C.F.R. §§ 36.13(a)(c),  
16 36.12(b)(1), 36.20(b); 36.41(a), 36.12(b)(1), 36.42(a)(4).

17                   **B. Section 504 of the Rehabilitation Act Prohibits Discrimination Against**  
18 **Students with Disabilities**

19           37. Section 504 of the Rehabilitation Act provides that “[n]o otherwise qualified  
20 individual with a disability . . . shall, solely by reason of her or his disability, be excluded  
21 from the participation in, be denied the benefits of, or be subjected to discrimination  
22 under . . . any program or activity conducted by any Executive agency.” 29 U.S.C.  
23 § 794(a). A “program or activity” includes a school system, 29 U.S.C. § 794(b)(2)(B), and  
24 a disability is defined broadly to include any “physical or mental impairment that  
25 substantially limits one or more life activities,” such as (but not limited to), “caring for  
26 oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing,  
27 lifting, bending, speaking, breathing, *learning, reading, concentrating, thinking,*  
28 *communicating,* and working.” 42 U.S.C. §§ 12102(1)(A), (2)(A) (emphasis added).

1           38. Section 504 requires that Defendants ensure that all children with disabilities  
2 have meaningful access to public education. “Access” to public education for students with  
3 disabilities is understood broadly to refer both to physical accessibility of the school site  
4 and the students’ ability to receive a benefit from public education.

5           39. Under Section 504, Defendants must guarantee students with disabilities an  
6 “equal opportunity to obtain the same result, to gain the same benefit, or to reach the same  
7 level of achievement, in the most integrated setting appropriate to the person’s needs.”  
8 34 C.F.R. § 104.4(b)(2). Therefore, a federally funded education system may be found in  
9 violation of Section 504 where the entity’s practices preclude students with disabilities  
10 from obtaining system benefits realized by students without disabilities. *See New Mexico*  
11 *Ass’n. for Retarded Citizens v. State of New Mexico*, 678 F.2d 847, 853 (10th Cir. 1982).

12           40. Section 504’s nondiscrimination mandates require Defendants to ensure  
13 access to appropriate educational settings for students with disabilities; establish and  
14 conduct identification, evaluation, and placement procedures for students with disabilities;  
15 and establish and implement procedural safeguards for any actions related to the  
16 “identification, evaluation, or educational placement” of students with disabilities.  
17 34 C.F.R. §§ 104.32, 104.34, 104.35, 104.36.

18           41. Section 504 further requires Defendants to provide educational services to  
19 students with disabilities in the least restrictive environment possible and appropriate to  
20 meet the students’ educational needs. 34 C.F.R. § 104.34.

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

25           43. Section 504 prohibits retaliation against individuals who advocate on behalf  
26 of students with disabilities. *See* 34 C.F.R. § 104.61.

### 27 **III. EXPERIENCES OF STUDENT PLAINTIFFS**

28           44. **Plaintiff Stephen C.** recently completed the sixth grade and has been

1 enrolled in Havasupai Elementary School since Fall 2009.

2 45. Stephen C. has been denied access to a general-education curriculum and  
3 culturally relevant instruction at Havasupai Elementary School. He has received no formal  
4 instruction in any content area other than math and English.

5 46. Stephen C. has been subject to the effects of chronic staffing shortages at  
6 Havasupai Elementary School. Stephen C.'s teachers have repeatedly left during the  
7 middle of the school year. In particular, in fifth grade, Stephen C. was taught by a series of  
8 temporary teachers who stayed only two weeks at a time before a permanent teaching  
9 position was filled. Along with other sixth-grade students at the School, Stephen C.  
10 received much of his instruction during the 2016-2017 school year in the same classroom  
11 with seventh- and eighth-grade students.

12 47. Stephen C. has been denied access to adequate textbooks, a functioning  
13 library, extracurricular activities, and field trips. Stephen C. has endured multiple adverse  
14 childhood experiences, which negatively affect child development and impact the ability to  
15 carry out basic life activities necessary to access education, including learning, thinking,  
16 reading, concentrating, and communicating. This adversity is not limited to discrete  
17 incidents, but consists of long-term, repeated, ongoing, and overlapping stressors. Stephen  
18 C. and his family have experienced historical trauma, including family experience with  
19 boarding schools, which has adversely impacted the Havasupai community and  
20 contributed to present day adversity. [REDACTED]

21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

[REDACTED] Stephen C. has also experienced a traumatic classroom-based arrest and referral to the juvenile justice system. As a result of his bad memories related to this arrest, Stephen C. feels disengaged from school and associates school with maltreatment. Stephen C. routinely sees other children act out of control in the classroom and on the playground. For example, it is common knowledge that students drink in the school bathroom and students have been treated for ingesting cleaning supplies at the School.

48. [REDACTED]

49. As a result of Defendants' failure to establish a system to deliver specialized instruction, related services, and accommodations necessary to address the impact of adversity and complex trauma on Stephen C.'s ability to learn, read, think, concentrate, and/or communicate, Steven C. has been deprived of meaningful access to the benefits of a

1 public education. Stephen C.'s challenges with emotional self-regulation, behavior, and  
2 concentration have resulted in his repeated exclusion from the classroom. Stephen C. has  
3 missed a significant amount of instruction time because he has been repeatedly sent home  
4 from school early, suspended, and referred to the juvenile justice system. Stephen C. has  
5 also struggled academically and has tremendous difficulty reading and writing.

6 50. Plaintiff Stephen C. is a student who has been identified with Attention  
7 Deficit Hyperactive Disorder ("ADHD") and is eligible to receive special education  
8 services. In addition to needing special education services, Stephen C. requires positive  
9 behavior support and counseling services to address his behaviors and mental health needs.

10 51. As a direct result of Defendants' failure to ensure that Havasupai Elementary  
11 School has a system in place to deliver special education, Stephen C. has not been  
12 provided with the specialized instruction, related services, and accommodations necessary  
13 for him to access the benefits of a public education.

14 52. Because Havasupai Elementary School lacks the capacity to meet Plaintiff  
15 Stephen C.'s behavioral and mental health needs, Stephen C. has been repeatedly  
16 suspended and subjected to punitive school discipline for behavior that is a manifestation  
17 of his disability and is a result of the School's failure to deliver required special education  
18 and related services. Stephen C. was sent home from school early four days per week, on  
19 average, over a period of years. As a result, his grandfather and legal guardian, Frank C.,  
20 estimates that he attended school only approximately half of the time for years. The School  
21 regularly failed to provide Stephen C.'s guardians with any written records of disciplinary  
22 action against Stephen C. or to assign him homework or remedial work when he was  
23 suspended or sent home early.

24 53. Plaintiff Stephen C. has been subject to classroom-based arrest and  
25 prosecution by law enforcement in response to classroom behavior that is a manifestation  
26 of his disability and that is a result of the School's failure to deliver required special  
27 education and related services. In September 2016, eleven-year-old Stephen C. pulled the  
28 cord out of the back of a computer monitor in the classroom. The police were called to



1 respond to the incident, and Stephen C. was indicted in federal court.

2 54. On or about November 21, 2016, Havasupai Elementary School excluded  
3 Stephen C. from attending class as a result of behavior that was a manifestation of his  
4 disability. Stephen C. was subsequently placed on a “homebound” schedule, and did not  
5 receive any instruction for months, except for intermittent one-hour tutoring sessions about  
6 once per week. By the end of his sixth grade year, Stephen C. was permitted to attend only  
7 approximately one hour of classroom instruction at Havasupai Elementary School each  
8 school day.

9 55. Although Stephen C. is entitled to counseling under his IEP and the School  
10 has hired a counselor, he has yet to receive such counseling from the School.

11 56. Stephen C.’s guardians have not been provided with basic information  
12 regarding Stephen C.’s school program. For example, they have not been provided with a  
13 student handbook. They have not been adequately informed of their rights as educational  
14 decisionmakers. Nor has the School taken important steps to support their engagement in  
15 Stephen C.’s education and school.

16 57. As a result of Defendants’ failure to ensure access to basic education, special  
17 education, and related services, Plaintiff Stephen C. is far behind in all academic areas.  
18 Because Defendants have denied him access to basic education, Stephen C. is in sixth  
19 grade but can barely read and write. Although Stephen C.’s guardian, Frank C., strongly  
20 prefers to have Stephen C. live with his family in his community, Frank C. is considering  
21 sending Stephen C. to a boarding school where he will have his educational needs met.

22 58. **Plaintiff Anna D.** recently completed the third grade and has been enrolled  
23 in Havasupai Elementary School since Fall 2013.

24 59. Anna D. has been denied access to a general-education curriculum and  
25 culturally relevant instruction at Havasupai Elementary School. She has received no formal  
26 instruction in any content area other than math and English.

27 60. Anna D. has been subject to the effects of chronic staffing shortages at  
28 Havasupai Elementary School. Anna D.’s teachers have frequently left during the middle

1 of the school year. In the first grade, Anna D.'s teacher switched twice during the school  
2 year. In the second grade, Anna D.'s teacher switched at least five times over the course of  
3 the year.

4 61. Anna D. received her third grade instruction in a combined classroom. She  
5 also received instruction in the first and second grades in a combined classroom.

6 62. Anna D. has been denied access to adequate textbooks, a functioning library,  
7 extracurricular activities, and field trips. Although Anna D. has a keen interest in  
8 basketball and tribal-cultural activities, there are no opportunities for her to pursue these  
9 interests through school. She has never even been offered an opportunity to participate in a  
10 school-sponsored field trip. The only structured activity outside of school that her mother,  
11 Elsa D. can recall was when Anna D. and her classmates picked up trash outside of the  
12 School for Earth Day.

13 63. Elsa D., the mother of Anna D., has observed that students in the School are  
14 routinely out of class and are not properly supervised. Given the rate of adverse childhood  
15 experiences impacting students in Havasupai, Anna D. requires a public school with a  
16 system that is responsive to complex trauma and able 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 64. Elsa D., the mother of Anna D., has been appointed by the Havasupai Tribal  
20 Council to serve on the Council's Advisory School Board.

21 65. **Plaintiff Durell P.** recently completed the seventh grade and has been  
22 enrolled at Havasupai Elementary School since Fall 2008, except for a 45-day period when  
23 the School compelled him to enroll in a residential placement because the School could not  
24 meet his educational needs.

25 66. Durell P. has been denied access to a general-education curriculum and  
26 culturally relevant instruction at Havasupai Elementary School. Until the filing of the First  
27 Complaint in this matter, he received no formal instruction in any content area other than  
28 math and English. He continues to receive restricted access to a full general-education

1 curriculum.

2 67. Durell P. has been subject to the effects of chronic staffing shortages at  
3 Havasupai Elementary School. Durell P. has been denied access to adequate textbooks, a  
4 functioning library, extracurricular activities, and field trips.

5 68. Durell P. has endured multiple adverse childhood experiences, which  
6 negatively affect child development and impact the ability to carry out basic life activities  
7 necessary to access education, including learning, thinking, reading, concentrating, and  
8 communicating. This adversity is not limited to discrete incidents, but consists of long-  
9 term, repeated, ongoing, and overlapping stressors. Durell P. and his family have  
10 experienced historical trauma, including family experience with boarding schools, which  
11 has adversely impacted the Havasupai community and contributed to present day  
12 adversity. As a young child, Plaintiff Durell P. experienced sexual abuse by a family  
13 member, who was prosecuted and is now incarcerated for another assault. [REDACTED] [REDACTED] [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 [REDACTED] Durell P. was separated from his caregivers again in  
26 2016, when he was compelled by Havasupai Elementary School personnel to attend a  
27 residential boarding school placement in Utah for 45 days. During the placement, Durell P.

28

1 was subjected to repeated use of physical restraints and was unable to communicate with  
2 his family for long periods of time.

3 69. Thirteen-year-old Durell P. has experienced repeated harassment and assault  
4 by the Bureau of Indian Affairs (BIA) police in the community. For example, in 2015,  
5 when Durell P. was only eleven years old, BIA police pulled his hand behind his back,  
6 threw him against a wall, and frisked him. Shortly thereafter, BIA police threatened to  
7 arrest and imprison him for swearing. In 2016, Durell P. was afraid to leave his home for  
8 weeks because BIA police officers threatened to file federal charges against him and  
9 imprison him.

10 70. Durell P. has also experienced repeated traumatic experiences at Havasupai  
11 Elementary School, which have made him terrified of the school grounds and school  
12 personnel. Durell P. was assaulted by a Havasupai Elementary School teacher. When  
13 Durell P. was in the second/third class, he was placed in the fifth/sixth grade for instruction  
14 in reading; the fifth/sixth grade teacher slapped him with a ruler and slammed a book on  
15 his hand. Durell P. has witnessed other students being punched, scratched, and having their  
16 hair pulled by other students. Durell P. has experienced bullying by classmates. Durell P.  
17 has also experienced traumatic classroom-based arrest and referral to the juvenile justice  
18 system by the school principal. In response to one incident, Durell P. spent over a week at  
19 the Colorado River Indian Tribes detention facility. In addition, Plaintiff Durell P. was  
20 arrested and criminally prosecuted for assault for pushing a teacher in the classroom during  
21 the school day. That incident arose when a student in the combined classroom punctured  
22 Durell P.'s skin with a sharpened pencil several times and threatened to continue to stab  
23 Durell P. if he did not push the teacher.

24 71. [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

[REDACTED]

72. [REDACTED]

[REDACTED]

[REDACTED]

73. [REDACTED]

[REDACTED]

[REDACTED]

74. As a result of Defendants' failure to establish a system to deliver specialized instruction, related services, and accommodations necessary to address the impact of adversity and complex trauma on Durell P.'s ability to learn, read, think, concentrate, and/or communicate, Durell P. has been deprived of meaningful access to the benefits of a public education. Durell P.'s challenges with emotional self-regulation, panic and anxiety,

1 reactive behavior, and withdrawal and isolating behavior have resulted in his repeated  
2 physical exclusion from school. Durell P. has missed years of instruction time because he  
3 has been repeatedly sent home from school early, suspended, expelled, and referred to the  
4 juvenile justice system. Although he has experienced some academic gains since he has  
5 resumed tutoring away from school grounds, he remains excluded from many of the  
6 benefits of public education because he cannot access the physical environment of the  
7 School as a result of complex trauma.

8         75. 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.

12         76. As a direct result of Defendants' failure to ensure that Havasupai Elementary  
13 School has a system in place to deliver special education, Durell P. has not been provided  
14 with the specialized instruction, related services, and accommodations necessary for him to  
15 access the benefits of a public education. Plaintiff Durell P. has also been deprived of  
16 education as a result of Defendants' failure to establish a system to deliver specialized  
17 instruction, related services, and accommodations necessary for students whose ability to  
18 access the benefits of a public education is affected by exposure to adversity and complex  
19 trauma.

20         77. Because Havasupai Elementary School lacks the capacity to meet Durell P.'s  
21 behavioral and mental health needs, Durell P. has been repeatedly suspended and subjected  
22 to punitive school discipline for behavior that is a manifestation of his disability and is a  
23 result of the School's failure to deliver required special education and related services.  
24 Since third grade, Plaintiff Durell P. has been suspended so often that he has attended  
25 school only approximately 20% of the time. On several occasions, including a four-month  
26 period in 2012 and a six-month period in 2013, the School excluded Durell P. from school  
27 altogether. The School did not provide Durell P. with any educational or related services  
28 during his disciplinary exclusions.

1           78. Plaintiff Durell P. has been subject to classroom-based arrest and prosecution  
2 by law enforcement in response to classroom behavior that is a manifestation of his  
3 disability and is a result of the School's failure to deliver required special education and  
4 related services. For example, Plaintiff Durell P. was arrested and criminally prosecuted  
5 for assault for pushing a teacher in the classroom during the school day.

6           79. Plaintiff Durell P. has been on a homebound or restricted-hours schedule for  
7 over four years. He has not attended school full-time since third grade because the School  
8 cannot meet his behavioral and mental health needs.

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

23           81. During the 2016-2017 school year, Durell P. continued to be enrolled at  
24 Havasupai Elementary School and was restricted to a maximum of about six hours of  
25 instruction per week. Although he is also entitled to at least two hours of counseling per  
26 week, he did not receive those services until a counselor was hired and began providing  
27 him with counseling services in January 2017. The School has recently suggested  
28 decreasing his counseling hours in the future.

1           82.     **Plaintiff Taylor P.** recently completed kindergarten and has been enrolled in  
2 Havasupai Elementary School since Fall 2016.

3           83.     Taylor P. has been denied access to a general-education curriculum and  
4 culturally relevant instruction at Havasupai Elementary School. She has received no formal  
5 instruction in any content area other than math and English.

6           84.     Taylor P. has been subject to the effects of chronic staffing shortages at  
7 Havasupai Elementary School. Taylor P.'s kindergarten class was combined with the first-  
8 grade class since the beginning of the school year. In addition, her teacher will not be  
9 returning to teach at Havasupai Elementary School for the upcoming school year.

10          85.     Taylor P. has been denied access to adequate textbooks, a functioning  
11 library, extracurricular activities, and has never gone on a field trip.

12          86.     Six-year-old Taylor P. has already endured multiple adverse childhood  
13 experiences, which negatively affect child development and impact the ability to carry out  
14 basic life activities necessary to access education, including learning, thinking, reading,  
15 concentrating, and communicating. This adversity is not limited to discrete incidents, but  
16 consists of long-term, repeated, ongoing, and overlapping stressors. Taylor P. and her  
17 family have experienced historical trauma, including family experience with boarding  
18 schools, which has adversely impacted the Havasupai community and contributed to  
19 present day adversity. Taylor P. has experienced sexual and physical assault on school  
20 grounds. Taylor P. was pushed against a wall and choked by another student while her  
21 kindergarten teacher was not watching. In her first semester at the School, Taylor P. was  
22 sexually assaulted and penetrated by another student on the playground. In neither  
23 situation was Taylor P.'s mother, Billie P., informed by the School of what had happened.

24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

[REDACTED]

87. [REDACTED]

[REDACTED]

[REDACTED]

88. As a result of Defendants' failure to establish a system to deliver specialized instruction, related services, and accommodations necessary to address the impact of adversity and complex trauma on Taylor P.'s ability to learn, read, think, concentrate, and/or communicate, Taylor P. has been deprived of meaningful access to the benefits of a public education.

89. Given the rate of adverse childhood experiences impacting students in Havasupai, Taylor P. requires a public school with a system that is responsive to complex trauma and able to deliver specialized instruction, related services, and accommodations necessary for students whose ability to access the benefits of a public education is affected by exposure to adversity and complex trauma.

90. **Plaintiff Levi R.** is a rising ninth grader. He recently completed the eighth grade at an Arizona public school. Levi R. attended Havasupai Elementary School from

1 Fall 2007, when he was in kindergarten, through Fall 2016, the beginning of the eighth  
2 grade, except for a two-month period in 2014 when he was receiving online education  
3 services because the Havasupai Elementary School could not meet his educational needs.

4 91. Levi R. has been denied access to a general-education curriculum and  
5 culturally relevant instruction at Havasupai Elementary School. He has received no formal  
6 instruction in any content area other than math and English.

7 92. Levi R. has been subject to the effects of chronic staffing shortages at  
8 Havasupai Elementary School.

9 93. Levi R. has been denied access to adequate textbooks, a functioning library,  
10 extracurricular activities, and field trips.

11 94. Levi R. has endured multiple adverse childhood experiences, which  
12 negatively affect child development and impact the ability to carry out basic life activities  
13 necessary to access education, including learning, thinking, reading, concentrating, and  
14 communicating. This adversity is not limited to discrete incidents, but consists of long-  
15 term, repeated, ongoing, and overlapping stressors. Levi R. and his family have  
16 experienced historical trauma, including family experience with boarding schools, which  
17 has adversely impacted the Havasupai community and contributed to present day  
18 adversity. Levi R. has experienced physical assault on school grounds. When Levi R. was  
19 ten years old and in fifth grade, Levi R. was forcibly restrained. A teacher sat and lay on  
20 Levi R. while he repeatedly cried out and yelled, "I can't breathe. Get off of me, you're  
21 hurting me."<sup>2</sup> Levi was then handcuffed by BIA police in the classroom in front of his  
22 peers and marched across town in handcuffs. [REDACTED]

23 [REDACTED]  
24 [REDACTED]

---

25 <sup>2</sup> Although the mother of Levi R., Laila R., filed a Suspected Child Abuse/Neglect (SCAN)  
26 report in response to the incident, BIE officials have failed to comply with internal agency  
27 procedures in investigating and responding to the SCAN report. *See* BIE, Suspected Child  
28 Abuse/Neglect (SCAN) & Employee Incident Reporting Protocol (rev. 2009),  
<http://www.rrds.bie.edu/Reporting%20Protocol.pdf>.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

95.

[REDACTED]

[REDACTED]

96.

[REDACTED]

[REDACTED]

[REDACTED]

1           97. As a result of Defendants' failure to establish a system to deliver specialized  
2 instruction, related services, and accommodations necessary to address the impact of  
3 adversity and complex trauma on Levi R.'s ability to learn, read, think, concentrate, and/or  
4 communicate, Levi R. has been deprived of meaningful access to the benefits of a public  
5 education. Levi R.'s challenges with avoidance, isolation, and concentration, as well as  
6 with self-regulation and behavior as documented by the School, have resulted in his  
7 repeated exclusion from the classroom. Levi R. has missed a significant amount of  
8 instruction time because he has been repeatedly sent home from school early, suspended,  
9 and expelled. Levi R. has also struggled academically because of his experiences at the  
10 School. Although Levi R. was far behind in all academic areas, he has worked hard to  
11 overcome his past experiences and to improve his academic performance since enrolling in  
12 Arizona public schools. However, he continues to be impacted by the School's failure to  
13 address his exposure to adversity and complex trauma.

14           98. Levi R. is a student identified with ADHD and a specific learning disability  
15 and is eligible to receive special education services. In addition to needing special  
16 education services, Levi R. requires positive behavior support and counseling services to  
17 address his behaviors and mental health needs.

18           99. As a direct result of Defendants' failure to ensure that Havasupai Elementary  
19 School has a system in place to deliver special education, Levi R. has not been provided  
20 with the specialized instruction, related services, and accommodations necessary for him to  
21 access the benefits of a public education. Levi R. has also been deprived of education as a  
22 result of Defendants' failure to establish a system to deliver specialized instruction, related  
23 services, and accommodations necessary for students whose ability to access the benefits  
24 of a public education is affected by exposure to adversity and complex trauma.

25           100. Laila R., the mother of Plaintiff Levi R., was told repeatedly that there was  
26 not sufficient staff to hold an IEP meeting.

27           101. Because Havasupai Elementary School lacks the capacity to meet Levi R.'s  
28 behavioral and mental health needs, Levi R. has been repeatedly suspended and subjected

1 to punitive school discipline for behavior that is a manifestation of his disability and is a  
2 result of the School's failure to deliver required special education and related services. The  
3 School has repeatedly called Laila R. to come and pick up Levi R. in the middle of the  
4 school day as a means of addressing his behaviors. The School expelled Levi R. due to  
5 behavior that was a manifestation of his disability in August 2013. During this incident,  
6 Levi R. was forcibly restrained when a teacher sat and lay on Levi R. while he repeatedly  
7 cried out and yelled, "I can't breathe. Get off of me, you're hurting me."

8 102. Plaintiff Levi R. was placed on a restricted-hours schedule for three years  
9 following the expulsion. From September 2013 to January 2014, he was permitted to  
10 attend school only from 3:15 to 4:15 p.m. on Monday, Tuesday, and Wednesday. And,  
11 because Levi R. complied with those excessive scheduling restrictions, the Havasupai  
12 Elementary School informed his mother that Levi R. had been unenrolled for lack of  
13 attendance. From January 2014 through the remainder of the school year, Levi R. was  
14 permitted to attend school for only a half day on Monday, Tuesday, and Wednesday. This  
15 pattern continued for years. The Havasupai Elementary School later unilaterally placed  
16 Levi R. on a shortened school-day schedule in which he was permitted to attend school for  
17 only half of the school day in October 2014 and again in December 2015. Although he is  
18 also entitled to counseling under his IEP, he received no counseling because the Havasupai  
19 Elementary School had not hired a counselor.

20 103. Despite years of advocacy by his mother, Laila R., Levi R. is behind in many  
21 academic areas, particularly in the area of reading comprehension. For example, in the fifth  
22 grade, Levi R. tested at a second-grade reading level.

23 104. In September 2016, Laila R. was compelled to move her family from  
24 Havasupai in part to place both her sons Levi R. and Leo R. at a public school where their  
25 needs would be met, despite the fact that Levi R. was then eligible to attend Havasupai  
26 Elementary School.

27 105. **Plaintiff Leo R.** recently completed the tenth grade at an Arizona public  
28 high school. Leo R. attended Havasupai Elementary School full time from kindergarten in

1 Fall 2005 through his graduation from eighth grade in Spring 2015.

2 106. Leo R. was denied access to a general-education curriculum and culturally  
3 relevant instruction when he attended Havasupai Elementary School. He received no  
4 formal instruction in any content area other than math and English.

5 107. Leo R. was subject to the effects of chronic staffing shortages at Havasupai  
6 Elementary School.

7 108. Leo R. was denied access to adequate textbooks, a functioning library,  
8 extracurricular activities, and field trips.

9 109. Leo R. has endured multiple adverse childhood experiences, which  
10 negatively affect child development and impact the ability to carry out basic life activities  
11 necessary to access education, including learning, thinking, reading, concentrating, and  
12 communicating. This adversity is not limited to discrete incidents, but consists of long-  
13 term, repeated, ongoing, and overlapping stressors. Leo R. and his family have  
14 experienced historical trauma, including family experience with boarding schools, which  
15 has adversely impacted the Havasupai community and contributed to present day  
16 adversity. [REDACTED]

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

27 110. [REDACTED]  
28 [REDACTED]

1 [REDACTED] As a result of Defendants'  
2 failure to establish a system to deliver specialized instruction, related services, and  
3 accommodations necessary to address the impact of adversity and complex trauma on  
4 Leo R.'s ability to learn, read, think, concentrate, and/or communicate, Leo R. has been  
5 deprived of meaningful access to the benefits of a public education.

6 111. Leo R. is currently enrolled in an Arizona public high school. Because Leo  
7 R. was denied access to basic education at Havasupai Elementary School, in his first year  
8 in public high school, in ninth grade, he struggled academically, failing multiple classes  
9 and passing others with D's. As a result, Leo R. was required to take credit recovery  
10 classes in order to advance to the tenth grade. However, Leo R. continued to struggle  
11 during his tenth grade year. Leo R. failed several classes this year, and has been retained in  
12 the tenth grade for the 2017-2018 school year. Leo R.'s mother is concerned that Leo R.  
13 will not continue with education because he is being retained and feels like quitting school.

14 112. Given the rate of adverse childhood experiences impacting students in  
15 Havasupai, Leo R. required a public elementary school with a system that is responsive to  
16 complex trauma and able to deliver specialized instruction, related services, and  
17 accommodations necessary for students whose ability to access the benefits of a public  
18 education is affected by exposure to adversity and complex trauma.

19 113. **Plaintiff Jenny A.** is a rising tenth grader. She recently completed the ninth  
20 grade at a BIE boarding school in Oklahoma. She attended Havasupai Elementary School  
21 from kindergarten in Fall 2006 through the sixth grade in Spring 2014.

22 114. Jenny A. was denied access to a general-education curriculum and culturally  
23 relevant instruction when she attended Havasupai Elementary School. She received no  
24 formal instruction in any content area other than math and English.

25 115. Jenny A. was subject to the effects of chronic staffing shortages at Havasupai  
26 Elementary School.

27 116. Jenny A. was denied access to adequate textbooks, a functioning library,  
28 extracurricular activities, and field trips.

1 117. Jenny A. has endured multiple adverse childhood experiences, which  
2 negatively affect child development and impact the ability to carry out basic life activities  
3 necessary to access education, including learning, thinking, reading, concentrating, and  
4 communicating. This adversity is not limited to discrete incidents, but consists of long-  
5 term, repeated, ongoing, and overlapping stressors. Jenny A. and her family have  
6 experienced historical trauma, including family experience with boarding schools, which  
7 has adversely impacted the Havasupai community and contributed to present day  
8 adversity. When Jenny A. attended Havasupai Elementary School, she was subjected to  
9 significant bullying by other students. She was also afraid of running into intoxicated  
10 adults in the community and on her way to school. She frequently witnessed intoxicated  
11 adults engaging in frightening behaviors such as verbal arguments or physical altercations.  
12 Jenny A. has experienced significant family disruption necessitated by her parents'  
13 commitment to obtain adequate education for her, as well as by her father's employment.  
14 As a condition of his employment as a wildlife ranger, Jenny A.'s father works both in and  
15 out of the canyon. When he is deployed out of the canyon, he sleeps in a trailer. He is  
16 unable to see the children every day, even when the children are home. It is difficult for  
17 Jenny A.'s parents to be involved in her education now that she is in boarding school. All  
18 members of the family grieve that they are not able to live together as a family.

19 118. As a consequence of the unaddressed childhood adversity that she has  
20 experienced, Jenny A. has significant mental health needs which impact her ability to  
21 learn, read, think, concentrate, and/or communicate. As a result of Defendants' failure to  
22 establish a system to deliver specialized instruction, related services, and accommodations  
23 necessary to address the impact of adversity and complex trauma on Jenny A.'s ability to  
24 learn, read, think, concentrate, and/or communicate, Jenny A.'s has been deprived of  
25 meaningful access to the benefits of a public education.

26 119. Plaintiff Jenny A. is a student identified with significant mental health needs  
27 and is eligible to receive special education services as a student with an emotional  
28 disturbance ("ED"). In addition to needing special education services, Jenny A. requires



1 positive behavior support and counseling to address her behaviors and mental health needs.

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

10 121. Because Havasupai Elementary School lacked the capacity to meet Jenny  
11 A.'s behavioral and mental health needs, Jenny A. was repeatedly suspended and subjected  
12 to punitive school discipline for behavior that was a manifestation of her disability and was  
13 a result of the School's failure to deliver required special education and related services.  
14 When Jenny A. attended Havasupai Elementary School, she was sent home early most  
15 days, without homework or remedial work to make up for lost instructional time.

16 122. Jasmine A., Jenny A.'s mother, was compelled to send Jenny A. away from  
17 her family and community to a boarding school where her educational needs would be  
18 met, even though Jenny A. was eligible to attend school in her community at Havasupai  
19 Elementary School.

20 123. **Plaintiff Jeremy A.** is a rising eighth grader. He recently completed the  
21 seventh grade at a BIE boarding school in Oklahoma. He attended Havasupai Elementary  
22 School from kindergarten in Fall 2009 through the fifth grade in Spring 2015.

23 124. Jeremy A. was denied access to a general-education curriculum and  
24 culturally relevant instruction when he attended Havasupai Elementary School. He  
25 received no formal instruction in any content area other than math and English.

26 125. Jeremy A. was subject to the effects of chronic staffing shortages at  
27 Havasupai Elementary School.

28 126. Jeremy A. was denied access to adequate textbooks, a functioning library,

1 extracurricular activities, and field trips.

2 127. Given the rate of adverse childhood experiences impacting students in  
3 Havasupai, Jeremy A. required a public elementary school with a system that is responsive  
4 to complex trauma and able to deliver specialized instruction, related services, and  
5 accommodations necessary for students whose ability to access the benefits of a public  
6 education is affected by exposure to adversity and complex trauma.

7 128. Jasmine A., Jeremy A.'s mother, was compelled to send Jeremy A. away  
8 from his family and community to a boarding school where his educational needs would be  
9 met, even though Jeremy A. was eligible and remains eligible to attend school in his  
10 community at Havasupai Elementary School.

11 129. **Plaintiff Jordan A.** is a rising fifth grader. He recently completed the fourth  
12 grade at a BIE boarding school in Oklahoma. He attended Havasupai Elementary School  
13 from kindergarten in Fall 2012 through the third grade in Spring 2016.

14 130. Jordan A. was denied access to a general-education curriculum and culturally  
15 relevant instruction when he attended Havasupai Elementary School. He received no  
16 formal instruction in any content area other than math and English.

17 131. Jordan A. was subject to the effects of chronic staffing shortages at  
18 Havasupai Elementary School.

19 132. Jordan A. was denied access to adequate textbooks, a functioning library,  
20 extracurricular activities, and field trips.

21 133. Jordan A. has endured multiple adverse childhood experiences, which  
22 negatively affect child development and impact the ability to carry out basic life activities  
23 necessary to access education, including learning, thinking, reading, concentrating, and  
24 communicating. This adversity is not limited to discrete incidents, but consists of long-  
25 term, repeated, ongoing, and overlapping stressors. Jordan A. and his family have  
26 experienced historical trauma, including family experience with boarding schools, which  
27 has adversely impacted the Havasupai community and contributed to present day  
28 adversity. Jordan A. was exposed to bullying when he attended Havasupai Elementary

1 School. He was afraid of running into intoxicated adults in the community and on his way  
2 to school. He frequently witnessed intoxicated adults engaging in frightening behaviors  
3 such as verbal arguments or physical altercations. Jordan A. has experienced significant  
4 family disruption necessitated by his parents' commitment to obtain adequate education  
5 for him, as well as by his father's employment. As a condition of his employment as a  
6 wildlife ranger, Jordan A.'s father works both in and out of the canyon. When he is  
7 deployed out of the canyon, he sleeps in a trailer. He is unable to see the children every  
8 day, even when the children are home. It is difficult for Jordan A.'s parents to be involved  
9 in his education now that he is in boarding school. All members of the family grieve that  
10 they are not able to live together as a family.

11 134. As a consequence of the unaddressed childhood adversity that he has  
12 experienced, Jordan A. has difficulty learning, reading thinking, concentrating, and/or  
13 communicating. As a result of Defendants' failure to establish a system to deliver  
14 specialized instruction, related services, and accommodations necessary to address the  
15 impact of adversity and complex trauma on Jordan A.'s ability to learn, read, think,  
16 concentrate, and/or communicate, Jordan A.'s has been deprived of meaningful access to  
17 the benefits of a public education.

18 135. Plaintiff Jordan A. is a student identified with a specific learning disability  
19 ("SLD"), and is eligible to receive special education services. In addition to needing  
20 special education services, Jordan A. requires additional supports to address his SLD.

21 136. As a direct result of Defendants' failure to ensure that Havasupai Elementary  
22 School has a system in place to deliver special education, Jordan A. has not been provided  
23 with the specialized instruction, related services, and accommodations necessary for him to  
24 access the benefits of a public education. Jordan A. was also deprived of education as a  
25 result of Defendants' failure to establish a system to deliver specialized instruction, related  
26 services, and accommodations necessary for students whose ability to access the benefits  
27 of a public education is affected by exposure to adversity and complex trauma.

28 137. Jasmine A., Jordan A.'s mother, was compelled to send Jordan A. away from

1 his family and community to a boarding school where his educational needs would be met,  
2 even though Jordan A. was eligible and remains eligible to attend school in his community  
3 at Havasupai Elementary School.

4 **IV. ADDITIONAL FACTS COMMON TO ALL STUDENT PLAINTIFFS**

5 **A. Failure To Provide Required Instruction**

6 138. Defendants do not provide instruction in all subjects or content areas, as  
7 required by federal regulations. Nor do Defendants provide required culturally relevant  
8 instruction.

9 139. No comprehensive program of multicultural and multilingual education—  
10 including the creation and use of culturally appropriate instructional materials,  
11 methodologies, and assessments—exists at the School. Defendants have not engaged in  
12 collaboration or consultation with Havasupai families, community members, or tribal  
13 officials to enact such culturally relevant language programs.

14 **B. Failure To Adequately Staff the School**

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

22 141. For example, the principal position has been vacant at the beginning of every  
23 school year since at least Fall 2014. The 2016-2017 school year also began with the  
24 counselor and first-grade teacher positions vacant.

25 142. Insufficient staffing has repeatedly caused the School to shut down  
26 altogether. On multiple occasions, the School has been so severely understaffed that it has  
27 been unable to operate. For instance, although the 2015-2016 academic year was scheduled  
28 to begin on August 25, 2015, students did not begin attending school until September 15

1 due to a severe staffing shortage. For the remainder of the school year, most classrooms  
2 were covered by temporary BIE instructors who rotated through on two-week details.

3 143. Most recently, around February 2017, a teacher who taught the middle-  
4 school grades was terminated by the BIE, while his students were subject to a series of  
5 temporary replacements in the middle of the school year.

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

12 145. The School is also subject to repeated closures or early dismissals with little  
13 or no notice to families. During most of November 2016, school was only in session for  
14 half-days or was canceled altogether. And on May 8, 2017, families received notice that  
15 school would end about two weeks early and students would be released early every day  
16 for the remaining month of the school year.

17 146. The BIE has exacerbated its failure to hire an adequate number of teachers in  
18 the first instance by creating conditions for high staff turnover.

19 147. Even when Havasupai Elementary School is considered “fully staffed,”  
20 multiple grade levels are combined into a single classroom. However, teachers are not  
21 provided the training or support necessary to serve such combined classrooms.

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

23 148. Defendants have failed to meet the most basic of the federal regulations to  
24 ensure that Havasupai students have access to the instructional materials and activities that  
25 are both necessary for learning and required by BIE regulation.

26 149. Havasupai Elementary School does not have sufficient numbers of  
27 textbooks, let alone a community-based review committee, to ensure that textbooks and  
28 other instructional materials are appropriate.

1 150. Sufficient learning resources and technology are not available at the  
2 Havasupai Elementary School to support student education, such as the presence of a  
3 functioning school library or media center. A dedicated librarian has not been assigned to  
4 the Havasupai Elementary School.

5 151. Similarly, Havasupai students have been denied access to an “integral part of  
6 the overall education program” through Defendants’ failure to provide access to any  
7 extracurricular activities. 25 C.F.R. § 36.43. There are no sports teams, student clubs, or  
8 art, music, or dance groups.

9 **D. Exclusion of the Community from School Decisionmaking**

10 152. Defendants have repeatedly denied Havasupai community members the  
11 requisite opportunities to participate in important areas of school decisionmaking,  
12 including the development of culturally relevant curricula, the review of textbooks and  
13 instructional materials, and the evaluation of educational needs and goals.

14 153. Defendants have not adequately informed parents and community members  
15 of school achievement results or provided access to a written handbook of current school  
16 policies. Defendants do not conduct outreach sufficient to secure family or community  
17 involvement in the schools. The Havasupai Elementary School does not hold culturally  
18 relevant events or community engagement activities, such as plays, dances, or sporting  
19 events. Parents are rarely invited onto school grounds except to pick up a student who has  
20 been suspended or otherwise subject to exclusionary discipline.

21 154. Defendants have not only failed to engage the Havasupai community in  
22 school decision making. They have actively imposed barriers to such participation and  
23 discouraged advocacy to improve the School and secure student rights by engaging in a  
24 pattern of retaliation against individuals who have advocated to improve the education for  
25 Havasupai students.

1           155. The Havasupai Advisory School Board<sup>3</sup> is appointed by the Havasupai  
2 Tribal Council and has played an important advisory role in overseeing the activities of the  
3 Havasupai Elementary School and actively seeking to improve the education provided to  
4 Havasupai students. But Defendants have effectively disbanded the Advisory School  
5 Board by demanding that all members obtain burdensome and retaliatory FBI background  
6 checks before the Board may meet, even though it does not meet at the School when  
7 children are present. Advisory School Board members are prohibited from entering school  
8 grounds and otherwise participating in the work of the Advisory School Board until the  
9 background checks, which have taken many months to process, have cleared. No other  
10 community member is prohibited from entering school grounds absent a background  
11 check. Because Defendants have not completed the background checks despite the passage  
12 of more than a year, the Advisory School Board has not met since January 2015.

13           156. In addition, community leaders who advocated on behalf of families have  
14 been barred from school grounds and prohibited from participating in Individualized  
15 Education Program (“IEP”) meetings.

16 **V. ADDITIONAL FACTS COMMON TO STUDENT PLAINTIFFS IMPACTED**  
17 **BY CHILDHOOD ADVERSITY**

18           157. This claim is brought on behalf of Stephen C., Durell P., Taylor P., Levi R.,  
19 Leo R., Jenny A., and Jordan A. (hereinafter “Student Plaintiffs Impacted by Childhood  
20 Adversity”) and NADLC. As a result of centuries of U.S. government policies that have  
21 oppressed and discriminated against Native communities, Student Plaintiffs Impacted by  
22 Childhood Adversity—like many Havasupai youth and Native youth across the nation—  
23 are exposed to childhood adversity that, absent appropriate intervention and support, has  
24 denied them the full opportunity to learn and receive the benefits of a public education.

25  
26  
27 <sup>3</sup> Because the School is administered and operated by the BIE, the Advisory School Board  
28 lacks authority to establish policies or make binding decisions for the School.

1           **A. Student Plaintiffs' Exposure to Childhood Adversity and Trauma**

2           158. As members of the Havasupai tribe, Student Plaintiffs Impacted by  
3 Childhood Adversity and their families bear the burden of generations of historical trauma  
4 stemming from a legacy of chronic discrimination—forced relocations, loss of homes,  
5 families, and culture. In particular, the historical and widespread consignment of Native  
6 American children to boarding schools constituted a form of forcible assimilation that was  
7 designed to stamp out a child's tribal affiliations and cultural identity at an early age.

8           159. Native children are disproportionately exposed to the chronic effects of  
9 unaddressed and unresolved historical trauma and adversity in their communities.  
10 Havasupai children are exposed to significant childhood adversity and trauma in their  
11 community. For example: 1) a disproportionate rate of Havasupai children live in poverty;  
12 2) over 42% of all households with children in Supai are led by single mothers; 3) alcohol  
13 abuse rates are higher for Native youth than for other racial groups; and 4) Native children  
14 are more likely to experience violent crimes, have an incarcerated parent, and be subject to  
15 disciplinary exclusion, including involvement in the juvenile justice system.

16           160. Student Plaintiffs Impacted by Childhood Adversity have been exposed to  
17 multiple adverse childhood experiences, including, but not limited to, involvement in the  
18 juvenile justice and child welfare systems; family disruption, including separation from  
19 caregivers due to boarding school placements; historical trauma, including parent  
20 experience with boarding schools; physical and sexual violence, including exposure to  
21 restraints in the school setting; alcohol and substance abuse in the community; denial of  
22 access to education; and poverty. *See* Section III, *supra*.

23           **B. The Impact of Childhood Adversity and Trauma on Child Development**  
24           **and the Ability To Learn**

25           161. Complex trauma stems from an individual child's exposure to multiple  
26 persistent sources of violence, loss, and other adverse childhood experiences ("ACEs"),  
27  
28



1 and describes children’s exposure to these events and the impact of this exposure.<sup>4</sup>  
2 Unaddressed exposure to trauma can impair a child’s ability to learn. The cumulative  
3 effect of trauma affects the core processing abilities of the brain in areas critical to  
4 learning, such as thinking, reading, concentrating, communicating, and regulating  
5 emotions.

6 162. Exposure to trauma can lead to palpable, physiological harm to a young  
7 person’s developing brain. Trauma is associated with mental health conditions such as  
8 somatoform disorders, major depression, schizophrenia, and substance abuse and  
9 dependence. In addition, exposure to traumatic stressors can cause developmental  
10 disruption and consequent educational loss for children, even if they do not meet the  
11 threshold for a diagnosable mental health disorder.

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

17 164. Unaddressed trauma affects a student’s ability to participate and succeed in  
18 school. Children exposed to violence demonstrate significantly lower reading ability and  
19 grade-point averages, increased absences from school, and overall lower rates of high  
20 school graduation. Children exposed to Adverse Childhood Experiences (“ACEs”)<sup>5</sup> are  
21 subject to an escalating array of detrimental educational impacts. Exposure to two or more

---

22  
23 <sup>4</sup> The terms “trauma” and “complex trauma” are often used interchangeably in this  
24 complaint. Although a child can be profoundly affected by one traumatic experience,  
25 Student Plaintiffs Impacted by Childhood Adversity have all experienced complex trauma,  
26 which is the subject of most of the academic literature cited.

27 <sup>5</sup> ACEs are “inherently disruptive experiences in childhood that produce significant and  
28 potentially damaging level[s] of stress and associated physical changes.” Christopher  
Blodgett, *Adopting ACES Screening and Assessment in Child Servicing Systems 1*  
(working paper, July 2012), <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>.

1 such traumas, for example, makes a student 2.67 times more likely to repeat a grade or  
2 become disengaged with school.<sup>6</sup> Exposure to three or more traumas makes a student  
3 4 times more likely to experience academic failure, and 5 times more likely to have serious  
4 attendance problems.<sup>7</sup> Students who have witnessed violence, in particular, meet state  
5 academic-performance standards only half as often as peers who have not.<sup>8</sup> As a result,  
6 unaddressed trauma is a powerful driver of academic failure.

7 **C. Defendants' Failure To Provide Meaningful Access to Education to**  
8 **Student Plaintiffs Impacted by Childhood Adversity and Trauma**

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

16 166. The key components of these school-wide practices include (1) training  
17 educators to recognize, understand, and proactively address the effects of complex trauma  
18 and childhood adversity, in part through building children's self-regulation and social-  
19 emotional learning skills; (2) developing restorative practices that build healthy  
20 relationships, peacefully resolve conflicts, and avoid re-traumatizing students through

21 \_\_\_\_\_  
22 <sup>6</sup> Christina D. Bethel et al., *Adverse Childhood Experiences: Assessing the Impact on*  
*Health and School Engagement and the Mitigating Role of Resilience*, 33:12 *Health*  
*Affairs* 2106, 2111 (2014).

23 <sup>7</sup> 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* at 25 (March 2015),  
24 [http://www.healthygen.org/sites/default/files/No%20School%20Alone\\_%20How%20com](http://www.healthygen.org/sites/default/files/No%20School%20Alone_%20How%20com)  
25 [munity%20risks%20and%20assets%20contribute%20to%20school%20and%20youth%20s](http://www.healthygen.org/sites/default/files/No%20School%20Alone_%20How%20com)  
26 [uccess.pdf](http://www.healthygen.org/sites/default/files/No%20School%20Alone_%20How%20com).

27 <sup>8</sup> Christopher C. Henrich et al., *The Association of Community Violence Exposure with*  
*Middle-School Achievement: A Prospective Study*, 25 *J. APPL. DEV. PSYCHOL.* 327, 343  
28 (2004).

1 punitive discipline; (3) ensuring the availability of consistent mental health support to meet  
2 student needs, and (4) adopting practices and interventions that are responsive to  
3 Havasupai cultural beliefs and traditions and are created in partnership with community  
4 members.

5 167. Together, these school-wide practices create a safe, consistent, and  
6 supportive learning environment that allows students impacted by childhood adversity to  
7 learn. Schools that have put such practices in place have shown impressive improvements  
8 in student outcomes, with those children receiving appropriate intervention and receiving  
9 higher grades and demonstrating better behavior and concentration. Research has also  
10 indicated that appropriate remedial methods and supports can help mitigate the effects of  
11 ACEs.<sup>9</sup> With this support, Student Plaintiffs Impacted by Childhood Adversity can benefit  
12 from a system of education that allows them to learn effectively in the classroom and  
13 meaningfully access a public education.

14 168. By failing to recognize and address the impact of trauma on students affected  
15 by adversity and failing to implement trauma-informed practices, Defendants have failed  
16 to ensure that Student Plaintiffs Impacted by Childhood Adversity are provided  
17 meaningful access to public education at Havasupai Elementary School. Havasupai  
18 Elementary School has no culturally responsive programming to address the impact of  
19 childhood adversity and promote wellness. It does not train or sensitize teachers or  
20 administrative personnel to recognize, understand, and address the complex effects of  
21 childhood adversity and trauma in children. Without such training, school staff are unable  
22 to appropriately identify students in need of support, notify their families, or provide  
23 adequate interventions that may reduce the impact of trauma and other mental health  
24 challenges on learning and student outcomes. Moreover, culturally sensitive mental health  
25 and support services are either entirely unavailable or grossly insufficient to meet student  
26 needs.

---

27 <sup>9</sup> Bethell, *supra* note 6, at 2112.  
28

1 169. Instead of receiving these and other appropriate resources, Student Plaintiffs  
2 Impacted by Childhood Adversity are subjected to punitive and counter-productive  
3 suspensions, expulsions, and referrals to law enforcement that push them out of school, off  
4 the path to graduation, and into the criminal justice system.

5 170. NADLC's advocacy demonstrates that services and supports that are limited  
6 only to individual students are not sufficient to address the impacts of childhood adversity  
7 on its clients and that school-wide practices are required to address childhood trauma.

8 **VI. ADDITIONAL FACTS COMMON TO ALL STUDENT PLAINTIFFS WITH**  
9 **DISABILITIES**

10 171. Defendants have failed to provide basic education to all students at  
11 Havasupai Elementary School, but students with disabilities face even more formidable  
12 barriers to accessing public education. Plaintiffs with disabilities have been denied access  
13 to even the paltry general education that is provided at Havasupai Elementary School.

14 172. The need for a well-functioning system of special education to address the  
15 needs of students with disabilities is critical at Havasupai Elementary School, which serves  
16 a high proportion of students with disabilities. The School reported to the Advisory School  
17 Board in 2014 that approximately half of the students in the School had been identified as  
18 students with disabilities.

19 173. Havasupai Elementary School has no system for identifying those students  
20 who have disabilities or for ensuring that such students receive the specialized instruction,  
21 related services, and accommodations necessary for them to access a general education  
22 curriculum. Instead, students with disabilities are often excluded from school and  
23 subjected to punitive discipline and police prosecution on the basis of their disabilities.

24 174. Havasupai Elementary School also has no system for meeting the procedural  
25 requirements of Section 504 and its implementing regulations, including identifying and  
26 assessing students with disabilities and providing notice and procedural safeguards to  
27 families.

28 175. Staffing at Havasupai Elementary School is insufficient to provide the

1 specialized instruction and related services required by federal law. Havasupai Elementary  
2 School does not employ, and has not employed at any time in recent years, sufficient  
3 numbers of the following personnel necessary to adequately provide special education  
4 services to students with disabilities: highly qualified special education teachers, mental  
5 health providers, occupational therapists, physical therapists, and speech therapists. At no  
6 time in recent years has the School employed sufficient numbers of paraprofessionals or  
7 support staff to meet the needs of students with disabilities. The staffing of Havasupai  
8 Elementary School is so inadequate that the School cannot even hold IEP meetings on a  
9 timely basis.

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

- 16 • **Restricted Hours Schedules:** Havasupai Elementary School students with  
17 disabilities are routinely denied a full day of public instruction. Because the  
18 School lacks the capacity to meet student needs by providing adequate  
19 specialized instruction or related services, students with disabilities are  
20 relegated to "homebound" placements or placed on restricted-hours schedules  
21 under which students receive only 3-6 hours of instruction per week.
- 22 • **Coercion to Leave Community:** Havasupai Elementary School students with  
23 disabilities are frequently compelled to choose between receiving the special  
24 education services to which they are entitled and staying in their community.  
25 Havasupai families who move outside the canyon in order to obtain services  
26 often endure significant financial hardships upon leaving their jobs and other  
27 sources of support on the reservation.
- 28 • **Exclusionary Discipline:** Instead of receiving the specialized instruction and  
related services to which they are entitled, and as a consequence of not  
receiving these services, Havasupai students with disabilities are routinely and  
repeatedly removed from the classroom and sent to the principal's office,  
suspended, or expelled in response to conduct that is a manifestation of the  
student's disability. Defendants fail to maintain accurate records of  
disciplinary action against students with disabilities, in clear violation of  
federal regulations implementing Section 504.
- **Referral to Law Enforcement:** Havasupai students with disabilities are  
frequently referred to law enforcement and even prosecuted in federal court for

1 minor misbehavior that is a manifestation of their disabilities. Children miss  
2 weeks of instruction while awaiting hearings in a tribal court because those  
3 hearings are held only once per month. There has also been a pervasive BIA  
4 police presence on school grounds, where BIA officers frequently escorted  
5 home children who had been subject to exclusionary discipline.

6 177. Havasupai Elementary School does not have the capacity to meet its  
7 obligation to identify and provide comprehensive assessments of students with disabilities.  
8 The School makes matters even more challenging for parents by failing to provide  
9 information required by federal statutes and regulations, including notice of procedural  
10 safeguards and information necessary to understand disabilities, participate in planning,  
11 and access educational records. The School also does not have an adequate recordkeeping  
12 system in place.

13 178. Parents and community members who do assert the rights of students with  
14 disabilities are often retaliated against by the School.

15 179. Because onset of disabilities can occur at any time, all student Plaintiffs  
16 require an adequate system to identify and assess the needs of students with disabilities.

17 **VII. ADVERSE CONSEQUENCES OF DEFENDANTS' FAILURE TO ENSURE**  
18 **ACCESS TO EDUCATION AT HAVASUPAI ELEMENTARY SCHOOL**

19 180. Defendants' legal violations have had devastating consequences for the  
20 educational achievement and life chances of Havasupai students. The federal government's  
21 failure to invest in and provide for Native education and wellness in the face of trauma has  
22 resulted in stark educational deprivations for Native youth in all educational settings.

23 181. Native children attending BIE schools lag significantly behind their peers  
24 attending traditional public schools. But students who attend Havasupai Elementary  
25 School are among the most disadvantaged and furthest behind, even among students  
26 attending BIE-funded and -operated schools. Havasupai students perform many years  
27 below grade-level, even in the limited content areas such as reading, writing, and  
28 mathematics in which curriculum is provided.

182. Although the BIE has failed to adequately collect and disseminate publicly  
available performance data for the School, available BIE data shows that in the 2012-2013

1 school year, Havasupai Elementary School students performed at the **1<sup>st</sup> percentile in**  
2 **reading and 3<sup>rd</sup> percentile in math**, based on a median percentile rank of 1 to 100.  
3 Moreover, BIE data reflects that Havasupai Elementary School students experienced a  
4 **large negative growth index** of **-.72** and **-.71** in reading and math, respectively, meaning  
5 that the academic progress made by individual Havasupai Elementary School students as  
6 they continued to attend the School was approximately 0.7 standard deviations lower than  
7 expected.<sup>10</sup> This performance placed the School dead last in both reading and math  
8 achievement out of nearly 60 BIE schools surveyed. Moreover, BIE data from two  
9 consecutive school years running from 2011 through 2013 indicate that only about 15% of  
10 Havasupai students achieved grade-level proficiency in reading, and that not a single one  
11 achieved grade-level proficiency in math.<sup>11</sup>

12 183. As a result, Havasupai students arrive at the secondary-school level  
13 unprepared for high school-level work and years behind their peers who were provided  
14 appropriate education in the elementary and middle school years.

15 184. Because no high school instruction is available for Havasupai students in the  
16 community, students who have completed eighth grade must apply to BIE high schools—  
17 most of which are boarding schools with entrance requirements—or seek transfers to  
18 public schools outside of the canyon. Because of the substandard education provided at  
19 Havasupai Elementary School, students have repeatedly been unable to meet coursework  
20 and credit requirements or the basic proficiency standards necessary to attend BIE high  
21 schools.

22 185. Havasupai Elementary School students who are admitted to a secondary  
23 school typically struggle academically because they lack basic elementary education. As a

24 \_\_\_\_\_  
25 <sup>10</sup> Northwest Education Evaluation Association, *BIE Report on Student Achievement and*  
26 *Growth: 2009-10 to 2012-13* at 56, 58 (2014),  
<http://www.bie.edu/cs/groups/webteam/documents/document/idc1-028067.pdf>.

27 <sup>11</sup> BIE Division of Performance and Accountability, *Annual Report: Havasupai*  
28 *Elementary School* at 2, 3 (2013), <http://www.bie.edu/cs/groups/xbie/documents/text/idc1-026335.pdf>.

1 result, it is estimated that fewer than 20% of Havasupai students eventually graduate from  
2 high school. Families in the Havasupai community fear that children attending Havasupai  
3 Elementary School will not be able to gain admission to a secondary school or that they  
4 will not successfully complete high school as a result of the educational deprivations at  
5 Havasupai Elementary School. As a result, multiple families with young children in  
6 kindergarten through eighth grade who otherwise would have attended Havasupai  
7 Elementary School have been compelled to leave their community in order to provide their  
8 children meaningful access to education.

9 **VIII. THE FEDERAL GOVERNMENT'S DELIBERATE INDIFFERENCE TO**  
10 **STUDENT PLAINTIFFS' RIGHTS**

11 186. For decades, the federal government has stood witness to profound  
12 disparities in the educational resources and outcomes of Native students. Numerous current  
13 and former DOI and BIE leaders have acknowledged the failures in tribal education. They  
14 have also been made specifically aware of the problems at Havasupai Elementary School,  
15 yet have failed to act meaningfully to correct them.

16 187. The BIE's longstanding failure to provide Native students with adequate  
17 educational opportunities has been repeatedly recognized by federal officials in the White  
18 House, BIE, and Department of Education. The federal government has likewise  
19 repeatedly recognized the harmful impacts of complex trauma on Native youth and the  
20 critical need to provide wellness and mental health services to address trauma in BIE  
21 schools.

22 188. Defendant BIE acknowledged only last year, "[t]he DOI has a longstanding  
23 and troubling history of failing to provide a high quality education to American Indian  
24 students in BIE-funded schools," citing the very deprivations at issue in this complaint,  
25  
26  
27  
28



1 including “failing schools,” “failure to include tribal nations in the decision-making  
2 process,” and “teachers and principal shortages.”<sup>12</sup>

3 189. The Government Accountability Office (“GAO”) concluded in 2015 that  
4 BIE schools were not complying with binding special education regulations.<sup>13</sup> Federal  
5 reports have repeatedly acknowledged that “American Indians and Alaska Natives  
6 continue to have worse educational outcomes than the general population by nearly all  
7 measures,”<sup>14</sup> and that Native students attending BIE schools perform even more poorly  
8 than their peers in public schools.<sup>15</sup>

9 190. Moreover, Defendants have long been specifically aware of the inadequacy  
10 of the education delivered to students at the School. A 2011 application for School  
11 Improvement Grant funding drafted by the former principal of Havasupai Elementary  
12 School and sent to Defendant BIE acknowledged nearly all of these issues,<sup>16</sup> including:

- 13 • “lack of a well defined [sic] and comprehensive instructional program”;
- 14 • the need to improve “quality of instruction,” and “little or no knowledge of  
15 effective instructional practices in areas of reading and math by instructional  
16 staff and site leaders; no instructional framework”;
- 17 • “changes in leadership (15 principals in 10 years; principals leaving in the  
18 middle of the year)” and “constant staff turnover,” including “teachers  
19 [leaving] in the middle and end of year”;

18 <sup>12</sup> BIE Study Group: *Blueprint for Reform, BIE Progress Report 2015* at 3,  
19 <https://www.bie.edu/cs/groups/xbie/documents/document/idc1-030931.pdf> (2015); BIE,  
20 *Synopsis of the Reprogramming*, <https://www.bie.edu/BFRI/index.htm> (2017); *see also*  
21 GAO, *Further Actions on GAO Recommendations Needed to Address System Management*  
22 *Challenges in Indian Education*, GAO-15-539T at 14 (Apr. 2015),  
23 <http://www.gao.gov/assets/670/669784.pdf> (hereinafter, “2015 GAO Report”) (finding that  
24 40 percent of BIE regional facility jobs remained vacant in 2015).

22 <sup>13</sup> 2015 GAO Report at 14-16.

23 <sup>14</sup> Executive Office of the President, *2014 Native Youth Report* at 14; *see also id.* at 15-16;  
24 GAO, *BIA and DOD Schools: Student Achievement and Other Characteristics Often Differ*  
25 *from Public Schools*’ 10, 12, 14 GAO-01-934 (2001),  
26 <http://www.gao.gov/new.items/d01934.pdf>.

25 <sup>15</sup> GAO Report, *Indian Affairs: Better Management and Accountability Needed to Improve*  
26 *Indian Education* 6, GAO-13-774 at 1 (Sept. 2013),  
27 <http://www.gao.gov/assets/660/658071.pdf>.

27 <sup>16</sup> Havasupai Elementary School, School Improvement Grant Application Packet, at 3-5,  
28 attached hereto as Exhibit A.

- 1 • “no substantive parent involvement activities”;
- 2 • “[h]igh levels of poverty, unemployment, low levels of literacy and substance  
3 abuse and family violence [that] plague th[e] community” and a “high level of  
4 discipline and disruptive incidents.”

5 The report concluded that “[t]he continued low academic achievement of HES students  
6 cannot be overstated.”

7 191. Members of the Havasupai Tribal Council have traveled to Washington,  
8 D.C. to meet with top BIE and DOI officials on multiple occasions including, most  
9 recently, for a face-to-face meeting in April 2016 with the then-Acting Director of the BIE,  
10 Ann Marie Bledsoe Downes. The former Director of the BIE has also visited Havasupai  
11 within the last several years, as have many other BIE and DOI officials from Washington  
12 and regional offices. During all of these meetings, members of the Havasupai Tribal  
13 Council have explained the problems facing the School and the need for the BIE to act.

14 192. In addition, the BIE’s Division of Performance and Accountability recently  
15 engaged in a “discussion on schools with intensive needs such as Havasupai.”<sup>17</sup> Over the  
16 years, Havasupai parents and families, as well as members of the School Advisory Board  
17 and Tribal Council, have also complained to the BIE about the inadequacy of their  
18 children’s education and the mismanagement of the School by BIE staff.

19 193. Laila R., the mother of Plaintiffs Leo R. and Levi R., has helped draft and  
20 circulate written grievances concerning the School—including demands that vacant  
21 positions be filled when the School was severely understaffed and requests that the BIE  
22 provide standardized testing to students attending the School—to BIE officials, including  
23 former BIE director Monty Roessel, Arizona BIE education program administrator Jim  
24 Hastings, and former school principal Coleen Maldonado.

25 194. As a result, Defendants are specifically aware of each of the educational  
26 deprivations identified in this complaint. Yet they have taken no discernable steps to

---

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

1 address significant disparities in the quality of the educational opportunities afforded to  
2 Havasupai students. Defendants’ actions and inactions resulting in the creation and  
3 exacerbation of these educational deficiencies are deliberate and conscious, in that they are  
4 aware of the causes of these deficiencies, yet have failed to establish any system to  
5 monitor, identify, and remedy identified inadequacies.

6 **FIRST CAUSE OF ACTION**  
7 **(FAILURE TO TAKE ACTION REQUIRED TO**  
8 **PROVIDE BASIC EDUCATION (5 U.S.C. § 706(1))**  
9 **(All Plaintiffs against All Defendants)**

10 195. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1  
11 through 194 as if set forth fully here.

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

15 197. Havasupai Elementary School is operated by Defendants.

16 198. Defendants are obligated to provide an education to Havasupai children that  
17 meets basic educational standards and enables students to access post-secondary  
18 educational opportunities in accordance with the standards set forth in federal statutes and  
19 regulations, including, but not limited to, 25 U.S.C. §§ 2000-2001 & 2003; 20 U.S.C.  
20 § 7401; and 25 C.F.R. Chapter I, Subchapter E. Specifically:

21 199. Defendants must comply with 25 C.F.R. § 36.20, which requires providing  
22 an educational program including multi-culture and multi-ethnic dimensions designed to  
23 enable students to function effectively in a pluralistic society.

24 200. Defendants must comply with 25 C.F.R. §§ 36.21-36.23, which outline the  
25 minimum requirements for kindergarten, grades one through six, and grades seven and  
26 eight.

27 201. Defendants must comply with regulations governing staffing and  
28 administrative requirements, grading requirements, student promotion requirements,

1 additional programming requirements (*e.g.*, “each school shall provide a library/media  
2 program”), textbooks, behavioral health services, extracurricular activities, evaluation and  
3 monitoring requirements, and student rights and due process protections. 25 C.F.R.  
4 §§ 36.11, 36.30-31, 36.40-43, 36.50-51.

5 202. Defendants have failed to take required discrete actions to comply with these  
6 regulations and to satisfy their obligations to provide an adequate education to Havasupai  
7 children.

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

1 Havasupai Elementary School;

2 p. Defendants have not developed a student handbook including policies  
3 and disciplinary procedures or communicated those policies and procedures to students  
4 and their families;

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

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

9 204. Plaintiffs, including NADLC, have been aggrieved by these failures to act  
10 because Havasupai children have been deprived of the educational opportunities to which  
11 they are entitled, and they have not been adequately prepared for the transition to high  
12 school.

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

17 206. Plaintiffs were not required to exhaust administrative remedies in order to  
18 bring this claim.

19 207. Plaintiffs are entitled to appropriate relief.

20 **SECOND CAUSE OF ACTION**

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

22 **(All Plaintiffs against All Defendants)**

23 208. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1  
24 through 207 as if set forth fully here.

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

1           210. Havasupai Elementary School is operated by Defendants.

2           211. Defendants are obligated to provide an education to Havasupai children that  
3 meets basic educational standards and enables students to access post-secondary  
4 educational opportunities in accordance with the standards set forth in federal statutes and  
5 regulations, including, but not limited to, 25 U.S.C. §§ 2000-2001 & 2003; 20 U.S.C.  
6 § 7401; and 25 C.F.R. Chapter I, Subchapter E. Specifically:

7           212. Defendants must comply with 25 C.F.R. § 36.20, which requires providing  
8 an educational program including multi-culture and multi-ethnic dimensions designed to  
9 enable students to function effectively in a pluralistic society.

10           213. Defendants must comply with 25 C.F.R. §§ 36.21-36.23, which outline the  
11 minimum requirements for kindergarten, grades one through six, and grades seven and  
12 eight.

13           214. Defendants must comply with regulations governing staffing and  
14 administrative requirements, grading requirements, student promotion requirements,  
15 additional programming requirements (*e.g.*, “each school shall provide a library/media  
16 program”), textbooks, behavioral health services, extracurricular activities, evaluation and  
17 monitoring requirements, and student rights and due process protections. 25 C.F.R.  
18 §§ 36.11, 36.30-31, 36.40-43, 36.50-51.

19           215. Defendants have acted in a manner that is arbitrary, capricious, an abuse of  
20 discretion, or otherwise not in accordance with the law in their administration of  
21 Havasupai Elementary School.

22           216. The actions of Defendants that are arbitrary, capricious, an abuse of  
23 discretion, or otherwise not in accordance with the law include, but are not limited to, the  
24 failures listed in paragraph 203, *supra*.

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

28           218. Plaintiffs have suffered an irreparable injury that could not be adequately

1 compensated by a remedy at law, the balance of the hardships between the parties warrants  
2 an equitable remedy, and the public interest would not be disserved by an equitable  
3 remedy.

4 219. Plaintiffs were not required to exhaust administrative remedies in order to  
5 bring this claim.

6 220. Plaintiffs are entitled to appropriate relief.

7 **THIRD CAUSE OF ACTION**

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

10 **(Plaintiffs Stephen C., Durell P., Levi R., Jenny A., Jordan A., and NADLC against**  
11 **Defendants Zinke, Black, Dearman, and Williamson)**

12 221. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1  
13 through 220 as if set forth fully here.

14 222. Under Section 504 of the Rehabilitation Act, “[n]o otherwise qualified  
15 individual with a disability. . . shall, solely by reason of her or his disability, be excluded  
16 from the participation in, be denied the benefits of, or be subjected to discrimination  
17 under . . . any program or activity conducted by any Executive agency . . . .” 29 U.S.C.  
18 § 794(a).

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

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

26 225. Thus, Defendants Zinke, Black, Dearman, and Williamson are required to  
27 provide special education instruction, related services, and appropriate resources to  
28 Havasupai students with physical or mental impairments that substantially limit them with

1 respect to learning, reading, concentrating, thinking, and/or communicating; and they must  
2 put into place a system—including procedures, teachers, and appropriate providers—for  
3 delivery of specialized instruction and services in order to ensure that those students have  
4 access to the benefits of a public education.

5 226. Defendants Zinke, Black, Dearman, and Williamson have failed to establish  
6 a system to ensure that students with disabilities receive the special education, related  
7 services, and other resources necessary to access to the benefits of a public education.  
8 Specifically:

9 227. At Havasupai Elementary School, there is not a sufficient number of  
10 qualified special education teachers; there are no special education classrooms, no  
11 occupational therapists, physical therapists, or speech therapists; and there are either no or  
12 insufficient mental health staff and support staff.

13 228. Students with disabilities are either not given a full day of instruction or are  
14 channeled into residential schools, forcing students and their families to choose between  
15 leaving home to obtain adequate schooling and services, or living at home in their own  
16 community without access to basic education.

17 229. Defendants have compounded their failure to provide education to students  
18 with disabilities by relying on police and the criminal justice system, or repeated  
19 suspension and punitive discipline, instead of counseling and support. Students miss such a  
20 significant amount of school—including while on suspension or awaiting court hearings—  
21 that they fall far behind their peers from an educational perspective.

22 230. Plaintiffs, including NADLC, have been damaged by the failure to provide a  
23 system for serving Havasupai students with disabilities, which has deprived those students  
24 of access to public education.

25 231. Plaintiffs have suffered irreparable injury that could not be adequately  
26 compensated by a remedy at law, the balance of the hardships between the parties warrants  
27 an equitable remedy, and the public interest would not be disserved by an equitable  
28 remedy.





1 substantially limits one or more life activities,” including, but not limited to, “caring for  
2 oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing,  
3 lifting, bending, speaking, breathing, *learning, reading, concentrating, thinking,*  
4 *communicating,* and working.” 42 U.S.C. §§ 12102(1)(A), (2)(A) (emphasis added).

5 239. The effects of complex trauma cause impairment that limits a student’s  
6 ability to learn, read, concentrate, think, and/or communicate, and to generally receive an  
7 education and have the opportunity to succeed in school.

8 240. Student Plaintiffs Impacted by Childhood Adversity have been exposed to  
9 childhood adversity and historical trauma within their community and experience or have  
10 experienced complex trauma and its effects, substantially limiting them with respect to  
11 learning, reading, concentrating, thinking, and/or communicating.

12 241. Solely by reason of their unaddressed exposure to complex trauma and its  
13 effects, Student Plaintiffs Impacted by Childhood Adversity have been denied meaningful  
14 access to public education by Defendants.

15 242. There are effective and reasonable accommodations that Defendants could  
16 implement that would allow Student Plaintiffs Impacted by Childhood Adversity to learn,  
17 read, concentrate, think, communicate, and enjoy the benefit of a public education. The  
18 effects of complex trauma can be addressed with behavioral and mental health resources,  
19 as well as culturally relevant interventions, in order for students to have meaningful access  
20 to education. In order to meaningfully access public education, Student Plaintiffs Impacted  
21 by Childhood Adversity require a system that is responsive to and capable of addressing  
22 the impact of complex trauma.

23 243. Defendants have failed to establish a system to ensure that Student Plaintiffs  
24 Impacted by Childhood Adversity receive the specialized instruction, related services, and  
25 other resources necessary to access to the benefits of a public education.

26 244. Defendants Zinke, Black, Dearman, and Williamson are required to provide  
27 specialized instruction, related services, and other resources to Student Plaintiffs Impacted  
28 by Childhood Adversity, and they must put into place a system—including procedures,

1 teachers, and appropriate providers—for delivery of specialized instruction and services in  
2 order to ensure that those students have access to the benefits of a public education.

3 245. Student Plaintiffs Impacted by Childhood Adversity and NADLC have been  
4 damaged by the failure to provide a system for serving Havasupai students who have  
5 suffered adversity and complex trauma, which has deprived those students of access to  
6 public education.

7 246. Student Plaintiffs Impacted by Childhood Adversity have suffered an  
8 irreparable injury that could not be adequately compensated by a remedy at law, the  
9 balance of the hardships between the parties warrants an equitable remedy, and the public  
10 interest would not be disserved by an equitable remedy.

11 247. Student Plaintiffs Impacted by Childhood Adversity do not need to  
12 administratively exhaust their claim. There is no administrative procedure for challenging  
13 Defendants’ school-wide failure to provide a system to address the needs of students who  
14 have been exposed to adversity and complex trauma. Indeed, the BIE has not even  
15 promulgated regulations for challenging individual denials of access to education for such  
16 students. Even if a family could somehow obtain an individual remedy through a due  
17 process proceeding or some other form of administrative process, Defendants could not  
18 implement that remedy at Havasupai Elementary School because they have no system in  
19 place for doing so.

20 248. Moreover, declaratory relief, which is essential to this claim, is not available  
21 under IDEA. Thus, the IDEA exhaustion requirement cannot be applied to this claim.

22 249. Student Plaintiffs Impacted by Childhood Adversity are entitled to  
23 appropriate relief.

24  
25  
26  
27  
28

1 **FIFTH CAUSE OF ACTION**

2 **(VIOLATION OF DEPARTMENT OF EDUCATION REGULATIONS**

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

4 **(Plaintiffs Stephen C., Durell P., Levi R., Jenny A., Jordan A., and NADLC against**  
5 **Defendants Zinke, Black, Dearman, and Williamson)**

6 250. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1  
7 through 249 as if set forth fully here.

8 251. Department of Education (“DOE”) regulations require a recipient of DOE  
9 funding to identify and locate students who are not properly receiving an adequate public  
10 education as a result of their disabilities, including but not limited to identification and  
11 location of students whose disabilities are related to complex trauma and its effects.

12 252. Defendants Zinke, Black, Dearman, and Williamson receive DOE funding to  
13 provide special education services at Havasupai Elementary School.

14 253. Defendants have not established and implemented policies or procedures to  
15 identify and locate Havasupai students who are not properly receiving an adequate public  
16 education on account of their disabilities, including but not limited to disabilities related to  
17 complex trauma and its effects.

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

21 255. Defendants have not established and implemented policies or procedures to  
22 notify the parents or guardians of Havasupai students who are not receiving an adequate  
23 public education as a result of their disabilities, including but not limited to disabilities  
24 related to complex trauma and its effects, of Defendants’ duty to identify students who  
25 might require a reasonable accommodation.

26 256. Defendants have failed to notify the parents or guardians of Havasupai  
27 students who are not receiving an adequate public education as a result of their disabilities,  
28 including but not limited to disabilities related to complex trauma and its effects, of

1 Defendants' duty to identify students who might require a reasonable accommodation.

2 257. Plaintiffs, including NADLC, have been damaged by the failure to provide a  
3 system to locate and notify Havasupai students who are not receiving an adequate public  
4 education as a result of their disabilities, which has deprived those students of access to  
5 public education.

6 258. This is an irreparable injury that could not be adequately compensated by a  
7 remedy at law, the balance of the hardships between the parties warrants an equitable  
8 remedy, and the public interest would not be disserved by an equitable remedy.

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

17 260. Moreover, declaratory relief, which is essential to this claim, is not available  
18 under IDEA. Thus, the IDEA exhaustion requirement cannot be applied to this claim.

19 261. Plaintiffs are entitled to appropriate relief.

20 **SIXTH CAUSE OF ACTION**

21 **(VIOLATION OF DEPARTMENT OF EDUCATION REGULATIONS**

22 **REGARDING "PROCEDURAL SAFEGUARDS," 34 C.F.R. § 104.36)**

23 **(Plaintiffs Stephen C., Durell P., Levi R., Jenny A., Jordan A., and NADLC against**  
24 **Defendants Zinke, Black, Dearman, and Williamson)**

25 262. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1  
26 through 261 as if set forth fully here.

27 263. DOE regulations provide that a recipient of DOE funding that "operates a  
28 public elementary or secondary education program or activity shall establish and

1 implement, with respect to actions regarding the identification, evaluation, or educational  
2 placement of persons who, because of handicap, need or are believed to need special  
3 instruction or related services, a system of procedural safeguards that includes notice, an  
4 opportunity for the parents or guardian of the person to examine relevant records, an  
5 impartial hearing with opportunity for participation by the person's parents or guardian and  
6 representation by counsel, and a review procedure." 34 C.F.R. § 104.36.

7       264. Defendants Zinke, Black, Dearman, and Williamson receive DOE funding to  
8 provide special education services at Havasupai Elementary School.

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

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

20       267. Plaintiffs, including NADLC, have been damaged by the failure to provide  
21 such procedural safeguards to Havasupai students who are not receiving an adequate  
22 public education as a result of their disabilities, which has deprived those students of  
23 access to public education.

24       268. This is an irreparable injury that could not be adequately compensated by a  
25 remedy at law, the balance of the hardships between the parties warrants an equitable  
26 remedy, and the public interest would not be disserved by an equitable remedy.

27       269. Plaintiffs do not need to administratively exhaust their claim. There is no  
28 administrative procedure for challenging Defendants' school-wide failure to provide a

1 system for serving students with disabilities. Indeed, the BIE has not even promulgated  
2 regulations for challenging individual denials of access to education for students with  
3 disabilities. Even if a family could somehow obtain an individual remedy through a due  
4 process proceeding or some other form of administrative process, Defendants could not  
5 implement that remedy at Havasupai Elementary School because they have no system in  
6 place for doing so.

7 270. Moreover, declaratory relief, which is essential to this claim, is not available  
8 under IDEA. Thus, the IDEA exhaustion requirement cannot be applied to this claim.

9 271. Plaintiffs are entitled to appropriate relief.

10 **REQUEST FOR RELIEF**

11 WHEREFORE, Plaintiffs respectfully request the following relief:

12 1. The issuance of a Declaratory Judgment that the actions and omissions of the  
13 Defendants, as described above, constitute violations of the Indian Education Act, the  
14 Rehabilitation Act, as well as numerous other federal laws, and violate student Plaintiffs'  
15 civil rights;

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

19 3. Appropriate injunctive relief requiring Defendants, their officers, agents,  
20 employees, successors in office and assigns/assignees to provide student Plaintiffs:

- 21 a. access to an adequate public education including access to all required subjects,  
22 content, and curriculum;
- 23 b. access to education provided by sufficient numbers of qualified teachers and  
24 related services providers based on the needs of the school-age population in  
25 Havasupai;
- 26 c. access to education that is culturally relevant based on the unique culture and  
27 tradition of the Havasupai tribe;
- 28 d. access to instruction appropriate to students' native language;

- 1 e. access to education that is properly governed by a school board appointed by the  
2 Tribal Council;
- 3 f. access to education that includes appropriate assessment of student achievement,  
4 with assessment results provided and explained to parents and students;
- 5 g. public disclosure of disaggregated achievement data as required by law;
- 6 h. access to timely special education and related services as needed and of  
7 sufficient duration and intensity based on individual needs of students, with such  
8 services to be provided to students in the least restrictive environment in their  
9 home community to the maximum degree possible;
- 10 i. trained staff and services necessary to respond to complex trauma and students'  
11 social-emotional needs, including, but not limited to: (1) comprehensive and  
12 ongoing training, coaching, and consultation for all adult staff regarding trauma-  
13 informed and culturally sensitive strategies for educating students and fostering  
14 a healthy, supporting environment; (2) implementation of restorative practices to  
15 prevent, address, and heal after conflict; (3) employment of appropriately trained  
16 counselors who can assist with identification of students who have mental-health  
17 difficulties; (4) adoption of practices and interventions to enhance student  
18 wellness that are responsive to Havasupai beliefs and traditions and are created  
19 in partnership with community members.
- 20 j. procedures to ensure that parents of students at Havasupai Elementary School  
21 are able to participate fully in their education, including procedures protecting  
22 parent and student rights related to: (1) parental notification of individual  
23 student progress; (2) identification, evaluation, placement, and educational  
24 programs of students with disabilities; (3) parental notification of injuries of  
25 students on school campus; (4) student and parental notice of discipline actions  
26 against students; (5) parental notification of law enforcement interactions with  
27 students and law enforcement presence on school campus;
- 28



1 k. Compensatory and remedial education to provide access to all required general-  
2 education subjects, along with any needed special-education and related  
3 services, to all student Plaintiffs—including to those who previously attended  
4 but no longer attend Havasupai Elementary School;

5 l. Appointment of an independent third party to receive and respond to complaints  
6 from parents or tribal officials;

7 4. 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 5. 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 6. A grant of such other or additional relief as this Court may deem just and  
16 proper.

17 RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of July, 2017.

18 By: s/Alexis DeLaCruz w/permission  
19 Alexis DeLaCruz (SBN 031273)  
20 NATIVE AMERICAN DISABILITY  
21 LAW CENTER  
3535 E. 30th Street, Suite 201  
Farmington, NM 87402  
Telephone: 505.566.5880

By: s/Judith M. Dworkin  
Judith M. Dworkin (SBN 010849)  
David C. Tierney (SBN 002385)  
SACKS TIERNEY P.A.  
4250 N. Drinkwater Blvd., 4th Floor  
Scottsdale, AZ 85251-3693  
Telephone: 480.425.2600

22 Mark Rosenbaum (*pro hac vice*)  
mrosenbaum@publiccounsel.org  
23 Kathryn Eidmann (*pro hac vice*)  
keidmann@publiccounsel.org  
24 Anne Hudson-Price (*pro hac vice*)  
aprice@publiccounsel.org  
25 Elizabeth Song (*pro hac vice*)  
esong@publiccounsel.org  
26 PUBLIC COUNSEL  
610 South Ardmore Avenue  
27 Los Angeles, CA 90005  
Telephone: 213.385.2977

Bradley S. Phillips (*pro hac vice*)  
Brad.Phillips@mto.com  
Bryan H. Heckenlively (*pro hac vice*)  
bryan.heckenlively@mto.com  
Seth J. Fortin (*pro hac vice*)  
Seth.Fortin@mto.com  
Emily Curran-Huberty (*pro hac vice*)  
Emily.Curran-Huberty@mto.com  
MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue, 35th Floor  
Los Angeles, CA 90071  
Telephone: 213.683.9100

1 Elisabeth Bechtold (*pro hac vice*)  
ebechtold@aclu-nm.org  
2 Maria Martinez-Sánchez (*pro hac vice*)  
mmartinez@aclu-nm.org  
3 AMERICAN CIVIL LIBERTIES  
UNION of NEW MEXICO  
4 1410 Coal Avenue SW  
Albuquerque, NM 87104  
5 Telephone: 505.266.5915

Tara C. Ford (*pro hac vice*)  
taraford@law.stanford.edu  
Stanford Law School  
MILLS LEGAL CLINIC  
Youth and Education Law Project  
559 Nathan Abbott Way  
Stanford, CA 94305-8610  
Telephone: 650.725.8581s

6 *Attorneys for Plaintiffs*  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2017, I electronically transmitted the foregoing document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants for this matter.

s/ Frances Fulwiler