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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW BRACH, an individual;
JESSE PETRILLA, an individual;
LACEE BEAULIEU, an individual;
ERICA SEPHTON, an individual;
KENNETH FLEMING, an individual;
JOHN ZIEGLER, an individual;
ALISON WALSH, an individual;

Case No.: 2:20-cv-06472 DDP (AFMx)

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

Judge: Hon. Dean D. Pregerson

1 **ROGER HACKETT**, an individual;
2 **CHRISTINE RUIZ**, an individual;
3 **Z.R.**, a minor; **MARIANNA BEMA**, an
4 individual; **ASHLEY RAMIREZ**, an
5 individual; **TIFFANY MITROWKE**,
6 an individual; **ADE ONIBOKUN**, an
7 individual; and **BRIAN HAWKINS**, an
8 individual;

9 Plaintiffs,

10 v.

11 **GAVIN NEWSOM**, in his official
12 capacity as the Governor of California;
13 **XAVIER BECERRA**, in his official
14 capacity as the Attorney General of
15 California; **SONIA Y. ANGELL**, in
16 her official capacity as the State Public
17 Health Officer and Department of
18 Public Health Director; and **TONY**
19 **THURMOND**, in his official capacity
20 as State Superintendent of Public
21 Instruction and Director of Education

22 Defendants.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. – Chief Justice Earl Warren, Brown v. Board of Education, 347 U.S. 483, 491 (1954).

Plaintiffs Matthew Brach, Jesse Petrilla, Lacee Beaulieu, Erica Sephton, Kenneth Fleming, John Ziegler, Alison Walsh, Roger Hackett, Christine Ruiz, her minor child, referred to by his initials, Z.R., Marianna Bema, Ashley Ramirez, Tiffany Mitrowke, Ade Onibokun, and Brian Hawkins, by their attorneys, Dhillon Law Group, Inc., for their claims against Defendants Gavin Newsom, in his official capacity as the Governor of California; Xavier Becerra, in his official capacity as the Attorney General of California; Sonia Y. Angell, in her official capacity as the State Public Health Officer and Department of Public Health Director; Tony Thurmond, in his official capacity as State Superintendent of Public Instruction and Director of Education, allege and show the Court as follows (this “Complaint”).

NATURE OF ACTION

1. Defendants have ushered in a new wave of COVID-19 restrictions, this time barring in-person schooling for most of California's children. In Defendants' rush to enact these new restrictions, they have placed special interests ahead of the wellbeing

1 of the children, and children's fundamental right to receive a basic minimum education.
 2 Defendants' arbitrary bar on in-person schooling effectively deprives Plaintiffs'
 3 children, and millions of other children across California, of the opportunity for a
 4 decent education and the attendant hope for a brighter future. The state's exclusion from
 5 in-person schooling also contradicts the recommendations of experts from across the
 6 political spectrum and across numerous disciplines, who argue that schools must re-
 7 open for in-person instruction this year to avoid further harm to California's children.

8 2. This Action presents facial challenges to the Governor of California's May
 9 4, 2020 Executive Order N-60-20 ("State Order"), attached here as **Exhibit 1**, which
 10 requires Californians to obey all State Public Health directives and orders, including the
 11 State's July 17, 2020 "COVID-19 Industry Guidance: School and School-Based
 12 Programs," attached here as **Exhibit 2**.

13 3. This Action is brought pursuant to 42 U.S.C. § 1983, on the grounds that
 14 the State Order and associated guidance and directives, and Defendants' enforcement
 15 thereof, violate Plaintiffs' constitutionally and federally protected rights, including
 16 specifically: (1) the right to substantive due process (U.S. Const. amend. XIV); (2) the
 17 right to equal protection, free from arbitrary treatment by the State (U.S. Const. amend.
 18 XIV); (3) the right to be free from federally funded state action resulting in a disparate
 19 impact on racial minorities (Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d,
 20 *et seq.*); and (4) the right to equal and meaningful access to education, free from
 21 arbitrary state action resulting in a disparate impact on those with disabilities
 22 (Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*; Title II of the
 23 Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, *et seq.*; and Section 504 of
 24 the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*)).

25 4. With the school year commencing in a little over two weeks from the date
 26 of this filing, time is of the essence, and the Court should not hesitate to ensure that
 27 Plaintiffs' fundamental rights in securing a basic minimum education for their children
 28 are preserved and protected from Defendants' arbitrary actions.

JURISDICTION AND VENUE

5. This action arises under 42 U.S.C. § 1983 in relation to Defendants' deprivation of Plaintiffs' rights as secured by the U.S. Constitution and federal law. Accordingly, this Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested declaratory relief under 28 U.S.C. § 2201; the requested injunctive relief and damages under 28 U.S.C. § 1343(a); and attorneys' fees and costs under 42 U.S.C. § 1988.

6. The Central District of California is the appropriate venue for this action pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because it is the District in which Defendants maintain offices, exercise their authority in their official capacities, and will enforce the State Order; and it is the District in which substantially all of the events giving rise to the claims occurred.

PARTIES

7. Plaintiff Matthew Brach is a resident of Rancho Palos Verdes, California. He is suing in his individual capacity and not as an elected member of the Board of Education for the Palos Verdes Peninsula Unified School District. He is the father of two children. His sixteen-year-old son and thirteen-year-old daughter are students in the Palos Verdes Peninsula Unified School District. His son is entering his senior year and will suffer academically as a result of the denial of personal interaction with teachers and positive academic role models. His son's learning style requires him to be able to ask questions of and interact with his teachers and to learn collaboratively with peers. His daughter is already suffering emotionally from being isolated from her learning community.

8. Plaintiff Jesse Petrilla is a resident of Mission Viejo, California. He has a son who is about to enter first grade. Last school year, when his son was in kindergarten and transitioned from in-classroom to distance learning, Petrilla noticed a significant decline in his son's discipline and engagement. His son's enthusiasm for learning declined, and his son became restless. Petrilla's wife has been forced to take time off

1 from work in order to oversee her son's education. The Petrillas are concerned about
2 the negative effects that this prolonged absence from the social aspects of structured
3 education will have on the future development of their son.

4 9. Plaintiff Lacey Beaulieu is a resident of La Jolla, California. She has two
5 children, a daughter who is entering the ninth grade at a private school and a son who is
6 about to enter fifth grade in the San Diego Unified School District. One of her family's
7 biggest challenges with distance learning was trying to balance screen time. Her son's
8 doctor has recommended that he not spend more than two hours a day in front of
9 computer screens. With distance learning, this instruction has been almost impossible to
10 honor. She is concerned that if her son is going to keep up academically, this could
11 come at a cost of brain development issues as a result of him spending too much time in
12 front of computer screens. She found it unrealistic to expect her son to follow the
13 daily/weekly schedule on his own. If she was tied up with work, her son was unable to
14 proceed with his daily lesson plans. While her daughter had more interaction with her
15 teachers, because of the lack of labs, she was unable to properly perform science
16 experiments. Beaulieu believes that the increased screen time has had a negative effect
17 on both of her children. She has noticed that they have difficulty with sleep schedules,
18 both are depressed, and their discipline in completing school assignments has
19 decreased. The enforced deprivation of personal contact with their peers has also
20 affected these children negatively.

21 10. Plaintiff Erica Sephton is a resident of Murrieta, California. She has a
22 daughter who is about to enter transitional kindergarten at Saint Jeanne de Lestonnac
23 Catholic school in Temecula. Sephton understands that her daughter needs social
24 interaction with her fellow classmates, something that she cannot get at home doing
25 distance learning. Sephton is aware of the risks of COVID-19 and believes that these
26 minor risks for children do not outweigh the harm that her daughter is suffering by
27 being deprived of her in-person education. While the school, the teachers and the
28 students are ready to resume school instruction in the classroom with proper

1 precautions, Sephton believes that they are being held back because of positive test
2 results in other parts of the county and not because of any substantial risk in her
3 community. She does not understand why her daughter is allowed to spend all day in a
4 childcare facility, but cannot spend the same period of time in a private school,
5 learning.

6 11. Plaintiff Kenneth Fleming is the father of a public high school senior in
7 Long Beach, California. His daughter has maintained straight A's on her report card for
8 the last three years. She is a student athlete with ambition to earn a sports scholarship to
9 attend her dream school. Plaintiff Fleming is concerned that online-only education,
10 which has not been awarding letter grades to students, adversely impacts his daughter's
11 opportunity to compete for a college scholarship. He also believes that online-only
12 education does not assist his daughter either athletically or academically in preparing
13 for college.

14 12. Plaintiff John Ziegler is a resident of Camarillo, California and is the father
15 of an eight-year-old girl enrolled in public school. When her school moved from in-
16 person instruction to an online platform during the Spring 2020 semester, her
17 educational development suffered. She fell behind in her academic progress. As a result
18 of the denial of in-person educational instruction, Plaintiff Ziegler's wife is left with no
19 choice but to forgo her employment to stay home with their daughter.

20 13. Plaintiff Alison Walsh is the mother of two children who were in the
21 Capistrano Unified School District during the 2019-2020 school year. When CUSD
22 moved to an online platform in the 2020 spring semester, her children's education
23 suffered. Her children's school did not offer her children any live instruction. Their
24 teachers merely sent work packets to the students to complete independently. In
25 preparation for the 2020-2021 academic year, Plaintiff Walsh enrolled her children in
26 private school to ensure that her children could receive academic instruction. Now with
27 Defendants' guidance, even the private school is prohibited from providing in-person
28 education.

1 14. Plaintiff Roger Hackett lives in Ventura County and has a son who will
2 attend a private middle school in Westlake Village, California. His son's school has
3 made significant preparations for safe in-person instruction pursuant to the CDC and
4 local guidelines. This school is willing to offer both in-person and distance learning
5 options based on the preference of the parents, and is ready to safely reopen in-school
6 classes and non-contact athletics starting August 12. Plaintiff Hackett's concern is that
7 online-only education will adversely impact his son's academic and social
8 development. His son is frustrated by continual isolation from his academic community
9 and absence from school athletics. Even though Westlake Village has very few
10 COVID-19 positive cases, because it is in Los Angeles County, which is on the state's
11 watch list, this private school is being prevented from operating in compliance with
12 COVID safety guidelines and in accordance with the desires of the school, teachers,
13 parents, and students.

14 15. Plaintiff Christine Ruiz is Hispanic and lives in Los Angeles County. She
15 has two sons who attend public school in the county, one of whom is Plaintiff Z. R.,
16 referred to by his initials herein. Both boys have been diagnosed with autism. Her 15-
17 year-old son, Z. R., attends high school, in moderate to severe special education classes.
18 Under normal circumstances, he has an entire team of special needs-educated,
19 credentialed staff working hands-on with him during the entire school day pursuant to
20 an Individual Education Program ("IEP") mandated by law. As of March 16, 2020, he
21 has received none of the services required by his IEP. While the school offered a Zoom
22 meeting, this did not work. Her younger son is in junior high school. He has been
23 placed in mild to moderate special education classes. The online class only lasted about
24 30 minutes a day, and he did not learn anything by clicking a few links and watching a
25 video. Her son is a hands-on learner. As a result of the school transitioning to online-
26 only education and not providing the required IEP services, Ruiz has had to hire an
27 educational tutor to assist her sons.

1 16. Plaintiff Z. R. is a minor and, as such, is referred to by his initials herein.
2 Z. R. is the 15-year-old son of Christine Ruiz who currently attends high school. Z. R.
3 is Hispanic and takes moderate to severe special education classes as a result of his
4 autism.

5 17. Plaintiff Marianne Bema is a resident of Los Angeles County, California.
6 She is originally from Cameroon, Africa and is a single mother of three school aged-
7 sons. It is hard for her boys to pay attention and learn solely online. Even though she
8 speaks several languages, there is a small language barrier and it is best for her children
9 to be taught by a trained, English-speaking teacher. Plaintiff Bema also has spotty
10 internet connection at her home, and has noted that the online classes are not secure,
11 and were sometimes hacked into by third-parties.

12 18. Plaintiff Ashley Ramirez has three children who attend their local public
13 school. Ramirez and one of her sons have both tested positive for COVID-19 and
14 successfully recovered. Her children participate in the free or reduced lunch program at
15 school, which greatly helps their family's financial situation. Plaintiff Ramirez tries to
16 limit screen time for her sons, and notes that the schools' distance learning scheme
17 seems to be promoting unhealthy amounts of screen time. Her oldest son has an IEP and
18 he basically "shut down" and cannot effectively participate in an online-only education.
19 Plaintiff Ramirez wonders why the schools are not allowed to reopen, when day care
20 and camps are open for children.

21 19. Plaintiff Tiffany Mitrowke is a resident of San Diego, California. She is
22 the single mother of a seven-year-old boy who attends public school. Her son has been
23 negatively affected educationally and emotionally by the school closures. She hears her
24 son crying in the shower because he cannot go to school and feels isolated. When her
25 son's school went online, the teachers provided no meaningful instruction and merely
26 sent homework packets to the students; additionally, no one from the school even called
27 to check to see how her son was fairing. She has also reached out to the school with
28 questions concerning the next school year but the school has been unresponsive.

1 Plaintiff Mitrowke has researched hiring a private tutor to teach her child if the schools
2 do not reopen but it is cost-prohibitive for her family.

3 20. Plaintiff Adebukola Onibokum is a resident of Santa Clara County,
4 California. He is a neurosurgeon by profession with two young children. His children
5 attend private, parochial school and the school has applied for a waiver from the
6 Governor's order so that the school can provide in-person learning. Plaintiff Onibokum
7 believes that the quality and depth of online learning is of lesser degree and not
8 comparable to an in-person education, and he supports opening California schools.
9 Plaintiff Onibokum's children attended camp this summer and returned much happier
10 as a result of the vital human interaction that has been absent for children during the
11 shutdown.

12 21. Plaintiff Brian Hawkins is resident of San Jacinto, Riverside County,
13 California. He is an African-American full-time pastor. He has two children, including
14 a son who has an Individualized Education Program (hereinafter "IEP"). His son has
15 ADHD and cannot learn via an online format. His son has also been deprived of his
16 special aide who normally helps him (in-person) throughout the entire school day. His
17 daughter, usually a talkative and very social young girl, reports that she is "angry" at
18 missed learning opportunities such as "learning to write cursive." As a pastor, Plaintiff
19 Hawkins has counseled many individuals who have been depressed and suicidal as a
20 result of COVID-19.

21 22. Defendant Gavin Newsom ("Newsom") is made a party to this Action in
22 his official capacity as the Governor of California. The California Constitution vests the
23 "supreme executive power of the State" in the Governor, who "shall see that the law is
24 faithfully executed." Cal. Const. Art. V, § 1. Governor Newsom signed Executive Order
25 N-60-20 (the "Executive Order") on May 4, 2020. *See, e.g., Ex Parte Young*, 209 U.S.
26 123 (1908).

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23. Defendant Xavier Becerra (“Becerra”) is made a party to this Action in his official capacity as the Attorney General of California. Under California law, Becerra is the chief law enforcement officer in the State. Cal. Const. Art. V, § 13.

24. Defendant Sonia Y. Angell, MD, MPH (“Dr. Angell”) is made a party to this Action in her official capacity as the Director and State Public Health Officer. Dr. Angell is sued herein in her official capacity to the extent that she is responsible for providing official government guidance to the various industries that are allowed to operate.

25. Defendant Tony Thurmond (“Thurmond”) is made a party to this Action in his official capacity as State Superintendent of Public Instruction and Director of Education. Thurmond is responsible for enforcing education law and regulations in California.

FACTUAL ALLEGATIONS

26. On or about March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency as a result of the threat of COVID-19.¹

27. On or about March 19, 2020, California Governor Newsom issued Executive Order N-33-20 in which he ordered “all residents are directed to immediately heed the current State public health directives.”²

28. On or about May 4, 2020, California Governor Newsom issued Executive Order N-60-20 in which he ordered “All residents are directed to continue to obey State public health directives, as made available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/> and elsewhere as the State Public Health Officer may provide.” Ex. 1.

¹ Available as of the date of this filing: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

² Available as of the date of filing: <https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf>.

29. On July 17, 2020 Newsom announced a framework to reopening schools.³

30. Under his plan, schools and school districts are allowed to reopen for in-person instruction *only* “if they are located in a local health jurisdiction (LHJ) that has not been on the county monitoring list within the prior 14 days.”⁴

31. California is the only state in the U.S. that is mandating at the state level that school districts not hold in-person classes, rather than leaving that decision to the individual school districts.⁵

32. California Department of Public Health (CDPH) has provided guidance to similarly situated industries, namely camps⁶ and childcare facilities,⁷ allowing them to remain open, but schools are subject to more stringent standards that defy reason.⁸

33. In fact, at the same time that classrooms are being closed for students, these same classrooms are being used to provide child care.⁹

34. Currently, there are 37 counties on the watch list.¹⁰ A county is put on the watch list if for any one of five benchmarks for three consecutive days. These five

³ Available as of the date of filing:

<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>.

⁴ Available as of the date of filing:

<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>.

⁵ Available as of the date of filing: <https://thehill.com/homenews/state-watch/508105-heres-your-states-plan-for-reopening-schools>.

⁶ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-daycamps.pdf>.

⁷ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-childcare--en.pdf>.

⁸ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-schools.pdf>.

⁹ Available as of the date of filing:

<https://apnews.com/53c43bebfcb6c89aadd2511b8ff8c9f9>.

¹⁰ As of July 28, 2020, the following counties are on the watchlist: Alameda, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Los Angeles, Madera, Marin, Merced, Mono, Monterey, Napa, Orange, Placer, Riverside, Sacramento, San

benchmarks include: 1) 100 cases per 100,000 people over a two-week period; 2) more than 25 cases per 100,000 people with positive test rates of more than 8%; 3) an increase in the number of patients hospitalized of more than 10% over a three-day average; 4) ICU bed availability below 20%; and 5) ventilator availability below 25%. To get off the watch list, a county must not trigger any of the five thresholds for three consecutive days.¹¹ However, in order for schools to open, the county must remain off the watch list for 14 days.

35. There are currently 5.9 million students K-12 in California.¹²

36. As of July 14, 2020, there are 8,433 Child Care centers opened in the state of California and a total of 24,915 licensed Family Child Care Homes for a total of 33,348 total facilities.¹³

Table 1: Total Number of Open Child Care Centers and Family Child Care Homes Statewide and by County (Data Retrieved: 7/14/2020)

County	Total Number of Open Facilities	Total Number of Open Facilities	Total Number of Open Facilities
	Child Care Centers	Family Child Care Homes	All
Statewide	8,433	24,915	33,348

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Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tulare, Ventura, Yolo, and Yuba. Available as of the date of filing:

<https://covid19.ca.gov/roadmap-counties/#track-data>.

¹¹ Available as of the date of filing:

<https://www.sfchronicle.com/bayarea/article/California-s-watch-list-What-it-monitors-and-15430008.php>.

¹² Available as of the date of filing: <https://lao.ca.gov/Education/EdBudget/Details/331>.

¹³ Available as of the date of filing: <https://cdss.ca.gov/Portals/9/Additional-Resources/Research-and-Data/DSSDS/ChildCare-7-19.pdf>.

**The U.S. Department of Education and Centers for Disease Control
Are Encouraging Schools to Open**

37. The United States Department of Education spent approximately \$8.3 billion on California K-12 schools for the 2019-2020 school year.¹⁴

38. During a July 8 briefing conducted by the Vice President and the coronavirus task force, the United States Secretary of Education, Betsy DeVos, stated that “[t]here were a number of schools and districts across the country that did an awesome job of transitioning this spring. And there were a lot in which I and state school leaders were disappointed in that they didn’t figure out how to continue to serve their students. Too many of them just gave up. The Center for Reinventing Public Education [CRPE] said that only 10 percent across the board provided any kind of real curriculum and instruction program.”¹⁵

39. Devos also quoted The American Academy of Pediatrics, “Keeping schools closed ‘places children and adolescents at considerable risk of morbidity and, in some cases, mortality.’” The Pediatrics’ guidance concluded that everyone “should start with a goal of having students physically present in school.” “Fully open” and “fully operational” means that students need a full school year or more, and it’s expected it will look different depending on where you are.”¹⁶ “Ultimately, it’s not a matter of ‘if’ schools should reopen, it’s simply a matter of ‘how.’ They must fully open, and they must be fully operational.”¹⁷

¹⁴ Available as of the date of filing: <https://lao.ca.gov/Education/EdBudget/Details/331>.

¹⁵ Available as of the date of filing: <https://www.whitehouse.gov/briefings-statements/press-briefing-vice-president-pence-members-coronavirus-task-force-july-8-2020/>.

¹⁶ *Id.*; full report available as of the date of filing: <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>.

¹⁷ *Id.*

40. CRPE found many disparities among schools.¹⁸ In a new report involving a national representative sample of 477 school systems, statistical weights were applied to provide a national representative sample of U.S. school districts. CRPE compared distance learning in districts with different types of communities and different student populations. CRPE found a “sobering story... just one in three districts expect teachers to provide instruction, track student engagement, or monitor academic progress for all students... Far too many districts are leaving learning to chance during the coronavirus closures.”¹⁹

41. As CRPE noted, “[e]xperience tells us that low expectations for instruction bode poorly for the students who faced the greatest challenges: those in low-income households, those with disabilities, those who speak a language other than English at home.”²⁰

42. Although “[t]racking student progress by collecting work for review, assessing students’ progress toward academic benchmarks, or grading their work is the best way to gauge if students are continuing to learn in their remote settings”—and may also be the “only way to get a sense of gaps in students’ learning that may emerge before the fall”—CRPE “found worrisome trends in the expectations districts set. Just 42 percent expect[ed] teachers to collect student work, grade it, and include it in final course grades for at least some students (typically those in middle and upper grades).”²¹

43. The CRPE found a “stark” rural-urban divide “in expectations”—“far more so than the gap in instruction between districts with high concentrations of students who qualify for free or reduced-price lunch.”²²

¹⁸ Available as of the day of filing: <https://www.crpe.org/thelens/too-many-schools-leave-learning-chance-during-pandemic>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

1 44. “More affluent school districts [were] more likely to require live video
 2 instruction from teachers. While expectations around synchronous, or real-time,
 3 teaching are uncommon across the board (expected in 21.8 percent of districts), only
 4 14.5 percent of school districts with the highest concentration of students receiving free
 5 or reduced-price lunch expect[ed] teachers to provide live instruction. The most affluent
 6 25 percent of districts” in the CRPE sample were “twice as likely to expect real-time
 7 teaching.”²³ In short, school districts with concentrations of students from low-income
 8 families woefully failed to provide meaningful instruction once schools closed in the
 9 spring.

10 45. School closings also disproportionately affects minorities, as the NAACP
 11 notes:²⁴ “For students of color at all levels across the country, school closings create
 12 problems even more urgent than the interruption of their educations. Schools also serve
 13 as a community nexus for food and housing. Many Black students are eligible for the
 14 federal Free or Reduced-Price Lunch Program (FRPL). Fall 2016 data from the
 15 National Center on Education Statistics show that for high-poverty schools where more
 16 than 75% of students are eligible for FRPL, Black students accounted for 44% of those
 17 attending. At schools where 50-75% percent of students are eligible for FRLP, Black
 18 students made up 30% of the student population. For students who rely on their schools
 19 as a reliable source of daily meals, school closings leave a critical gap.”²⁵

20 46. The CDC explained that “[s]chools play a critical role in supporting the
 21 whole child, not just their academic achievement,” including the “development of social
 22 and emotional skills,” and that a safe, connected environment such as school reduces
 23 students’ depression, anxiety, and thoughts of suicide.²⁶

24 _____
 25 ²³ *Id.*

26 ²⁴ Available as of the day of filing: <https://naacp.org/coronavirus/coronavirus-impact-on-students-and-education-systems/>.

27 ²⁵ *Id.*

28 ²⁶ *The Importance of Reopening America’s Schools this Fall*, Centers for Disease Control and Prevention (July 23, 2020), available at

47. The CDC also noted that “more than 30 million children participate in the National School Lunch Program and nearly 15 million participate in the School Breakfast Program.”²⁷

**American Academy of Pediatrics Recommends Students
Physically Present in Schools**

48. In late June, the American Academy of Pediatrics (“AAP”) “strongly” recommended that “the coming school year should start with a goal of having students physically present in school.”²⁸

49. The AAP noted the health benefits that would otherwise be lost, such as “child . . . development,” “social and emotional skills,” “reliable nutrition,” physical/speech and mental health therapy,” and “opportunities for physical activity.”²⁹

50. The AAP also noted that the lack of “in-person learning” could disproportionately affect minorities and those of less socioeconomic means.³⁰

51. The AAP also explained that “[l]ong time away from school and associated interruption of supportive services often results in isolation, making it difficult for schools to identify and address important learning deficits as well as child and adolescent physical or sexual abuse, substance use, depression, and suicidal ideation.”³¹

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<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html>.

²⁷ *Id.*

²⁸ American Academy of Pediatrics, *COVID-19 Planning Considerations: Guidance for School Reentry*, 3d para. (Last Updated June 25, 2020), <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>.

²⁹ *Id.* at 1st para.

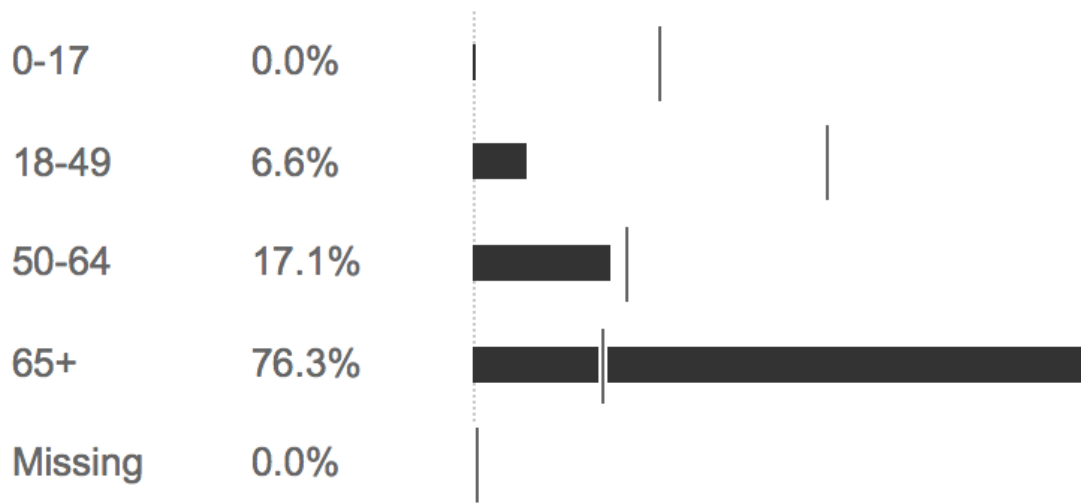
³⁰ *Id.*

³¹ *Id.*

Studies Show that Open Schools Present Minimal Risk

52. According to California's own published reports, *not a single minor* in the state of California has died as a result of COVID-19.³² "No child under age 18 in the state of California has died due to infection from the coronavirus since tracking began on February 1, 2020...[u]nlike the seasonal flu, which kills approximately 200 children per year nationally."³³ This is consistent with national statistics, which indicate that children under 18 account for 0% of nationwide-deaths from COVID-19.

Total Deaths by Age

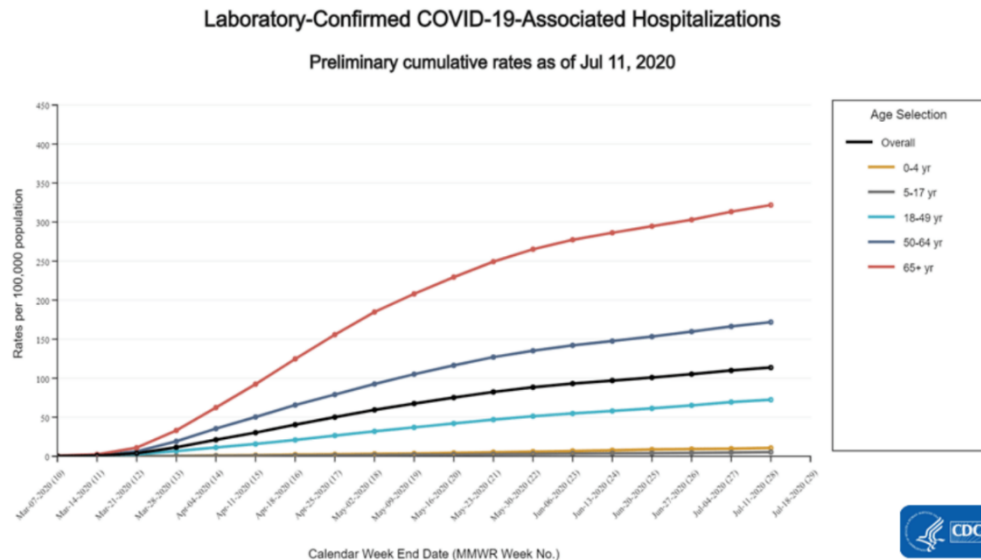


53. The CDC reports that children between the ages of 5–17 are hospitalized at a rate of 5.3 per 100,000 compared to a national average of 113.6.³⁴

³² Available as of the date of filing: <https://update.covid19.ca.gov>.

³³ McDonald Decl. in support of Motion for Preliminary Injunction at ¶ 5.

³⁴ Available as of the date of filing: <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html#hospitalizations>



54. On March 30, 2020, the Australian Research Council released a study that looked at the early data from China, Singapore, South Korea, Japan, and Iran. The study concluded that while “SARS-CoV-2 can cause mild disease in children, the data available to date suggests that children have not played a substantive role in the intra-household transmission of SARS-CoV-2.”³⁵

55. On April 3, 2020, the Ministry of Health for British Columbia found that “COVID-19 virus has a very low infection rate in children estimated at 1-5% worldwide.”³⁶

56. On April 26, 2020, another Australian study found *no* evidence of children infecting teachers.³⁷ The study concluded that the “spread of COVID-19 within NSW (New South Wales) schools has been very limited.”³⁸ This study also found that unlike

³⁵ Available as of the date of filing:

<https://www.medrxiv.org/content/10.1101/2020.03.26.20044826v1>.

³⁶ Available as of the date of filing: <http://www.bccdc.ca/Health-Professionals-Site/Documents/Caring-for-children.pdf>.

³⁷ Available as of the date of filing: http://ncirs.org.au/sites/default/files/2020-04/NCIRS%20NSW%20Schools%20COVID_Summary_FINAL%20public_26%20April%202020.pdf, p. 4.

³⁸ *Id.*

1 other respiratory viruses, children are not the primary drivers of the spread of COVID-
2 19.³⁹

3 57. On May 18, 2020, during a video conference of ministers of education
4 with the Council of the European Union, it was reported that since the reopening of
5 schools in 22 member states, there had been *no increase* in infections of COVID-19
6 among students, teachers and parents.⁴⁰

7 58. On May 28, 2020, a study was released showing that there was no
8 evidence of secondary transmission of COVID-19 from children attending school in
9 Ireland.⁴¹

10 59. On June 23, 2020, the Institute Pasteur after studying 1,340 people linked
11 to primary schools in France released a study in which they found that infected children
12 did not spread the virus to other children or to teachers or other school staff.⁴²

13 60. On July 7, 2020, the Public Health Agency of Sweden published a study
14 titled “Covid-19 in schoolchildren”.⁴³ This study found:

- 15 a. Closing of schools had no measurable effect on the number of cases of
16 COVID-19 among children;
- 17 b. Children are not a major risk group of the COVID-19 disease and seem to
18 play a less important role from the transmission point of view, although
19 more active surveillance and special studies such as school and household
20 transmission studies are warranted; and

21
22 ³⁹ *Id.*

23 ⁴⁰ Available as of the date of filing: <https://www.washingtonexaminer.com/news/22-eu-member-states-have-not-seen-a-spike-in-coronavirus-cases-in-schools-after-reopening>.

24 ⁴¹ Available as of the date of filing:
25 https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.21.2000903#html_fulltext.

26 ⁴² Available as of the date of filing: <https://www.pasteur.fr/fr/file/35404/download>.

27 ⁴³ Available as of the date of filing:
28 <https://www.folkhalsomyndigheten.se/contentassets/c1b78bffbde4a7899eb0d8ffdb57b09/covid-19-school-aged-children.pdf>.

c. The negative effects of closing schools must be weighed against the possible positive indirect effects it might have on the mitigation of the COVID-19 pandemic.

61. On July 8, 2020, Prevent Epidemics published a report by the former Head of the Centers for Disease Control and Prevention. In this report titled “Reopening America’s Schools: A Public Health Approach” they found that the evidence “suggests that children may play a smaller role in transmission of COVID-19 than adults.”⁴⁴

62. On July 15, 2020, a study of 2,000 German school children was released that concluded that schools and young people do not play a significant role in the transmission of the coronavirus.⁴⁵ This study found that schools in Germany did not become hotspots after they were reopened.⁴⁶

63. On July 15, 2020, the National Academies of Sciences, Engineering, and Medicine prepared a report in which they weighed the health risks of reopening K-12 schools against the educational risks of providing no in-person instruction and they came to the conclusion that:

Districts should weigh the relative health risks of reopening against the educational risks of providing no in-person instruction in Fall 2020. Given the importance of in-person interaction for learning and development, districts should prioritize reopening with an emphasis on providing full-time, in-person instruction in grades K-5 and for students with special needs who would be best served by in-person instruction.⁴⁷

⁴⁴ Available as of the date of filing: https://preventepidemics.org/wp-content/uploads/2020/07/Reopening-Americas-Schools_07-08-2020-Final.pdf, p. 6.

⁴⁵ Available as of the date of filing: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7271745/>.

⁴⁶ *Id.*

⁴⁷ Available on page 75 as of the date of filing: <https://www.nap.edu/read/25858/chapter/1>.

64. On July 21, 2020, a leading epidemiologist reported to the media that there is *no known case* of a teacher catching coronavirus from pupils.⁴⁸

65. On July 23, 2020, the CDC updated its report titled The Importance of Reopening America's Schools this Fall.⁴⁹ This report found:

Death rates among school-aged children are much lower than among adults. At the same time, the harms attributed to closed schools on the social, emotional, and behavioral health, economic well-being, and academic achievement of children, in both the short- and long-term, are well-known and significant.

66. The CDC also published a report on the age distribution of transmission to new cases in South Korea, which found that less than 1% of new transmission detected in the study were attributed to children aged 0 to 10 years; similarly, less than 1% of new transmissions were from children aged 11 to 20 years.

67. Presently, there are 22 countries that have their schools open without social distancing, mask wearing, and other measures, yet these countries have not experienced an increase in COVID-19 cases or spread of the virus among children.

68. These countries have also not seen transmission of the virus between children and their parents or elderly grandparents.

69. Quite the contrary, one July 2020 study from the University of Dresden concluded that, in fact, children appeared to act as a barrier to transmission.

Studies Show that the Digital Divide Harms Students

70. A study from Brown University has explained that "there are many reasons to believe the COVID-19 impacts might be larger for children in poverty and children of color," noting (1) the disproportionately higher rate of COVID-19 infections and

⁴⁸ Available as of the date of filing: <https://www.thetimes.co.uk/article/no-known-case-of-teacher-catching-coronavirus-from-pupils-says-scientist-3zk5g2x6z>.

⁴⁹ Available as of the date of filing: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html>.

1 deaths and worse effect of the economic downturn on African American and Hispanic
 2 parents, and (2) the “digital divide in technology and internet access by race/ethnicity
 3 and socioeconomic status.”⁵⁰

4 71. Studies have shown that “Blacks and Latinos are substantially less likely to
 5 have a computer at home than are white, non-Latinos,” with some estimates showing
 6 that “70.4 percent of whites have access to a home computer” while “only 41.3 percent
 7 of blacks and 38.8 percent of Latinos have access to a home computer.”⁵¹

8 72. This digital divide is supported by other surveys, one of which reported
 9 that: (1) 41% of respondents stated that “not having a computer or tablet or enough
 10 available devices” was a “top barrier” to distance learning, while only 37% said that
 11 their child’s school had lent mobile technology devices; and (2) 71% of African
 12 American families and 69% of families with a household income of less than \$50,000
 13 stated that lending mobile technology devices would be very helpful for families like
 14 theirs.⁵² This survey comports with the “evidence that, even when teachers are making
 15 themselves and their instructional materials available virtually, many students lack the
 16 means to access online material from home.”⁵³

17 73. The Brown University study estimated those negative impacts on children
 18 to be a loss of 63-68% of the learning gains in reading relative to a typical school year
 19 and a loss of 37-50% in learning gains in math.⁵⁴

21 ⁵⁰ Kuhfeld *et al.* (May 2020) *Projecting the potential impacts of COVID-19 school*
 22 *closures on academic achievement*, p. 25 Annenberg Institute at Brown University,
 23 <https://doi.org/10.26300/cdrv-yw05>.

24 ⁵¹ Robert W. Fairlie, *Race and the Digital Divide*, UC Santa Cruz: Department of
 25 Economics, UCSC, at 2 (2014), available at <https://escholarship.org/uc/item/48h8h99w>.

26 ⁵² The Education Trust-West, *California Parent Poll: COVID-19 and School Closures*
 27 (Accessed on June 19, 2020), available at: <https://west.edtrust.org/ca-parent-poll-covid-19-and-school-closures/>.

28 ⁵³ Kuhfeld, *Projecting the potential impacts of COVID-19 school closures on academic achievement*, p. 10.

⁵⁴ *Id.* p. 23.

1 74. In some grades, students may come back close to a “full year behind in
2 math.”⁵⁵

3 75. There is also evidence showing that remote learning leads to decreased
4 teacher interaction with students.⁵⁶

5 76. Another study showed that that, even for children receiving average-
6 quality online learning in the fall of 2020, students would lose “three to four months of
7 learning” by January 2021. And the study predicted that Blacks and Latinos would
8 suffer a 15 to 20 percent greater loss in educational gains than other students.⁵⁷

9 77. Less than two weeks after the school shutdown on March 16, 2020, the Los
10 Angeles School District officials admitted that 15,000 students were completely
11 unaccounted for and more than 40,000 had not been in daily contact with their
12 teachers.⁵⁸

13 78. A study conducted by the Los Angeles Unified School District (LAUSD)
14 found that between March 16 and May 22, 2020, “on an average day only about 36% of
15 middle and high school students participated online,” while “[a]bout 25% logged on or
16 viewed work only” “[a]nd about 40% were absent.” The study also found that Black
17 and Latino students showed participation rates between 10 and 20 percentage points
18 lower than white and Asian peers.” And “English learners, students with disabilities,
19

20 ⁵⁵ *Id.*

21 ⁵⁶ *Id.* at 10 “There are concerning signs that many teachers have had no contact at all
22 with a significant portion of students . . . only 39% of teachers reported interacting with
23 their students at least once a day, and most teacher-student communication occurred
24 over email”, and absenteeism.

25 ⁵⁷ Emma Dorn, et al., *COVID-19 and student learning in the United States: The hurt
26 could last a lifetime*, McKinsey & Company (June 1, 2020), available at
27 [https://www.mckinsey.com/industries/public-sector/our-insights/covid-19-and-student-
28 learning-in-the-united-states-the-hurt-could-last-a-lifetime](https://www.mckinsey.com/industries/public-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime).

⁵⁸ Howard Blume, *15,000 L.A. high school students are AWOL online, 40,000 fail to
check in daily amid coronavirus closures*, LOS ANGELES TIMES, (March 30, 2020)
Available at: [https://www.latimes.com/california/story/2020-03-30/coronavirus-los-
angeles-schools-15000-high-school-students-absent](https://www.latimes.com/california/story/2020-03-30/coronavirus-los-angeles-schools-15000-high-school-students-absent).

1 homeless students and those in the foster-care system had lower rates of online
2 participation.”⁵⁹

3 79. Even among students from families with lower economic means who are
4 provided with tablets and wifi hotspots, it has been reported that parents who are
5 technologically challenged have been unable to help their children get online. Teachers
6 report students who are unable to respond online because they are babysitting their
7 siblings, who are also home from school, while parents work to keep the family housed.
8 Even the most diligent teacher cannot provide the extra attention to a struggling student
9 that he or she would provide in-person, while using only online resources.

10 **Special Education Students are Disadvantaged by Distance Learning**

11 80. Under federal law, students with disabilities are guaranteed a Free,
12 Appropriate Public Education (FAPE), as incorporated through the IDEA ACT 34
13 C.F.R. § 300.101 and Title III of the Americans with Disabilities Act of 1990 (“ADA”),
14 § 504 of the Rehabilitation Act of 1973.⁶⁰

15 81. The federal government allocates approximately \$1.2 billion to California
16 for special education each year.⁶¹

17 82. Many parents of special needs children in California have reported that
18 their children received none, or nearly none, of the individualized instruction
19 guaranteed by law when schools closed in the spring. Frustrated instructors simply gave
20 up when faced with technology challenges, while others didn’t even try, and many
21 school districts made zero provision for delivering these federally mandated services to
22 children, despite the federal funding the state received that was conditioned upon
23

24 ⁵⁹ *Report reveals disparities among Black, Latino LAUSD students in online learning*
25 *amid COVID-19 pandemic*, ABC 7 Eyewitness News (July 17, 2020), available at
26 [https://abc7.com/lausd-los-angeles-unified-school-district-race-disparity-racial-](https://abc7.com/lausd-los-angeles-unified-school-district-race-disparity-racial-divide/6321930/)
27 [divide/6321930/](https://abc7.com/lausd-los-angeles-unified-school-district-race-disparity-racial-divide/6321930/).

28 ⁶⁰ 20 U.S.C.A. § 1412; *see* 42 U.S.C.A. § 12132; *see* 29 USCA § 794.

⁶¹ Available as of the date of filing:

<https://lao.ca.gov/Publications/Report/4110#Introduction>.

1 providing these services. Accordingly, children with disabilities were especially
2 harmed by the school closures during the spring.

3 83. Moreover, even if schools were to make better efforts in the fall, many
4 individualized education programs (IEPs) simply *cannot* be implemented in a distance-
5 learning environment. For example, many IEPs require individualized instruction, such
6 as a one-on-one aide. And not following an IEP can have grave consequences, such as
7 regression.

8 84. While not unique to students with disabilities, socialization in schools is
9 critical for special needs children.

10 85. The CDC's July 23, 2020, report on the Importance of Reopening
11 America's Schools this Fall found that

12 The lack of in-person educational options
13 disproportionately harms low-income and minority
14 children and those living with disabilities. These
15 students are far less likely to have access to private
16 instruction and care and far more likely to rely on key
17 school-supported resources like food programs, special
education services, counseling, and after-school
programs to meet basic developmental needs.⁶²

18 **Distance-Only Schools Pose Child Safety Concerns**

19 86. As mandatory reporters, teachers who have daily contact with children are
20 in the best position to notice and report suspected child abuse.

21 87. Nationwide, "stay at home" does not mean "safe at home" as a report from
22 RAINN (Rape, Abuse, & Incest National Network) describes. "Many minors are now
23 quarantined at home with their abuser. Meanwhile, these kids are cut off from their
24 safety net — the teachers, coaches, and friends' parents who are most likely to notice
25 and report suspected abuse.... As a result, abuse reports to many state authorities have
26

27 ⁶² Available as of the date of filing: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html>.
28

declined — not because there is less abuse taking place, but because children have less contact with adults outside the home who could potentially spot and report abuse. Sadly, it is likely that the risk of children being sexually abused will increase as shelter-in-place orders continue — one more tragic consequence of the public health crisis the country currently faces.”⁶³

88. The CDC reports that teachers and educational staff report more than one-fifth of all child-abuse cases, that during school closures “there has been a sharp decline in reports of suspected maltreatment,” and hospitals have seen an increase in hospitalizations of children suffering from abuse.⁶⁴

89. Although child abuse reports have declined, hospitals are reporting higher numbers of physically abused children – this indicates that abuse is not being detected in time (i.e., before an abuse incident requiring hospitalization). In San Diego, during the months of April and May, 24 children were treated for abuse symptoms, which is double the normal rate. Other locations have seen an increase, including Jacksonville, Florida (8 abusive head trauma cases in March and April instead of 3) and Fort Worth, Texas (9 severe cases at a hospital since March, when they usually have only 6 in the whole year).

One California School District’s Effort to Prepare to Open

90. As an elected member of the Palos Verdes Peninsula Unified School District (“PVPUSD”), which is located in Los Angeles County, plaintiff Brach was active in the process of preparing the district for school reopenings in the fall.

91. Brach was involved in preparing a “Return to School” survey.

92. This survey found that over 60% of parents in the district believed that there was not enough face-to-face teaching time during the initial shutdown.

93. Over 60% of parents also preferred that their children attend school in a normal in-person setting rather than return to the virtual learning program.

⁶³ Available as of the date of filing: <https://www.rainn.org/news/first-time-ever-minors-make-half-visitors-national-sexual-assault-hotline>.

⁶⁴ *The Importance of Reopening America’s Schools*, *supra*.

1 94. Over 60% of the teachers were comfortable with returning to teach school.

2 95. The survey also showed that due to financial constraints, if the school did
3 not return to in-person learning, over 7% of parents of TK – 5th grade children and over
4 19% of parents of children between 6th – 12th grade would have to leave their children
5 home without supervision.

6 96. PVPUSD established a reopening committee that included staff, medical
7 professionals and parents.

8 97. PVPUSD was prepared to implement screening including providing a digital
9 app so parents could answer questions each morning regarding symptoms, and the school
10 was prepared to take students' temperature to verify the app's data.

11 98. PVPUSD also was prepared to implement the following mitigation strategy:

- 12 a. Staggered arrival times;
- 13 b. Designated entrance and exit routes;
- 14 c. Purchase no touch thermometers;
- 15 d. Procure N95 masks for nurses and cloth masks for students;
- 16 e. Provide water filling stations to avoid use of drinking fountains;
- 17 f. Provide grab/go meals for lunch;
- 18 g. Plexiglas for serving and cashier stations;
- 19 h. Investigation of HVAC system to support air circulation if windows had to
20 be closed;
- 21 i. Order signage for directional guides and handwashing reminders;
- 22 j. Handwashing stations with foot pedal;
- 23 k. Install touch free sanitizing;
- 24 l. Institute protocols for high touch areas.

25 99. PVPUSD was ready to work with the teachers, parents, and students to
26 provide options. The 60% of teachers and parents who wanted in-person learning could
27 have chosen that option, while the remainder could continue their learning with virtual
28 study. The Governor's new guidance upended these plans by requiring all schools in the

1 county to close, regardless of the efforts made to reopen safely, and the choices of parents,
2 teachers, and children.

3 **Newsom's Doomsday Predictions Have Not Proven True**

4 100. Governor Newsom's rationale for Executive Order N-33-20, his original
5 shelter in place order, was to "bend the curve."⁶⁵ He stated that "[i]n some parts of our
6 state, our case rate is doubling every four days," and that "[t]he point of the stay at
7 home order is to make those numbers moot."⁶⁶ The Governor added that one goal was
8 to slowdown transmission enough to reduce the strain it might place on hospital
9 resources.⁶⁷

10 101. Governor Newsom cited a model showing that as of March 19, 2020, 56
11 percent of Californians, or more than 25 million people, could be infected over the next
12 eight weeks.⁶⁸

13 102. Several infectious disease experts, including Professor of Epidemiology
14 John P.A. Ioannidis of Stanford University, called this an extreme, worst-case scenario
15 that was unlikely to happen.⁶⁹ They turned out to be correct.

16 103. Upon information and belief, another piece of flawed data that drove
17 California's and Santa Clara County's original, onerous shelter-in-place orders was an
18 incorrect assumption that the R_0 of COVID-19 was 5.7.

19 104. The "R-naught" is the rate at which people can be infected, or more
20

21
22 ⁶⁵ March 19, 2020 press briefing at 35:17-36:00, available as of the date of filing at
<https://www.youtube.com/watch?v=8OeyeK8-S5o>.

23 ⁶⁶ *Id.*

24 ⁶⁷ *Id.* at 5:42-8:09.

25 ⁶⁸ *Id.* at 5:00-6:00.

26 ⁶⁹ *Newsom: 56 % of Californians Could Get Coronavirus If Nothing Is Done*, San
27 Francisco Chronicle, March 19, 2020, available as of May 3, 2020 at:
https://webcache.googleusercontent.com/search?q=cache:sokxG9_b-2oJ:https://www.sfchronicle.com/health/article/Newsom-56-of-Californians-could-get-coronavirus-15144438.php+&cd=1&hl=en&ct=clnk&gl=us.
28

precisely the rate of reproduction of the virus as measured by infected human hosts.⁷⁰

105. Upon information and belief, part of the data that the Governor depended on for his claim that 25 million Californians would be infected within eight weeks was the initial rate of infection in Wuhan, the originating epicenter of COVID-19, where the numbers apparently showed a R_0 of 5.7.⁷¹

106. However, scientists now believe that the R_0 of COVID-19 without mitigation efforts is approximately 2.2-2.7.⁷² With mitigation efforts, the R_0 of COVID-19 has been driven down even further.

107. More egregiously, the COVID-19 death rate projections model on which Governor Newsom relied for implementing a state of emergency and mass quarantine of healthy Californians, turned out to be grossly flawed.⁷³ California has thus far accounted for five point three percent (5.3%) of the nation's COVID-19 deaths while containing twelve percent (12%) of the nation's populace.⁷⁴

108. Governor Newsom's inexplicable restrictions on school reopening are not based on any scientific data and are completely arbitrary, especially in light of the fact that California allows camps and childcare facilities to remain open. More fundamentally, the school closing "plan," which is no plan at all, ignores the state's legal duties to California's children.

⁷⁰ <https://www.nytimes.com/2020/04/23/world/europe/coronavirus-R0-explainer.html>.

⁷¹ Available as of the date of filing: https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article.

⁷² *Id.*

⁷³ Available as of the date of filing: <https://www.statnews.com/2020/04/17/influential-covid-19-model-uses-flawed-methods-shouldnt-guide-policies-critics-say/>.

⁷⁴ According to the CDC, California has 6,823 of the United States' 128,035 COVID-19 deaths. Available as of the date of filing at <https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm>. According to the U.S. Census, California has 39,512,223 of the United States' 328,239,523 people. Available as of date of filing at <https://www.census.gov/quickfacts/fact/table/CA,US/PST045219>.

CLAIMS

FIRST CLAIM FOR RELIEF

**42 U.S.C. § 1983 – Violation of Due Process under the Fourteenth Amendment
Deprivation of Substantive Due Process
(By All Plaintiffs Against All Defendants)**

109. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein

110. The Due Process Clause of the Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend XIV. In particular, “the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Glucksberg*, 521 U.S. at 720–21 (internal citations and quotation marks omitted). Plaintiffs and their children have a fundamental right to a basic, minimum education.

111. Defendants have deprived Plaintiffs and their children of this right in violation of the Fourteenth Amendment to the U.S. Constitution, by effectively precluding children from receiving a basic minimum education because (1) many students have no or limited access to the internet; (2) of those who do have digital access their educations will be significantly impaired; and (3) truancy will run rampant.

112. The U.S. Constitution entitles Plaintiffs to be free from any burden to a fundamental right unless the infringement is narrowly tailored to serve a compelling state interest.

113. Defendants lack any compelling, or even rational, interest for burdening Plaintiffs’ children of their fundamental right to a basic minimum education. The weight of the evidence shows that children’s transmission and infection rates cannot justify school closures. Defendants further ignore that the evidence of mortality risk and severe adverse health outcome risk to children from COVID-19 disease is virtually non-

1 existent.

2 114. Risk to teachers may be managed just as risk to other essential workers is
3 managed in California – by offering choices and providing protection. The challenges
4 posed by the situation pale in comparison to the harm being inflicted on California’s
5 families through the deprivations of their constitutional rights.

6 115. Nor are the Defendants’ actions narrowly tailored. If children can study
7 and learn in-person, even on a limited basis while in school, but are forced to “learn”
8 through a means in which they realistically cannot access, then the policy is not
9 narrowly tailored. Moreover, as seen elsewhere, many other States have provided
10 options to attend school, including deploying “hybrid” models of mixed virtual and in-
11 person learning to reduce student contact. While remote instruction may play a role in
12 the various counties’ approaches, there is no reason to adopt a one-size-fits-all model
13 for the State, and Defendants’ insistence on such an approach fails any form of
14 heightened scrutiny.

15 116. Plaintiffs have no adequate remedy at law and will suffer serious and
16 irreparable harm to their constitutional rights unless Defendants are enjoined from
17 implementing and enforcing the Governor’s Order and associated guidance.

18 117. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
19 declaratory relief and temporary, preliminary, and permanent injunctive relief
20 invalidating and restraining enforcement of the State Order and associated guidance.

21 118. Plaintiffs found it necessary to engage the services of private counsel to
22 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
23 attorneys’ fees pursuant to 42 U.S.C. § 1988.

24
25 ///

26 ///

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1 **SECOND CLAIM FOR RELIEF**

2 **42 U.S.C. § 1983 – Violation of the Equal Protection Clause**

3 **under the Fourteenth Amendment**

4 **Arbitrary School Closures**

5 **(By All Plaintiffs Against All Defendants)**

6 119. Plaintiffs incorporate by reference each and every allegation contained in
7 the preceding paragraphs of this Complaint as though fully set forth herein.

8 120. The equal protection doctrine prohibits “governmental classifications that
9 affect some groups of citizens differently than others.” *Engquist v. Or. Dep’t. of Agric.*,
10 553 U.S. 591, 601 (2008) (citations omitted). The touchstone of this analysis is whether
11 a state creates disparity “between classes of individuals whose situations are arguably
12 indistinguishable.” *Ross v. Moffitt*, 417 U.S. 600, 609 (1974).

13 121. The framework for reopening schools arbitrarily treats Plaintiffs’ children
14 (and other minors attending public and private schools) differently from those in nearby
15 school districts; from those in childcare; and from those attending summer camps, even
16 though all such children and their families are similarly situated.

17 122. The risk of exposure or transmission within in any particular county is
18 substantially the same whether children are at school, daycare, or at camp. Children at
19 summer camp, daycare, and in school will be in the presence of other children, in an
20 enclosed or semi-enclosed space, overseen by an older person(s) not comprised of the
21 child’s family unit, for an extended period, and industry guidance issued for schools,
22 camps, and daycare, contains the same or essentially the same protocols for wearing
23 face coverings, physically distancing, hygiene, cleaning, arrival/departure procedures,
24 sharing, checking for signs and symptoms and notification procedures if a child or staff
25 member becomes ill. Yet only schools are subject to the Governor’s mandated closure
26 orders.

27 123. Defendants’ actions arbitrarily restrict access to schools based on the
28 location of the school. Children residing in any particular county, including those

1 counties in which Defendants have forcibly shut down in-person instruction, may still
2 attend private school in nearby counties, despite the state's assignment of differing
3 levels of risk or exposure to the virus.

4 124. There is no rational basis—much less any compelling reason—for
5 Defendants' arbitrary treatment of schools, which are vital to children's development
6 but subject to more severe restrictions and potentially outright closure. Moreover, to the
7 extent the state has a compelling interest in ensuring that parents, children, and teachers
8 afraid of contracting COVID-19 are not forced to return to school this fall, less
9 restrictive alternatives to Defendants' closure regime exist, such as requiring schools to
10 *enable* distanced learning over the internet. Nor is Defendants' overbearing, one-size-
11 fits-all regime narrowly tailored to prevent to the spread of COVID-19 in schools. As
12 the example from the Palos Verdes Peninsula Unified School District illustrates, there
13 are a number of steps schools can take to protect their students while still providing
14 effective in-person education.

15 125. Defendants' intentional, discriminatory, and arbitrary imposition of state-
16 wide restrictions on school reopening violate Plaintiffs' right to equal protection under
17 the law.

18 126. Plaintiffs have no adequate remedy at law and will suffer serious and
19 irreparable harm to their and/or their children's constitutional rights unless Defendants
20 are enjoined from implementing and enforcing the Governor's Order and associated
21 guidance documents which restrict the reopening of schools in a manner that violates
22 the Equal Protection Clause.

23 127. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
24 declaratory relief and temporary, preliminary, and permanent injunctive relief
25 invalidating and restraining enforcement of the Governor's Order and any associated
26 guidance documents.

27 128. Plaintiffs found it necessary to engage the services of private counsel to
28 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of

attorneys' fees pursuant to 42 U.S.C. § 1988.

THIRD CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of Title VI of Civil Rights Act of 1964

Disparate Impact on Racial Minorities

(By Christine Ruiz, Z. R., Brian Hawkins, Marianna Bema, Ashley Ramirez,
Tiffany Mitrowke, and Ade Onibokun Against All Defendants)

129. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

130. Federal law conveys to Plaintiffs the right to be free from enforcement of facially discriminatory laws, facially neutral laws adopted with discriminatory intent or purpose, and facially neutral laws causing a disparate impact on racial minorities with regard to federally funded public programs, including California's public schools. 42 U.S.C. 2000d, *et seq.* (Title VI of the Civil Rights Act of 1964); 28 C.F.R. § 42.104(b)(2). Section 1983, in turn, creates a private right of action against the deprivation of such federal rights against officials acting under color of state law, despite there being no private right of action under a disparate impact theory pursuant to Title VI itself. *See* 42 U.S.C. § 1983; *Alexander v. Sandoval*, 532 U.S. 275, 300 (2001) (Stevens, J., dissenting) (“[l]itigants who in the future wish to enforce the Title VI [disparate impact] regulations against state actors in all likelihood must only reference § 1983 to obtain relief.”)

131. Mandatory distance learning has a negative, disparate impact on racial minorities. Distance learning is more difficult for many minority students, who tend to have less access to technology. Additionally, schools serving primarily minority students have provided demonstrably less effective distance learning than other schools. And the order applies to counties with disproportionately greater minority populations than those not on the county monitoring list.

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132. Defendants have acted arbitrarily and with deliberate indifference toward the unduly harsh effects their school restrictions have on racial minorities who have less access to technology, are provided less effective distance-learning, and are more heavily impacted by the orders.

133. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights under Title VI and its implementing regulations unless Defendants are enjoined from implementing and enforcing their broad prohibitions on in-person education in California.

134. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Governor's Order.

135. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

FOURTH CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of Federal Disability Rights Statutes;

**Failure to Provide Appropriate and Equal Educational to Disabled Students
(By Plaintiffs Christine Ruiz, Z. R., Brian Hawkins, Marianna Bema, and Ashley
Ramirez against All Defendants)**

136. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

137. Federal law provides all disabled children in California the right to a free appropriate public education, individualized education plans conferring educational benefit, appropriate identification and evaluation, and the right to be free from discrimination on the basis of any disability, including through the exclusion from or deprivation of equal access to the educational opportunities. *See* 20 U.S.C. § 1400, *et seq.* (Individuals with Disabilities Education Act (“IDEA”)); 42 U.S.C.A. § 12131, *et*

1 *seq.*, (Title II of the Americans with Disabilities Act of 1990 (“ADA”)); 29 U.S.C. §
2 794, *et seq.*, (Section 504 of the Rehabilitation Act of 1973).

3 138. Defendants’ arbitrarily imposed restrictions on the reopening of schools,
4 including the forced closure of many public and private schools and the imposition of
5 online-only learning, deprives disabled children in California of these rights, which are
6 secured by the above-cited federal laws.

7 139. Defendants acted knowingly, recklessly, and with deliberate indifference
8 to the rights of disabled children in California by forcibly preventing most private and
9 public schools in California from providing disabled students with specialized
10 instruction and related services commensurate with the schools’ obligations under
11 federal law, as well as from providing disabled students equal access to education as
12 required by federal law.

13 140. Plaintiffs have no adequate remedy at law and will suffer serious and
14 irreparable harm in the form of the deprivation of educational opportunities, related
15 services, and other educational and non-discrimination rights secured by federal law,
16 unless Defendants are enjoined from implementing and enforcing the school closure.

17 141. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
18 declaratory relief and temporary, preliminary, and permanent injunctive relief
19 invalidating and restraining enforcement of the state orders and any associated
20 guidance.

21 142. Plaintiffs found it necessary to engage the services of private counsel to
22 vindicate their rights under the law. They are therefore entitled to an award of
23 attorneys’ fees pursuant to 42 U.S.C. § 1988.

24 **WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment
25 against Defendants as follows:

- 26 • An order and judgment declaring that the Governor’s Order and the associated
27 guidance, facially and as-applied to Plaintiffs, violates the Equal Protection
28 and Due Process Clauses of the Fourteenth Amendment to the U.S.

Constitution; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*); the Individuals with Disabilities Education Act (20 U.S.C. § 1400, *et seq.*); Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131, *et seq.*); and/or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794, *et seq.*), and that Plaintiffs' children should be allowed in-person instruction without delay;

- An order temporarily, preliminarily, and permanently enjoining and prohibiting Defendants from enforcing the State Order or otherwise interfering with Plaintiffs' constitutional rights and federal guarantees;
- For attorneys' fees and costs;
- Such other and further relief as the Court deems appropriate and just.

Date: July 29, 2020

DHILLON LAW GROUP INC.

By: /s/ Harmeet K. Dhillon

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