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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

PETER P., et. al, *Plaintiffs*, v. COMPTON UNIFIED SCHOOL DISTRICT; et. al, *Defendants.*	Case No. LA CV-15-3726 MWF (PLAx) **CLASS ACTION** **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS** Date: August 17, 2015 Time: 10:00 a.m. Ctrm: 1600 Judge: Hon. Michael W. Fitzgerald

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I. INTRODUCTION AND STATEMENT OF FACTS

Plaintiffs'[1] 73-page Complaint alleges that Compton Unified School District ("CUSD") and Individual Defendants[2] have systematically discriminated against CUSD students who are impaired in their ability to learn as a result of the complex trauma they have endured. As the Complaint alleges, children attending CUSD schools are exposed to multiple forms of trauma, including witnessing or experiencing violence; grief over the loss of family members and friends; the loss of a caregiver due to deportation, incarceration, or family separation; the causes and consequences of involvement in the foster system; extreme socioeconomic hardship and its attendant consequences, including homelessness; and discrimination and racism. Childhood exposure to complex trauma has neurobiological effects that impair the ability to regulate emotion and impulses and the brain's ability to store and retrieve information—activities essential to education. These effects substantially impair Student Plaintiffs' ability to perform major life activities, including learning, thinking, reading, and concentrating—and thus constitute a disability under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

But although the pervasive exposure to childhood trauma among CUSD students is widely-known and well-documented, Defendants have not implemented the school-wide trauma-sensitive practices necessary to accommodate students whose ability to learn has been impaired by complex trauma. Student Plaintiffs

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[1] Plaintiffs are Peter P., Phillip W., Virgil W., Kimberly Cervantes, and Donte J., on behalf of a putative class of current and future students in Compton Unified School District ("CUSD") whose exposure to complex trauma has impaired or will impair their basic ability to learn, read, think, concentrate, and communicate (collectively, "Student Plaintiffs"), and teachers Rodney Curry, Armando Castro II, and Maureen McCoy ("Teacher Plaintiffs").

[2] Individual Defendants are Superintendent of Compton Unified School District Darin Brawley, and the members of the Board of Trustees of Compton Unified School District, Micah Ali, Satra Zurita, Margie Garrett, Charles Davis, Skyy Fisher, Emma Sharif, and Mae Thomas.

have been, and without reasonable accommodations will continue to be, denied meaningful access to public education on account of their disabilities.[3]

Defendants have moved to dismiss Plaintiffs' claims primarily on the grounds that Plaintiffs have failed to allege that Student Plaintiffs are individuals with disabilities, MTD at 7-13, or that Student Plaintiffs have been denied access to public education solely by reason of their disability, *id.* at 14-18. But as Plaintiffs detail below, Defendants' arguments are contrary to controlling Supreme Court and Ninth Circuit law and would fundamentally distort the scope, purpose, and meaning of our nation's disability laws beyond recognition. For example, Defendants seek to characterize the well-documented effects of complex trauma as solely "environmental, cultural, or economic," despite the fact that other courts routinely recognize disabilities caused by environmental factors, including manifestations of trauma. In addition, Defendants ignore the hundreds of paragraphs of allegations in the Complaint detailing the neurobiological effects of complex trauma on the developing brain, the specific ways in which these effects impair children's ability to learn and to access a public education, and the widespread exposure to complex trauma among Compton youth.

The Complaint is organized to address the basic elements of the Rehabilitation Act and the ADA. The Complaint alleges that it is widely-known and well-documented that CUSD students are pervasively exposed to complex trauma. Compl. ¶¶ 73-106. The named Student Plaintiffs have endured multiple traumas that are typical of Compton youth. *Id.* ¶¶ 14-36. For example, Peter P. is a former foster youth who is homeless and lived for two months on the roof of his school's cafeteria. *Id.* ¶¶ 15, 18. Phillip W. has been shot at and has witnessed multiple shootings and deaths. *Id.* ¶¶ 27-28. Kimberly Cervantes has been the victim of

[3] Plaintiffs have since substantiated the allegations in the Complaint by means of the evidence submitted in support of Plaintiffs' Motion for Preliminary Injunction, filed July 13, 2015. *See* Mtn. for PI [Dkt. 42-1] at 3-14.

multiple assaults and was traumatized by a homophobic remark made by a teacher. *Id.* ¶¶ 22-24. Decades of medical research have conclusively established that exposure to chronic or repeated trauma results in adverse neurological and endocrinal changes in developing children. *Id.* ¶¶ 107-122. These changes demonstrably impair the brain's ability to store and retrieve information—impeding memory, concentration, and communication—and to regulate emotion and impulses. *Id.* ¶¶ 123-145. Students who have experienced trauma are thus more likely to experience academic failure, perform poorly on tests, be disengaged or absent from school, have behavioral problems, and drop out. *Id.* ¶¶ 146-152. District-wide implementation of trauma-sensitive practices is effective and necessary to reasonably accommodate students whose ability to learn is impaired due to the effects of complex trauma, particularly in schools like CUSD's that serve high concentrations of trauma-impacted students. *Id.* ¶¶ 158-181. Yet, instead of providing these necessary accommodations, CUSD's policies and practices re-traumatize and discriminate against Student Plaintiffs. *Id.* ¶¶ 182-191.

Defendants' additional arguments seeking to dismiss Plaintiffs' claims in part must likewise be rejected. Defendants argue that Plaintiffs' claims under the Department of Education regulations implementing the Rehabilitation Act should be dismissed for lack of a private right of action, MTD at 18-21, but Plaintiffs' claims are enforceable through a private right of action because they impose "reasonable accommodation" or "meaningful access" requirements. Defendants' arguments that the claims are not properly brought against the Individual Defendants or by Teacher Plaintiffs are also unavailing. Individual Defendants have direct enforcement duties at CUSD schools and are thus proper parties to this litigation, and the Complaint pleads ample facts to establish standing on behalf of the Teacher Plaintiffs.

II. STANDARD OF REVIEW

When reviewing a 12(b)(6) motion to dismiss, a court must accept all material facts alleged in the Complaint as true, and must construe those facts in the light most favorable to the non-moving party. *Colony Cove Props., LLC v. City of Carson*, 640 F.3d 948, 955 (9th Cir. 2011). A complaint must only contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The plausibility standard will be satisfied when the facts pleaded "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. at 663.

III. PLAINTIFFS' FIRST AND FIFTH CLAIMS FOR RELIEF STATE A CLAIM UNDER SECTION 504 OF THE REHABILITATION ACT AND THE ADA

The tests for proving a violation of Section 504 of the Rehabilitation Act and Title II of the ADA are similar. "[U]nder Section 504… a plaintiff must show: (1) he is an 'individual with a disability'; (2) he is 'otherwise qualified' to receive the benefit; (3) he was denied the benefits of the program solely by reason of his disability; and (4) the program receives federal financial assistance." *Weinreich v. Los Angeles Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997) (quoting 29 U.S.C. § 794). Under Title II of the ADA, a plaintiff must demonstrate: "(1) he is a 'qualified individual with a disability'; (2) he was either excluded from participation in or denied the benefits of a public entity's services, programs or activities, or was otherwise discriminated against by the public entity; and (3) such exclusion, denial of benefits, or discrimination was by reason of his disability." *Id.* (quoting 42 U.S.C. § 12132). Indeed, because of "the close relationship between Section 504 [of the Rehabilitation Act] and Title II of the ADA," *K.M. ex rel. Bright v. Tustin Sch. Dist.*, 725 F.3d 1088, 1098 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 1493, 1494

(2014), "courts have applied the same analysis to claims brought under both statutes." *Zukle v. Regents of Univ. of Cal.*, 166 F.3d 1041, 1045 n.11 (9th Cir. 1999). Plaintiffs analyze these statutes together.

The only two elements in dispute are whether Plaintiffs have adequately alleged that: (1) they are individuals with a disability within the meaning of Section 504 and the ADA; and (2) they have been denied meaningful access to public education solely by reason of their disability. MTD at 6-7. Plaintiffs have pleaded sufficient facts as to these elements.

A. Student Plaintiffs Are Individuals With A Disability

The definition of "disability" is identical under Section 504 of the Rehabilitation Act and the ADA. *See* 29 U.S.C. §§ 794(a), 705(20)(B) (defining disability under Section 504 via cross-reference to the definition in the ADA). Both statutes define "disability" as "a physical or mental impairment that substantially limits one or more life activities of [an] individual." 42 U.S.C. § 12102. In response to several Supreme Court decisions that Congress found "narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect," and the subsequent lower court decisions that "incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities," Congress passed the Americans with Disabilities Act Amendments Act of 2008 ("ADAAA"), Pub. L. No. 110-325, § 2(a)(4)-(6), 122 Stat. 3553, 3553 (2008). The 2008 Amendments expanded and clarified the definition of disability, outlining a non-exhaustive list of "major life activities" specifically including "learning, reading, concentrating, thinking, communicating," and the operation of "major bodily functions," including "neurological, brain" and "endocrine" functions. 42 U.S.C. § 12102(2)(A), (B). The ADAAA also provides that "[t]he definition of disability in this chapter shall be construed in favor of broad coverage

of individuals under this chapter, to the maximum extent permitted by the terms of this chapter." *Id.* § 12102(4)(A). Plaintiffs have pleaded injury to one or more of the enumerated major life activities and have thus pleaded disability under the statutes. *See, e.g.*, Compl ¶¶ 55-57.

1. Plaintiffs Allege That They Are Impacted By The Effects Of Trauma, Not Their Economic Disadvantages

Defendants' primary argument, which they make in the first two pages of their brief, is that Plaintiffs allege that the "economic disadvantages of growing up in the underprivileged areas served by CUSD deprive them of meaningful access to education." MTD at 1; *see also id*. at 8. This is a mischaracterization of the Complaint. As the Complaint makes clear, it is the neurological and endocrine *effects* of prolonged, repeated, and unpredictable traumas on the child's developing brain—and not the adverse experiences themselves—that impair the ability to learn.[4] *See, e.g.* Compl. ¶¶ 2, 10, 107-152, 193, 204, 212, 216-217. To the extent the Complaint discusses the *causes* of trauma, these facts are pleaded in support of Plaintiffs' claims that trauma is widespread among CUSD students, *id.* ¶ 74, and that such exposure is widely known and well-documented, placing Defendants on notice of the need for accommodations, *id.* ¶ 182; *see infra* Section III.B.1.

The Ninth Circuit and other courts have acknowledged that manifestations of trauma, which by definition are a consequence of environment, may constitute a disability under the Rehabilitation Act and ADA.[5] Moreover, the Equal

[4] The fact that a disability is *caused* by an external factor—and is not congenital or hereditary—does not make the impairment itself "environmental." Many disabilities are the result of environmental factors, such as exposure to violence, neglect, or malnutrition. If an individual required a wheelchair as a consequence of a neighborhood shooting, for example, that individual would be protected under Section 504 and the ADA. An intellectual disability due to exposure to lead paint or extreme malnutrition would be likewise cognizable under the Acts.

[5] *See, e.g.*, *Mustafa v. Clark County Sch. Dist.*, 157 F.3d 1169, 1174 (9th Cir. 1998); *Desmond v. Mukasey*, 530 F.3d 944, 952-61 (D.C. Cir. 2008); *Whelan v. Potter*, No. CIV S-09-3606 KJM-KJN, 2012 WL 3535869, at *12 (E.D. Cal. Aug. 14, 2012); *Franklin v. City of Slidell*, 936 F. Supp. 2d 691, 709 (E.D. La. 2013);

Employment Opportunity Commission's regulations implementing the ADA provide that post-traumatic stress disorder is an impairment that "will, in virtually all cases, result in a determination of coverage under . . . the 'actual disability' prong." 29 C.F.R. 1630.2(j)(3)(ii), (iii); *id.* (post-traumatic stress disorder "will, at a minimum, substantially limit the major life activit[ies]" associated with "brain function."). The neurological and endocrine effects of complex trauma are extensively pleaded.

2. The Neurological And Endocrine Effects Of Complex Trauma Create A "Physical Or Mental Impairment"

As Defendants acknowledge, "the term 'disability' is 'construed in favor of broad coverage.'" MTD at 8 (citing 42 U.S.C. § 12102). To effectuate this breadth, Congress deliberately chose not to limit the physical or mental impairments that would qualify as a disability by setting forth a list of specific disorders or conditions.[6] 34 C.F.R. Pt. 104, App. A ¶ 3. Rather, disability is defined categorically and functionally, with reference to the effects or impact of the impairment on the affected individual. *See* 42 U.S.C. § 12102.

Defendants further acknowledge that the regulations implementing Section 504 and the ADA provide that "physical or mental impairment[s]" include—among other physiological, mental, and psychological impediments—those affecting the "neurological" and "endocrine" systems. MTD at 8 (citing 29 C.F.R. § 1630.2(h) (Section 504); 34 C.F.R. § 104.3(j)(2)(i) (ADA)). The

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Linder v. Potter, 304 Fed. Appx. 570, 570 (9th Cir. 2008); *Cooper v. United Parcel Serv., Inc.*, No. 08-1585, 2008 WL 4809153, at *3 (E.D. La. Nov. 3, 2008).

[6] Although it is not necessary for impairments to be recognized by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), *see generally* 29 C.F.R. § 1630.2, Plaintiffs have alleged that the class of Student Plaintiffs "includes, but is not limited to, students with trauma-related conditions recognized by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), including post-traumatic stress, anxiety, dissociative, conduct, somatoform, depressive, and substance-related and addictive disorders." Compl. ¶ 55.

Complaint alleges in great detail that complex trauma has substantial effects on the neurology, endocrine system, and brain development of a child.

"Decades of medical research have made clear that the brains of children who experience chronic or repeated traumas undergo material changes, creating demonstrable physiological impairments that impede the ability to perform daily activities, including thinking, learning, reading, and concentrating." Compl. ¶ 107; *see also id.* ¶¶ 3, 107-126, 129-139, 143, 146-151. The Complaint explains that a young person exposed to trauma will experience a "fight or flight" response, "engaging a set of nervous system, neuroendocrine, and immune responses." *Id.* ¶ 111. When a child repeatedly experiences unpredictable chaos, fear, violence and adversity, the brain adapts and "states become traits": "the areas of the brain that control behavior directed by fear can become over-sensitized, and 'full-blown response patterns' such as hyperarousal or dissociation can be triggered by seemingly innocuous stimuli." *Id.* ¶ 116. The Complaint goes on to detail several of the ways in which the brain's adaptation to trauma manifests in demonstrable alterations to the endocrine and nervous systems. *E.g.*, *id.* ¶¶ 119 ("[T]he hippocampus is less active in a traumatized brain . . . [T]rauma can increase cortisol levels in the hippocampus and ultimately cause it to decrease in volume."), 121 ("[T]raumatized children had smaller or abnormal prefrontal cortex structures."), 118 (displaying differences in the brain scans of children who have experienced trauma). In short, Plaintiffs have alleged that "trauma causes palpable, physiological harm to a young person's developing brain." *Id.* ¶ 122. Defendants attempt to manufacture a distinction between physical and mental impairments, *see* MTD at 11-12, but fail to cite even a single case to support any claimed difference between "when a disorder versus a condition can satisfy the statute," MTD at 11, and Plaintiffs are unaware of any court that has applied a different standard to

considering physical impairments and mental impairments under the ADA or Section 504.

Plaintiffs have pleaded that complex trauma results in physiological impairments affecting the "neurological" and "endocrine" systems under the "physiological disorder or condition" prong of the ADA-implementing regulation. 29 C.F.R. § 1630.2(h); *see* Compl. ¶¶ 3, 107-122, 129-136. The definition of "mental disorder" suggested by Defendants[7]—"[m]ental disorders are usually associated with significant distress in social, occupational, or other important activities," MTD at 11—is wholly consistent with the substantial impairment in functioning caused by the complex trauma alleged by Plaintiffs. *See, e.g.*, Compl. ¶¶ 123-157.

3. The Effects Of Complex Trauma Substantially Limit Major Life Activities

As the Ninth Circuit held even three years before enactment of the ADAAA, "[t]o be a major life activity, the activity need not be essential to survival, but rather of central importance to most people's daily lives." *Head v. Glacier Nw. Inc.*, 413 F.3d 1053, 1061-62 (9th Cir. 2005) (citation and internal quotations omitted) (listing "thinking" and "reading" as "major life activities."). "[T]he term 'substantially limits' is not meant to be a demanding standard and should be broadly construed in favor of expansive coverage." *Franklin*, 936 F. Supp. 2d at 708-09 (citing ADAAA § 2(b)(4); 29 C.F.R. § 1630.2(j)(1)(iii)) ("The primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether an individual's impairment substantially limits a major life activity.").

[7] Defendants cite the DSM definition of "mental disorder," MTD at 11, even though courts have repeatedly made clear that it is not necessary for an impairment to be specifically listed or categorized as a "mental disorder" by the DSM or elsewhere to state a claim under the ADA and Section 504. *See generally* 29 C.F.R. § 1630.2. The cited regulation does not define "disorder" or "condition," and Plaintiffs are unaware of any court that has undertaken such analysis.

Defendants' contention that Plaintiffs' complaint "fails to even clarify exactly what 'effects of trauma' are being alleged to substantially limit Plaintiffs' ability to learn, read, concentrate, think, or communicate" is flawed. *See* MTD at 13. Plaintiffs have not merely provided "anecdotal research and contentions," as Defendants suggest. MTD at 13. Rather, the Complaint alleges with particularity based on extensive scientific and medical literature that the neurobiological effects of complex trauma substantially impair a number of major life activities specifically enumerated by the ADA and Section 504, including "learning, reading, concentrating, thinking, [and] communicating." *E.g.*, Compl. ¶¶ 65, 123-157.

- ***Verbal Processing and Communication*:** "The capacity to internalize new verbal cognitive information depends upon having portions of the frontal and related cortical areas being activated—which, in turn, requires a state of attentive calm. A state the traumatized child rarely achieves." *Id.* ¶ 130; *see also id.* ¶¶ 129-132.
- ***Cognitive Development & Memory*:** "[Y]outh with [traumatic experiences] have deficits in key areas of the [prefrontal cortex] responsible for cognitive control[,] attention, memory, response inhibition, and emotional reasoning—cognitive tools that may be necessary for learning." *Id.* ¶ 121; *see also id.* ¶¶ 119-121, 133.
- ***Concentration*:** "The difficulty concentrating caused by exposure to trauma can impair students' ability to process, retain, synthesize, and recall information." *Id.* ¶ 135; *see also id.* ¶¶ 121, 134.
- ***Goal-Setting and Long-Term Planning*:** "The traumatized child lives in an aroused state, ill-prepared to learn from social, emotional, and other life experiences. She is living in the minute and may not fully appreciate the consequences of her actions." *Id.* ¶ 136.
- ***Classroom Behaviors*:** "[B]ehavioral adaptations to trauma include

aggression, defiance, withdrawal, perfectionism, hyperactivity, reactivity, impulsiveness, and/or rapid and unexpected emotional swings." *Id.* ¶ 137; *see also id.* ¶¶ 137-145.

The Complaint further alleges that these impairments, in turn, have significant consequences for educational attainment, including: academic failure, grade repetition, low performance on standardized tests, disengagement in school, absenteeism, behavioral problems, and drop-outs. *See id.* ¶¶ 143, 146-152.

Defendants' suggestion that the allegations particular to the individual Student Plaintiffs are likewise conclusory, MTD at 13, is belied by the specific recitation in the Complaint regarding the consequences of trauma experienced by these Student Plaintiffs, which is consistent with the effects of trauma described in the outlined medical literature. For example:

- As a result of the severe complex trauma he has endured, Peter P.: "experiences uncontrollable anger," Compl. ¶ 19, "is currently failing all but two classes," "has repeatedly missed classes," "has been repeatedly suspended for disobedient, angry, or aggressive behavior, and has been involuntarily transferred" from several CUSD schools," *id.* ¶ 20.
- Overall, "[d]ue to unaddressed trauma, Kimberly had trouble focusing and concentrating in class . . . and failed numerous courses; she was compelled to transfer to a continuation school." *Id.* ¶ 26. An altercation with a school security guard resulted in "feelings of terror" and Kimberly "did not attend school for over a week." *Id.* ¶ 23. After being assaulted on the way home from school, Kimberly was "terrified," "missed multiple days of school," and "flashbacks caused her to break down in class." *Id.* ¶ 24. As a direct result of homophobic remarks made by her teacher, Kimberly stopped attending class and had to transfer to continuation school. *Id.* ¶ 22.

- "As a result of the complex trauma he has experienced, Philip W. has difficulty focusing, concentrating, and recalling information in school. Philip W. "feels detached or angry much of the time. . . . He frequently jokes around during school to distract himself from thinking about the past." *Id.* ¶ 29. He has been removed from three CUSD high schools in a single year. *Id.* ¶ 31.[8]

B. Student Plaintiffs Have Been Denied Benefits Of A Public Education Solely By Reason Of A Disability

Section 504 "protect[s] disabled persons from discrimination arising out of both discriminatory animus and 'thoughtlessness,' 'indifference,' or 'benign neglect.'" *Crowder v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir. 1996) (citation omitted). "Rather than attempt to classify a type of discrimination as either 'deliberate' or 'disparate impact,' . . . it [is] more useful to assess whether disabled persons were denied 'meaningful access' to state-provided services." *Crowder*, 81 F.3d at 1484; s*ee also Ferguson v. City of Phoenix*, 157 F.3d 688, 679 (9th Cir. 1998); *cf. Lovell v. Chandler*, 303 F.3d 1139, 1054 (9th Cir. 2002) (assuming that 'meaningful access' is the appropriate standard). Thus, when evaluating whether or not a discrimination, exclusion, or denial has occurred on the basis of disability, the proper inquiry is whether the defendant school district has provided the plaintiffs with "meaningful access" to its otherwise available benefits, services, and programs.

Defendants raise two arguments to suggest that Plaintiffs have failed to allege a denial of benefits solely by reason of disability. First, they argue that "Plaintiffs at a minimum need to establish facts showing Defendants' knowledge of Plaintiffs' *disability* . . ." MTD at 15 (emphasis in original). Second, they claim that Plaintiffs have not properly pleaded a "comparison requirement" between disabled and non-

[8] The Complaint pleads similar particularized allegations with respect to Virgil W., Compl. ¶ 33, and Donte J., *id.* ¶ 35.

disabled individuals. *Id.* at 16-17. Both arguments apply the incorrect legal standard and ignore the Complaint's voluminous allegations.

1. Prior "Knowledge Of Plaintiffs' Disability" Is Not A Predicate For Obtaining Injunctive Relief, And Defendants Had Reason To Know Of Student Plaintiffs' Disabilities

Where *damages* are sought under Section 504, a plaintiff must show that the defendant acted with "deliberate indifference" to plaintiff's rights. *Mark H. v. Lemahieu*, 513 F.3d 922, 938 (9th Cir. 2008). But the statute does not impose such a requirement in cases for injunctive or declaratory relief, for good reason. While it might make sense to require a plaintiff to show that defendants were deliberately indifferent to the plaintiff's disability when the plaintiff seeks damages for prior illegal conduct, it would make no sense to allow defendants to avoid their obligation to provide meaningful access to education simply because, prior to the suit, defendants had not acted with deliberate indifference. A school, for example, could not avoid an obligation to install a wheelchair ramp on the basis that it lacked prior knowledge that a student was unable to use the stairs; past ignorance does not justify future discrimination. Moreover, Defendants clearly have knowledge *now* of Plaintiffs' disability, and Plaintiffs seek only prospective, not retroactive, relief.[9]

[9] Defendants' contrary argument is supported by inapposite and non-binding district court cases. *Dutson v. Farmers Ins. Exch.*, 815 F. Supp. 349 (D. Or. 1993), *aff'd without opinion*, 35 F.3d 570 (9th Cir. 1994) was a private employment termination case seeking damages. *Id.* at 353 (explaining that plaintiff sought ten million dollars in damages); *see also Hedberg v. Indiana Bell Tel. Co.*, 47 F.3d 928, 930-31 (7th Cir. 1995) (seeking damages); *S. L.-M. v. Dieringer Sch. Dist. No. 343*, 614 F. Supp. 2d 1152, 1159, 1163 (W.D. Wash. 2008) (same). The vacated opinion of *Doe v. Eagle-Union Cmty. Sch. Corp.*, 101 F. Supp. 2d 707 (S.D. Ind. 2000) and the unpublished opinion of *Stearns v. Bd. of Educ.*, No. 99 C 5818, 1999 WL 1044832 (N.D. Ill. Nov. 16, 1999), cases that also appear to have involved damages requests, concern whether allegedly disabled students may serve on school athletic teams and thus reflect the Seventh Circuit's refusal "to define the major life activity of learning in such a way that the Act applies whenever someone wants to play

Nonetheless, even under Defendants' invented standard, Plaintiffs have alleged that Defendants should have known a substantial number of CUSD students exposed to complex trauma are disabled within the statutory meaning of Section 504 and the ADA and require accommodations. Defendants have an affirmative obligation under the Department of Education regulations implementing Section 504 to identify and locate qualified children with disabilities within their jurisdiction not receiving a free appropriate public education. 34 C.F.R. § 104.32(a). The obligation to identify and locate qualified children with disabilities is triggered when the school district has a reason to suspect a disability. *See, e.g.*, *D.R. v. Antelope Valley Union High Sch. Dist.*, 746 F. Supp. 2d 1132, 1144 (C.D. Cal. 2010); *Ms. H. v. Montgomery County Bd. of Educ.*, 784 F. Supp. 2d 1247, 1260 (M.D. Ala. 2011).[10]

As the Complaint alleges, the manifestations of trauma in CUSD schools are evident and pervasive. The named Student Plaintiffs, for example, are typical of CUSD students whose learning is impaired by complex trauma, and exhibited the following indicators: dissociative or disruptive behavior in school,[11] repeated subjection to punitive suspensions and involuntary transfers,[12] and poor attendance

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[scholastic] athletics." *Knapp v. Nw. Univ.*, 101 F.3d 473, 481 (7th Cir. 1996). *Stearns* further depends on the general doctrine, as commentators have recognized, that "conduct rules involving the use of alcohol may be imposed on students who claim to be alcoholic." James Rapp, Education Law § 3.09[7][a][iii] (Matthew Bender & Co. 2015) (citing, *inter alia*, *Stearns*). None of these doctrines are relevant to the current case, and thus these cases are inapposite.

[10] Defendants concede "[k]nowledge [can] be established where a school district is on notice because it at least has reason to suspect a disability," MTD at 15 (citing *Antelope Valley*, 746 F. Supp. 2d at 1144), but fail to acknowledge their corresponding obligation to identify and locate qualified students with disabilities under the Department of Education regulations.

[11] Compl. ¶¶ 24 ("flashbacks caused her to break down in class"), 25 (read aloud poem "discussing her struggles with suicidal feelings"), 26, 29 (jokes around to distract from thinking about the past), 33, 36.

[12] *Id.* ¶¶ 20 ("repeatedly suspended for disobedient, angry, or aggressive behavior"); *id.* ¶¶ 31, 33, 36; *see also id.* ¶¶ 142, 191. CUSD reports 1,243 suspensions in the 2013-2014 school year. *Id.* ¶¶ 142, 190.

or sudden significant changes in attendance patterns,[13] at times combined with poor or sudden changes in academic performance.[14] The Complaint also pleads that "Defendants . . . are on notice that CUSD schools serve a disproportionately high number of students exposed to complex trauma." Compl. ¶ 37; *see also id.* ¶ 182. CUSD reports that it serves high numbers of foster youth, homeless youth, youth of color, and low-income youth, *id.* ¶¶ 91, 95-96, 98, and widely-known data documenting Compton's high rates of violence and crime is a matter of public record. *Id.* ¶ 83.

Defendants' suggestion that "misbehavior, such as truancy and schoolyard fights" provides no notice of a trauma-related disability because "these scenarios could be the result of nothing more than 'immaturity or poor judgement,'" MTD at 16, is precisely the type of misbegotten and counterproductive response to trauma-induced behavior that the trauma-sensitive practices sought by this litigation are designed to address.[15] *See, e.g.*, Compl. ¶¶ 137 ("Children exposed to unbearable stresses may be unable to self-regulate their behavior in the classroom, which results in them being labeled as 'acting out' or as 'troubled.'"); *id.* ¶¶ 138-141. When educators label and stigmatize young people with lengthy histories of trauma instead of recognizing the trauma they have endured and responding appropriately, these actions send yet another message to these students that they are "bad kids" and not worthy of education or investment.

2. Defendants Mischaracterize The Comparison Required Between Disabled And Non-Disabled Individuals

[13] *Id.* ¶¶ 20, 22, 24, 26.
[14] *Id.* ¶¶ 20, 26.
[15] Defendants' response is backwards: the fact that a student's conduct could be motivated by something other than a disability does not discharge Defendants' obligation to investigate sufficiently to identify and locate qualified children with disabilities within their jurisdiction who are not receiving a public education. 34 C.F.R. § 104.32(a).

Defendants mischaracterize the nature of the comparison between disabled and non-disabled individuals required under the Rehabilitation Act and ADA. The Rehabilitation Act and the ADA are anti-discrimination statutes, and the touchstone for establishing discrimination under these Acts is to show that a person has been denied "'meaningful access' to state-provided services" solely on the basis of a disability. *Lemahieu*, 513 F.3d at 937 (quoting *Crowder*, 81 F.3d at 1484). Implicit in this standard is a showing that disabled individuals face an impediment to meaningful access that is not faced by non-disabled individuals (or that is greater than the impediment faced by non-disabled individuals). Put differently, disability discrimination occurs when plaintiffs "face conditions that are more onerous for them [than non-disabled individuals] because of their particular disabilities." *Henrietta D. v. Bloomberg*, 331 F.3d 261, 279 (2d Cir. 2003). What the Rehabilitation Act and ADA do not require, however, is a showing of disparate outcomes: where Student Plaintiffs are denied meaningful access to public education by reason of their trauma-related disabilities, it would not be a defense to say that non-disabled CUSD students are also denied meaningful access to public education.

The court in *Henrietta* highlighted this very principle. 331 F.3d 261 at 279. The plaintiffs—clients of a New York agency that assisted indigent persons with HIV-related diseases obtain public assistance benefits—alleged that the state of New York "fail[ed] to provide them with adequate access to public benefits." *Id.* at 264. In response, defendants argued that the plaintiffs needed to show that the denial of benefits was not the result of a failed and dysfunctional benefits system affecting non-disabled and disabled persons alike. The court rejected the defendants' argument, citing the "'familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes'" and expressing its "reluctan[ce] to interpret the 'by reason of such disability' language of the ADA and the Rehabilitation Act . . . so narrowly that they deprive the plaintiffs of

reasonable accommodations to which the plaintiffs clearly would be entitled if the social services system were functioning as intended." *Id.* at 279 (quoting *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967)). Because of "disability-related challenges that ma[d]e access more difficult for the plaintiff class than for those without disabilities," "it is no defense that others are equally unsuccessful in accessing benefits." *Id.* at 279-80.

Here, the Complaint painstakingly details the barriers to learning faced by children who are disabled due to the effects of complex trauma that are not endured by non-disabled students. The Complaint's description of the neurobiological effects of complex trauma on the brain is premised on a comparison to healthy child development. Compl. ¶¶ 3, 107-122, 129-136. In detailing the impairments to major life activities caused by the effects of exposure to trauma, the Complaint makes numerous, express comparisons between young people who are substantially impaired due to the effects of complex trauma and those who are not.[16] And—although a comparison in outcomes is not required—the Complaint alleges that students disabled by complex trauma experience poorer educational outcomes than students who have not experienced trauma. Plaintiffs allege that "[c]hildren affected by trauma are far more likely to be suspended or expelled than children who are not

[16] *E.g.*, Compl. ¶ 129 (comparing a child in a calm state who "can focus on the words of the teacher and, using the neocortex, engage in abstract cognition" with a child in an alarm state who "will be less efficient at processing and storing the verbal information the teacher is providing"); *id.* ¶¶ 131-132 (children exposed to complex trauma are "less able to interpret and respond to verbal cues," and as a result will "learn far less" and have "a harder time communicating with others"); *id.* ¶ 133 ("understanding of cause-and-effect underdeveloped" which a "young person who has not experienced complex trauma takes for granted"); *id.* ¶ 136 ("In a state of calm, we use the higher, more complex parts of our brain to process and act on information. . . . In a state of fear, we use the lower, more primitive parts of our brain. . . . The traumatized child lives in an aroused state, ill prepared to learn from social, emotional, and other life experiences."); *id.* ¶ 138 ("A traumatized student in a hypervigilant state may interpret visual and verbal cues differently than students unaffected by trauma."); *id.* ¶ 139 ("Trauma causes students to have a harder time processing language and accurately reading social cues, which in turn causes them to have more difficulty relating to and empathizing with others, which can elicit aggressive behaviors.").

affected by trauma," Compl. ¶ 141, and children who have experienced trauma are disproportionately likely to experience academic failure, grade repetition, low performance on standardized tests, disengagement in school, absenteeism, behavior problems, and drop outs. *See id.* ¶¶ 125, 143, 146-152.

Defendants' argument that Plaintiffs' Rehabilitation Act and ADA claims must fail because Plaintiffs have not adequately pleaded "the Rehabilitation Act's comparative requirement," MTD at 16, is imprecise and mischaracterizes the statutes at issues and the case law interpreting them. Neither of the cases on which Defendants rely requires Plaintiffs bringing suit under Section 504 or the ADA to allege disparities in outcomes between disabled and non-disabled students. The portion of *Lemahieu* relied on by Defendants does not interpret Section 504 itself, but rather a Department of Education regulation implementing the statute.[17] And the district court case cited by Defendants, *J.W. v. Fresno Unified School District*, 570 F. Supp. 2d 1212 (E.D. Cal. 2008), states only that a plaintiff cannot establish that he was "denied meaningful access to education because of his disability" under Section 504 solely by alleging that the school district not meet its obligation to deliver a Free and Appropriate Public Education ("FAPE") under the IDEA. *Id.* at 1228 ("Significantly, and fatally, Plaintiff continues to rely on his IDEA FAPE allegations, which have an individual, rather than comparative focus.").

As a factual matter, Defendants argue that the Complaint fails to establish that "Plaintiffs' alleged treatment was inadequate in comparison to non-handicapped students," MTD at 18, but entirely ignore the extensive factual allegations described above. The only "deficiency" in the Complaint they identify is the omission of the words "as compared to non-disabled students" at the end of two paragraphs in

[17] The Defendants purport to distinguish between Rehabilitation Act and the IDEA: "[the Rehabilitation Act] requires a comparison between the treatment of disabled and nondisabled children . . ." MTD at 17 (quoting *Lemahieu*, 513 F.3d at 936). But Defendants have improperly inserted "Rehabilitation Act" in brackets; the actual text reads "§ 104.33," an implementing regulation discussing a district's obligation to provide a Free Appropriate Public Education under Section 504.

Plaintiffs' recital of claims for relief. MTD at 17 (quoting Compl. ¶¶ 197, 220) ("[E]ach of the student class members has been denied *meaningful access to an adequate* public education by Defendants. Each of the class members has also been denied the *benefits of an adequate* public education.") (emphasis in MTD). As discussed above, it is unnecessary for Plaintiffs to allege that non-disabled CUSD students have not been denied meaningful access to public education. *See Henrietta*, 331 F.3d at 279-80. And even if such a comparison were necessary, it is unnecessary to require this formal recitation when there are more than sufficient facts alleged in the Complaint to support such a comparison, all of which are incorporated by reference in Plaintiffs' Claims for Relief. Compl. ¶¶ 192-223.

IV. PLAINTIFFS' SECOND, THIRD, AND FOURTH CLAIMS FOR RELIEF ARE ENFORCEABLE THROUGH AN IMPLIED RIGHT OF ACTION

Defendants argue that Plaintiffs' claims under the Department of Education regulations implementing Section 504 should be dismissed because the implementing regulations do not create a private right of action. MTD at 19-20.[18] In the Ninth Circuit, claims under Section 504 implementing regulations are enforceable through an implied right of action to the extent that they impose "reasonable accommodation" or "meaningful access" requirements:

> [Section] 504 itself prohibits actions that deny disabled individuals 'meaningful access' or 'reasonable accommodation' for their

[18] Defendants also claim that their arguments regarding Plaintiffs' Section 504 and ADA claims apply to Plaintiffs causes of action under the regulations and that Plaintiffs' fail to plead facts sufficient to support relief. These arguments fail here for the reasons discussed in *supra* Section III. In particular, the Complaint includes detailed factual allegations explaining that, as a result of CUSD's failure to appropriately train staff to recognize manifestations and trauma and its grossly inadequate numbers of mental health personnel, "CUSD cannot and does not appropriately identify trauma-impacted students in need of more intensive support. Likewise, CUSD does not notify parents of its obligation to identify and provide accommodations to students who learning may be impaired due to the experience of trauma." Compl. ¶ 184; *see also id.* ¶¶ 65, 188.

> disabilities. . . . For purposes of determining whether a particular regulation is ever enforceable through the implied right of action contained in a statute, the pertinent question is simply whether the regulation falls within the scope of the statute's prohibition.

Lemahieu, 513 F.3d at 938. As Defendants recognize, this requirement stems from *Alexander v. Sandoval*, in which the Supreme Court held that regulations promulgated under a Spending Clause-based statute can be enforced through a private right of action only to the extent they "authoritatively construe" the statute. 532 U.S. 275, 284-86 (2001); *see also Lemahieu*, 513 F.3d at 935. As applied to the Rehabilitation Act, "whether the § 504 regulations are privately enforceable will turn on whether their requirements fall within the scope of the prohibition contained in § 504 itself." *Lemahieu*, 513 F.3d at 935 (interpreting *Sandoval*, 532 U.S. 275). That scope includes "reasonable accommodation" and "meaningful access" requirements. *Id.* at 938.

Each of the Section 504 regulations asserted in this action is a "meaningful access" or "reasonable accommodation" regulation. The Fourth Claim for Relief asserted in this matter alleges violation of the "Free Appropriate Public Education" requirements of 34 C.F.R. § 104.33,[19] which the Ninth Circuit has already found to be a meaningful access regulation enforceable through an implied right of action. *See Lemahieu*, 513 F.3d at 939.

The Third Claim for Relief asserted in this matter alleges violation of the "Procedural Safeguards" requirements of 34 C.F.R. § 104.36. Section 104.36 requires that:

> [a] recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to

[19] Section 104.33 requires that "[a] recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap."

> 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.

Section 104.36 is both a "meaningful access" and "reasonable accommodation" regulation because students facing disciplinary action due to actions that stem from their disability are both denied meaningful access to a public education and entitled to reasonable accommodation within the disciplinary system. Furthermore, § 104.36 is situated within the same subpart of the Code of Federal Regulations as § 104.33, which was found to be a meaningful access regulation in *Lemahieu*, 513 F.3d at 939, and was mentioned by that court as a likely candidate for a meaningful access regulation, *id.* at 938 n.14.

Finally, The Second Claim for Relief asserted in this matter alleges violation of the "Location and Notification" requirements of 34 C.F.R. § 104.32. Section 104.32 requires that:

> [a] recipient that operates a public elementary or secondary education program or activity shall annually: (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

Section 104.32 is both a meaningful access and reasonable accommodation regulation because without location and notification of students eligible for reasonable accommodations, those students will be denied meaningful access to

public education and unable to access the accommodations to which they are legally entitled. Furthermore, students with disabilities and their families may be unaware of available accommodations *because of the disability*, in which case location and notification is itself a reasonable accommodation. Furthermore, § 104.32 is within the same subpart of the Code of Federal Regulations as § 104.33, which was found to be a meaningful access regulation in *Lemahieu*, 513 F.3d at 939.

V. THE INDIVIDUAL DEFENDANTS ARE PROPERLY NAMED IN THEIR OFFICIAL CAPACITY

Defendants argue that the relation between the Individual Defendants and the alleged ongoing violation of federal law is not direct enough for *Ex parte Young* to apply. MTD at 21-22. As Defendants acknowledge, the party must have a "fairly direct" connection to enforcement. In the education context, being the head of a system has been found sufficient to satisfy the "fairly direct" requirement. *See Coal. to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134-35 (9th Cir. 2012) (finding *Ex parte Young* relief available against president of university); *Los Angeles County Bar Ass'n v. March Fong Eu*, 979 F.2d 697, 704 (9th Cir. 1992) (allowing suit against governor and secretary of state); *see also Shepard v. Irving*, 77 Fed. App'x 615, 620 (4th Cir. 2003) (allowing suit against principal and dean under Rehabilitation Act). California law establishes that the Individual Defendants have authority to establish rules and policies in CUSD schools a directly connected enforcement duty.[20] This combination of authority and duty "establishes sufficient

[20] *See* Cal. Educ. Code § 35010(b) ("The governing board of each school district shall prescribe and enforce rules not inconsistent with law . . ."); *id.* § 35020 ("The governing board of each school district shall fix and prescribe the duties to be performed by all persons in public school service in the school district."); *id.* § 35035(a),(h) ("The superintendent of each school district shall, in addition to other powers and duties granted to or imposed upon him or her: (a) Be the chief executive officer of the governing board of the school district. . . . (h) Enter into contracts for and on behalf of the school district pursuant to § 17604."); *id.* § 35161 ("The governing board of any school district . . . shall discharge any duty imposed by law upon it or upon the district of which it is the governing board, and may delegate to an officer or employee of the district any of those powers or duties. The governing

enforcement power for *Ex Parte Young*." *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013) (finding combination of authority and duty to prosecute sufficient for establishing enforcement power).

VI. TEACHER PLAINTIFFS HAVE STANDING

CUSD contends that Teacher Plaintiffs lack standing because their injuries are governed solely under Workers' Compensation; and they lack standing to assert injury based on students' disabilities. MTD at 22-25. Both arguments fail.

Workers' Compensation is clearly inapplicable here. California's Workers' Compensation plan expressly limits its applicability to "the right to recover compensation"—*i.e.*, damages—for workplace injuries. Cal. Labor Code § 3602; *see generally Employers Mutual Liability Ins. Co. of Wisconsin v. Tutor-Saliba Corp.*, 17 Cal. 4th 632, 637 (Cal. Sup. Ct. 1998) (noting limit on Workers' Compensation's zone of applicability). Teacher Plaintiffs here are not seeking any form of payment or benefits from CUSD, but solely injunctive relief and a mandate that CUSD comply with its obligations under Section 504 and the ADA. Further, even if Workers' Compensation and the ADA did coincide here, "the exclusive remedy provision of the California Workers' Compensation Act is preempted by the ADA because that provision stands as an obstacle to the accomplishment of Congress' purposes and objectives in passing the ADA." *Wood v. County of Alameda*, 875 F. Supp. 659, 665 (N.D. Cal. 1995); *see also Leptich v. City College of San Francisco*, No. 96-16873, 1998 U.S. App. LEXIS 689, at *8-9 (9th Cir. Jan. 15, 1998) (summarizing the holding in *Wood* as allowing "a claimant [to] concurrently seek relief under the California Labor Code and the ADA").

Teacher Plaintiffs are proper parties before this Court. It is well-established that interested parties who themselves meet Article III's standing requirements of

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board, however, retains the ultimate responsibility over the performance of those powers or duties so delegated.").

injury, causation, and redressability may bring suit to assert the rights of another.[21] *See, e.g., Innovative Health Sys. v. City of White Plains*, 117 F.3d 37, 46-47 (2d Cir. 1997) (finding standing for third-party drug treatment center on behalf of its individual clients); *Greater Los Angeles Council of Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1115 (9th Cir. 1987) (finding organization that paid for a sign language interpreter for a deaf juror and was denied county reimbursement possessed individual standing). Defendants' failure to reasonably accommodate students affected by complex trauma unfairly discriminates against CUSD teachers by virtue of their association with students suffering from unaddressed trauma. *See Blanchard v. Morton Sch. Dist.*, 509 F.3d 934 (9th Cir. 2007) (finding that a child's mother "is a proper plaintiff, at least insofar as she is asserting and enforcing the rights of her son and incurring expenses for his benefit") (citing *Zolin*, 812 F.2d at 1115); *see also Winkelman v. Parma City Sch. Dist.*, 127 S. Ct. 1994, 2003 (2007) (finding a parent of a child with a disability "has a particular and personal interest" in preventing discrimination against the child). Teacher Plaintiffs have been injured in numerous concrete ways, including in their ability to do their job and advance in their chosen profession and in their mental, emotional, and physical well-being. Compl. ¶¶ 45-47, 153-157; *see also id.* ¶ 154 ("Research has demonstrated that teachers working closely with traumatized students may themselves experience

[21] The only case Defendants cite in support of their claim that Teacher Plaintiffs lack standing, *Thompson v. North American Stainless, LP*, 562 U.S. 170, 177 (2011), is inapposite and in fact supports, rather than hinders, an assertion of Teacher Plaintiffs' standing. In *Thompson*, the Supreme Court reversed the circuit court to effectively *extend* the reach of Section 504 and the ADA, finding that an employee fired in retaliation for his fiancée's actions against an employer had standing under the anti-retaliation provision of Title VII. *See id.* Under *Thompson*'s "zone of interest"—a limitation meant only to be placed on injury to one person in an act to discriminate or retaliate against *a different* person—Teacher Plaintiffs possess standing. 562 U.S. at 177. Teacher Plaintiffs' interests are fully consistent with those of Student Plaintiffs and the "purposes implicit in the statute[s]." *Id.* at 178. Section 504 and the ADA are intended to protect and champion the rights of persons to be free from discrimination on the basis of disability, including discrimination in learning—a right the students' teachers are uniquely positioned to protect and over which teachers have a unique and foreseeable interest.

compassion fatigue, secondary traumatic stress (or 'vicarious trauma') and burn-out."). For example, Plaintiff McCoy "experienced significant health problems and was place on disability leave" due to Defendants' failure to address student trauma. *Id.* ¶ 47. Plaintiff Curry "spends his own money and personal time in attempting to alleviate the effects of complex trauma on his students." *Id.* ¶ 45. Furthermore, CUSD's failure to accommodate trauma-impacted students has a direct and causal link to the Teacher Plaintiffs' above-identified injuries, and implementation of trauma-sensitive practices will ameliorate the negative impact of trauma-induced disabilities on learning, and thereby ameliorate the associational injury suffered by Teacher Plaintiffs.

VII. CONCLUSION

Education is a critical foundation for children's development that will shape and determine their entire future. Plaintiffs seek to give CUSD students, who are disproportionately impacted by trauma, meaningful access to this vital right. Plaintiffs respectfully request the Court deny Defendants' motion to dismiss. In the alternative, Plaintiffs seek leave to amend the Complaint to cure any identified deficiencies. Fed. R. Civ. P. 15(a); *U.S. v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) ("The standard for granting leave to amend is generous.").

DATED: July 27, 2015

Respectfully submitted,

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FILER'S ATTESTATION

Pursuant to Local Civil Rule 5-4.3.4(a)(2)(i), I hereby attest that all signatories on whose behalf this filing is jointly submitted concur in the filing's content and have authorized me to file this document.

DATED: July 27, 2015

Respectfully submitted,

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