

1 Alexis DeLaCruz (SBN 031273)
adelacruz@natedisabilitylaw.org
2 Tara C. Ford+
Ford.Tara.C@gmail.com
3 NATIVE AMERICAN DISABILITY
LAW CENTER
4 3535 E. 30th Street, Suite 201
Farmington, NM 87402
5 Telephone: 505.566.5880

6 Mark Rosenbaum+
mrosenbaum@publiccounsel.org
7 Kathryn Eidmann+
keidmann@publiccounsel.org
8 Anne Hudson-Price+
aprice@publiccounsel.org
9 Elizabeth Song+
esong@publiccounsel.org
10 PUBLIC COUNSEL
610 South Ardmore Avenue
11 Los Angeles, CA 90005
Telephone: 213.385.2977

12 Elisabeth Bechtold+
ebechtold@aclu-nm.org
13 Maria Martinez-Sánchez+
mmartinez@aclu-nm.org
14 AMERICAN CIVIL LIBERTIES UNION of
15 NEW MEXICO
1410 Coal Avenue SW
16 Albuquerque, NM 87104
Telephone: 505.266.5915

17 *Attorneys for Plaintiffs*

18 + Application for admission *Pro Hac Vice* forthcoming
19

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

22
23 STEPHEN C., a minor, by Frank C.,
guardian ad litem; ANNA D., a minor, by
24 Elsa D., guardian ad litem; DURELL P.,
a minor, by Billie P., guardian ad litem;
25 TAYLOR P., a minor, by Billie P.,
guardian ad litem; LEVI R., a minor, by
26 Laila R., guardian ad litem; LEO R., a
minor, by Laila R., guardian ad litem;
27 JENNY A., a minor, by Jasmine A.,
guardian ad litem; JEREMY A., a minor,
by Jasmine A., guardian ad litem;
28 JORDAN A., a minor, by Jasmine A.

No. _____

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 guardian ad litem; and THE NATIVE
2 AMERICAN DISABILITY LAW
CENTER,

3 *Plaintiffs,*

4 v.

5 BUREAU OF INDIAN EDUCATION;
6 UNITED STATES DEPARTMENT OF
THE INTERIOR; SALLY JEWELL, in
her official capacity as Secretary of the
Interior; LAWRENCE ROBERTS, in his
7 official capacity as Principal Deputy
Assistant Secretary - Indian Affairs;
8 TONY DEARMAN, in his official
capacity as Director of the Bureau of
9 Indian Education; JEFF WILLIAMSON,
in his official capacity as Principal of
10 Havasupai Elementary School,

11 *Defendants.*

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **INTRODUCTION**

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

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

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

24
25 _____
26 ¹ Defendants are the United States Department of the Interior (“DOI”), United States Bureau of
27 Indian Education (“BIE”), Defendant Sally Jewell, in her official capacity as U.S. Secretary of the
28 Interior, Lawrence Roberts, in his official capacity as Principal Deputy Assistant Secretary—
Indian Affairs, Tony Dearman, in his official capacity as Director of the Bureau of Indian
Education, and Jeff Williamson, in his official capacity as Principal of Havasupai Elementary
School (collectively, “Defendants”).

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

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

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

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

20 • **Failure to Provide a Full Day of Public Education to Students with**
21 **Disabilities:** Students with disabilities are excluded from the school and denied a full day of
22 public education by placement on “restricted hours” or “homebound” schedules, pursuant to which
23 *they receive as few as three hours of education per week.* Plaintiffs Levi R. and Durell P. have
24 each been limited to such restricted-hours schedules continuously for over three and five years,
25 respectively.²

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

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

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

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

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

25 4. The consequences of these educational deprivations for Havasupai children are
26 devastating and enduring. Students perform many years below grade level: The most recent
27 publicly-available BIE data reflects that in the 2012-2013 school year, Havasupai Elementary
28 School students performed at only the **1st percentile in reading and 3rd percentile in math**, based

1 on a median percentile rank from 1 up to 100.³ This places the School dead last—by a large
2 margin—in both reading and math achievement among BIE schools. Moreover, the longer
3 students remain at Havasupai Elementary School, the farther behind they fall. BIE data reflects
4 that Havasupai Elementary School students experienced a *large negative growth index* of *-.72* and
5 *-.71* in reading and math, respectively, meaning that the academic progress made by individual
6 students as they continued to attend the School was approximately 0.7 standard deviations lower
7 than expected. As the BIE has acknowledged, this indicates “*well-below average gains made by*
8 *the student[s].*”⁴

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

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

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

26 _____
27 ³ Northwest Education Evaluation Association, *BIE Report on Student Achievement and Growth* at
28 56, 58 (Feb. 2014), <http://www.bie.edu/cs/groups/webteam/documents/document/idc1-028067.pdf>

⁴ *Id.* at 17.

1 8. Defendants’ abdication of responsibility defies unmistakably clear federal law. The
2 federal government has specific statutory and regulatory obligations to provide Native students
3 with a basic education and to meet the needs of Native students with disabilities. These
4 obligations, grounded in the federal government’s “undisputed . . . trust relationship [with] the
5 Indian people,”⁵ are assigned to Defendants, the federal government agencies and officials
6 charged with administering and overseeing the education of Native students.

7 9. Numerous federal statutes and regulations, including the Indian Education Act and its
8 implementing regulations, expressly require Defendants to provide an education to Native
9 American children that meets basic educational standards and enables students to access post-
10 secondary educational opportunities.⁶ Congress and the BIE have detailed the content of the
11 federal government’s robust duties to Native students attending BIE-funded and operated schools.
12 Binding regulations describe with specificity the content and form of the education that must be
13 provided in BIE schools, including the subject areas that must be taught and the educational
14 resources that must be available.⁷

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

21 11. Despite these legal mandates, Defendants have failed to provide basic general
22 education to students at Havasupai Elementary School and to establish a system to deliver
23 specialized instruction, related services, and accommodations necessary for students with
24 disabilities—including but not limited to students whose ability to learn has been impacted by

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

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

27 ⁷ 25 C.F.R. §§ 36.11-36.51.

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

1 exposure to childhood adversity—to access the benefits of a public education. These deprivations
2 violate the federal government’s substantive obligations under the Indian Education Act as
3 amended, Section 504 of the Rehabilitation Act of 1973, and their implementing regulations.
4 Defendants’ neglect of and indifference to the educational rights of Havasupai children has
5 systemically excluded Plaintiffs from the opportunity to attain economic self-sufficiency and
6 meaningfully participate in our democratic society.⁹

7 12. To redress the deprivation of rights secured to students attending Havasupai
8 Elementary School, Plaintiffs bring this complaint under the Administrative Procedure Act and
9 Section 504 of the Rehabilitation Act for declaratory and injunctive relief. Plaintiffs seek a
10 declaration of the rights and obligations of Defendants with respect to the delivery of general and
11 special education to Havasupai Elementary School students. They also seek injunctive relief to
12 ensure that Defendants comply with those rights and obligations, and do so in a way that is
13 culturally relevant. Exhaustion of administrative remedies is not required because, among other
14 reasons explained below, it would be futile. In addition, Plaintiffs seek compensatory and remedial
15 education to provide them access to the benefits of a general education, along with any needed
16 special education and related services.

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

21 FACTUAL ALLEGATIONS

22 I. PARTIES

23 Plaintiffs

24 14. **Plaintiff Stephen C.** is an eleven-year-old Havasupai boy who resides on the
25 Havasupai reservation in Supai, Arizona. Stephen C. is enrolled in the sixth grade at Havasupai

26
27 ⁹ *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955); *see also Wisconsin v. Yoder*, 406
28 U.S. 205, 221 (1972) (“[S]ome degree of education is necessary to prepare citizens to participate
effectively and intelligently in our open political system if we are to preserve freedom and
independence.”).

1 Elementary School and is legally required to attend school. Stephen C. has attended Havasupai
2 Elementary School since kindergarten. The guardian of Stephen C., Frank C., has concurrently
3 filed a petition with the Court to act as his guardian *ad litem* in connection with this litigation.

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

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

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

25 18. As a direct result of Defendants’ failure to ensure that Havasupai Elementary School
26 has the capacity to deliver access to basic education, Plaintiff Anna D. has been deprived of access
27 to required general education curriculum and culturally relevant instruction and has been subject
28 to school conditions—including lack of access to textbooks, a library, and extracurricular

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

5 19. **Plaintiff Durell P.** is a thirteen-year-old Havasupai boy who resides on the
6 Havasupai reservation in Supai, Arizona. Durell P. is enrolled in the seventh grade at Havasupai
7 Elementary School and is legally required to attend school. Durell P. has been enrolled at
8 Havasupai Elementary School since kindergarten, except for a 45-day period when the school
9 compelled him to enroll in a residential placement because the school could not meet his
10 educational needs. The mother of Durell P., Billie P., has concurrently filed a petition with the
11 Court to act as his guardian *ad litem* in connection with this litigation.

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

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

28

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

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

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

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

28

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

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

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

24 29. **Plaintiff Jenny A.** is a 14-year-old Havasupai girl who resides on the Havasupai
25 Reservation in Supai, Arizona. Jenny A. attended Havasupai Elementary School from
26 kindergarten through the sixth grade. Due to the inadequacy of the education provided at the
27 school, Jenny A.'s mother, Jasmine A., decided to enroll her daughter at a BIE boarding school in
28 Oklahoma. Jenny A. is currently enrolled in the ninth grade, and she is legally required to attend

1 school. The mother of Jenny A., Jasmine A., has concurrently filed a petition with the Court to act
2 as her guardian *ad litem* in connection with this litigation.

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

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

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

26 33. As a direct result of Defendants’ failure to ensure that Havasupai Elementary School
27 has the capacity to deliver access to basic education, Plaintiff Jeremy A. has been deprived of
28 access to required general education curriculum and culturally relevant instruction and has been

1 subject to school conditions—including lack of access to textbooks, a library, and extracurricular
2 activities—that prevent him from learning. Plaintiff Jeremy A. has also been deprived of
3 education as a result of Defendants’ failure to establish a system to deliver specialized instruction,
4 related services, and accommodations necessary for students whose ability to access the benefits
5 of a public education is affected by exposure to adversity and complex trauma.

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

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

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

28

1 meeting the requirements of Section 504 of the Rehabilitation Act and the educational needs of
2 Native American children residing on reservations and attending elementary and secondary
3 schools funded by the Department of the Interior. He can delegate those responsibilities only to
4 the Director of the BIE.

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

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

16 **II. U.S. GOVERNMENT’S OBLIGATION TO PROVIDE EDUCATION TO**
17 **HAVASUPAI STUDENTS**

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

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

23 45. The Havasupai are a federally recognized Native American tribe who has resided for
24 centuries in the Grand Canyon. The tribe has historically lived on lands that include the base and
25 rim of Havasu Canyon. The Havasupai people cultivated crops at the bottom of the canyon in the
26
27
28

1 spring and summer, while migrating to the plateau in the fall and winter months for hunting and
2 grazing.¹⁰

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

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

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

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

28 ¹¹ Arizona Rural Policy Institute et al., *Demographic Analysis of the Havasupai Tribe Using 2010
Census and 2010 American Community Survey Estimates* 32,

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

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

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

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

16 52. For decades, Havasupai families strove to resist sending their children away from
17 home into the rampant abuse and neglect of the boarding schools. Along with their struggle to
18 regain their tribal homelands, the Havasupai fought to have their children educated in the
19 communities and on the lands that form an inseparable part of their identity as a people. They
20 rejected the flawed proposition that a public education required the dilution of their culture, which
21 remains deeply rooted in their ancestral homelands in the Grand Canyon.

22
23 <http://azcia.gov/Documents/Links/DemoProfiles/Havasupai%20Tribe.pdf> (hereinafter
24 “Demographic Analysis”).

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

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

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

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

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

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

22 57. Yet the Havasupai persisted in their struggle to ensure access to tribal education. In
23 1964, the Havasupai successfully lobbied for the reopening of the Supai Day School.¹⁵ With only
24 one teacher, the school provided education on the reservation for young children from
25
26

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

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

1 kindergarten through second grade.¹⁶ After the age of 8 or 9, however, children were still required
2 to leave home to complete their education at the boarding schools.

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

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

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

20 61. Today, the school in Supai—renamed Havasupai Elementary School—serves
21 approximately 70 students in grades kindergarten through eight. There continues to be no high
22 school instruction provided to Havasupai students; students who wish to pursue secondary
23

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

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

28 ¹⁸ See STEPHEN HIRST, *I AM THE GRAND CANYON* 243 (3d ed. 2006). The percentage has declined
in the intervening years, which is not surprising because Havasupai Elementary School does not
provide any instruction in the Havasupai language, despite a legal obligation to do so.

1 education must leave their community to attend public schools or BIE-operated boarding schools
2 outside of the canyon.

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

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

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

18 [t]he legacy [of the federal government’s involvement in Native American
19 education] is characterized by inadequate resource allocation, systematic exclusion
20 of Indian parents and communities from any role in the education of their children,
21 and a one-way transmission of white American education to the Indian child as a

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

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

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

²² *Id.* at 161.

1 means to remove the child from his aboriginal culture and assimilate him into the
2 dominant white culture. Put another way, Native Americans have endured
generations of inadequate and inappropriate education.²³

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

7 65. In 1969, a Special Senate Subcommittee Report on Native education titled “Indian
8 Education: A National Tragedy - A National Challenge” was published.²⁴ The authors
9 summarized the subcommittee’s research as “a major indictment of the [federal government’s]
10 failure” to “live up to its responsibility” to educate Native American children and admonished,
11 “[t]hese cold statistics illuminate a national tragedy and a national disgrace.”²⁵ The Report’s
12 conclusions were bleak:

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

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

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

²⁵ *Id.* at ix-x.

²⁶ *Id.* at xi.

1 66. In an attempt to redress the stark reality depicted in the Report,²⁷ Congress passed the
2 Indian Education Act of 1972 (“IEA”),²⁸ which forms the basis for current federal policy
3 concerning the education of Native American students. This landmark legislation, the first
4 “comprehensive approach to meeting the unique needs” of Native students,²⁹ established the
5 National Advisory Council on Indian Education, created the Office of Indian Education (the
6 predecessor to today’s BIE), and authorized a number of grants targeted at improving Native
7 American educational opportunities and addressing the unique educational needs of Native
8 American students.³⁰ In his opening statement at the hearings before the Senate Subcommittee on
9 Education, Senator Ted Kennedy, one of the Act’s sponsors, proclaimed, “[t]he time is now ripe
10 for Congress to undertake the job of providing substance behind its own often-voiced commitment
11 to improving Indian education.”³¹ Affirming this mandate, a 1976 pamphlet released by the
12 Department of Health, Education, and Welfare described the “[c]ongressional intent in enacting
13 the Indian Education Act” as “to give all Native American students equal educational
14 opportunity.”³²

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

17 67. In response to the federal government’s troubled legacy of neglect, oppression, and
18 cultural eradication in Native education, the federal government has committed to providing
19 education for Native American students attending schools funded or operated by the BIE. Title XI

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

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

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

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

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

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

1 of the Education Amendments of 1978, as amended by the Native American Education
2 Improvement Act of 2001 (“Title XI”), expressly states that in order to fulfill the federal
3 government’s “unique and continuing trust responsibility . . . for the education of Indian children,”
4 the “Federal Government has *the sole responsibility* for the operation and financial support of the
5 [BIE] funded school system. . . .”³³ The Act further “vests in the Assistant Secretary for Indian
6 Affairs all functions with respect to formulation and establishment of policy and procedure and
7 supervision of programs and expenditures of Federal funds for the purpose of Indian education
8 administered by the Bureau.”

9 68. In this respect, the governance and administration of BIE-funded schools is distinct
10 from the traditional public school system, in which education is primarily the responsibility of the
11 state. Unlike a traditional public school, Havasupai Elementary School—one of 57 schools that is
12 both funded and operated by the BIE—is not controlled or operated by the Havasupai government
13 and is not subject to the jurisdiction of any State Educational Agency (“SEA”) other than the
14 BIE.³⁴

15 69. **General Education:** Numerous federal statutes and regulations expressly obligate
16 Defendants to provide an education to Native American children that meets basic educational
17 standards and enables students to access post-secondary educational opportunities. Indeed,
18 Congress has made clear that the BIE must provide Native American children “with educational
19 opportunities that *equal or exceed those for all other students in the United States.*”³⁵ Other
20 statutes and regulations similarly refer to Defendants’ obligation to provide education that is
21 “adequate,”³⁶ “comprehensive,”³⁷ “of the highest quality,”³⁸ and that meets “the basic elementary
22
23

24 ³³ 25 U.S.C. § 2000 (emphasis added).

25 ³⁴ 20 U.S.C. § 7801(30)(C).

26 ³⁵ 25 U.S.C. § 2001(a)(1) (emphasis added).

27 ³⁶ 25 C.F.R. § 32.4(r).

28 ³⁷ 25 C.F.R. § 32.3 (codified into law under 25 U.S.C. § 2003).

³⁸ 25 U.S.C. § 2000.

1 and secondary educational needs.”³⁹ These statutory and regulatory obligations are reinforced by
2 the federal government’s “trust” responsibility for Native American students.⁴⁰

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

9 71. **Special Education:** Defendants are likewise tasked with complying with federal
10 statutes that prohibit discrimination against students with disabilities—including Section 504 of
11 the Rehabilitation Act (“Section 504”)—in the administration and operation of all BIE schools.
12 Beginning in 1978, Congress directed the Secretary of the Interior to bring all schools operated by
13 the Bureau into compliance with Section 504. In enacting the No Child Left Behind Act of 2001,
14 Congress once again directed the Secretary to bring all schools operated by the Bureau into
15 compliance with Section 504.⁴² Similarly, Executive Order 13160, signed in 2001, specifically
16 applies Section 504’s non-discrimination principles to federal education programs, including those
17 at BIE schools.

18 **III. DEFENDANTS’ FAILURE TO DELIVER BASIC EDUCATION AT HAVASUPAI**
19 **ELEMENTARY SCHOOL**

20 72. Under Defendants’ control and operation, Havasupai Elementary School has failed to
21 deliver the basic education required by federal statute and Defendants’ own regulations. It does
22 not even purport to provide a comprehensive general education curriculum, depriving students of
23 instruction in numerous required subject and content areas, including culturally relevant
24 instruction. Defendants have failed to provide students with basic instructional materials and

25 _____
26 ³⁹ *Id.*

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

28 ⁴¹ 20 U.S.C. § 7401.

⁴² 25 U.S.C. § 2005(b)(1).

1 resources like textbooks, a functioning library, and extracurricular activities, and to ensure that
2 Havasupai Elementary School is adequately staffed such that it can effectively deliver basic
3 education. Additionally, Defendants have actively excluded the community from school decision-
4 making and discouraged advocacy to improve the school and secure student rights.

5 **A. Defendants’ Failure to Provide Required**
6 **Instruction at Havasupai Elementary School**

7 (1) Legal Obligations of Defendants

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

13 • **25 C.F.R. § 36.21** outlines the minimum requirements for kindergarten, including,
14 *inter alia*, a curriculum that emphasizes language development and the development of positive
15 feelings as well as instruction in “exploration of the environment (number, space and time
16 relationships, natural science)” and “psychomotor and socialization development.”

17 • **25 C.F.R. § 36.22** outlines the elementary curriculum, covering grades one through
18 six, and listing six subject areas that the instructional programs must offer—language arts,
19 mathematics, social studies, sciences, fine arts, and physical education—as well as five content
20 areas that must be integrated into the curriculum—career awareness, environmental and safety
21 education, health education, metric education, and computer literacy.

22 • **25 C.F.R. § 36.23** outlines the junior high/middle school instructional program,
23 listing seven instructional subject areas—language arts, social studies, mathematics, science, fine
24 arts and practical arts, computer literacy, and physical education—as well as five content areas
25 that must be integrated into the curriculum—career exploration and orientation, environmental and
26 safety education, metric education, consumer economics (including personal finances), and health
27 education—along with minimum units, such as that “one unit [of science] shall be required of each
28 student every year.”

1 • 25 C.F.R. § 36.24 outlines the “secondary instructional program,” enumerating
2 nine subject areas—language arts, sciences, mathematics, social studies, fine arts and practical
3 arts, physical education, languages other than English, driver education, and vocational
4 education— four general content areas to be integrated into the curriculum (consumer economics,
5 metric education, safety education, and health education), and a number of guiding principles to
6 promote graduation.

7 74. There also are regulations generally applicable to all grade levels that take into
8 account the cultural, ethnic, and linguistic needs of Native students. The educational program
9 must “include multi-culture and multi-ethnic dimensions designed to enable students to function
10 effectively in a pluralistic society.”⁴³ Specifically, each “school’s language arts program shall
11 assess the English and native language abilities of its students and provide instruction that teaches
12 and/or maintains both the English and the primary native language of the school population,” and
13 each such program must “meet local tribal approval.”⁴⁴ Additionally, “[t]he school program shall
14 include aspects of the native culture in all curriculum areas” and the content of the program must
15 “meet local tribal approval.”⁴⁵ Each school must “assess the learning styles of its students and
16 provide instruction based upon that assessment” and provide “for at least one field trip per child
17 per year to broaden social and academic experiences.”⁴⁶

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

20 75. The instruction provided at Havasupai Elementary School is limited to the subject
21 areas of reading, writing, and math. Plaintiffs do not receive instruction in the subject areas of
22 science, social studies, any language other than English, arts, or physical education. The school
23 provides no culturally relevant instruction, such as instruction in Havasupai history, culture, arts,
24
25

26 ⁴³ 25 C.F.R. § 36.20(b).

27 ⁴⁴ 25 C.F.R. § 36.20(b)(1).

28 ⁴⁵ 25 C.F.R. § 36.20(b)(2).

⁴⁶ 25 C.F.R. §§ 36.20(b)(3), (b)(4).

1 or language. Nor does it provide instruction in the “content areas” required by BIE regulations to
2 be integrated into the curriculum.⁴⁷

3 76. Defendants have also failed to ensure that the school provides instruction in the
4 Havasupai language, which is necessary to promote the goals of language preservation, enhanced
5 educational outcomes, cultural familiarity, and community pride. Defendants have equally failed
6 to provide appropriate bilingual education to students who speak primarily the Havasupai
7 language and are learning English as a second language. No members of the teaching staff speak
8 the Havasupai language. No assessment has been made of the English and Havasupai language
9 skills of students at the School. No comprehensive program of multicultural and multilingual
10 education—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 officials to
13 enact such culturally relevant language programs.

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

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

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

1 vocabulary or understand written materials relying on these words and concepts. Moreover,
2 education research shows that culturally relevant instruction and engaging activities like the arts
3 and physical education are directly linked with motivation and engagement.⁴⁸

4 (4) Remedy

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

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

15 80. Culturally relevant education refers to a holistic approach that “infuses the history,
16 values, and language—or ways of knowing—of Native people into the contents of the curriculum,
17 the language of instruction, the delivery of instruction, and the interaction with Native students.”⁴⁹
18 This integration of Native culture into mainstream educational frameworks does not detract from
19 traditional curricular areas, and it serves as a critical and complementary component of
20 educational success.⁵⁰ By encouraging cultural continuity between a child’s home community and

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

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

27 ⁵⁰ See, e.g., NIEA, *Using Culturally Based Education to Increase Academic Achievement and
28 Graduation Rates* 2 (2008), <http://files.eric.ed.gov/fulltext/ED523558.pdf>; Teresa L. McCarty, *The
Role of Native Languages and Cultures in American Indian, Alaska Native, and Native Hawaiian
Student Achievement* 2 (2011),

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

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

10 (1) Legal Obligations of Defendants

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

21 [https://static1.squarespace.com/static/52cf1070e4b048ae22d972b2/t/54aac6b3e4b0c309d027948a/
22 ext.pdf](https://static1.squarespace.com/static/52cf1070e4b048ae22d972b2/t/54aac6b3e4b0c309d027948a/1420478131256/McCarty+(2011).+Role+and+Impact+of+Native+Languages+and+Cultural+Cont) (“The issue, then, is not whether schooling based on Native students’ tribal language and
23 culture is beneficial, but rather which approaches are most effective and under what conditions.”).

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

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

28 ⁵³ 25 C.F.R. § 36.11(a)(5).

⁵⁴ *Id.*

1 with physical, social, emotional, intellectual, and vocational growth for each individual,” and
2 “familiar with the unique tribal, social, and economic characteristics of students.”⁵⁵

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

11 (2) Defendants’ Longstanding Failure to Adequately Staff Havasupai
12 Elementary School

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

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

26 _____
27 ⁵⁵ 25 C.F.R. § 36.42.

28 ⁵⁶ 25 C.F.R. § 36.20(a).

⁵⁷ 25 U.S.C. § 2000.

1 acting principal for approximately the first 12 weeks of the school year. The counselor position
2 remained vacant until December 2016.

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

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

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

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

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

28

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

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

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

24 93. Even when Havasupai Elementary School is considered “fully staffed,” multiple
25 grade levels are combined into a single classroom, but teachers are not provided the training or
26 support necessary to serve such combined classrooms. Grade levels are typically combined in
27 K/1, 2/3, 4/5, 6 and 7 /8 classrooms. For example, Anna D. receives her third grade instruction in
28 a combined classroom, and she also received instruction in the first and second grades in a

1 combined classroom. During periods of inadequate staffing, there have been up to three grade
2 levels in a single classroom. At present, due to the lack of a dedicated sixth-grade teacher,
3 students are being placed in a combined classroom for grades 6 through 8. Along with other sixth-
4 grade students at the School, Stephen C. receives his instruction in the same classroom with
5 seventh- and eighth-grade students.

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

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

21 95. As a result of the combined classrooms, teachers must also serve students with
22 especially wide ranges of proficiency levels, disabilities, and social-emotional needs in a single
23 classroom, but they lack the training or support to meet the needs of all students in this setting. As
24 a result, in many classrooms at Havasupai Elementary School, the teacher provides instruction to
25 only a small group of students at any one time, while the remaining students wait, unsupervised
26 and not engaged in any educational activity.

27 96. In addition to a lack of adequate classroom instruction, Defendants have also failed to
28 ensure that Havasupai Elementary School is consistently staffed with a professional student

1 counselor attuned to the individual needs of students and familiar with the tribal community. As a
2 result, Havasupai students have been deprived of access to critical counselling services, ranging
3 from academic guidance in the formation of “an academic and career plan,” to “preventative and
4 crisis counselling” to meet mental health needs, as well as other important services to support
5 student development.⁵⁸ Rather, inadequately trained teachers and staff at Havasupai Elementary
6 School must scramble to meet these critical student needs in the limited time available or leave
7 these needs wholly unaddressed in the absence of a dedicated school counselor.

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

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

17 (4) Remedies

18 99. Adequate staffing of qualified teachers and staff at Havasupai Elementary School,
19 including offering sufficient instructional time for students of each grade and hiring qualified
20 counselors and administrators, is fundamental to the provision of education to Havasupai students.
21 Research in Native American education reveals effective practices in recruiting and retaining
22 highly qualified teachers to work in schools located in tribal communities, such as partnering new
23 teachers with elders in the community to coach them and to help the teachers as they learn how to
24 participate in the community. Similar research shows that investing in professional development
25 and training programs for teachers and offering improved living conditions helps decrease teacher
26
27

28 ⁵⁸ 25 C.F.R. § 36.42(b)(3).

1 attrition rates.⁵⁹ Defendants must adopt these and other practices to recruit, retain, and
2 appropriately train qualified teachers and staff.

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

4 (1) Legal Obligations of Defendants

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

- 10 • **25 C.F.R. § 36.40** specifies that “each school shall provide a library/media
11 program” meeting applicable local and state requirements, along with federal standards
12 specifying *inter alia* the numbers of grade-level appropriate books, reference and
13 periodical texts, professional texts for teachers and staff, copies of principal textbooks, as
14 well as a variety of audio-visual materials, such as maps, films, and recordings. The
15 regulation additionally provides that the library media center “shall be serviced by a
16 librarian,” and that library resources shall incorporate materials relevant to Native
17 American tribes.
- 18 • **25 C.F.R. § 36.41** requires that each BIE school establish a textbook review
19 committee, composed of teachers, parents, students, and school board members. This
20 committee is charged with reviewing textbooks and other instructional materials to ensure
21 that they meet curricular objectives, adequately portray different cultures, are recent and in
22 good condition, and reflect varied reading levels.
- 23 • **25 C.F.R. § 36.43** mandates that each school “provide and maintain a well-
24 balanced student activities program” that shall function as “an integral part of the overall
25 educational program.” These activities, such as “special interest clubs, physical activities,
26

27 ⁵⁹ Angela E. Castagno & Bryan McKinley Jones Brayboy, *Culturally responsive schooling for*
28 *Indigenous youth: A review of the literature*, 78 *Review of Educational Research* 941, 981 (2008),
<http://www.mn-indianed.org/docs/CulturallyResponsiveSchoolingForIndigenousYouth.pdf>.

1 student government, and cultural affairs,” are designed to “help develop leadership abilities
2 and provide opportunities for student participation.”

3 (2) Defendants’ Failure to Provide Required Instructional Support at Havasupai
4 Elementary School

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

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

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

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

21 (3) Defendants’ Failure to Provide Instructional Resources Has Denied
22 Havasupai Students Access to Adequate Educational Opportunities

23 105. No school can function without basic instructional resources, such as textbooks and
24 technology. Defendants have denied Havasupai students access to these most basic learning
25 resources, leading to a dramatic reduction in students’ opportunity to learn effectively in school.
26 Without textbooks or access to a library and media center, students’ educational universe is strictly
27 limited to the pages of photocopied assignments or whatever limited classroom instructional
28 materials can be provided during the school day. These constraints on their interaction with

1 instructional material is harmful to student outcomes and denies them access to adequate
2 educational opportunities.

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

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

19 (4) Remedy

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

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

27 ⁶² Jennifer A. Fredricks & Jacquelynne S. Eccles, *Is Extracurricular Participation Associated*
28 *With Beneficial Outcomes? Concurrent and Longitudinal Relations*, 42 DEVELOPMENTAL
PSYCHOLOGY 698, 698 (2006),
<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.546.5178&rep=rep1&type=pdf>.

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

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

9 (1) Legal Obligations of Defendants

10 109. Multiple statutes and regulations obligate Defendants to engage tribal community
11 members in various areas of school decision-making. Notably, this regulatory regime envisions
12 the role of a local school board that participates in setting and assessing educational goals. *See,*
13 *e.g.,* 25 C.F.R. § 36.10(b). Under BIE regulations, tribal community members are provided with
14 various opportunities for school involvement, including but not limited to, the development of the
15 school's mission and goals,⁶³ the selection of appropriate curricula,⁶⁴ the integration of tribal
16 language and culture,⁶⁵ the review of instructional materials,⁶⁶ and the evaluation of educational
17 needs.⁶⁷ Moreover, a critical component of community engagement involves access to student
18 achievement information⁶⁸ and written school policies in order for parents and other community
19 members to meaningfully evaluate school performance and ensure that schools are adopting and
20 applying appropriate policies.⁶⁹

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

23 ⁶³ 25 C.F.R. § 36.10(b).

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

25 ⁶⁵ 25 C.F.R. § 36.20(b).

26 ⁶⁶ 25 C.F.R. § 36.41(a).

27 ⁶⁷ 25 C.F.R. § 36.12(b)(1).

28 ⁶⁸ 25 C.F.R. § 36.42(a)(4).

⁶⁹ 25 C.F.R. § 36.10(e).

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

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

12 112. The Havasupai Advisory School Board is composed of seven members appointed by
13 the Havasupai Tribal Council. Laila R., the mother of Levi R. and Leo R., and Elsa D., the mother
14 of Anna D., have each been appointed by the Havasupai Tribal Council to serve on the Council's
15 Advisory School Board. Because the School is administered and operated by the BIE, the
16 Advisory School Board lacks authority to establish policies or make binding decisions for the
17 school.

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

26 114. The BIE retaliated against Laila R. and other Advisory School Board members for
27 their advocacy by demanding that all members obtain burdensome FBI background checks before
28 allowing the Advisory School Board to meet, even though they do not meet at the school when

1 children are present. Advisory School Board members are prohibited from entering school
2 grounds and otherwise participating in the work of the Advisory School Board until the
3 background checks, which take many months, have cleared. No other individual is prohibited
4 from entering school grounds absent a background check. The school recently called the police
5 when one school board member and grandparent of a student arrived on school grounds. As a
6 direct result of the BIE's retaliatory acts, the Advisory School Board has effectively been
7 disbanded. Even though the Tribal Council has continued to appoint Advisory School Board
8 members, including appointing Elsa D. in August 2016, the Advisory School Board has not met
9 since January 2015.

10 115. This is not the first time advocates seeking to improve the education to Havasupai
11 students have been subject to retaliation. Community leaders who advocated on behalf of families
12 were barred from School grounds and prohibited from participating in Individualized Education
13 Program ("IEP") meetings. And, during the 2015-2016 school year, the BIE terminated both a
14 teacher and a counselor who were deeply committed to working with children in the community
15 and who sought to advocate for additional resources for students. In addition, Defendants do not
16 conduct outreach sufficient to secure family or community involvement in the schools. The
17 School does not hold culturally relevant events or community engagement activities, such as
18 plays, dances, or sporting events. Parents are rarely invited onto school grounds except to pick up
19 a student who has been suspended or otherwise subject to exclusionary discipline.

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

22 116. The complete lack of opportunity for meaningful community engagement at
23 Havasupai Elementary School, in addition to violating a series of regulatory imperatives, has
24 served to undermine student educational achievement. When parents, families, and community
25 members lack meaningful avenues of participation in their children's education, schools fail to
26 enlist important sources of support and resources to promote student learning. Community
27 members, for example, can help develop culturally relevant curriculum that is an integral part of
28 Native education. Families, once engaged, can assist in setting educational goals and ensuring that

1 children have adequate support with schoolwork. As a consequence, Native education becomes
2 embedded in Native communities and curricular approaches reflect the cultural identity of the
3 community, which enhances student motivation and engagement with what they are learning.
4 Teachers and staff, particularly those from outside the community, are also able to partake of the
5 support and resources offered by community members, who can help them integrate into the
6 community and develop culturally sensitive practices.

7 (4) Remedy

8 117. Defendants must fulfill their obligation to involve Havasupai community members in
9 their children’s education and to participate in various areas of decision-making at Havasupai
10 Elementary School. Defendants should offer culturally relevant events and community-
11 engagement activities at the School. In addition, a coalition of Native American organizations has
12 recommended creating opportunities for families and the community to be involved in developing
13 curriculum and to provide leadership and participate in school activities on an ongoing basis.⁷⁰
14 Defendants must also permit families and members of the Advisory School Board to oversee the
15 activities of the School and participate in decision-making, including identifying the needs of the
16 school, representing parent and community concerns, and participating in the hiring process for
17 school staff. Specifically, Advisory School Board members should not be subject to burdensome
18 and lengthy federal background checks prior participating in this collaborative process. In
19 addition, Defendants must collect, analyze and disseminate data regarding student achievement, as
20 well as provide a written handbook of school policies, to parents and community members so that
21 there is sufficient information to assess student performance and hold Defendants accountable for
22 providing educational policies and school resources that support an academically and culturally
23 appropriate education.

24
25
26 ⁷⁰ Nat’l Congress of Am. Indians (“NCAI, ”), Nat’l Indian Child Welfare Ass’n (“NICWA,”),
27 NIEA, and Nat’l Indian Health Board, *Native Children’s Policy Agenda: Putting First Kids 1st* 17
28 http://www.ncai.org/attachments/PolicyPaper_Ua1lLEyZXrEoMnjffnqPGmmCUAPanEYedcadGqySBSMBStvQCXo_Aug%202015%20Native%20Children's%20Policy%20Agenda.pdf.

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

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

7 119. While Defendants' systemic failure to deliver a basic education severely injures all
8 Havasupai students, it disproportionately harms those with disabilities. Students with disabilities
9 are among the most vulnerable to educational deficits because they require specialized instruction
10 in order to access the same educational benefits as other students. As a result of their disabilities,
11 these students are often not able to partake of incidental learning from other sources or catch up as
12 quickly as their peers. The denial of a system for the delivery of special education to meet their
13 needs is therefore destructive to their ability to access a basic education.

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

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

26 122. Section 504 of the Rehabilitation Act requires schools to provide a system—
27 including procedures, teachers, and appropriate providers—for the delivery of specialized
28 instruction and related services to meet the needs of the numerous students entitled to special

1 education. Yet Havasupai Elementary School has no system for identifying those students who
2 have disabilities or for ensuring that such students receive the specialized instruction, related
3 services, and accommodations necessary for them to access a general education curriculum.
4 Instead, students with disabilities are excluded from school and subjected to punitive discipline
5 and police prosecution on the basis of their disabilities. Havasupai Elementary School also has no
6 system for meeting the procedural requirements of Section 504 and its implementing regulations,
7 including identifying and assessing students with disabilities and providing notice and procedural
8 safeguards to families.

9 **A. Section 504 of the Rehabilitation Act Prohibits Discrimination Against**
10 **Students with Disabilities**

11 123. Over forty years ago, Congress passed and the President signed Section 504 of the
12 Rehabilitation Act of 1973, the first disability civil rights law in the United States. Pub. L. No. 93-
13 112, §504, 87 Stat 355, 394 (1973). Section 504 “is designed to eliminate discrimination on the
14 basis of handicap in any program or activity receiving Federal financial assistance.” 34 C.F.R. §
15 104.1 (2000).

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

25 125. The protections of Section 504 are robust and include obligations on Defendants to
26 make certain that all children with disabilities have meaningful access to public education.

27 “Access” to public education for students with disabilities is understood broadly to refer both to
28

1 physical accessibility of the school site and the students' ability to receive a benefit from public
2 education.

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

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

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

23 129. In the public school context, Section 504's nondiscrimination mandates require
24 federal officials to ensure access to appropriate educational settings for students with disabilities;
25 establish and conduct identification, evaluation and placement procedures for students with
26 disabilities; and establish and implement procedural safeguards for any actions related to the
27 "identification, evaluation, or educational placement" of students with disabilities. 34 C.F.R. §§
28 104.32, 104.34, 104.35, 104.36.

1 130. Section 504 further requires Defendants to provide educational services to students
2 with disabilities in the least restrictive environment possible and appropriate to meet the students'
3 educational needs. This includes educating students with disabilities alongside students *without*
4 disabilities to the maximum extent appropriate. It also includes providing education to students
5 with disabilities in their home communities. In the rare instances when the provision of needed
6 services at school is not sufficient to meet the needs of a student with a disability, Defendants
7 must take into consideration the proximity of alternative settings to the student's home. 34 C.F.R.
8 § 104.34.

9 131. Defendants must tailor the services made available to "meet [the] individual
10 educational needs" of students with disabilities "as adequately as the needs of" students without
11 disabilities. 34 C.F.R. § 104.33(b)(1). Defendants are prohibited from offering only a
12 predetermined universe of placement options.

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

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

23 **B. Defendants' Failure to Implement a System for Delivery of Special Education**
24 **Excludes and Penalizes Students with Disabilities**

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

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

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

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

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

28

1 139. Plaintiff Levi R. has likewise been placed on a restricted-hours schedule since
2 September 2013, when he was in fifth grade. From September 2013 to January 2014, he was
3 permitted to attend school only from 3:15 to 4:15 p.m. on Monday, Tuesday, and Wednesday.
4 And, because Levi R. complied with those excessive scheduling restrictions, the School informed
5 his mother that Levi R. had been unenrolled from the School for lack of attendance. From January
6 2014 through the remainder of the school year, Levi R. was permitted to attend school for only a
7 half day on Monday, Tuesday, and Wednesday. This pattern continued for years. The School
8 later unilaterally placed Levi R. on a shortened school-day schedule in which he was permitted to
9 attend school for only half of the school day in October 2014 and again in December 2015.
10 Although he is also entitled to counseling under his IEP, he has received no counseling because,
11 once again, the School has not hired a counselor.

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

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

25 142. The pressure to remove children from the community for schooling is particularly
26 troubling in light of the history of abusive BIE boarding schools intended to destroy native
27 language and culture, which many adults in the community endured. Moreover, residential
28 placements have the potential to exacerbate problems by depriving children of a stable and

1 supportive home and community environment, and by denying families who remain on the
2 reservation the opportunity to fully take part in their child's education or to become involved on
3 campus. Native students living in reservation communities, for example, are more likely to
4 graduate and pursue higher education than peers living in non-reservation communities.⁷¹ An
5 education close to home is therefore essential to student achievement as well as to maintaining
6 cultural identity and community well-being.

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

18 144. Similarly, Plaintiff Stephen C.'s guardian, Frank C., strongly prefers to have
19 Stephen C. live with his family in his community, but Frank C. is considering sending Stephen C.
20 to a boarding school where he will have his needs met. Laila R. was compelled to move her
21 family from Havasupai in part to place both her sons Levi R. and Leo R. at a public school where
22 their needs will be met, despite the fact that Levi R. is eligible to attend Havasupai Elementary
23 School. And Jasmine A. has likewise made the difficult decision to send her children with
24 disabilities, Plaintiffs Jenny A. and Jordan A., to a BIE boarding school in Oklahoma, where their
25
26

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

1 educational needs will be met, even though both children were eligible to attend school in their
2 community at Havasupai Elementary School.

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

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

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

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

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

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

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

20 152. For example, eleven-year-old Plaintiff Stephen C. was indicted in federal court for
21 pulling the cord out of the back of computer monitor. Twelve-year-old Plaintiff Durell P., who
22 has multiple disabilities and was the victim of sexual abuse as a young child, is currently being
23 criminally prosecuted for assault for pushing a teacher. He spent over a week at the CRIT
24 detention facility.

25 153. In spite of the numerous challenges these children face, draconian school discipline
26 threatens to stigmatize them and exacerbate the same behaviors that led to disciplinary action in
27 the first place. In Arizona alone, Native students were referred to the principal’s office at a rate
28 three times that of white peers, and Native students face national suspension rates that are more

1 than one-and-a-half times that of white peers.⁷² These suspensions and expulsions, in addition to
2 depriving students of valuable instructional time, hurt a child's academic performance and
3 increase the likelihood that a child will struggle and drop out of school.⁷³ Consequently, the use
4 of such discipline on Native children is counterproductive, leading to a vicious cycle of
5 punishment, exclusion, and low achievement.⁷⁴

6 154. These problems are compounded by the use of school arrests to address routine
7 student misbehavior. Although Native students make up only 1% of the nationwide student
8 population, they disproportionately receive 2% of all school arrests, and 3% of all referrals to law
9 enforcement.⁷⁵ That is, Native students are twice as likely as other students to be arrested and
10 three times as likely to be referred to law enforcement. Once arrested, Native youth are more
11 likely to go to court rather than have their charges dropped, compared to all other ethnic groups.⁷⁶
12 In comparison to their white peers, Native juvenile offenders are then significantly more likely to
13 be incarcerated or transferred to the adult criminal justice system.⁷⁷ At each step of the process,
14 Native youth are prematurely and disproportionately pushed out of school and into prison.⁷⁸ The

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

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

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

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

26 ⁷⁶ *Id.*

27 ⁷⁷ *Id.* at 2.

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

1 consequences of this overly punitive and exclusionary school discipline for Native youth are
2 profound and devastating to Native students' educational outcomes and life chances.

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

11 156. **Inadequate Procedures to Identify, Locate, Assess, and Provide Procedural**
12 **Safeguards to Students with Disabilities:** Havasupai Elementary School has no system in place
13 to identify and assess the needs of students with disabilities, nor does it adequately inform families
14 of students with disabilities of their rights under federal anti-discrimination laws. Havasupai
15 Elementary School does not have the capacity to meet its obligation to identify and provide
16 comprehensive assessments of students with disabilities. This failure causes the responsibility to
17 fall overwhelmingly on parents, and the School makes matters even more challenging for parents
18 by failing to provide information required by federal statutes and regulations, including notice of
19 procedural safeguards and information necessary to understand disabilities, participate in planning,
20 and access educational records. The school also does not have an adequate record-keeping system
21 in place. And parents and community members who do assert the rights of students with
22 disabilities are often retaliated against by the School.

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

25 157. Section 504 requires Defendants to implement an adequate system for ensuring that
26 students with disabilities receive the specialized instruction, related services, and accommodations

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

1 necessary to access a general education curriculum and other benefits, programs, or services
2 provided by Defendants. In particular, early identification and evaluation of a disability is vital to
3 ensuring that students are provided with needed educational services and supports. Defendants
4 must also guarantee that students have access to personnel with training in delivering special
5 education services and other resources such as a special classroom for students with more
6 intensive needs. Defendants are responsible for providing a system to meet the procedural
7 requirements of Section 504 and its implementing regulations, such as providing notice and
8 procedural safeguards to families. This system should be based on input from Native American
9 education experts knowledgeable about the complexities of identifying and providing appropriate
10 education to Native American students with disabilities.

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

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

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

28

1 **V. DEFENDANTS' FAILURE TO PROMOTE WELLNESS AND MEET MENTAL**
2 **HEALTH NEEDS**

3 161. As a result of centuries of U.S. government policies that have oppressed and
4 discriminated against Native communities, Havasupai youth—like many Native youth across the
5 nation—are exposed to childhood adversity that, absent appropriate intervention and support,
6 denies students full opportunity to learn and receive the benefits of a public education. Native
7 educators have thus concluded that promoting wellness and providing mental health services are
8 required to ensure that students have meaningful access to public education. Yet Havasupai
9 Elementary School lacks programming to promote wellness as well as culturally sensitive mental
10 health and support services. Defendants have also failed to provide appropriate training to ensure
11 that teachers can support students' mental health and social-emotional needs in the classroom.

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

14 162. Like many Native communities, the Havasupai bear the burden of generations of
15 historical trauma stemming from a legacy of chronic discrimination—forced relocations, loss of
16 homes, families, and culture—and unresolved grief.⁸⁰ The term “historical trauma” captures “the
17 extensive, cumulative, and intergenerational experiences of trauma” endured by Native
18 communities.⁸¹ In particular, the historical and widespread use of Native American boarding
19 schools, as discussed above, constituted a form of forcible assimilation that was designed to stamp
20 out a child's tribal affiliations and cultural identity at an early age.

21 163. Despite the resistance and resilience of Native communities, the lengthy legacy of
22 cultural deracination, dispossession, and disenfranchisement has adversely impacted these
23 communities, and children in particular. As the Center for Native American Youth (“CNAY”) has

24 ⁸⁰ Kathleen Brown-Rice, *Examining the Theory of Historical Trauma Among Native Americans*,
25 3:3 The Professional Counselor 117, 119 (2013) (“The theory of historical trauma has been
26 considered clinically applicable to Native American individuals by counselors, psychologists, and
27 psychiatrists.”).

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

1 found, “[h]istorical trauma, chronically underfunded federal programs, ineffective government
2 policies, and failure to meet trust responsibilities have all contributed to negative health,
3 education, and economic disparities in Indian Country relative to the general population.”⁸²
4 Native advocacy groups, including as the National Congress of American Indians (“NCAI”)
5 Policy Research Center, the National Indian Child Welfare Association (“NICWA”), and the
6 National Indian Educators Association (“NIEA”) have documented a number of concrete ways in
7 which the consequences of discriminatory U.S. government policies continue to affect Native
8 communities, including higher rates of criminal justice involvement, family disruption, poverty,
9 alcoholism and substance abuse, and violence. Overall, NICWA reports that Native children are
10 2.5 times more likely to experience one or more of these conditions as compared to their non-
11 Native peers.⁸³

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

19 165. Native children are forced to grow up in poverty at alarming rates, and they
20 experience profound disruptions in their home environment due to the absence or death of family
21 members. Havasupai children, in particular, experience poverty at almost double the rate of
22 Native children nationally—and nearly triple that of all children. An overwhelming 61% of
23

24
25 ⁸² CNAY, *Native American Youth 101 2* (2012), available at
26 https://cnayblog.files.wordpress.com/2016/06/native-american-youth-101_final_2012.pdf
(hereinafter “Native American Youth 101”).

27 ⁸³ NICWA, *Trauma-Informed Care Fact Sheet*, at 1, (Apr. 2014), available at
28 <http://mecptraining.org/wp-content/uploads/2015/03/Trauma-Informed-Care-Fact-Sheet.pdf>
(citing Nat’l Ctr. for Children in Poverty, *Facts About Trauma for Policymakers* (2007),
www.nccp.org/publications/pub_746.html).

1 Havasupai children under 18 live below the poverty line,⁸⁴ as compared to 32.4% of all Native
2 children,⁸⁵ and 21% of all children nationwide.⁸⁶ Native children, and Havasupai children in
3 particular, also disproportionately experience disruption of their families, such as the absence or
4 loss of a parent, leading to lowered household incomes. In Supai, over 42% of all households with
5 children are led by single mothers.⁸⁷

6 166. This family disruption stems, in part, from the elevated incidents of incarceration,
7 drug or alcohol abuse, and violence experienced and witnessed by Native individuals. These
8 conditions are powerful indicators of the cumulative and intergenerational impact of childhood
9 adversity and historical trauma. Native youth, themselves shaped through repeated and early
10 exposure to these conditions, and lacking adequate mental health resources or support, turn to
11 alcohol or drugs as a coping mechanism or begin to act out in school and become involved with
12 law enforcement. The NICWA has reported that alcohol abuse is more likely to be reported for
13 Native families,⁸⁸ and the National Indian Education Association (“NIEA”) has reported that
14 Native youth suffer from alcohol and drug abuse rates higher than any other racial group.⁸⁹
15 Moreover, research has shown that “abuse, domestic violence, and other family dysfunction . . .
16 [are] substantially more common in alcoholic households,” and that children growing up in these
17 contexts are more likely to experience adversity and exhibit depression or alcoholism as adults.⁹⁰

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

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

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

23 ⁸⁷ *See* Demographic Analysis, *supra* note 11.

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

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

28 ⁹⁰ Robert F. Anda et al. *Adverse childhood experiences, alcoholic parents, and later risk of*
alcoholism and depression. 8 PSYCHIATRIC SERVICES 1001, 1005-06 (2002); Shanta R. Dube et

1 This is a serious problem among Havasupai youth who live on the reservation, where drinking
2 alcohol is prohibited. Recently, two students drank alcohol-based hand sanitizer at school. One
3 was airlifted out of the canyon for medical treatment, and the other was handcuffed and taken to
4 the local medical clinic.

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

15 168. Within Native communities, violence is a manifestation of embedded historical
16 trauma, compounded by poverty, family disruption, substance abuse, and a broken system of
17 criminal justice. The NCAI reported that Native Americans are 2.5 times more likely to
18 experience violent crimes as compared to all other races,⁹⁴ and “violence is more likely to be
19
20

21
22 al., *Growing up with Parental alcohol abuse: Exposure to Childhood Abuse, Neglect and Household Dysfunction*. 25 CHILD ABUSE AND NEGLECT 1627, 1628 (2001).

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

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

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

27 ⁹⁴ NCAI Policy Research Center, *Statistics on Violence Against Native Women* 3 (Feb. 2013),
28 http://www.ncai.org/attachments/PolicyPaper_tWAjznFslemhAffZgNGzHUqIWMRPkCDjpFtxeKEUVKjubxfpGYK_Policy%20Insights%20Brief_VAWA_020613.pdf.

1 reported among AI/AN families.”⁹⁵ Native women disproportionately experience violence,
2 including by non-Natives.⁹⁶ Native youth between the ages of 12 and 17 are exposed to violence
3 at a rate that is 32% higher than the national average,⁹⁷ and violence is the leading cause of death
4 among Native youth.⁹⁸ In spite of the efforts of many Native organizations to address these
5 incidents of violence, they are often under-resourced. Moreover, these incidents are too often
6 cumulative and intergenerational, extending the cycle of suffering and making it harder for Native
7 communities to heal.

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

14
15
16 ⁹⁵ See NICWA, Trauma-Informed Care Fact Sheet, *supra* note 83 at 1 (citing Earle, K. and A.
17 Cross, *Child Abuse and Neglect Among American Indian/Alaska Native Children: An Analysis of
Existing Data* (2001)).

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

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

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

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

1 170. Research has documented the extensive mental health needs among Native children
2 that stem from the failure to address historical trauma, discrimination and oppression, and adverse
3 childhood experiences. Suicide is the second leading cause of death among Native youth, who
4 take their own lives at rates at least 2.5 times the national average.¹⁰⁰ This challenge affecting
5 many Native communities unfortunately is faced by the Havasupai as well. Plaintiff Leo R., Levi
6 R.'s brother, has expressed suicidal thoughts.

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

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

20 172. Decades of medical research has established that *unaddressed* trauma has profound
21 effects on a child's developing brain. Research has shown that a substantial percentage of children
22 exposed to violence develop post-traumatic stress disorder (“PTSD”) and has linked trauma with
23 mental health conditions such as somatoform disorders, major depression, schizophrenia, and
24

25
26 ¹⁰⁰ NCAI, *Alcohol & Substance Abuse*, <http://www.ncai.org/policy-issues/education-health-human-services/alcohol-substance-abuse>.

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

1 substance abuse and dependence.¹⁰² But exposure to traumatic stressors can also cause
2 developmental disruption and consequent educational loss for children, even if they do not meet
3 the threshold for a diagnosable mental health disorder.

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

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

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

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

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

27 ¹⁰³ *Id.*

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

1 graduation.¹⁰⁵ Research reveals that children exposed to Adverse Childhood Experiences
2 (“ACEs”)¹⁰⁶ are subject to an escalating array of detrimental educational impacts. Exposure to
3 two or more such traumas, for example, makes a student 2.67 times more likely to repeat a grade
4 or become disengaged with school.¹⁰⁷ Exposure to three or more traumas makes a student 4 times
5 more likely to experience academic failure,¹⁰⁸ and 5 times more likely to have serious attendance
6 problems.¹⁰⁹ Students who have witnessed violence, in particular, meet state academic-
7 performance standards only half as often as peers who have not.¹¹⁰ As a result, unaddressed
8 trauma is a powerful driver of academic failure.

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

11 177. Defendants have failed to ensure that children impacted by adversity and children
12 with mental health needs are provided meaningful access to public education at Havasupai
13 Elementary School. As discussed, Havasupai Elementary School has no culturally responsive
14 programming to promote wellness. It does not train or sensitize teachers or administrative
15 personnel to recognize, understand, and address the complex effects of childhood adversity and

16 ¹⁰⁵ *E.g.*, Sheryl Kataoka et al., *Effects on School Outcomes in Low-Income Minority Youth: Preliminary Findings from a Community-Partnered Study of a School Trauma Intervention*, 21
17 *ETHN. DIS.* 7 (2011); Nadine J. Burke et al., *The Impact of Adverse Childhood Experiences*, 35
18 *CHILD ABUSE & NEGLECT* 408 (2011); Jeffrey Grogger, *Local Violence and Educational Attainment*, 32 *J. OF HUMAN RESOURCES* 659 (1997).

19 ¹⁰⁶ ACEs are “inherently disruptive experiences in childhood that produce significant and
20 potentially damaging level[s] of stress and associated physical changes.” Christopher Blodgett,
21 *Adopting ACES Screening and Assessment in Child Servicing Systems* 1 (working paper, July
22 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>.

23 ¹⁰⁷ 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).

24 ¹⁰⁸ *Id.*

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

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

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

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

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

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

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

24 181. Particularly in schools like Havasupai Elementary School that serve populations of
25 students who disproportionately have been impacted by adversity and/or have significant mental
26 health needs, comprehensive school-wide practices are required to address childhood trauma and

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

1 to create an environment in which all students are able to learn. Such interventions can effectively
2 address the disabling impact of adverse childhood experiences and give students the meaningful
3 access to the public education to which they are entitled.

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

12 183. Together, these school-wide practices create a safe, consistent, and supportive
13 learning environment that allows students impacted by childhood adversity to learn. Schools that
14 have put such practices in place have shown impressive improvements in student outcomes, with
15 those children receiving appropriate intervention and support at school receiving higher grades and
16 demonstrating better behavior and concentration.¹¹² Research has also indicated that appropriate
17 remedial methods and supports can help mitigate the effects of ACEs.¹¹³ With this support,
18 Havasupai students can partake in a system of education that allows them to learn effectively in
19 the classroom and meaningfully access a public education.

20 **VI. CONSEQUENCES OF DEFENDANTS’ FAILURE TO ENSURE ACCESS TO**
21 **EDUCATION AT HAVASUPAI ELEMENTARY SCHOOL**

22 184. Defendants’ failure to provide basic education at Havasupai Elementary School, their
23 failure to establish a system to provide special education and related services so that students with

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

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

1 disabilities may access public education, and their failure to support wellness for students who
2 have experienced trauma has had devastating consequences for the educational achievement and
3 life chances of Havasupai students.

4 185. The federal government’s failure to invest in and provide for Native education and
5 wellness in the face of trauma has resulted in stark educational deprivations for Native youth in all
6 educational settings. According to data released in 2007, an estimated “81% of Indian students
7 read below grade level”¹¹⁴ and 84% score below “proficient” in math.¹¹⁵ Native youth “are among
8 the most likely of any group to drop out of school”¹¹⁶ and Native American adults “have the
9 lowest education levels of any group, and are only half as likely to graduate from high school or
10 college as other adults.”¹¹⁷ Native American high school graduates are also only half as likely to
11 pursue post-secondary education.¹¹⁸ And, of the students who do attend college, only 39%
12 complete their degrees, as compared to 62% of white students.¹¹⁹

13 186. Native children at BIE schools have fallen even further behind their peers.¹²⁰ Data
14 shows that students in BIE schools perform at levels “far below” Native students at public schools
15 on standardized tests, and that only 40% of BIE students satisfy English proficiency standards.¹²¹

16 _____
17 ¹¹⁴ S. Rep. No. 91-501, *supra* note 24, at 360.

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

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

21 ¹¹⁷ *Id.*

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

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

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

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

1 Compared to an overall Native graduation rate of 69%, only slightly more than half of Native
2 students at BIE schools graduate from high school.¹²²

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

10 188. According to a graduate of the School, out of the approximately 18 to 21 students in
11 his kindergarten class, only about 5 students graduated from the eighth grade at Havasupai
12 Elementary School. Of those 5 students, only 3 graduated from high school, and none attended
13 college. Two of those 5 students have served time in prison, including one who is still in prison
14 now.

15 189. Although the BIE has failed to adequately collect and disseminate publicly available
16 performance data for the School, available BIE data shows that in the 2012-2013 school year,
17 Havasupai Elementary School students performed at the **1st percentile in reading and 3rd**
18 **percentile in math**, based on a median percentile rank of 1 to 100.¹²³ Moreover, BIE data reflects
19 that Havasupai Elementary School students experienced a *large negative growth index* of **-.72** and
20 **-.71** in reading and math, respectively, meaning that the academic progress made by individual
21 Havasupai Elementary School students as they continued to attend the School was approximately
22 0.7 standard deviations lower than expected.¹²⁴ The BIE itself characterizes -0.8 as “a large
23 difference between the student’s actual gains and his or her growth projections,” that is, “*well-*

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

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

28 ¹²⁴ *Id.*

1 ***below average gains made by the student.***¹²⁵ This performance placed the School dead last in
2 both reading and math achievement out of nearly 60 BIE schools surveyed. Moreover, BIE data
3 from two consecutive school years running from 2011 through 2013 indicate that only about 15%
4 of Havasupai students achieved grade-level proficiency in reading, and that not a single one
5 achieved grade-level proficiency in math.¹²⁶

6 190. As a result, Havasupai students arrive at the secondary-school level unprepared for
7 high school-level work and years behind their peers who were provided appropriate education in
8 the elementary and middle school years. Because no high school instruction is available for
9 Havasupai students in the community, students who have completed eighth grade must apply to
10 BIE high schools—most of which are boarding schools with entrance requirements—or seek
11 transfers to public schools outside of the canyon. Because of the substandard education provided
12 at Havasupai Elementary School, students have repeatedly been unable to meet coursework and
13 credit requirements or the basic proficiency standards necessary to attend BIE high schools.

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

20 192. Families in the Havasupai community fear that children attending Havasupai
21 Elementary School will not be able to gain admission to a secondary school or that they will not
22 successfully complete high school as a result of the educational deprivations at Havasupai
23 Elementary School. As a result, multiple families with young children in kindergarten through
24 eighth grade who otherwise would have attended Havasupai Elementary School have been
25

26
27 ¹²⁵ *Id.* at 17.

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

1 compelled to leave their community in order to provide their children meaningful access to
2 education.

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

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

10 194. In the words of a 2014 White House report, “there is a history of deeply troubling
11 and destructive federal policies and actions that have hurt Native communities, exacerbated severe
12 inequality, and accelerated the loss of tribal cultural traditions. The repudiated federal policies
13 regarding the education of Indian children are among those with a devastating and continuing
14 effect on Native peoples.”¹²⁷

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

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

25 ¹²⁷ Executive Office of the President, *2014 Native Youth Report*, 4 (Dec. 2014),
26 https://www.whitehouse.gov/sites/default/files/docs/20141129nativeyouthreport_final.pdf.

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

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

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

5 198. Top officials at the Department of Education have acknowledged the longstanding
6 nature of the problem. In 2015, Secretary of Education John King declared that “[t]here is a
7 painful history and a failure on the past [*sic*] of the country to serve Native youth well.”¹²⁹ His
8 predecessor, former Secretary Arne Duncan, declared bluntly that the BIE educational system was
9 “the epitome of broken . . . just utterly bankrupt.”¹³⁰

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

17 200. The BIE acknowledged only last year, “[t]he DOI has a longstanding and troubling
18 history of failing to provide a high quality education to American Indian students in BIE-funded
19

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

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

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

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

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

1 schools.”¹³⁴ In outlining the extent of the problems facing Native students, the BIE rattled off a
2 litany of alarming facts: that “Native youth have the lowest high school graduation rate of students
3 across all schools,” that “the American Indian/Alaskan Native high school graduation rate is 69
4 percent, far below the national average of 81 percent,” and that “the situation for the eight percent
5 of Native students attending [BIE] schools is much worse with an average graduation rate of 53
6 percent.”¹³⁵ It summarized the problem as follows: “Failing schools, crumbling infrastructure,
7 failure to include tribal nations in the decision-making process and lack of access to broadband
8 and teachers and principals shortages contribute to the urgency of the situation.”¹³⁶

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

17 202. The White House report then turned to the specific problems at BIE schools. It noted
18 that over one-third of BIE schools are in poor condition, and nearly 30% are over 40 years old.¹⁴⁰
19 In addition, a staggering 60% of BIE-funded schools still lack “adequate digital bandwidth or
20 computers to meet the requirements of new assessments aligned to college and career ready
21
22

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

24 ¹³⁵ *Id.*

25 ¹³⁶ *Id.*

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

27 ¹³⁸ *Id.* at 16.

28 ¹³⁹ *Id.* at 15.

¹⁴⁰ *Id.* at 16-17.

1 standards.”¹⁴¹ As a consequence, students at BIE-funded schools significantly underperformed,
2 even compared to Native students attending public schools.

3 203. As discussed at length in the 2013 GAO report, comprehensive data from the DOE’s
4 National Center for Education Statistics reveal that “in 4th grade, BIE students on average scored
5 22 points lower for reading and 14 points lower for math” than Native students in public
6 schools.”¹⁴² This pattern of underperformance held true even in a range of state educational
7 assessments, where students at BIE schools consistently scored less than Native students at public
8 schools.¹⁴³

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

15 205. At the root of these problems is a severe and recognized shortage in BIE staffing.
16 The GAO found that approximately 40 percent of BIE regional facility jobs, including key
17 administrative and technical support staff, remained vacant in 2015, forcing other staff members
18 with limited expertise and training to fill the gaps.¹⁴⁶ The result is that the BIE is unequipped to
19 provide critical administrative support services to its schools, leading to “confusion among schools
20

21 ¹⁴¹ *Id.* at 17.

22 ¹⁴² GAO Report, *Indian Affairs: Better Management and Accountability Needed to Improve Indian*
23 *Education* 6, GAO-13-774 (Sept. 2013), <http://www.gao.gov/assets/660/658071.pdf> (hereinafter
“2013 GAO Report”).

24 ¹⁴³ *Id.* at 8.

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

26 ¹⁴⁵ *Id.* at 14.

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

1 about whom to contact about problems, as well as delays in the delivery of key educational
2 services and supplies, such as textbooks.”¹⁴⁷

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

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

19 208. This lack of financial oversight exacerbates the severe budgetary needs of many BIE
20 schools, whose physical infrastructure is crumbling, unsafe, and unsanitary.¹⁵¹ The GAO reported
21

22
23 ¹⁴⁷ 2015 GAO Report, *supra* note 146.

24 ¹⁴⁸ 2015 GAO Report at 14-16.

25 ¹⁴⁹ 2013 GAO Report, *supra* note 142, at 1.

26 ¹⁵⁰ 2015 GAO Report, *supra* note 146, at 20.

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

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

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

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

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

23 injuries from bumping their heads on the pipes and some students had attempted suicide by
24 hanging from them.”).

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

25 ¹⁵³ *Id.* at 16.

26 ¹⁵⁴ *Id.* at 21.

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

1 Country, particularly among youth, which is often the result of an individual’s exposure to
2 trauma.”¹⁵⁶

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

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

15 213. Further federal reports illustrate the harmful consequences of childhood adversity for
16 Native communities. According to a 2014 report issued by the Justice Department, “[t]he
17 immediate and long-term effects of this exposure to violence include[] increased rates of altered
18 neurological development, poor physical and mental health, poor school performance, substance
19 abuse, and overrepresentation in the juvenile justice system. This chronic exposure to violence
20 often leads to toxic stress reactions and severe trauma; which is compounded by historical
21 trauma.”¹⁶⁰ Because of the overwhelmingly high rates of violence, and the lack of resources

22
23 ¹⁵⁶ *Id.* at 3.

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

26 ¹⁵⁸ Tribal Law and Order Act of 2010, Pub. L. 111–211, § 202(a)(5)(A), 124 Stat. 2261, 2262,
<https://www.congress.gov/111/bills/hr725/BILLS-111hr725enr.pdf>.

27 ¹⁵⁹ *Id.*, § 202(a)(5)(C).

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

1 available to those communities, the report concluded that “service providers and policy makers
2 should assume that *all* AI/AN children have been exposed to violence.”¹⁶¹

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

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

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

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

17 217. Defendants have long been aware of the inadequacy of the education delivered to
18 students at the School. Members of the Havasupai Tribal Council have traveled to Washington,
19 D.C. to meet with top BIE and DOI officials on multiple occasions including, most recently, for a
20 face-to-face meeting in April 2016 with the then-Acting Director of the BIE, Ann Marie Bledsoe
21 Downes. The former Director of the BIE has also visited Havasupai within the last several years,
22 as have many other BIE and DOI officials from Washington and regional offices. During all of
23 these meetings, members of the Havasupai Tribe have explained the problems facing the school
24 and the need for the BIE to act.

25
26 _____
27 ¹⁶¹ *Id.*

28 ¹⁶² *Id.* at 23-24, 41.

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

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

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

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

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

19 222. Defendants are aware of the severe lack of textbooks and basic learning materials at
20 the School. They are aware that students must rely instead on photocopied sheet of papers for
21 homework and that the school offers no library access for students. Despite this knowledge,
22 Defendants have taken no affirmative steps to address these deficiencies.

23 223. While Defendants are aware that the School lacks a system for the identification and
24 assessment of students with disabilities and the capacity to provide special education, it has done
25 nothing to remedy the situation. Defendants are aware that there are straightforward remedial
26 measures, including employing personnel with training in delivering special education services or

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

1 providing a special classroom for students with more intensive needs. Yet Defendants have failed
2 to take such steps and has instead allowed the loss of learning time and adequate instruction for
3 students with disabilities to continue unabated.

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

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

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

17 227. In February 2016, Secretary of Education King declared before the National
18 Congress of American Indians that, "We cannot afford to throw away any of our children."¹⁶⁵ Yet
19 Defendants' persistent indifference to the plight of Havasupai children does precisely that.
20 Reforms and remedial practices must be implemented by Defendants to ensure that Havasupai
21 students have access to the educational opportunities that they deserve and to remedy the harmful
22 deprivation of educational opportunities that they have endured. It is equally critical that these
23 remedial efforts are conducted in a manner that is consistent with tribal beliefs, thought, and
24 philosophy and respectful of cultural standards.

25
26
27
28 ¹⁶⁵ NCAI, *2016 Executive Council Winter Session Newsletter 2* (Feb. 22-24, 2016),
http://www.ncai.org/conferences-events/ncai-events/ECWS2016_Final_Wrap_Up_Newsletter.pdf.

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

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

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

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

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

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

14 233. NADLC is managed and controlled by a Board of Directors. The current Board
15 includes seven persons who are enrolled members of a federally recognized Native American
16 Tribe, four persons who have least one family member with a mental illness, two persons with a
17 disability, and two persons who are mental health professionals. At least three members of
18 NADLC’s Board have children who now receive or have in the past received special education
19 and related services.

20 234. Six members of NADLC’s Board of Directors constitute the Advisory Council
21 mandated by the Protection and Advocacy for Mentally Ill Individuals Act of 1986, 42 U.S.C. §§
22 10801 *et. seq.* As required by law, 60% of the members of that Advisory Council, including its
23 chairperson, are individuals who have received or are receiving mental health services or are
24 family members of such individuals.

25 235. Helping students with disabilities obtain access to public education and a general
26 education curriculum, specialized instruction, and related services has always been a high priority
27 service for NADLC, and it has consumed a substantial portion of NADLC’s resources. In Fiscal
28 Year 2015, for example, more than 25% of the requests for services received by NADLC related

1 to special education. Those services have included advocating for students in the school setting,
2 representing students in administrative and judicial proceedings, and other education, outreach,
3 investigation, and advocacy efforts.

4 236. Havasupai students whose families have sought assistance from NADLC have been
5 denied access to public education by Defendants, including access to the required general
6 education curriculum, special education and related services, and needed mental health services.
7 Defendants' practices therefore frustrate NADLC's mission to guarantee such students the right to
8 an adequate public education.

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

13 238. NADLC has filed two administrative "due process" complaints relating to Havasupai
14 Elementary School's failure to provide appropriate special education and related services. Both of
15 those cases were settled, and in both cases the BIE failed to provide the student with the services
16 promised in the Settlement Agreement.

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

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

26 241. In addition to such individual advocacy that NADLC has provided its clients,
27 NADLC filed a Freedom of Information Act ("FOIA") request to obtain public records from the
28 BIE about Havasupai Elementary School. NADLC filed the FOIA request on May 21, 2015. To

1 date, NADLC has received only a partial response from the BIE. In July 2016, NADLC requested
2 assistance from the U.S. Office of Government Information Services (“OGIS”) in obtaining a
3 substantive response from the BIE. OGIS indicated in August 2016 that the BIE anticipated
4 providing a complete response to the FOIA request by September 16, 2016. To date, despite the
5 BIE’s assurances to OGIS, NADLC has not received anything further from the BIE in response to
6 the FOIA request. On October 31, 2016, NADLC filed a formal appeal before the Department of
7 Interior’s FOIA and Privacy Act Appeals Office challenging the federal government’s failure to
8 respond to its May 21, 2015 FOIA request.

9 242. NADLC has devoted significant organizational resources to identifying and
10 counteracting Defendants’ practices, including investigation, education, outreach, and advocacy.
11 As a direct consequence, Defendants’ practices have caused NADLC to divert its scarce resources
12 from other efforts to promote and protect the rights of Native Americans with disabilities.
13 Continued advocacy on behalf of Havasupai students with disabilities against Defendants will
14 significantly diminish NADLC’s resources and impact its ability to serve other Native Americans
15 with disabilities in the Four Corners area.

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

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

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

FIRST CAUSE OF ACTION
(FAILURE TO TAKE ACTION REQUIRED TO PROVIDE BASIC EDUCATION (5
U.S.C. § 706(1)))

(All Plaintiffs against All Defendants)

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

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

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

248. Defendants must provide Native American children with “with educational opportunities that equal or exceed those for all other students in the United States.” 25 U.S.C. § 2001(a)(1). They must also provide education that is “adequate,”¹⁶⁶ “comprehensive,”¹⁶⁷ “of the highest quality,”¹⁶⁸ and offers “the basic elementary and secondary educational needs.”¹⁶⁹ Providing an education meeting these standards is a critical component of Defendants’ trust responsibility for Native American students. *See Navajo Nation*, 537 U.S. at 506.

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

250. Defendants must comply with 25 C.F.R. § 36.20, which requires providing an educational program including multi-culture and multi-ethnic dimensions designed to enable

¹⁶⁶ 25 C.F.R. § 32.4(r).
¹⁶⁷ 25 C.F.R. § 32.3 (codified into law under 25 U.S.C. § 2003).
¹⁶⁸ 25 U.S.C. § 2000.
¹⁶⁹ *Id.*

1 students to function effectively in a pluralistic society; assessing students' language abilities and
2 providing instruction in English and the primary native language of the students, as appropriate;
3 including aspects of the native culture in each aspect of the curriculum; assessing the learning
4 styles of students and providing instruction based on that assessment; and scheduling at least one
5 field trip per student per year.

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

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

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

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

24
25 ¹⁷⁰ 25 C.F.R. § 36.11.

26 ¹⁷¹ 25 C.F.R. § 36.30.

27 ¹⁷² 25 C.F.R. § 36.31.

28 ¹⁷³ 25 C.F.R. § 36.40.

¹⁷⁴ 25 C.F.R. § 36.41.

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

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

- 4 a. Defendants have not provided instruction in social studies;
- 5 b. Defendants have not provided instruction in fine arts;
- 6 c. Defendants have not provided instruction in science;
- 7 d. Defendants have not provided instruction in computer literacy;
- 8 e. Defendants have not provided instruction in career exploration and
9 orientation;
- 10 f. Defendants have not provided a library/media program;
- 11 g. Defendants have not provided adequate textbooks and instructional
12 materials;
- 13 h. Defendants have not provided behavioral health services;
- 14 i. Defendants have not provided extracurricular activities;
- 15 j. Defendants have not adequately staffed Havasupai Elementary School;
- 16 k. Defendants have not assessed the English and native language abilities of
17 students at Havasupai Elementary School;
- 18 l. Defendants have not provided instruction in the Havasupai language;
- 19 m. Defendants have not included aspects of the Havasupai culture in all aspects
20 of the curriculum;
- 21 n. Defendants have not evaluated the learning styles of students at Havasupai
22 Elementary School;

23 _____
24 ¹⁷⁵ 25 C.F.R. §§ 36.42, 36.42(b) (“Each school shall offer student counseling services concerned
25 with physical, social, emotional, intellectual, and vocational growth for each individual.
26 Counseling services shall be included in a school-wide assessment program” and “each counseling
27 program shall provide . . . [p]reventative and crisis counseling on both individual and group bases
28 . . .”).

¹⁷⁶ 25 C.F.R. § 36.43.

¹⁷⁷ 25 C.F.R. §§ 36.50, 36.51.

¹⁷⁸ 25 C.F.R. § 42.1, *et seq.*

1 o. Defendants have not provided one field trip, per student, per year at
2 Havasupai Elementary School;

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

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

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

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

13 258. 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 warrant an
15 equitable remedy, and the public interest would not be disserved by an equitable remedy.

16 259. Plaintiffs were not required to exhaust administrative remedies in order to bring this
17 claim. Under 5 U.S.C. § 704, agency action is final and subject to an APA challenge in court,
18 unless the agency by rule requires an administrative challenge “and provides that the action
19 meanwhile is inoperative.” BIA regulations permit administrative appeals, but they do not require
20 such appeals before filing suit, and they do not make decisions inoperative pending appeal.
21 Rather, agency decisions are final if they have not been appealed within 30 days. 25 C.F.R. §§ 2.6,
22 2.8. Moreover, exhaustion cannot be required on a claim that, like this one, arises under § 706(1)
23 of the Administrative Procedure Act. Section 706(1) is meant to address situations in which there
24 has been no formal request for agency action, whereas § 706(2) applies when agency action has
25 been requested and rejected.

26 260. Plaintiffs are entitled to appropriate relief.
27
28

1 **SECOND CAUSE OF ACTION**

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

3 **(All Plaintiffs against All Defendants)**

4 261. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1 through
5 260 as if set forth fully here.

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

10 263. Havasupai Elementary School is operated by Defendants. Defendants are obligated
11 to provide an education to Havasupai children that meets basic educational standards and enables
12 students to access post-secondary educational opportunities.

13 264. Defendants must provide Native American children with “with educational
14 opportunities that equal or exceed those for all other students in the United States.” 25 U.S.C. §
15 2001(a)(1). They must also provide education that is “adequate,”¹⁷⁹ “comprehensive,”¹⁸⁰ “of the
16 highest quality,”¹⁸¹ and offers “the basic elementary and secondary educational needs.”¹⁸²
17 Providing an education meeting these standards is a critical component of Defendants’ trust
18 responsibility for Native American students. *See Navajo Nation*, 537 U.S. 506.

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

23 266. Defendants must comply with 25 C.F.R. § 36.20, which requires providing an
24 educational program including multi-culture and multi-ethnic dimensions designed to enable

25 _____
26 ¹⁷⁹ 25 C.F.R. § 32.4(r).

27 ¹⁸⁰ 25 C.F.R. § 32.3 (codified into law under 25 U.S.C. § 2003).

28 ¹⁸¹ 25 U.S.C. § 2000.

¹⁸² *Id.*

1 students to function effectively in a pluralistic society; assessing students' language abilities and
2 providing instruction in English and the primary native language of the students, as appropriate;
3 including aspects of the native culture in each aspect of the curriculum; assessing the learning
4 styles of students and providing instruction based on that assessment; and scheduling at least one
5 field trip per student per year.

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

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

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

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

24
25 ¹⁸³ 25 C.F.R. § 36.11.

26 ¹⁸⁴ 25 C.F.R. § 36.30.

27 ¹⁸⁵ 25 C.F.R. § 36.31.

28 ¹⁸⁶ 25 C.F.R. § 36.40.

¹⁸⁷ 25 C.F.R. § 36.41.

1 271. Defendants have acted in a manner that is arbitrary, capricious, an abuse of
2 discretion, or otherwise not in accordance with the law in their administration of Havasupai
3 Elementary School.

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

- 6 a. Defendants have not provided instruction in social studies;
- 7 b. Defendants have not provided instruction in fine arts;
- 8 c. Defendants have not provided instruction in science;
- 9 d. Defendants have not provided instruction in computer literacy;
- 10 e. Defendants have not provided instruction in career exploration and
11 orientation;
- 12 f. Defendants have not provided a library/media program;
- 13 g. Defendants have not provided adequate textbooks and instructional
14 materials;
- 15 h. Defendants have not provided behavioral health services;
- 16 i. Defendants have not provided extracurricular activities;
- 17 j. Defendants have not adequately staffed Havasupai Elementary School;
- 18 k. Defendants have not assessed the English and native language abilities of
19 students at Havasupai Elementary School;
- 20 l. Defendants have not provided instruction in the Havasupai–Hualapai
21 language;

22
23
24 ¹⁸⁸ 25 C.F.R. §§ 36.42, 36.42(b) (“Each school shall offer student counseling services concerned
25 with physical, social, emotional, intellectual, and vocational growth for each individual.
26 Counseling services shall be included in a school-wide assessment program” and “each counseling
27 program shall provide . . . [p]reventative and crisis counseling on both individual and group bases
28 . . .”).

¹⁸⁹ 25 C.F.R. § 36.43.

¹⁹⁰ 25 C.F.R. §§ 36.50, 36.51.

¹⁹¹ 25 C.F.R. § 42.1, *et seq.*

1 m. Defendants have not included aspects of the Havasupai culture in all aspects
2 of the curriculum;

3 n. Defendants have not evaluated the learning styles of students at Havasupai
4 Elementary School;

5 o. Defendants have not provided one field trip, per student, per year at
6 Havasupai Elementary School;

7 p. Defendants have not developed a student handbook including policies and
8 disciplinary procedures or communicated those policies and procedures to students and their
9 families;

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

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

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

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

20 275. Plaintiffs were not required to exhaust administrative remedies in order to bring this
21 claim. Under 5 U.S.C. § 704, agency action is final and subject to an APA challenge in court,
22 unless the agency by rule requires an administrative challenge “and provides that the action
23 meanwhile is inoperative.” BIA regulations permit administrative appeals, but they do not require
24 such appeals before filing suit, and they do not make decisions inoperative pending appeal.
25 Rather, agency decisions are final if they have not been appealed within 30 days. 25 C.F.R. §§ 2.6,
26 2.8.

27 276. Plaintiffs are entitled to appropriate relief.
28

1 **THIRD CAUSE OF ACTION**

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

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

6 277. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1 through
7 276 as if set forth fully here.

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

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

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

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

25 282. There are a disproportionately large number of Havasupai students who have
26 physical or mental impairments that substantially limit them with respect to learning, reading,
27 concentrating, thinking, and/or communicating. Havasupai Elementary School reported to the
28

1 Advisory School Board in 2014 that approximately half of the students in the school had been
2 identified as students with disabilities.

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

6 284. At Havasupai Elementary School, there is not a sufficient number qualified special
7 education teachers, and there are no special education classrooms; no occupational therapists,
8 physical therapists, or speech therapists; and either no or insufficient mental health staff and
9 support staff.

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

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

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

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

25 289. Plaintiffs do not need to administratively exhaust their claim. There is no
26 administrative procedure for challenging Defendants' school-wide failure to provide a system for
27 serving students with disabilities. Indeed, the BIE has not even promulgated regulations for
28 challenging individual denials of access to education for students with disabilities. Even if a

1 family could somehow obtain an individual remedy through a due process proceeding or some
2 other form of administrative process, Defendants could not implement that remedy at Havasupai
3 Elementary School because they have no system in place for doing so.

4 290. Moreover, declaratory relief, which is essential to this claim, is not available under
5 IDEA. Thus, the exhaustion requirement in IDEA cannot be applied to this claim under 29 U.S.C.
6 § 794(a).

7 291. Plaintiffs are entitled to appropriate relief.

8 **FOURTH CAUSE OF ACTION**

9 **(FAILURE TO PROVIDE A SYSTEM ENABLING STUDENTS WHO HAVE**
10 **SUFFERED ADVERSITY AND COMPLEX TRAUMA TO ACCESS PUBLIC**

11 **EDUCATION (29 U.S.C. § 794)**

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

13 292. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1 through
14 291 as if set forth fully here.

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

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

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

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

28

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

5 298. This historical and individual trauma requires additional behavioral and mental health
6 resources, as well as culturally relevant interventions, in order for students to have meaningful
7 access to education. In order to meaningfully access public education, Havasupai students require
8 a system that is responsive to and capable of addressing the impact of complex trauma.

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

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

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

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

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

1 implement that remedy at Havasupai Elementary School because they have no system in place for
2 doing so.

3 304. Moreover, declaratory relief, which is essential to this claim, is not available under
4 IDEA. Thus, the exhaustion requirement in IDEA cannot be applied to this claim under 29 U.S.C.
5 § 794(a).

6 305. Plaintiffs are entitled to appropriate relief.

7 **FIFTH CAUSE OF ACTION**

8 **(VIOLATION OF DEPARTMENT OF EDUCATION REGULATIONS**

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

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

12 306. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1 through
13 305 as if set forth fully here.

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

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

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

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

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

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

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

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

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

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

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

26 318. Plaintiffs are entitled to appropriate relief.
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

SIXTH CAUSE OF ACTION

**(VIOLATION OF DEPARTMENT OF EDUCATION REGULATIONS REGARDING
“PROCEDURAL SAFEGUARDS,” 34 C.F.R. § 104.36)**

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

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

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

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

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

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

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

1 Elementary School;

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

7 6. An award of costs and attorneys' fees on behalf of Plaintiffs pursuant to 29 U.S.C.
8 § 794(a) and any applicable provisions of law;

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

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

11

12 By: s/
13 Alexis DeLaCruz
14 Tara C. Ford⁺
15 NATIVE AMERICAN DISABILITY
LAW CENTER
3535 E. 30th Street, Suite 201
Farmington, NM 87402
Telephone: 505.566.5880

12 By: s/
13 Judith M. Dworkin
14 David C. Tierney
15 SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693
Telephone: 480.425.2600

16 Mark Rosenbaum⁺
17 mrosenbaum@publiccounsel.org
18 Kathryn Eidmann⁺
19 keidmann@publiccounsel.org
20 Anne Hudson-Price⁺
21 aprice@publiccounsel.org
22 Elizabeth Song⁺
23 esong@publiccounsel.org
24 PUBLIC COUNSEL
25 610 South Ardmore Avenue
26 Los Angeles, CA 90005
27 Telephone: 213.385.2977

16 Bradley S. Phillips⁺
17 Brad.Phillips@mto.com
18 Bryan H. Heckenlively⁺
19 bryan.heckenlively@mto.com
20 Seth J. Fortin⁺
21 Seth.Fortin@mto.com
22 Emily Curran-Huberty⁺
23 Emily.Curran-Huberty@mto.com
24 MUNGER, TOLLES & OLSON LLP
25 355 South Grand Avenue, 35th Floor
26 Los Angeles, CA 90071
27 Telephone: 213.683.9100

23 Elisabeth Bechtold⁺
24 ebechtold@aclu-nm.org
25 Maria Martinez-Sánchez⁺
26 mmartinez@aclu-nm.org
27 AMERICAN CIVIL LIBERTIES
UNION of NEW MEXICO
1410 Coal Avenue SW
Albuquerque, NM 87104
Telephone: 505.266.5915

28 *Attorneys for Plaintiffs*

⁺ Application for admission Pro Hac Vice forthcoming