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

Stephen C., a minor, by Frank C., guardian ad litem, et al.,  
  
Plaintiffs,  
  
v.  
  
Bureau of Indian Education, et al.,  
  
Defendants.

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

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## INTRODUCTION

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

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

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

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

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

### 5 INTEREST OF THE AMICUS

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

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

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

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

### 8 **ARGUMENT**

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

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

#### 18 **A. An Adequate Education Is Indispensable To Healthy Psychological** 19 **Development**

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

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

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

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

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

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

26 Native American communities feel the effects of an education deficit particularly  
 27 acutely. Lauren Camera, *Native American Students Left Behind*, U.S. NEWS & WORLD  
 28 REPORT, Nov. 6, 2015, <https://tinyurl.com/ybmdgwp0>. As a group, Native Americans

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

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

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

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

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

• **Incarceration rates are high**, see, e.g., Lakota People's Law Project, *Natives Live Matter*, at 7 (Feb. 2015), <https://tinyurl.com/ycl3zvc>; Nat'l Educ. Ass'n, *supra*, at 15, **including within the Havasupai community**, see, e.g., Press Release, U.S. Dep't of Justice, Supai Man Sentenced to 5 Years in Prison for Robbery (Dec. 13, 2016), <https://tinyurl.com/y7nhcvba>; Press Release, U.S. Dep't of Justice, Supai Village Man Sentenced to 37 Months for Assaulting Federal Officer (Apr. 14, 2017), <https://tinyurl.com/y82jyrg6>; see also, e.g., Caroline Wolf Harlow, U.S. Dep't of Justice, *Bureau of Justice Statistics Special Report: Education and Correctional Populations* (Jan. 2003), <https://tinyurl.com/kpsgzx4>; All. for Excellent Educ., *Saving Futures, Saving Dollars* (Sept. 2013), <https://tinyurl.com/kx5sw9k>; and

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

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

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

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

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

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

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

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

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

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

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

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

11 CRS has proven successful in Native American communities. In Chickaloon  
12 Village, for example, elders have initiated a weekend program to teach tribal culture,  
13 which is now the Ya Ne Dah Ah (“Ancient Teachings”) school with a full-time teacher and  
14 many volunteers. At this school, where “culture practices have been revived,” test scores  
15 are higher than state and national averages and students are no longer drop-out risks.  
16 Seelau, *supra* p. 1, at 100-03. As another example, the Coeur d’Alene tribe is tracking at-  
17 risk youth to monitor them for risk of “drop-out ..., suicide and substance abuse.” Eric  
18 Holder, Jr. et al., U.S. Dep’t of Justice, *Ending Violence so Children Can Thrive*, at 102  
19 (Nov. 2014), <https://tinyurl.com/ya4dm5ur>. This program “is community based, and  
20 various organizations come together to collaborate and focus on tribal youth, sharing data  
21 and information. As a result ..., the tribe reports no drop-outs, no gangs, and no suicides.”  
22 *Id.* Further, Kognito Interactive, Inc is creating digital training simulations that allow users  
23 to learn through a personalized and situated experience, progressing through realistic case  
24 scenarios at an individual pace. At-Risk Modules have been created to reduce the impact  
25 of stigma, performance anxiety, and cultural factors related to training on taboo topics and  
26 can be adapted to support tribal communities. *See* Kognito: Products,  
27 <https://tinyurl.com/y97u2wbk> (last visited Aug. 29, 2017). For example, one Avatar, Ms.  
28

1 Yazzi (common name for Navajo), is a virtual American Indian school-teacher supporting  
2 suicide prevention training in the southwest.

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

6 \* \* \*

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

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## II. WITHOUT EDUCATION TO DEVELOP RESILIENCY, EXPOSURE TO TRAUMA RESULTS IN DISABILITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3 CONCLUSION

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

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