1 JOCELYN SAMUELS, Acting Assistant Attorney General
ROY L. AUSTIN, JR., Deputy Assistant Attorney General
2 EVE L. HILL, Deputy Assistant Attorney General

3 ANURIMA BHARGAVA, Chief
RENEE WOHLENHAUS, Deputy Chief
4 United States Department of Justice
Civil Rights Division
5 Educational Opportunities Section

6 REBECCA B. BOND, Chief
KATHLEEN P. WOLFE, Special Litigation Counsel
7 United States Department of Justice
Civil Rights Division
8 Disability Rights Section

9 JONATHAN M. SMITH, Chief
LUIS E. SAUCEDO, Acting Deputy Chief
10 RYAN C. WILSON, Trial Attorney (DC 1013907)
United States Department of Justice
11 Civil Rights Division
Special Litigation Section
12 950 Pennsylvania Avenue, N.W.
Washington, DC 20530
13 Telephone: (202) 305-9937
Facsimile: (202) 514-0212
14 Email: ryan.wilson@usdoj.gov

15 PHILIP H. ROSENFELT, Deputy General Counsel
Delegated to Perform the Functions of the General Counsel
16 United States Department of Education
Office of General Counsel
17 400 Maryland Avenue, S.W.
Washington, DC 20202
18 Telephone: (202) 401-6000
Email: phil.rosenfelt@ed.gov
19
Attorneys for the United States of America
20

21 **IN THE UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
22

23 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, 24 25 Plaintiffs, 26 v. 27 CONTRA COSTA COUNTY, *et al.*, 28 Defendants.	Case No. 3:13-cv-03667-MEJ **STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION 1

II. INTEREST OF THE UNITED STATES 2

III. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND 3

A. CONTRA COSTA COUNTY JUVENILE HALL. 3

B. PLAINTIFFS 5

C. AMENDED COMPLAINT AND MOTIONS TO DISMISS. 6

IV. DISCUSSION. 7

A. DEFENDANTS CANNOT EVADE THEIR RESPONSIBILITIES UNDER THE ADA AND THE IDEA 7

B. THE IDEA REQUIRES DEFENDANTS TO PROVIDE ELIGIBLE STUDENTS WITH SPECIAL EDUCATION AND RELATED SERVICES. 10

C. THE ADA REQUIRES DEFENDANTS TO TAKE PROACTIVE STEPS TO AVOID DISCRIMINATION AGAINST STUDENTS WITH DISABILITIES AT THE JUVENILE HALL 11

V. CONCLUSION. 13

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

TABLE OF AUTHORITIES

CASES

Chevron U.S.A, Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) 2

Armstrong v. Schwarzenegger, 622 F.3d 1058, 1065 (9th Cir. 2010) 2

Magyar v. Tucson Unified Sch. Dist., 958 F.Supp. 1423 (D. Ariz. 1997) 3

Honig v. Doe, 484 U.S. 305 (1988) 3,4,10,12

M.R. v. Dreyfus, 663 F.3d 1100 (9th Cir. 2011) 3

A.E. v. County of Tulare, 666 F.3d 631 (9th Cir. 2012) 3

Pa. Dep't of Corr. v. Yeskey, 524 U.S. 206 (1998) 11

Lee v. City of Los Angeles, 250 F.3d 668 (9th Cir. 2001). 11

Donnell C. v. Illinois State Bd. of Educ., 829 F. Supp. 1016 (N.D. Ill. 1993). 12

STATUTES AND REGULATIONS

20 U.S.C. §§ 1400-1482. 2

42 U.S.C. §§ 12131-12134. 2

28 U.S.C. § 517. 2

29 U.S.C. §§ 794 *et seq*. 2

42 U.S.C. § 1997. 3

20 U.S.C. § 1414(d)(1)(A) 4

20 U.S.C. § 1414(d)(1)(A)(i)(IV)(bb) 4

34 C.F.R. § 300.320(a)(4)(ii) 4

20 U.S.C. § 1401(26) 4

34 C.F.R. § 300.34(a) 4

42 U.S.C. § 12131(1) 7

20 U.S.C. § 1412(a) 8

Cal Educ. Code § 48645.2. 8

Cal Educ. Code § 56150. 8

20 U.S.C. § 1412 8

20 U.S.C. § 1413. 8

34 C.F.R. § 300.200. 8

34 C.F.R. § 300.201. 8

Cal. Code Regs. Tit. 15, § 1730. 8

34 C.F.R. § 300.2(b)(1)(iv) 8,13

20 U.S.C. 1412 (a)(12) 8,10

34 C.F.R. 300.154 . . . . 8, 10

15 Cal Code Reg. § 1370(a) 9

15 Cal Code Reg. § 1370(d) 9

15 Cal Code Reg. § 1390(j) 9

28 C.F.R. § 35.130(b)(1) 9

28 C.F.R. § 35.130(b)(1)(v) 9

20 U.S.C. § 1400(d)(1)(A) 10

20 U.S.C. § 1401(3)(a) 10

34 C.F.R. § 300.101 10

34 C.F.R. § 300.102. 10

34 C.F.R. § 300.324 (d)(1)(i) 10

20 U.S.C. § 1415(k). 10,12

20 U.S.C § 1415(k)(1)(E) 10

20 U.S.C. § 1415 (k)(1)(D)(i) 11

42 U.S.C. § 12101(b)(1) 11

42 U.S.C. § 12101(a)(2) 11

42 U.S.C. § 12101(a)(3) 11

42 U.S.C. § 12132. 11

28 C.F.R. § 35.130(a) 11

28 C.F.R. § 35.130(b)(1)(i) 11

28 C.F.R. § 35.130(b)(1)(ii) 12

28 C.F.R. § 35.130(d) 12

28 C.F.R. § 35.130(b)(7) 12

28 C.F.R. § 35.164 12

20 U.S.C. § 1415 (b)(1)(D) 13

20 U.S.C. § 1415 (b)(1)(G) 13

OTHER AUTHORITIES

Robert L. Listenbee, Jr., *Report of the Attorney General's National Task Force on Children Exposed to Violence* Dec. 12, 2012. 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 confinement[1] 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 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

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

II. Interest of the United States

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

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

---

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

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

According to estimates provided by the Office of Education, from January to April 2013, approximately 32.7% of the youth at Mt. McKinley had a disability that required an individualized education program ("IEP") under the IDEA[5] or a similar plan under Section 504. Pls.' Am Compl. ¶ 140. These are also students with disabilities under the ADA.

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

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

[5] An IEP is the "primary vehicle" through which each child with a covered disability is provided a free and appropriate education under IDEA. *Honig v. Doe,* 484 U.S. at 311; 20 U.S.C. § 1414(d)(1)(A). The IEP ensures that each child with a disability receives the special education, related services, and 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).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

¶¶ 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
8 **C. Amended Complaint and Motions to Dismiss**
9 Plaintiffs filed their original complaint and motion for class certification on August 8, 2013. They
10 amended their complaint on December 24, 2013, and filed an amended motion for class certification on
11 January 9, 2014. Plaintiffs' amended complaint challenges alleged systemic violations of the IDEA and
12 the ADA throughout the Juvenile Hall program, including the restrictive security programs. However,
13 because the Defendants' Motions to Dismiss focus on the claims regarding the restrictive security
14 programs, this Statement of Interest also focuses on those aspects of the amended complaint. Plaintiffs
15 claim, *inter alia,* that Defendants violate the ADA, IDEA, Section 504, and various State laws. *Id.* at ¶¶
16 259-82. In their ADA claim, Plaintiffs allege that Defendants place youth with disabilities in restrictive
17 security programs because of their disabilities, thus denying them access to education and rehabilitation
18 services in the Juvenile Hall. *Id.* at ¶¶ 110-121, 278. They allege that Defendants fail to make reasonable
19 modifications to their policies, practices, and procedures, even though they are necessary to avoid
20 discrimination. *Id.* at ¶ 272. These modifications include identifying youth with disabilities who require
21 reasonable accommodations; inquiring into whether behaviors of youth with disabilities that lead to
22 disciplinary measures are disability-related; modifying school disciplinary policies and practices to ensure
23 that school officials have responsibility for discipline during school hours; and modifying restrictive
24 security program policies and practices to ensure that youth with disabilities are not disproportionately
25 burdened by such policies and practices by reason of their disabilities. *Id.*
26
27
28 Plaintiffs also allege that the Defendants violate the IDEA by failing to conduct manifestation

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

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

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

IV. Discussion

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

[6] This is consistent with the IDEA statutory scheme that allows states to assign responsibility for delivery of special education services to other non-educational public agencies to provide or pay for special education. 20 U.S.C. § 1412(a)(12); 34 C.F.R. § 300.154. The IDEA expressly requires States to have mechanisms in place to address situations where a non-educational public agency in the State shares responsibility under Federal or State law for providing or paying for special education and related services 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

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

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

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

V. Conclusion

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

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

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

Respectfully submitted,

PHILIP H. ROSENFELT
Deputy General Counsel Delegated to
Perform the Functions of the General Counsel
U.S. Department of Education

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

ROY L. AUSTIN, JR.
Deputy Assistant Attorney General

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EVE L. HILL
Deputy Assistant Attorney General

JONATHAN M. SMITH
Chief
LUIS E. SAUCEDO
Acting Deputy Chief
Special Litigation Section

ANURIMA BHARGAVA
Chief
RENEE WOHLENHAUS
Deputy Chief
Educational Opportunities Section

REBECCA B. BOND
Chief
KATHLEEN P. WOLFE
Special Litigation Counsel
Disability Rights Section

s/ *Ryan C. Wilson*
RYAN C. WILSON (DC 1013907)
Trial Attorney
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 305-9937
Facsimile: (202) 514-4883
E-mail: ryan.wilson@usdoj.gov

Attorneys for the United States of America

DATED: February 13, 2014
Washington, D.C.