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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

G.F., W.B., and Q.G., by and through their guardians ad
litem, and on behalf of themselves and a class of
similarly situated,

Plaintiffs,

v.

CONTRA COSTA COUNTY, *et al.*,

Defendants.

Case No. 3:13-cv-03667-MEJ

**STATEMENT OF INTEREST
OF THE
UNITED STATES OF AMERICA**

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I. Introduction

The Plaintiffs allege that youthful offenders with disabilities who are confined to the Contra Costa County Juvenile Hall (“Juvenile Hall”) are often subjected to solitary confinement¹ because of their disabilities and are denied special education, related services, and rehabilitation services. Plaintiffs allege that each Plaintiff is a youth with a disability eligible for special education and related services under the Individuals with Disabilities Education Act and each youth is a person with a disability qualified for the Defendants’ programs under the Americans with Disabilities Act. Plaintiffs allege that they are placed in restrictive security programs because of their disabilities and, once they are placed in restrictive security programs, they are denied education and other services in violation of federal law. According to the Amended Complaint and exhibits, Plaintiffs have missed hundreds of hours of education combined.

Despite their pronouncements to the contrary, Defendants, the Contra Costa County Office of Education (“Office of Education”) and Contra Costa County (“County”), have a legal obligation to avoid placing students with disabilities in restrictive security programs on the basis of their disabilities. In addition, Defendants are required to provide special education and related services to youth with disabilities in restrictive security programs. Defendants cannot abandon their legal responsibilities when the County’s Department of Probation places the youth in restrictive security programs. Nor can they each avoid responsibility by pointing the finger of liability at the other. Both are prohibited from discriminating on the basis of disability and both are required to ensure special education and related services are provided. As they acknowledge in their Motions, they can, and are required by State law to work together to accomplish these requirements. When they fail, the agencies, not the children they are required to serve, must take responsibility.

¹ Plaintiffs use the term “solitary confinement” to refer to the County’s Security Program, which provides different levels of discipline and supervision in the Juvenile Hall. According to Plaintiffs, in the most restrictive levels, a youth is locked in his or her room for 22 hours or more and is not permitted to participate in group activities, including school. Hereinafter, this Statement will refer to these restrictive confinement levels as “restrictive security programs.”

1 The United States submits this Statement of Interest to affirm and clarify the comprehensive
 2 protections afforded to youth with disabilities by the Individuals with Disabilities Education Act, 20
 3 U.S.C. §§ 1400-1482 (“IDEA”), Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-
 4 12134 (“ADA”), and their implementing regulations.²

5 II. Interest of the United States

6 The United States files this Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes
 7 the Attorney General “to attend to the interests of the United States” in any case pending in federal court.³
 8 The Attorney General’s National Task Force on Children Exposed to Violence recently addressed the
 9 interest of the United States in enforcement of laws protecting the rights of children in detention
 10 generally, and in solitary confinement, specifically. “Nowhere is the damaging impact of incarceration on
 11 vulnerable children more obvious than when it involves solitary confinement. A 2002 investigation by
 12 the U.S. Department of Justice showed that juveniles experience symptoms of paranoia, anxiety, and
 13 depression even after very short periods of isolation. Confined youth who spend extended periods
 14 isolated are among the most likely to attempt or actually commit suicide.” Robert L. Listenbee, Jr.,
 15 *Report of the Attorney General’s National Task Force on Children Exposed to Violence* at 178 (Dec. 12,
 16 2012), www.justice.gov/defendingchildhood/cev-rpt-full.pdf.
 17
 18

19 As the agency charged by Congress with enforcing and implementing regulations under the ADA,
 20 the Department of Justice’s interpretation of the Title II regulations has been accorded substantial
 21 deference. *Chevron U.S.A, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984);
 22 *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1065 (9th Cir. 2010) (observing that the Department of
 23

24 ² Plaintiffs allege violations of Section 504 of the Rehabilitation Act of 1973 (“Section 504”), as
 25 amended, 29 U.S.C. §§ 794 *et seq.*, and various state laws in the Third, Fourth, Fifth and Sixth claims of
 26 their Amended Complaint. The United States does not take a position on these claims other than to
 27 recognize that the ADA does not afford Plaintiffs any lesser protections than those provided under Section
 28 504 and its implementing regulations.

³ The full text of 28 U.S.C. § 517 is as follows: “The Solicitor General, or any officer of the Department
 of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the
 interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to
 attend to any other interest of the United States.”

Justice’s Title II implementing regulations “should be given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.”) The Department of Education is charged with administering the IDEA and its interpretation of the IDEA has been afforded similar deference. *See Magyar v. Tucson Unified Sch. Dist.*, 958 F. Supp. 1423, 1439-40 (D. Ariz. 1997) (observing that the Department of Education’s interpretive statements on the IDEA command heightened respect) (internal citations omitted). Furthermore, the United States has an interest in ensuring the appropriate and consistent interpretation of the IDEA and ADA, and their implementing regulations. *See Honig v. Doe*, 484 U.S. 305, 325 n. 8 (1988); *M.R. v. Dreyfus*, 663 F.3d 1100, 1117-18 (9th Cir. 2011).

The Department of Justice also enforces federal rights guaranteed by the Constitution and federal law in juvenile detention facilities and other public institutions through the Civil Rights of Institutionalized Persons Act (“CRIPA”), 42 U.S.C. § 1997. CRIPA gives the Department of Justice authority to investigate and seek a remedy for conduct in juvenile detention facilities that violates the IDEA. Accordingly, the United States believes that its views will be of interest to the Court in resolving Defendants’ Motions to Dismiss. The United States additionally requests that, should the Court hear oral argument on Defendants’ Motions, the United States be permitted to participate.

III. Factual Allegations and Procedural Background

A. Contra Costa County Juvenile Hall

The County operates the Juvenile Hall, a maximum-security detention facility for male and female youth.⁴ *Pls.’ Am. Compl.* ¶ 61. The Juvenile Hall has 290 beds for youth under age 18. *Id.* Within the Juvenile Hall, the Office of Education operates a juvenile court school, Mt. McKinley School (“Mt. McKinley”). *Id.* at ¶ 47. While on school sites, youth are under the direct supervision of personnel of the County’s Probation Department. *Id.* at ¶ 124.

The administrative responsibilities and relationship between the Office of Education and the

⁴ Unless otherwise noted, the factual allegations are from the Plaintiffs’ Amended Complaint. At the motion to dismiss stage, courts accept the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *A.E. v. County of Tulare*, 666 F.3d 631, 636 (9th Cir. 2012).

1 County regarding the operation of Mt. McKinley are governed by state law and a memorandum of
 2 understanding (“MOU”). *Id.* at ¶¶ 36-37; *see also* Office of Education Mot. to Dismiss at 13-14, Jan. 24,
 3 2014, ECF No. 113. The purpose of the MOU is to “develop a collaborative model that will foster an
 4 educational and residential environment that nurtures the whole child and consistently supports services
 5 that will meet the educational needs of the pupils.” Office of Education Mot. to Dismiss at 13 (internal
 6 citations omitted). The MOU incorporates State education regulations and states, in pertinent part, that
 7 the “educational program shall be integrated into the facility’s overall behavioral management plan and
 8 security system” and that for individuals with special needs “[e]ducational instruction shall be provided to
 9 youth restricted to high security or other special units.” Office of Education Mot. to Dismiss, Ex. A-1 at
 10 2, Jan. 24, 2014, ECF No. 114-1.

12 According to estimates provided by the Office of Education, from January to April 2013,
 13 approximately 32.7% of the youth at Mt. McKinley had a disability that required an individualized
 14 education program (“IEP”) under the IDEA⁵ or a similar plan under Section 504. Pls.’ Am Compl. ¶ 140.
 15 These are also students with disabilities under the ADA.

17 According to Plaintiffs, the County administers “Special Programs,” which provide different
 18 levels of securing youth as discipline. *Id.* at ¶ 69. In the most restrictive levels – maximum, security risk,
 19 and special program – a youth is confined in his or her cell for more than 22 hours a day. *Id.* at ¶¶ 69-71,
 20 76, 81. Each cell is “extremely small without even room to exercise.” *Id.* at ¶ 66. The cell has a solid
 21 door with a small window “about as wide as a hand and long as an arm.” *Id.*

22 While in the maximum and security risk levels of restrictive security programs, a youth is
 23 prohibited from attending school and is denied general education and special education services. *Id.* at
 24 _____

25 ⁵ An IEP is the “primary vehicle” through which each child with a covered disability is provided a free
 26 and appropriate education under IDEA. *Honig v. Doe*, 484 U.S. at 311; 20 U.S.C. § 1414(d)(1)(A). The
 27 IEP ensures that each child with a disability receives the special education, related services, and
 28 supplementary aids and services necessary to enable the child to be involved and make progress in the
 general education curriculum. 20 U.S.C. § 1414(d)(1)(A)(i)(IV)(bb); 34 C.F.R. § 300.320(a)(4)(ii).
 Related services may include counseling services, rehabilitation counseling services, and psychological
 services. 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(a).

¶¶ 71, 74, 76, 79. In the special program level, probation supervisors are authorized to impose “restrictions on school attendance,” and a tutor may visit the youth for 5 to 30 minutes a day on some days to provide school work. *Id.* at ¶¶ 82-83. Plaintiffs allege that tutors rarely provide actual instruction and, instead, provide worksheets for the youth to complete. *Id.* at ¶ 83. In all three of these levels, youth are not permitted to participate in the Juvenile Hall’s rehabilitation programs, such as anger management classes and group counseling sessions. *Id.* at ¶¶ 75, 80, 84.

B. Plaintiffs

Plaintiffs are youth with disabilities who are eligible for special education services through an IEP. They are also individuals with disabilities protected under the ADA. W.B. is a 17-year-old youth diagnosed with psychosis and schizophrenia. Pls.’ Am. Comp. at ¶¶ 210-211. At the time Defendants placed W.B. in restrictive security programs, he was “spitting, hearing voices, and talking to himself.” *Id.* at ¶ 212. Because of these behaviors, he was locked in restrictive security programs for 60 days from February to May 2013. *Id.* at ¶ 211. Throughout February 2013, he remained in maximum security because of hallucinations, inappropriate laughter, and facial twitching. County Mot. to Dismiss, Ex. E at 9. In March and April 2013, he remained in restrictive security programs because he continued to have hallucinations, accused staff of spitting into his food and shoes, and defecated in the shower. *Id.* In May 2013, he “totally decompensated” and began smearing feces in his cell. *Id.* He suffered a psychotic break and was hospitalized for three weeks. Pls.’ Am. Comp. at ¶¶ 213, 228.

G.F. is a 15-year-old youth diagnosed with bipolar affective disorder, attention deficit and hyperactivity disorder, and intermittent explosive disorder. *Id.* at ¶¶ 189, 191, 198. She has been in restrictive security programs for over 100 days in the past year. *Id.* at ¶ 198. The extent of her disabilities caused her to violate the rules and receive placement in restrictive security programs as punishment. *Id.* at ¶ 199. Specifically, she has had fights with other youth while in the Juvenile Hall, which have resulted in placement in restrictive security programs. County Mot. to Dismiss, Ex. C at 9.

Q.G. is a 17-year-old youth diagnosed with oppositional defiant disorder and attention deficit and

1 hyperactivity disorder. *Id.* at ¶ 232-33. He believes he has been in restrictive security programs for over
2 200 days since 2010. *Id.* at ¶ 237. His disabilities caused him to express behaviors that led to his
3 restrictive security programs punishment. *Id.* at ¶ 238.

4 According to Plaintiffs, while in restrictive security programs, Defendants denied G.F., W.B., and
5 Q.G. access to education services. *Id.* at ¶¶ 206, 225, 243. Each youth performs well below grade level in
6 all subjects and has failed to progress from grade-to-grade on schedule. *Id.* at ¶¶ 203-204, 226, 243.

7 **C. Amended Complaint and Motions to Dismiss**

8 Plaintiffs filed their original complaint and motion for class certification on August 8, 2013. They
9 amended their complaint on December 24, 2013, and filed an amended motion for class certification on
10 January 9, 2014. Plaintiffs' amended complaint challenges alleged systemic violations of the IDEA and
11 the ADA throughout the Juvenile Hall program, including the restrictive security programs. However,
12 because the Defendants' Motions to Dismiss focus on the claims regarding the restrictive security
13 programs, this Statement of Interest also focuses on those aspects of the amended complaint. Plaintiffs
14 claim, *inter alia*, that Defendants violate the ADA, IDEA, Section 504, and various State laws. *Id.* at ¶¶
15 259-82. In their ADA claim, Plaintiffs allege that Defendants place youth with disabilities in restrictive
16 security programs because of their disabilities, thus denying them access to education and rehabilitation
17 services in the Juvenile Hall. *Id.* at ¶¶ 110-121, 278. They allege that Defendants fail to make reasonable
18 modifications to their policies, practices, and procedures, even though they are necessary to avoid
19 discrimination. *Id.* at ¶ 272. These modifications include identifying youth with disabilities who require
20 reasonable accommodations; inquiring into whether behaviors of youth with disabilities that lead to
21 disciplinary measures are disability-related; modifying school disciplinary policies and practices to ensure
22 that school officials have responsibility for discipline during school hours; and modifying restrictive
23 security program policies and practices to ensure that youth with disabilities are not disproportionately
24 burdened by such policies and practices by reason of their disabilities. *Id.*

25 Plaintiffs also allege that the Defendants violate the IDEA by failing to conduct manifestation
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1 determinations or any of the requirements that flow from such determinations, prior to removing youth
2 from the classroom for more than 10 days in a school year, as required by the IDEA. *Id.* at ¶¶ 253-254.
3 Plaintiffs further allege that Defendants violate the IDEA by providing inadequate special education and
4 related services to youth at the Juvenile Hall and failing to provide special education and related services
5 altogether to youth with disabilities in the two most restrictive security programs. *Id.* at ¶¶ 92-109, 164,
6 254-256. In addition, Plaintiffs allege that any “tutoring” provided to youth in the third most restrictive
7 level, special program, does not constitute specialized academic instruction because it is not consistent
8 with the students’ IEP goals and does not allow youth with disabilities to continue to participate in the
9 general education curriculum. *Id.* at ¶ 165, 253-56.

11 Both Defendants responded with Motions to Dismiss on January 24, 2014. The Office of
12 Education contends that it has no legal responsibility for the disciplinary actions of the County, including
13 the use of restrictive security programs. Office of Education Mot. to Dismiss at 13-14. The County
14 contends that it does not have administrative control and direction over Mt. McKinley. County Mot. to
15 Dismiss at 8, Jan. 24, 2014, ECF No. 118. However, both the Office of Education and the County
16 acknowledge in their Motions to Dismiss that State law provides that they must engage in a collaborative
17 process to meet the needs of youth who are receiving education services in juvenile court schools and that
18 they must have procedures to communicate and coordinate between education and probation staff. *Id.*;
19 Office of Education Mot. to Dismiss at 13.

21 The County also argues that because of violent behavior, Plaintiffs pose a direct threat and are not
22 “otherwise qualified” under the ADA to participate in classroom education and the County’s
23 rehabilitation programs. County Mot. to Dismiss at 11-13.

25 IV. Discussion

26 A. Defendants Cannot Evade Their Responsibilities Under the ADA and the IDEA.

27 As used in Title II, a public entity includes any “state or local government” or “any department,
28 agency, special purpose district, or other instrumentality of a state or local government.” 42 U.S.C.

1 § 12131(1). As a local government, the County is a public entity under the ADA. The Office of
2 Education, as one of California's Offices of Education, is an agency of a local government and subject to
3 the ADA. As such, both Defendants are prohibited by the ADA from discriminating against youth with
4 disabilities in the Juvenile Hall.

5 In addition, the IDEA places a duty both on the Office of Education and the County to provide
6 access to special education and related services to confined youth with disabilities. As the overseer of
7 special education services throughout the state, California vested responsibility for the operation of the
8 juvenile court schools and the provision of special education services to the County Boards of Education.⁶
9
10 *See* 20 U.S.C. § 1412(a); Cal Educ. Code § 48645.2, § 56150. As the educational public agency, the
11 Office of Education has many responsibilities, including, but not limited to, the provision of special
12 education and related services and compliance with IDEA due process requirements, including those
13 protections specifically related to discipline. 20 U.S.C. §§ 1412-1413; 34 C.F.R. §§ 300.200-300.201;
14 Cal. Code Regs. tit. 15, § 1730.

15
16 The County alleges that it is not subject to the IDEA because it does not have any role in the
17 determination or provision of special education services. County Mot. to Dismiss at 6-7. However, the
18 IDEA applies to all political subdivisions of a state that are involved in the education of children with
19 disabilities, including local juvenile correctional facilities. 34 C.F.R. § 300.2(b)(1)(iv). In their Amended
20 Complaint, Plaintiffs allege that the County is involved in the education of youth with disabilities at the
21 Juvenile Hall in multiple ways. Pls.' Am. Compl. ¶¶ 36, 37, 252

22
23 ⁶ This is consistent with the IDEA statutory scheme that allows states to assign responsibility for delivery
24 of special education services to other non-educational public agencies to provide or pay for special
25 education. 20 U.S.C. § 1412(a)(12); 34 C.F.R. § 300.154. The IDEA expressly requires States to have
26 mechanisms in place to address situations where a non-educational public agency in the State shares
27 responsibility under Federal or State law for providing or paying for special education and related services
28 for children with disabilities in the State. *See* 20 U.S.C. § 1412(a)(12); 34 C.F.R. § 300.154. This is
accomplished through an interagency agreement or other mechanism for interagency coordination in order
to ensure that all services that are needed to ensure a free appropriate public education are provided to
children with disabilities in the State. *See* 20 U.S.C. § 1412(a)(12); 34 C.F.R. § 300.154.

1 For instance, the County’s Chief Probation Officer is required to work with the Office of
2 Education to provide for the administration and operation of juvenile court schools. 15 Cal. Code Reg.
3 § 1370(a). The County’s facility administrators are required to work with the Office of Education to
4 develop a written policy and procedures “to ensure communication and coordination between educators
5 and probation staff.” *Id.* The County and the Office of Education must also ensure that education
6 instruction is “provided to minors restricted to high security or other special units” and that “state and
7 federal laws [are] observed for individuals with special education needs.” 15 Cal. Code Reg. § 1370(d).
8 The County is also prohibited by State law from depriving youth of education when imposing discipline.
9 15 Cal. Code Reg. § 1390(j).
10

11 The MOU entered into between the County and the Office of Education also delineates their joint
12 education-related responsibilities, including the provision of special education and related services.
13 Office of Education Mot. to Dismiss Ex. A at 1. For instance, both agencies are required to: collaborate
14 to ensure the safety and security of youth, staff, and outside providers; collaborate to encourage and
15 motivate parents and legal guardians to attend IEP meetings; and collaborate on a process in which the
16 Office of Education meets the educational needs of students held-back in their living units. *Id.* at 4.
17

18 The Office of Education alleges that it cannot be responsible for the denial of special education
19 and related services while youth with disabilities are locked in restrictive security programs because,
20 under the MOU, the County has sole legal authority to discipline youth. Office of Education Mot. to
21 Dismiss at 13. The County alleges that it has no role in the provision of special education and related
22 services at the Juvenile Hall. County Mot. to Dismiss at 6-7.
23

24 Public entities cannot avoid their ADA and IDEA obligations by contracting, transferring them to,
25 or sharing them with, another entity, especially one that is unwilling or unable to meet those obligations.
26 The Title II regulations prohibit public entities from discriminating “directly or through contracting,
27 licensing, or other arrangements, on the basis of disability.” 28 C.F.R. § 35.130(b)(1). In addition, it is a
28 violation of Title II to “aid or perpetuate discrimination against a qualified individual with a disability by

1 providing significant assistance to an agency, organization, or person that discriminates on the basis of
2 disability in providing any aid, benefit, or service to beneficiaries of the public entity's program." *Id.*
3 § 35.130(b)(1)(v). Similarly, a public agency designated as the educational agency under the IDEA
4 remains responsible for ensuring IDEA compliance, even if another non-educational agency shares in that
5 obligation. *See* 20 U.S.C. § 1412(a)(12); 34 C.F.R. § 300.154.

6 In short, an entity covered under the ADA or the IDEA cannot escape its legal obligations by
7 contracting or delegating them to another entity, or by allowing another entity to interfere with carrying
8 out its responsibilities. Both Defendants attempt to do just that here, with the apparent hope of leaving no
9 one responsible for the discrimination and denial of special education and related services alleged by
10 Plaintiffs.

11
12 **B. The IDEA Requires Defendants to Provide Eligible Students with Special Education and**
13 **Related Services.**

14 Congress enacted the IDEA in 1975 to ensure that children with disabilities that affect their ability
15 to learn are provided a "free appropriate public education that emphasizes special education and related
16 services designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A); *see* §1401(3)(a); *see also*
17 *Honig*, 484 U.S. at 309. With very specific limited exceptions for those incarcerated in adult prisons, age-
18 eligible students with disabilities in detention are entitled to a free appropriate public education under the
19 IDEA. 34 C.F.R. §§ 300.101-102, § 300.324 (d)(1)(i). The Juvenile Hall is not an adult prison and youth
20 detained in the Juvenile Hall retain their rights under the IDEA.

21
22 The IDEA contains procedural safeguards to protect the education rights of children removed from
23 instruction for disciplinary infractions. 20 U.S.C. § 1415(k). Before a school can change the placement
24 of a child with a disability (i.e. removal for more than 10 school days), it must conduct a "manifestation
25 determination," which is a review of all relevant information to determine if the questioned behavior was
26 caused by, or had a direct and substantial relationship to, the child's disability or the failure to implement
27 the child's IEP. *Id.* § 1415(k)(1)(E). Furthermore, if an education provider removes a student from the
28

1 classroom for more than 10 days in a school year, it must provide the services necessary to allow the child
2 “to continue to participate in the general education curriculum and to progress toward meeting the goals
3 set out in the child’s IEP.” *Id.* § 1415(k)(1)(D)(i). Thus, if, as alleged, Defendants remove a youth with a
4 disability from school and place him or her in restrictive security programs for more than 10 school days
5 without conducting a manifestation determination or without providing the special education and related
6 services he or she is eligible for, they have violated the IDEA.

7
8 **C. The ADA Requires Defendants to Take Proactive Steps to Avoid Discrimination Against
Students with Disabilities at the Juvenile Hall.**

9 With the enactment of the ADA, Congress announced its intent to provide “a clear and national
10 mandate for the elimination of discrimination” based on disability. 42 U.S.C. § 12101(b)(1). Congress
11 found that “[i]solat[ion] and segregat[ion]” were pervasive in areas such as education and
12 institutionalization prior to the ADA’s implementation. *Id.* § 12101(a)(2) and (3). Under the public
13 services provisions of Title II, “no qualified individual with a disability shall, by reason of such disability,
14 be excluded from participation in or be denied the benefits of services, programs, or activities of a public
15 entity, or be subjected to discrimination.” *Id.* § 12132. The protections of the ADA extend to youth with
16 disabilities in a juvenile detention facility. *See Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998)
17 (holding that the language of the ADA unambiguously refers to people who are incarcerated); *Lee v. City*
18 *of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001) (internal quotation marks and citations omitted) (“[T]he
19 ADA’s broad language brings within its scope anything a public entity does...includ[ing] programs or
20 services provided at jails, prisons, and any other custodial or correctional institution.”).

21
22
23 The regulations implementing Title II of the ADA set forth the general prohibitions against
24 discrimination that apply to Defendants. *See* 28 C.F.R. § 35.130(a). Public entities may not, on the basis
25 of disability, deny youth with disabilities the opportunity to participate in or benefit from the aid, benefit,
26 or service the entity provides. *Id.* § 35.130(b)(1)(i). Nor may public entities afford youth with disabilities
27 an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded
28

1 others. *Id.* § 35.130(b)(1)(ii). The public entity must provide all services, programs, and activities in the
2 most integrated setting appropriate to the needs of the individual with disabilities. *Id.* § 35.130(d). In
3 addition, public entities must make reasonable modifications to their policies, practices, or procedures
4 when necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate
5 that doing so would fundamentally alter the nature of the service, program, or activity, or would result in
6 undue financial or administrative burdens. *Id.* § 35.130(b)(7), *see* § 35.164.

7
8 In their Amended Complaint, Plaintiffs allege that Defendants have not fulfilled their obligations
9 under the ADA because they have not considered and implemented reasonable modifications that would
10 prevent qualified youth with disabilities from being placed in restrictive security programs because of
11 their disability-related behaviors and from being denied disability-related education and rehabilitation
12 services while in restrictive security programs. Pls.’ Am. Compl. ¶¶ 269, 272. As a result, Plaintiffs
13 allege that Defendants deny youth with disabilities meaningful access to special education and related
14 services. Plaintiffs also allege that the denial of special education and related services while in restrictive
15 security programs leaves youth with disabilities further behind in their education and rehabilitation than
16 their non-disabled peers because, by reason of their disability, disabled youth require additional assistance
17 to access the general education curriculum and rehabilitative programs. *Id.* at ¶ 271.

18
19 The County alleges in a blanket assertion that Plaintiffs are a direct threat to safety and that this
20 relieves them from providing education and rehabilitation services. The Office of Education defers to the
21 County in this determination. Under the IDEA, public entities are not relieved from providing special
22 education and related services to eligible youth with disabilities based on disciplinary reasons, and “direct
23 threat” or dangerousness is not a defense to the IDEA obligation to provide educational services to all
24 eligible youth. *See Honig*, 484 U.S. at 323; 20 U.S.C. § 1415(k). The fact that youth have been charged
25 with or convicted of a crime does not diminish their substantive rights, procedural safeguards, and
26 remedies provided under the IDEA to youth with disabilities and their parents. *See* 34 C.F.R.
27 300.2(b)(1)(iv); *Donnell C. v. Illinois State Bd. of Educ.*, 829 F.Supp. 1016, 1020 (N.D. Ill. 1993). Even
28

1 when there are special circumstances based on the seriousness of a youth’s behavior, the youth is entitled
2 to continue receiving education services and appropriate interventions and modifications to address the
3 youth’s behavior. 20 U.S.C. § 1415(b)(1)(D), § 1415(b)(1)(G).

4 **V. Conclusion**

5 Public entities have a responsibility to serve youth with disabilities: Title II of the ADA requires
6 them to ensure that their services, programs, and activities do not discriminate against qualified youth
7 with disabilities. The IDEA and its regulations require public agencies designated to provide special
8 education and related services to deliver free appropriate public education to youth with disabilities. The
9 IDEA also provides that youth with covered disabilities have a right to a manifestation determination
10 prior to extended removal from the classroom and to receive educational services during long placements
11 outside of the classroom, such as in restrictive security programs.

13 Plaintiffs have adequately alleged violations of the ADA and IDEA. Contrary to their assertions,
14 no Defendant can avoid its responsibilities by pointing to the other. They both have independent and
15 shared responsibilities. The students in their charge cannot be responsible for the agencies’ failures to
16 meet those legal obligations.

18 Accordingly, the United States respectfully requests consideration of this Statement of Interest
19 and, for the reasons stated herein, requests this Court to deny Defendants’ Motions to Dismiss on the bases
20 addressed herein.⁷

21 Respectfully submitted,

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27 _____
28 ⁷ The United States takes no position on any other issues not specifically addressed in this Statement of Interest.

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