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11 *Attorneys for Amici Curiae*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO  
14

15 CITY AND COUNTY OF SAN FRANCISCO,

16 *Plaintiff and Petitioner,*

17 vs.

18 SAN FRANCISCO BOARD OF EDUCATION;  
19 SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT; VINCENT MATTHEWS in his official  
20 capacity as San Francisco Superintendent of  
Schools,

21 *Defendants and Respondents.*  
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Case No.: CPF-21-517352

**MOTION FOR LEAVE TO FILE BRIEF AS  
AMICI CURIAE IN SUPPORT OF  
PLAINTIFF AND PETITIONER CITY AND  
COUNTY OF SAN FRANCISCO**

Hearing Date: March 22, 2021  
Hearing Judge: Hon. Ethan P. Schulman  
Time: 1:30 p.m.  
Place: Dept. 302

ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**03/12/2021**  
Clerk of the Court  
BY: EDNALEEN ALEGRE  
Deputy Clerk

1 **MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE**

2 To the Honorable Ethan P. Schulman, Judge of the Superior Court:

3 Disability Rights Education and Defense Fund, joined by Disability Rights California, hereby  
4 requests leave of the court to file this attached proposed amicus brief in support of Plaintiff and  
5 Petitioner in this case under the court’s discretionary authority. (See *In re Veteran’s Industries, Inc.*  
6 (1970) 8 Cal. App. 3d 902, 924; *People v. City of Long Beach* (1960) 183 Cal. App. 2d 271, 276.) This  
7 brief has not been funded or authored by any party in this action.

8 **INTERESTS OF AMICI CURIAE**

9 The Disability Rights Education & Defense Fund (“DREDF”), based in Berkeley, California, is a  
10 national nonprofit law and policy center dedicated to protecting and advancing the civil rights of people  
11 with disabilities. DREDF was founded by people with disabilities and parents of children with  
12 disabilities, and remains board- and staff-led by members of the communities for whom we advocate.  
13 Recognized for its expertise in the interpretation of federal disability civil rights laws, DREDF pursues  
14 its mission through education, advocacy and law reform efforts. Consistent with its civil rights mission,  
15 DREDF supports legal protections for all diversity and minority communities, including the  
16 intersectional interests of people within those communities who also have disabilities.

17 Disability Rights California is the state and federally designated protection and advocacy system  
18 for California, with a mission to advance the legal rights of people with disabilities pursuant to Welf. &  
19 Inst. Code § 4900 et seq. Disability Rights California was established in 1978 and is the largest  
20 disability rights advocacy group in the nation. It has represented youth and adults with disabilities in  
21 litigation and individual advocacy regarding their rights to equal educational access. In 2019 alone,  
22 Disability Rights California assisted more than 24,000 disabled individuals throughout California,  
23 including students challenging disability discrimination in higher education.

24 **ARGUMENT**

25 An amicus brief is desirable and highly relevant in this case. At issue in this case is the  
26 fundamental right of all children in California to receive equal opportunity in education. Federal and  
27 California special education laws have articulated that meaningful educational equity for students with  
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1 disabilities requires the provision of an educational program that is individualized to the unique needs of  
2 each student, in the least restrictive environment, that maximizes interaction with nondisabled peers.  
3 (See 20 U.S.C. §§ 1412(a)(1)(A), 1412(a)(4), 1412(a)(5)(A); Ed. Code, § 56000, subd. (b).)

4 *Amici curiae* will argue that San Francisco Unified School District’s refusal to provide in-person  
5 instruction violates the law to the extent that a subset of youth with disabilities cannot access education  
6 without in-person supports. For disabled students, the transition to distance learning was especially  
7 difficult because they rely on special education supports and services that are nearly impossible to  
8 provide virtually. Furthermore, *amici* will demonstrate how students with the most severe disabilities,  
9 such as autism, developmental disabilities, and learning disabilities have lost and, without this Court’s  
10 intervention, will continue to lose out on services essential to maintaining positive long-term outcomes.  
11 The California Department of Education, federal courts, and the Office of Administrative Hearings have  
12 accordingly recognized that school districts must provide in-person instruction and services to provide a  
13 Free Appropriate Public Education to disabled students under special education laws.

#### 14 CONCLUSION

15 For the foregoing reasons, Disability Rights Education and Defense Fund and Disability Rights  
16 California request that this Court enter an order granting leave to file their *amicus curiae* brief in support  
17 of neither party in this case. The proposed *amicus curiae* brief is attached hereto as Exhibit A.

18 Dated: March 12, 2021

19 Respectfully submitted,

20 DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

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23 By: /s/ Malhar Shah  
24 Malhar Shah  
25 Attorney for *Amicus Curiae*  
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# EXHIBIT A

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**[PROPOSED] BRIEF OF AMICI CURIAE  
DISABILITY RIGHTS EDUCATION AND  
DEFENSE FUND AND DISABILITY RIGHTS  
CALIFORNIA IN SUPPORT OF PLAINTIFF  
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## AMICUS CURIAE BRIEF

Petitioners argue that San Francisco Unified School District’s (“SFUSD”) has failed to comply with state law requiring in-person services for all students. As Amici will show, disabled students have additional rights under the Individuals with Disabilities Education Act (“IDEA”) , which requires school districts to provide in-person services to disabled students where they are necessary to provide a Free Appropriate Public Education (“FAPE”). This is so even during the COVID-19 pandemic. Throughout COVID-19-related school closures, multiple courts and administrative bodies have decided, and decades of research confirms, that certain disabled students are legally entitled to and need in-person services and supports to achieve positive long-term outcomes and prevent irreparable harm. The California Department of Education has made clear that in such “exceptional situations” where it is necessary to “maintain students’ mental/physical health and safety for the purpose of supporting the student in accessing [distance learning],” school districts must make an “individualized determination” as to whether in-home support is necessary. Early and consistent intervention services are especially vital for students with severe disabilities such as autism, other developmental disabilities, and learning disabilities.

### I. The IDEA Requires In-Person Instruction and Supports for Certain Disabled Students, Even During the Pandemic.

A State that receives federal funding under the IDEA “must provide a free appropriate public education—a FAPE, for short—to all eligible children.” (*Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1* (2017) 137 S. Ct. 988, 993 [citing 20 U.S.C. § 1412(a)(1)].) “A FAPE, as the Act defines it, includes both ‘special education’ and ‘related services’”. (*Id.* at 994 [citing 20 U.S.C. § 1401(9)].) “‘Special education’ is specially designed instruction . . . to meet the unique needs of a child with a disability’; ‘related services’ are the support services ‘required to assist a child . . . to benefit from ‘ that instruction.” (*Id.* [citing 20 U.S.C. §§ 1401(26), (29)].) The instruction and services provided by school districts must meet each student’s “academic, social, health, emotional, communicative, physical and vocational needs.” (*Ashland Sch. Dist. v. Parents of Student E.H.* (9th Cir. 2009) 587 F.3d 1175, 1185].) To meet these needs, a school district’s services include “‘developmental, corrective, and other

1 supportive services,’ such as ‘psychological services, physical and occupational therapy, recreation . . .  
2 [and] social work services.’” (*Id.* [citing 20 U.S.C. § 1401(26)].)

3 Special education and related services must be provided “‘in conformity with the [child’s]  
4 individualized education program,’ or IEP.” (*Andrew F.*, 137 S. Ct. at 994 [citing 20 U.S.C. §  
5 1401(9)(D)].) An IEP must be “reasonably calculated to enable a child to make progress appropriate in  
6 light of the child’s circumstances[.]” (*Id.* at 999-10000 [citation omitted].) “Education for [] students  
7 with disabilities often differs dramatically from ‘conventional’ [ ] education.” (*E.R.K. ex rel. R.K. v.*  
8 *Hawaii Dep’t of Educ.* (9th Cir. 2013) 728 F.3d 982, 990 [citation omitted].) And a “material failure”  
9 by the school “to implement an IEP violates the IDEA.” (*Van Duyn ex rel. Van Duyn v. Baker Sch.*  
10 *Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822 [emphasis omitted].)

11 During COVID-19, providing the IDEA’s mandatory “special education” and “related services”  
12 requires in-person education for certain disabled students who cannot access FAPE with solely distance  
13 learning. The CDE made clear in April 2020 at the very start of the COVID-19-related school closures  
14 that school districts can still provide in-home supports and services in “exceptional situations” where it  
15 is necessary to “maintain students’ mental/physical health and safety for the purpose of supporting the  
16 student in accessing [distance learning].”<sup>1</sup> Districts must make an “individualized determination” as to  
17 whether in-home support is necessary.

18 The California legislature enacted Senate Bill 98 in July 2020, which requires LEAs such as  
19 SFUSD “to offer *classroom-based instruction whenever possible*, particularly for pupils who have  
20 experienced significant learning loss due to school closures.” (Ed. Code, § 43509, subd. (f)(1)(A)  
21 (emphasis added).) The legislative history leaves no doubt as to what the Legislature intended: “[I]t is  
22 the intent of the Legislature that LEAs offer in-person instruction in 2020–21 to the greatest extent  
23 possible.” (*See California Assembly Daily Journal*, 2019-2020 Regular Session, 196th Session Day  
24 (June 26, 2020)). With respect to special education students, the Legislature required LEAs to provide  
25 special education, related services, and any other services required by a pupil’s individualized education  
26

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28 <sup>1</sup> CDE, SPECIAL EDUCATION GUIDANCE FOR COVID-19 (Apr. 9, 2020),  
<https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp> (last accessed Nov. 9, 2020).

1 plan, with accommodations necessary to ensure that individualized education program can be executed  
2 during the period of school closures. (Ed. Code, § 43503, subd. (a)(4).) The Legislature recognized the  
3 challenges presented by a once-in-a-century pandemic, but chose not to abandon students who cannot  
4 access the educational curriculum through distance learning.

5 Federal courts have held that the IDEA requires the provision of in-person instruction during the  
6 pandemic. In *Hernandez v. Grisham*, the District Court of New Mexico held that due to a  
7 misinterpretation of the “state health regulations,” a school district violated the IDEA when it denied the  
8 disabled plaintiff in-person services. (D.N.M., Oct. 14, 2020, No. CIV 20-0942 JB\GBW) 2020 WL  
9 6063799, at \*68.) The Court reasoned that the IDEA requires an IEP “reasonably calculated to enable  
10 the child to achieve passing marks and advance from grade to grade,” but that the plaintiff was not  
11 making “excellent progress” and did not have access to a “substantial suite of specialized instruction and  
12 services” during remote learning. (*Id.*) Thus, the IEP was not “reasonably calculated to ensure she  
13 receive educational benefits.” (*Id.*)

14 Similarly, the Southern District of New York has held that a school district must provide in-  
15 person services under a student’s stay put right. (*L.V. on behalf of J.V.2 v. New York City Department of*  
16 *Education* (S.D.N.Y., July 8, 2020, No. 19CV05451ATKHP) 2020 WL 4043529, at \*3, *report and*  
17 *recommendation adopted* (S.D.N.Y., July 17, 2020, No. 19CIV5451ATKHP) 2020 WL 4040958.) The  
18 district court ordered the department of education to provide in-person services because “occupational  
19 therapy, physical therapy, and speech therapy for a child who is not yet in kindergarten cannot be  
20 provided through a computer as well as they can be in person, particularly if the child’s home does not  
21 have an adequate space for learning (like L.V.’s small apartment) or reliable WiFi (which L.V. does not  
22 have).” (*Id.* at \*4.)

23 The California Office of Administrative Hearings has repeatedly ruled that the failure of school  
24 districts to provide in-person services during the COVID-19 pandemic can violate the IDEA. In August  
25 2020, the OAH found that a distance learning program that provided a student less than half of the  
26 number of instructional minutes required by her IEP, and no in-person community life skills and  
27 vocational skills, denied the student a FAPE. (See *In the Matter of Parent on Behalf of Student v. Los*  
28



1 *Angeles Unified sch. Dist.* (2020) OAH Case No. 2020050465.) In September 2020, the OAH ordered a  
2 school district to provide intensive, in-person services to an 11-year-old child with developmental  
3 disabilities in the same duration and intensity described in her IEP. The OAH found that the student’s  
4 “distance learning plan is not a comparable program . . . for her, given her need for intensive services to  
5 access her education.” (See *In the Matter of Parent on Behalf of Student v. Pleasanton Unified Sch.*  
6 *Dist. & Contra Costa Cnty. Office of Educ.* (2020) OAH Case No. 2020070970.)

7 Disability Rights California released a report on December 12, 2020, in part to illustrate how  
8 many California students with disabilities were struggling without in-home special education supports  
9 and services.<sup>2</sup> The report explains that certain students with disabilities suffer significantly from the  
10 lack of in-person instruction because they rely on special education supports and services to learn and  
11 succeed.<sup>3</sup> Additionally, disabled students require more services than simply in-person instruction,  
12 including services from specialists such as occupational therapists, speech therapists, behavior  
13 specialists, and counselors—“services that are nearly impossible to provide virtually[.]”<sup>4</sup>

14 For example, a student with Down syndrome who requires hand-over-hand support cannot attend  
15 to or participate in class because his aide cannot meaningfully support him virtually.<sup>5</sup> Another student  
16 with an attention-related disability cannot meaningfully access remote learning without in-home support  
17 because his aide cannot redirect him via Zoom.<sup>6</sup> And an eighth grader with autism and ADHD has  
18 hardly logged onto classes for distance learning due to his anxiety and his district’s refusal to provide a  
19 trained adult to work with him in-person.<sup>7</sup> DRC concluded that to meet these needs and the  
20 requirements of the IDEA, school districts must be able to provide at least some in-person services.

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23 <sup>2</sup> See Disability Rights California, *Special Education During COVID-19: Stories From Across*  
24 *California* (Dec. 12, 2020) [https://www.disabilityrightsca.org/post/special-education-during-covid-19-stories-from-across-california#foot\\_1a](https://www.disabilityrightsca.org/post/special-education-during-covid-19-stories-from-across-california#foot_1a).

25 <sup>3</sup> *Id.*

26 <sup>4</sup> *Id.* (quoting Carolyn Jones, *As School Starts, California Districts Try to Improve Virtual Special*  
27 *Education; Parents, However, Are Skeptical That Distance Learning Will Ever Work For Children With*  
28 *Disabilities* (Aug. 17, 2020) EdSource <https://edsource.org/2020/as-school-starts-california-districts-try-to-improve-virtual-special-education/638325>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

1           **II.     Without In-Person Instruction, Certain Disabled Students Will Experience**  
2                           **Irreparable Harm**

3           Decades of research demonstrates that without these services, students with the most severe  
4 disabilities will lose the ability to achieve positive long-term outcomes. Early and consistent  
5 intervention services are especially vital for students with disabilities such as autism, developmental  
6 disabilities, and learning disorders.

7                           **A. Autistic Students**

8           Autism spectrum disorder (“ASD”) can cause significant social, communication, and behavioral  
9 challenges<sup>8</sup> and people with ASD may communicate interact, behave, and learn in ways that are  
10 different from most other people.<sup>9</sup> ASD is characterized by persistent difference in communication,  
11 interpersonal relationships, and social interaction across different environments, and restricted and  
12 repetitive behavior, activities, and interests.<sup>10</sup> Some people with ASD need significant assistance in  
13 their daily lives.<sup>11</sup>

14           Research has repeatedly shown that schools must identify and provide intervention services to  
15 autistic students at the earliest possible time to maximize positive outcomes and prevent negative  
16 secondary symptoms, such as remaining permanently non-verbal.<sup>12</sup> Moreover, an intervention likely  
17

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18 <sup>8</sup> Centers for Disease Control and Prevention, *Autism Spectrum Disorder (ASD)* (last visited Dec. 21,  
19 2020) <https://www.cdc.gov/ncbddd/autism/facts.html>.

20 <sup>9</sup> AutismSociety, *What is Autism* (last visited Dec. 21, 2020) <https://www.autism-society.org/what-is/>.  
<sup>10</sup> *Id.*

21 <sup>11</sup> Centers for Disease Control and Prevention, *supra* note 8.

22 <sup>12</sup> Lynn Kern Koegel et al., *The Importance of Early Identification and Intervention for Children With or*  
23 *At Risk for Autism Spectrum Disorders* (2013) 16 *International Journal of Speech-Language Pathology*  
24 50, 54 [“Data suggest that children who are completely non-verbal who begin intervention in the early  
25 pre-school years are far more likely to become verbal than children who begin intervention over the age  
26 of 5-years.”]; *id.* [“We strongly encourage symptoms to be addressed at the earliest point in time so that  
27 parents learn effective strategies to help their children improve socially and communicatively and to  
28 decrease the possibility of more severe secondary symptoms.”]; see e.g., *id.* at 52 [“Alternatively, failing  
to provide intervention for these symptoms due to inaccurate or lack of diagnosis may result in grave  
consequences. Early intervention techniques to address core symptoms of ASD may prevent secondary  
symptoms and reduce the need for more substantial and expensive interventions later in life.”]; Edward  
C. Fenske, et al., *Age at Intervention and Treatment Outcome for Autistic Children in a Comprehensive*  
*Intervention Program, in Analysis and Intervention in Developmental Disabilities* (1985) 57 [explaining  
that positive outcomes diminish sharply when intensive, high-quality services such as behavioral  
intervention are not begun before age five]; John W. Jacobson et al., *Cost-Benefit Estimates for Early*

(continued...)

1 “does not work well when it is performed piecemeal, briefly, or by individuals with inadequate training  
2 and experience,”<sup>13</sup> as is usually the case when untrained parents are forced to provide services during  
3 distance learning. “The majority of the field” therefore agrees that the “‘wait and see’ method for early  
4 intervention of ASD is likely to have significant negative consequences on children with ASD.”<sup>14</sup>

### 5 **B. Students with Developmental Disabilities and High Behavioral Needs**

6 Students with severe developmental disabilities and high behavioral needs also require early  
7 behavioral intervention services to improve long-term developmental outcome measures and academic  
8 achievement. Developmental disabilities encompass a broad range of conditions that result from  
9 cognitive and/or physical impairments and range in degree of severity.<sup>15</sup> Developmental disabilities  
10 encompass ASD, but also include intellectual disabilities and cerebral palsy.<sup>16</sup>

11 A recent study on the efficacy of distance learning programs for students with severe  
12 developmental disabilities and high behavioral needs found that these students are not spending enough  
13 time in the programs to meet their learning needs.<sup>17</sup> This loss will increase the chances of maladaptive  
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15 *Intensive Behavioral Intervention for Young Children with Autism - General Model and Single State*  
16 *Case* (1998) 13 Behav. Interventions 201, 204 [“During the past 15 years research has begun to  
17 demonstrate that significant proportions of children with autism or PDD who participate in early  
18 intensive intervention based on the principles of applied behavior analysis (ABA) achieve normal or  
19 near-normal functioning or significant gains in measured intelligence or other aspects of development.”]  
20 [citations omitted].

21 <sup>13</sup> Jacobson et al., *supra* note 12, at 216 [“Like effective early intervention for children at risk for various  
22 other disabilities, EIBI needs to begin early, be provided for many hours per week and many weeks per  
23 year for an extended period, be delivered directly to children, address a wide range of needs, and  
24 accommodate individual differences.”].

25 <sup>14</sup> Koegel et al., *supra* note 12, at 52.

26 <sup>15</sup> Melaura Andree Erickson Tomaino et al., *An Assessment of the Feasibility and Effectiveness of*  
27 *Distance Learning for Students with Severe Developmental Disabilities and High Behavioral Needs*  
28 (Aug. 6, 2020) at 7 available at [[+https://doi.org/10.21203/rs.3.rs-54344/v1](https://doi.org/10.21203/rs.3.rs-54344/v1)].

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* [citing Adam M. Briggs et al., *Prevalence of Resurgence of Destructive Behavior When Thinning*  
*Reinforcement Schedules During Functional Communication Training* (2018) 51 J. Applied Behav.  
Analysis 620 [concluding that the resurgence of destructive behavior is a common behavioral  
phenomenon when the reinforcement schedule for the appropriate alternative response is progressively  
thinned and that caregivers may be more likely than highly trained behavior therapists to cause sustained  
resurgence in destructive behavior]; see also, e.g., Stephanie P. Da Silva et al., *Concurrent Resurgence*  
*and Behavioral History* (2008) 90 J. Experimental Analysis of Behavior 313, 329 [“In applied settings,  
responding that was reinforced prior to the introduction of interventions may resurge when the  
contingencies arranged by the intervention are altered due to time constraints, caregivers’ limited skills,  
or to changes in assignments of personnel to carry out an intervention. Problem behavior, such as self-  
injury or aggression, may resurge in a classroom, for example, if the teacher does not reinforce a mand  
that a child had learned during functional communication training.”].

1 behavior and regression in skills necessary for successful re-entry into schools or clinical programs to  
2 ensure safety of students and educators/clinicians.<sup>18</sup> Long-term follow up studies have also  
3 demonstrated “enhancement in school achievement, better parenting skills, greater independence, lower  
4 criminal activity, and higher earnings in cohorts who have received early intervention programs.”<sup>19</sup>

### 5 **C. Students with Learning Disabilities**

6 Learning disabilities encompass a range of disabilities including dyslexia, dyscalculia, and  
7 dysgraphia that cause students to struggle in one or more areas of learning, even when overall  
8 intelligence of motivation is not affected.<sup>20</sup> As with students with ASD and developmental disabilities,  
9 students with learning disabilities require early intervention services to improve long-term outcomes and  
10 academic achievement.<sup>21</sup> Without these services, students with learning disabilities can experience  
11 “secondary consequences,” which “include problems in reading comprehension and reduced reading  
12 experience that can impede growth of vocabulary and background knowledge.”<sup>22</sup> Students with  
13 instructional deficits and gaps experience similar consequences.<sup>23</sup> Studies further demonstrate that

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14  
15 <sup>18</sup> Tomaino et al., *supra* note 15 at 7.

16 <sup>19</sup> Annette Majnemer, *Benefits of Early Intervention for Children with Developmental Disabilities*  
17 (1998) 5 *Seminars in Pediatric Neurology* 62, 64 [“These studies clearly illustrate that sensory  
18 enhancement or deprivation conditions encountered early in life can alter the neuronatomic circuitry of  
19 the nervous system. Accumulating evidence in infant behavior and development further support the  
20 view that environmental experiences profoundly influence the health and developmental competence of  
21 children.”] [“[T]here is growing consensus that based on the best available evidence, early intervention  
22 can have substantial benefits to children developmentally at risk. Overall, interventions improve scores  
23 on developmental outcome measures, strengthen parent-child interactions, and provide a supportive  
24 environment for the family.”].

25 <sup>20</sup> Centers for Disease Control, *Learning Disorders in Children* (last visited Dec. 21, 2020)  
26 <https://www.cdc.gov/ncbddd/childdevelopment/learning-disorder.html>.

27 <sup>21</sup> International Dyslexia Association, *Dyslexia Assessment: What Is It and How Can It Help?*  
28 (2017) <https://dyslexiaida.org/dyslexia-assessment-what-is-it-and-how-can-it-help/>  
[“[A]ppropriate early intervention, provided in kindergarten through grade three, is very  
effective in closing the gap for struggling readers. Early intervention and additional direct  
instruction should begin as early as kindergarten or first grade for struggling readers when the  
gap is small and students benefit from brain plasticity advantages for learning language-based  
information.”].

<sup>22</sup> International Dyslexia Association, *Definition of Dyslexia* (2002) <https://dyslexiaida.org/definition-ofdyslexia/>.

<sup>23</sup> Frank R Vellutino, *The Case for Early Intervention in Diagnosing Specific Reading Disability* (1998)  
36 *J. Sch. Psych.* 367, 388; see *id.* at 384 [“In keeping with results obtained in previous intervention  
studies, our remedial program significantly reduced the number of children who qualified as “disabled

(continued...)

1 academic and social-emotional regression in students with learning disabilities is a predictor of future  
2 incarcerations.<sup>24</sup>

### 3 III. Students in SFUSD Have Already Shown Signs of Significant Regression

4 In SFUSD, as the Plaintiff's supporting declarations detail, the COVID-19 pandemic and the  
5 related move to distance learning has been associated with enormous disruption in essential services for  
6 students with disabilities. (See Declaration of Liz Cong ISO Mtn. for PI at ¶¶ 7-9 [hereinafter "Cong  
7 Decl."]; Declaration of Elizabeth Kelly ISO Mtn. for PI at ¶¶ 1-13 [hereinafter "Kelly Decl."];  
8 Declaration of Lindsay Sink ISO Mtn. for PI at ¶¶ 5-6 [hereinafter "Sink Decl."].) While partially  
9 remediable, these delays and gaps during COVID in the provision of services to children with  
10 disabilities can cause long term harms to their academic and social-emotional trajectory.<sup>25</sup> Nevertheless,  
11 SFUSD continues to provide special education services and supports solely through a virtual format.<sup>26</sup>

12 As a result of SFUSD's systemic failure to provide appropriate special education supports and  
13 services, disabled students have showed significant signs of regression that may soon cause long-term  
14 harms. Regressive behaviors from the declarants' children include meltdowns and loss of previously  
15 achieved learning and behavioral goals:

16  
17 readers," relative to the number who qualified prior to remediation."]; *id.* at 389 ["They also suggest that  
18 such children are in the minority, compared with those whose reading difficulties are caused by  
19 experiential and instructional deficits and, thereby, speak for the utility of using early intervention as the  
20 primary vehicle for distinguishing the two groups."].

21 <sup>24</sup> Elaine Traynelis-Yurek & George A. Giacobbe, *Unremediated Learning Disabilities and*  
22 *Reincarceration* (1989) 13 J. Offender Couns. Serv. Rehab. 163.

23 <sup>25</sup> See Arlene Martinez, *It May Be The Most Important Test of A Child's Life. Most Aren't Getting It*,  
24 (Nov. 30, 2020) Disability Scoop [https://www.disabilityscoop.com/2020/11/30/it-most-important-test-  
25 childs-life-most-arent-getting-it/29095/](https://www.disabilityscoop.com/2020/11/30/it-most-important-test-childs-life-most-arent-getting-it/29095/) ["When delays are caught early, services can help the child's  
26 brain make the connections that are lacking. But as children get older, it is 'harder to break those brain  
27 habits.'"] [quoting Heather Little, systems director of First 5]; Koegel, *supra* note 12, at 52 ["[F]ailing to  
28 provide intervention for these symptoms due to inaccurate or lack of diagnosis may result in grave  
consequences. Early intervention techniques to address core symptoms of ASD may prevent secondary  
symptoms and reduce the need for more substantial and expensive interventions later in life."]; *id.* at 54  
["Developmental trajectories are well established by the pre-school years, and delays in communication  
are very likely to result in a lifetime of challenges in many other areas."]; Briggs, *supra* note 17, at 626-  
67 [concluding that the resurgence of destructive behavior is a common behavioral phenomenon when  
the reinforcement schedule for the appropriate alternative response is progressively thinned and that  
caregivers may be more likely than highly trained behavior therapists to cause sustained resurgence in  
destructive behavior].

<sup>26</sup> San Francisco Unified School District, *Special Education Frequently Asked Questions (FAQs)* (Sep.  
24, 2020) [https://www.sfusd.edu/services/health-wellness/covid-19-coronavirus-resources-families-  
students/faqs/special-education-frequently-asked-questions-faqs](https://www.sfusd.edu/services/health-wellness/covid-19-coronavirus-resources-families-students/faqs/special-education-frequently-asked-questions-faqs).

- A kindergartener who is anxious, withdrawn, and has begun hitting others when he is frustrated.
- A first-grader who has not receive any special education services during distance learning to support his social skills and who has almost completely lost his ability to speak without the use of his stuffed animals and increasingly struggles with attention.
- A first-grader who has forgotten how to write his letters, regressed in writing, grammar, and math, developed a stutter, has repeated meltdowns, and cannot focus on school-related activities for more than a few minutes at a time.

(See Cong Decl. ¶ 8; Kelly Decl. ¶ ; Sink Decl. ¶ 5-6.) These stories track SFUSD parents’ concerns with the district’s distance learning model. In the district’s summer 2020 survey of SFUSD parents’ distance-learning experiences, 59% of respondents indicated that they would prefer some form of in-person instruction.<sup>27</sup> Moreover, 76% of respondents indicated that they were only “somewhat satisfied,” “slightly satisfied” or “not at all satisfied” with their children’s overall distance learning experience.<sup>28</sup> Many of the respondents’ children received little to no adult support with their schoolwork.<sup>29</sup> As a result, 44% of respondents indicated that their child learned much less compared to regular school, while 34% indicated that their children learned somewhat less.<sup>30</sup>

There is also substantial evidence that disabled students of color are experiencing even more regression. In a recent survey, low income parents and parents of color surveyed across California were more likely to rate distance learning as unsuccessful and were more dissatisfied with how their child’s school has planned and prepared for the fall semester.<sup>31</sup> Moreover, low-income students and Black and Latinx students are most likely to lack access to high-quality remote learning and experience significant learning loss. Indeed, Black and Latinx students have lost roughly 10.3 and 9.2 months of learning, and

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<sup>27</sup> San Francisco Unified School District, *Fall 2020: Looking Forward* [https://drive.google.com/file/d/1-YaX2Ts\\_CxEJeWwdbKOWCdh-stzQI320/view](https://drive.google.com/file/d/1-YaX2Ts_CxEJeWwdbKOWCdh-stzQI320/view).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* [indicating that 36% of respondents’ children received less than 1 hour of adult support per day and 32% received only 1-2 hours of support per day].

<sup>30</sup> *Id.*

<sup>31</sup> The Education Trust-Midwest, *California Parent Poll: Fall 2020* (2020)1, <https://west.edtrust.org/california-parent-poll-october-2020/>.

1 low-income students have lost 12.4 months compared to six months for white students, and 6.8 months  
2 for all students.<sup>32</sup>

3 **CONCLUSION**

4 The provision of special education services, including in-person supports where necessary (at home  
5 or at school in cohorts consistent with public health guidelines), is required by the IDEA and consistent with  
6 public health guidelines. Such supports would prevent disabled students in SFUSD from experiencing  
7 continued regression and irreparable harm.  
8

9  
10 March 12, 2021

DISABILITY RIGHTS, EDUCATION, AND DEFENSE FUND  
Claudia Center  
Malhar Shah

11  
12 BY: /s/ Malhar Shah  
13 Malhar Shah

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<sup>32</sup> *Id.*

1 **PROOF OF SERVICE**

2 I am employed in the County of Alameda; I am over the age of 18 years and not a party to the  
3 within cause. My business address is **Disability Rights Education and Defense Fund, 3075 Adeline  
Street, Suite 210, Berkeley, CA 94703**. On **March 12, 2021**, I served the following documents:

- 4 **1. MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF  
PLAINTIFF AND PETITIONER CITY AND COUNTY OF SAN FRANCISCO**
- 5 **2. [PROPOSED] BRIEF OF *AMICI CURIAE* DISABILITY RIGHTS EDUCATION AND  
6 DEFENSE FUND AND DISABILITY RIGHTS CALIFORNIA IN SUPPORT OF  
7 PLAINTIFF AND PETITIONER CITY AND COUNTY OF SAN FRANCISCO [Attached  
to Motion for Leave to file Brief as *Amici Curiae* in Support of Plaintiff and Petitioner City  
and County of San Francisco, as. Exhibit A]**

8 in the manner checked below on all interested parties in this action addressed as follows:

9 Dennis J. Herrera  
10 Jesse C. Smith  
11 Ronald P. Flynn  
12 Yvonne R. Meré  
13 Tara M. Steeley  
14 Sara J. Eisenberg  
15 Matthew D. Goldberg  
16 City Hall, Room 234  
17 1 Dr. Carlton B. Goodlett Place  
18 San Francisco, CA 94102

19 *Attorneys for Plaintiff and Petitioner*

20 Suzanne Solomon  
21 Liebert Cassidy Whitmore  
22 135 Main Street, 7th floor  
23 San Francisco, CA 94105

24 *Attorney for Defendants and Respondents*

25 **X VIA ELECTRONIC SERVICE PROVIDER.** I am readily familiar with the firm's practice for  
26 filing electronically. Through use of ACE Attorney Service, an electronic service provider, I  
27 arranged a true and correct copy of the above-referenced documents to be electronically served to  
28 the e-mail address(es) registered with the court this day in the ordinary course of business  
following ordinary business practices.

Executed on **March 12, 2021**, at Downey, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is  
true and correct.

\_\_\_\_\_  
*/s/ Malhar Shah*  
Malhar Shah