**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| CHARLES H., et al.,<br><br>*Plaintiffs*,<br><br>v.<br><br>DISTRICT OF COLUMBIA, et. al.,<br><br>*Defendants*. | Civil Action No. 1:21-cv-00997 (CJN) |

**MEMORANDUM OPINION**

This case is about whether the District of Columbia is providing disabled and incarcerated students the individualized instruction and related services required by the Individuals with Disabilities Education Act ("IDEA"). Plaintiffs allege that the District has failed to do so since the beginning of the COVID-19 pandemic and have moved for a preliminary injunction ordering the District to immediately comply with those students' Individualized Education Plans ("IEPs"). Mot. Prelim. Inj., ECF No. 12; *see also* Prelim. Inj. Mem. 1–2, ECF No. 12-1 ("Prelim. Inj. Mem."). Defendants principally contend that, given the constraints imposed by the COVID-19 pandemic, they have done and continue to do the best they can, and that an injunction is thus unwarranted. Mem. Opp'n Mot. Prelim. Inj. 1–2, 14–22, ECF No. 23 ("Opp'n"). For the reasons below, the Court grants Plaintiffs' Motion.

I.

A.

IDEA mandates that every disabled student receive a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). That mandate extends to incarcerated students as well. *See id.* § 1412(a)(10)(A)(ii); 34 C.F.R. §§ 300.125, 300.45; 5 D.C.M.R. § 3002.2.

Commonly referred to by its acronym "FAPE," a free appropriate public education is defined as "special education and related services that" are "provided at public expense, under public supervision . . . ;" and that "meet the standards of the State educational agency;" as well as "conform[ ] with [each disabled student's] individualized education program." 20 U.S.C. § 1401(9). "Special education" is instruction that is "specifically designed . . . to meet the unique needs of a child with a disability," *id.* § 1401(29), and "related services" are "services designed to enable" a disabled child "to receive a free appropriate public education," like "counseling services," *id.* § 1401(26)(A). [1]

Under IDEA and its implementing regulations, students with disabilities—including incarcerated students—are entitled to receive FAPE through an Individualized Education Program (or IEP). 20 U.S.C. § 1401(9)(D).[2] Indeed, a "child's IEP" is "[t]he primary tool for ensuring that the student is provided FAPE." *Lofton v. D.C.*, 7 F. Supp. 3d 117, 123 (D.D.C. 2013) (citing *Honig v. Doe*, 484 U.S. 305, 311 (1988)). "[A]ll political subdivisions of a State involved in the education of children with disabilities" must cooperate to ensure that disabled students receive FAPE according to the terms of their IEPs. 34 C.F.R. § 300.2(b)(1).

Political subdivisions fail to provide FAPE whenever they "deviate[ ] materially from a student's IEP." *Holman v. District of Columbia*, 153 F. Supp. 3d 386, 390 (D.D.C. 2016). While

[1] IDEA expressly aims to guarantee "that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A).

[2] IEPs are developed by an "IEP Team" of parents, teachers, school administrators, and other educational experts. *See* 20 U.S.C. § 1414(d)(1)(B). A student's IEP must include a written action plan that describes measurable annual goals and the specific special education and related services that the student needs to "progress in the general education curriculum." 20 U.S.C. § 1414(d)(1)(A)(i).

the Court of Appeals has not articulated a definitive test for deciding what constitutes a material deviation, it has held that a student's IEP must "provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Reid ex rel. Reid v. D.C.*, 401 F.3d 516, 519 (D.C. Cir. 2005) (alteration in original) (internal quotation omitted). The Supreme Court puts it this way: FAPE demands that a disabled student's IEP produce more "than *de minimis* progress from year to year" because little-to-no progress "can hardly be said to" constitute "an education at all." *Endrew F. ex rel Joseph F.*, 137 S. Ct. 988, 1001 (2017).

Therefore, regardless of the precise test, if state agencies deviate from student IEPs, and those deviations rob students of a reasonable chance "to achieve passing marks and advance from grade to grade," those agencies fail to provide FAPE in violation of IDEA.[3] *Reid ex rel. Reid*, 401 F.3d at 519; *see also* 20 U.S.C. § 1414(d)(1)(A)(i)(IV)(bb); *Endrew F. ex rel Joseph F.*, 137 S. Ct. at 1001.

In the District, three political subdivisions are responsible for educating students housed at the D.C. Jail: the Office of the State Superintendent of Education ("Superintendent"), District of Columbia Public Schools ("DCPS"), and the Department of Corrections (collectively,

[3] The Parties agree that that, in general, "[a] material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Compare* Opp'n at 15 (citing *Holman*, 153 F. Supp. 3d at 390), *with* Prelim. Inj. Mem. at 18 n.4 (citing *Savoy v. D.C.*, 844 F. Supp. 2d 23, 31 (D.D.C. 2012)). But the Court of Appeals has not yet embraced a formal substantial-deviation test. The Court will thus focus its inquiry on whether Defendants' alleged IEP deviations deprived students with disabilities of any reasonable chance to "progress in the general education curriculum." 20 U.S.C. § 1414(d)(1)(A)(i)(IV)(bb). After all, that is what FAPE guarantees in the first place. *See Endrew F. ex rel Joseph F.*, 137 S. Ct. at 1001.

Defendants).[4] *See* Mem. of Agreement, March 5, 2019, Pls.' Ex. 2, ECF No. 12-4 ("Mem. of Agreement").

B.

The named Plaintiffs in this suit are part of a group of about 40 incarcerated students, all of whom have IEPs that address their specific disabilities. Am. Compl. ¶¶ 2–3, ECF No. 31-3 ("Am. Compl."). Charles H., for example, suffers from a learning disability and attention deficit disorder, which hinder his progress in English and math. Charles H. IEP at 1–7, Pls.' Ex. 21, ECF No. 12-23 ("Charles IEP"). His IEP entitles him to 20 hours of specialized instruction each week, as well as 3 hours of behavioral support services and 30 minutes of speech-language pathology consultations each month. *Id.* at 14. Israel F. has been diagnosed with an emotional disturbance and several learning disabilities that impair his ability to read and write. Am. Compl. ¶ 152. Israel's IEP mandates that he receive 26.5 hours of specialized instruction per week and 2 hours of behavioral support services a month. *Id.* ¶ 177; *see also* IEP of Israel F. at 9, ECF No. 28-1 ("Israel IEP"). The third and final named Plaintiff, Malik Z., qualifies as a disabled student because he has been diagnosed with attention deficit hyperactivity disorder, Am. Compl. ¶ 186, and his IEP requires that he receive 10 hours of specialized instruction per week and 2 hours of behavioral support services each month, *id.* ¶ 187.

[4] The Superintendent must guarantee that all eligible District residents with disabilities have access to programs that meet the District's educational standards. 20 U.S.C. § 1412(a)(11). DCPS is the Local Education Agency that directly educates students at the D.C. Jail. D.C. Code § 38-171. And the Department of Corrections is the executive entity that runs the D.C. Jail. Am. Compl. ¶ 17. These State subdivisions are party to a Memorandum of Agreement, which is designed to ensure (among other things) that special education services are delivered to students housed at the D.C. Jail. *See* Mem. of Agreement.

These three named Plaintiffs, like all other students in this group, are 18- to 22-year-old inmates housed at one of two adjacent D.C. Department of Corrections facilities, the Correctional Treatment Facility and the Central Detention Facility. *Id.* ¶ 2–3. All of these students are educated at a shared on-site school called the Inspiring Youth Program ("IYP"), where they earn credits toward their high school diplomas. Decl. Dr. Jerry Jellig ¶ 5, Defs.' Ex A, ECF No. 23-1.

Ordinarily, IYP students would interact with teachers directly. For example, students in the general housing population would leave their cells to gather for group classes every weekday from 9:00 a.m. to 11:00 a.m. and from 12:00 p.m. to 2:30 p.m. Decl. of Tarisai Lumumba-Umoja ¶ 9, Defs.' Ex. D, ECF No. 23-4 ("Umoja Decl."). Students in "restrictive housing units" would receive one-on-one instruction from teachers either in or near their cells. *Id.* ¶ 10.

But last March, in response to the COVID-19 pandemic, the District halted in-person instruction for all students. And on March 13, 2020, DCPS paused all classes at IYP. *Id.* ¶ 6; Am. Compl. ¶ 3.

That pause was supposed to be temporary. Indeed, by March 24, 2020, the agencies responsible for educating District residents had issued plans to provide distance-learning solutions for the 2020–21 school year. *See* Ferebee D.C. Couns. Test. at 2, Pls.' Ex. 7, ECF No. 12-9; Email from Chancellor to DCPS Cmty., Pls.' Ex. 9, ECF No. 12-11. For most students, distance learning ultimately meant access to online tools that facilitated two-way videoconference classes and feedback from home. *Id.* And by February 2021, at least certain incarcerated students (those under 18) had access to virtual classes as well as some in-person instruction. Russo Decl. ¶ 17.

Unfortunately, IYP students had no such luck. From March 2020 until very recently, the District offered almost no direct instruction, whether virtual or in-person, to disabled IYP students. In fact, in early April 2020, the D.C. Jail chose to confine IYP students to their cells for

approximately 23 hours per day. *See* Lopez Test., Tr. 9:9–9:18, Pls.' Ex. 10, ECF No. 12-12, ("Lopez Test.").[5] Over the next year (until at least April 21, 2021), IYP students received only hands-off instructional work packets, which were either printed and dropped off at their cells or delivered through tablets.[6] Decl. Israel F., Pls.' Ex. 12 ¶ 15, ECF No. 12-14 ("Israel Decl."); Decl. Charles H., Pls.' Ex. 15 ¶¶ 9–10, ECF No. 12-17 ("Charles Decl.").

These work packets were delivered sporadically and infrequently. Charles Decl. 2 ¶ 10. Over a 33-week period, for example, Plaintiff Charles H. received work packets on only five occasions. Hr'g Officer Determination 10 ¶ 12–14, Pls.' Ex. 25, ECF No. 12-27 ("Hr'g Officer Determination").[7] And even when new work packets were delivered, without any hands-on direction from a teacher, few (if any) IYP students were able to regularly complete assignments. Charles Decl. ¶ 11; Israel F. Decl. ¶ 17. The D.C. Jail's packet-completion log for May 2021 shows that of the more than 30 students who received paper work packets, only 2 turned anything in. *See* DOC Work Distribution Log, Pls.' Ex. 23, ECF No. 12-25 ("Work Log").

Those students who did complete work packets did not receive meaningful feedback. On August 24, 2020, the D.C. Jail's Education Administrator, Tabitha Burnett, informed IYP students that they could receive feedback and answers to specific questions by placing "a star next to" difficult problems in their paper work packets. *See* DOC Letter to Students, August 24, 2020, Pls.'

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[5] Amy Lopez, the Deputy Director of College and Career Readiness at the Department of Corrections, noted that the 30-hour confinement order was issued after an unnamed District health official recommended the policy for the purpose of complying with a temporary injunction issued by another court in this district. *See* Lopez Test., Tr. 9:11–9:18; 11:12–1121 (discussing *Banks v.* Booth, 20-cv-849).

[6] Each work packet included educational assignments and worksheets but was delivered without any accompanying teacher-led instruction. Am. Compl. ¶¶ 63–70, 73–84; P.I. Mem. at 17, 19.

[7] That thirty-week period ran from March 13 through October 23, 2020. Hearing Officer Determination 10 ¶ 12-14.

Ex. 22, ECF No. 12-24. But the D.C. Jail's Deputy Director of College and Career Readiness later conceded (in an administrative hearing discussed below) that "when students did ask for help, they didn't receive responses." Lopez Test., Tr. 36:15–36:26; *see also* Charles Decl. ¶ 11.

Students who eventually received their work packets on electronic tablets, rather than paper, fared no better. On August 31, 2020, IYP students were told that "[a]ll Students [would] have access to a [Department of Corrections]-provided tablet" and could "use these tablets to participate in virtual instruction with their teachers via the Microsoft Teams platform." 2020–21 IYP Student Handbook 5, Pls.' Ex. 18, ECF No. 12-20. But IYP's Principal later acknowledged (in the same administrative hearing) that she knew by early August 2020 that IYP students would not be able to access Microsoft Teams. Nevertheless, she did not revise the previous representations. *See* Roane Test., Tr. 85:3–85:9; 96:1–96:17, Pls.' Ex. 10, ECF No. 12-12, ("Roane Test.").

Instead, tablets were pre-loaded with the same content as the paper work packets. Russo Decl. ¶ 13. Plaintiffs have proffered evidence that spotty connections, slow load times, and poor functionality rendered the tablets even less usable than paper-based work packets. Charles Decl. ¶ 20 (giving up in frustration because a tablet took some 30 minutes to load material); Israel Decl. ¶ 21 (giving up because he had to hold a tablet outside his cell door through the food slot just to connect to the intranet). And while the tablets included a message-your-teacher feature, Plaintiffs also have submitted evidence that teachers often did not respond or remained otherwise unreachable. Charles Decl. ¶ 21; Israel Decl. ¶ 22 (noting that he cannot message his teachers because he does not know their names and so cannot list them as message recipients on the tablet).

Plaintiffs and other IYP students have also not received mandatory related services.[8] IYP Principal Dr. Roane has acknowledged that up until December 1, 2020, IYP students received no hands-on therapy or counseling services because they were not permitted to leave their cells for private sessions. Roane Test., Tr. 102:18–103:13. Take Charles H., for example. From March 2020 to the beginning of March 2021, Charles H. received counseling only two times for a combined total of two hours, Charles Decl. ¶ 23; *see also* DCPS Service Tracker for Charles H., Pls.' Ex. 16, ECF No. 12-18, even though his IEP mandates that he receive 3 hours and 30 minutes of support services each month, *see* Charles IEP at 14.

C.

In response to those deficiencies, Charles H. filed an administrative due process complaint with the Office of the State Superintendent of Education on October 16, 2020, alleging that he was unlawfully denied access to a free appropriate public education. *See* Charles H. Admin. Due Process Compl. ¶¶ 48–62, Pls.' Ex. 2, ECF No. 11-4.

During an evidentiary hearing, IYP Principal Roan agreed under oath that from March 2020 to December 2020, there were no opportunities for IYP students to "actually receive" the "related services" outlined "in their IEP[s]," Roane Test., Tr. 102:18–103:13. She also testified that it was "virtually impossible" for IYP students to receive direct special education services from the handful of volunteer teachers that entered the D.C. Jail to drop off work packets. *Id.*, Tr. 100:16–104:1. At closing arguments, on December 15, 2020, DCPS made a similar representation: "Under the current circumstances in the facility[,] the staff members are not able to provide the

[8] Again, related services are "developmental, corrective, and other supportive services" that are "required to assist a child with a disability to benefit from special education." 20 U.S.C. § 1401(26)(A). They include services like "speech-language pathology," "psychological services," "physical and occupational therapy," "counseling services," and "medical services," *id.*, and are listed in each disabled student's IEP. *See* Charles IEP 1–7.

supports and services outlined in [IYP] student IEPs." DCPS Closing Statement 5, Pls.' Ex. 28, ECF No. 12-30.

On January 11, 2021, the hearing officer found for Charles H. based on several observations: first, "DCPS conceded that [Charles H.]'s October 10, 2019 IEP prescribed 10 hours per week of specialized instruction and 180 minutes per month of behavior support services outside general education, and 30 minutes per month of speech and language pathology consultation services,"[9] Hr'g Officer Determination at 2; second, "work packets . . . with no scheduled interaction with any teacher, do not constitute specialized instruction or virtual instruction," *id.* at 20; and third, "[t]he record is clear that Petitioner [Charles H.] has not received specialized instruction or related services since the inception of COVID-19 restrictions," *id.* The hearing officer thus "concluded that [Charles H.] ha[d] met his/her burden of proving that DCPS failed to implement his/her IEP since March 16, 2020." *Id.*[10]

On April 9, 2021, named-Plaintiffs Charles H. and Israel F. filed this suit against the District, DCPS, and the Office of the State Superintendent of Education, alleging violations of the Individuals with Disabilities Education Act ("IDEA") (Counts 1 & 2), the Americans with Disabilities Act ("ADA") (Count 3), the Rehabilitation Act (Count 4), the D.C. Human Rights Act (Count 5), as well as the state[11] regulations that implement IDEA (Count 6). Am. Compl ¶¶ 216–

[9] Charles H.'s current IEP entitles him to 20 hours per week of specialized instruction, 3 hours per month of behavioral support services, and 30 minutes per month of speech-language pathology consultations. Charles IEP at 14.

[10] The other two named Plaintiffs, Israel F. and Malik Z., filed similar administrative complaints on February 4, 2021, and May 20, 2021 respectively. *See* Am. Compl. ¶¶ 181, 207. While Israel F.'s complaint was settled on May 14, 2021, *id.* ¶¶ 182–83, Malik Z.'s remains pending, *id.* ¶ 207.

[11] The District of Columbia is a "state" for the purposes of determining the District's obligations under IDEA. 20 U.S.C. § 1401(31).

52. All six counts allege that the agencies responsible for educating D.C. residents are failing to provide IYP students with free appropriate public education. *See id*. On April 12, 2021, Plaintiffs moved for a preliminary injunction directing the District to provide, among other things, special education and related services by means of in-person or direct virtual instruction. *See generally* Mot. Prelim. Inj.

Around May 5, 2021, DCPS resumed some in-person instruction, and, on May 14, 2021, it issued a master schedule setting forth plans to offer in-person instruction to all IYP students. *See* Decl. of Melvina Jones ¶ 6, Defs.' Ex. I, ECF No. 23-9 ("Jones Decl."). On May 12, 2021, Tamara Dukes, DCPS's Manager of School Mental Health, executed a declaration confirming that although Charles H.'s "IEP calls for 3 hours [of related services] monthly," he "received an average of 2.5 hours" from January 2021 through March 2021, and no services in April 2021. Decl. of Tamara Dukes ¶ 13, Defs.' Ex. C, ECF No. 23-3 ("Dukes Decl."). Ms. Dukes also confirmed that "since January 2021, Israel F. has received about 5 hours of behavioral support services," *id.* ¶ 14, even though his IEP entitles him to 2 hours of behavioral support services per month, Israel IEP at 9, or a total of eight hours between January 2021 and April 2021.

On May 26, 2021, The United States of America filed a Statement of Interest, expressing its view that "state or local entities responsible for providing special education and related services to youth in correction facilities must continue to do so to the greatest extent possible during the COVID-19 pandemic, and the failure to provide those services where possible violates the IDEA." Statement of Interest 1–2, ECF No. 24.

On May 27, 2021, Plaintiffs filed a redacted supplemental declaration from another IYP student to demonstrate that Defendants did not resume in-person instruction for IYP students on May 14, 2021. *See generally* IYP Student Decl. (Redacted), Pls.' Ex. 45, ECF No. 25-3

("Redacted Decl."). The student's "IEP mandates . . . 10 hours per week of Specialized Instruction and 120 minutes per month of Behavioral Support Services." *Id.* ¶ 4. But "[s]ince February 23, 2021," the date that student enrolled in IYP, the student represents that he/she has "not yet been to a class or otherwise received the education and services mandated by my IEP." *Id.* ¶ 6. The student further declares that he/she has not received any behavioral support services, other than a "20 minute[]" conversation with a counselor that he/she met for the first time in May 2021. *Id.* ¶ 15.

The day before argument on Plaintiffs' motion, they filed an Amended Complaint, adding Malik Z., the third named Plaintiff. *See generally* Am. Compl. ¶¶ 184–207. Malik represents that since the beginning of the pandemic, he has received no instruction beyond a tablet, which he does not use because "[i]t has poor connectivity and will often stop working." *Id.* ¶ 195.[12] Malik further represents that he has received no behavioral support services other than "a single 20-minute in-person session with a counselor since he enrolled with IYP in February 2021." *Id.* ¶ 199.

Later that afternoon, Defendants filed three supplemental declarations. The first, offered by Assistant IYP Principal Jones, reports that as of "May 24, 2021," approximately "7 teachers are providing in-person instruction, and each teaches approximately 3–4 students at a time," resulting in an average of "4 hours of classroom instruction" per IYP student for the week of May 24, 2021. Suppl. Decl. of Dr. Melvina Jones ¶¶ 4–5, Ex. A, ECF No. 32-3 ("Suppl. Jones"). But Jones also says that over a 3-week period in May,[13] "Charles H. received a total of 6.5 hours of classroom

[12] Malik acknowledges that on three dates since the filing of this lawsuit—May 18, 20, and 25, 2021—he was told that he was scheduled to attend in-person classes during his recreation time. Am. Compl. ¶ 204. Malik chose not to "attend school," however, "because he only receives two hours" of recreation time a day and needs to use them "to make phone calls, shower, and take are of other personal needs." *Id.* ¶ 204–05.

instruction," *id.* ¶ 8, even though his IEP entitles him to 20 hours of specialized instruction each week, *see* Charles IEP at 14.

The second declaration, offered by DCPS's Manager of School Mental Health Tamara Dukes, estimates that as of June 1, 2021, "IYP students are receiving approximately 75% of their required related services each month." Suppl. Decl. of Tamara Dukes ¶ 7, Ex. B, ECF No. 32-4 ("Suppl. Dukes"). Defendants' third and final supplemental declaration—from Amy Lopez, the D.C. Jail's Deputy Director of College and Career Readiness—notes that the Jail is presently trying to install a secure Wi-Fi network so IYP students can participate in virtual classes. Suppl. Decl. of Amy Lopez ¶¶ 4–6, Ex. C., ECF No. 32-5 ("Suppl. Lopez"). However, Lopez acknowledges that the "Wi-Fi network" will not "be fully installed" until "the end of August 2021." *Id.* ¶ 6.

The Court held oral argument on Plaintiffs' Motion for a Preliminary Injunction on June 2, 2021. *See* Minute Order *dated* June 2, 2021.

II.

A preliminary injunction is, of course, "an extraordinary remedy that should be granted only when the party seeking the relief, by a clear showing, carries the burden of persuasion." *Cobell v. Norton*, 391 F.3d 251, 258 (D.C. Cir. 2004) (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). A plaintiff seeking such relief must demonstrate that (1) it has a likelihood of succeeding on the merits, (2) it faces irreparable harm if an injunction does not issue, (3) the balance of equities favors relief, and (4) an injunction is in the public interest. *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When "the Government is the opposing party," the

[13] May 10 to May 28 is a period encompassing 3 full school weeks. Suppl. Jones ¶ 8. Jones also notes that Israel F. received "a total of 4 hours of classroom instruction" from May 10 to May 14. *Id.* However, Israel F. was released from the custody of the Department of Corrections on May 14, 2021, and shortly thereafter, settled his legal claims against Defendants. *Id.*

assessment of "harm to the opposing party" and "the public interest" merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Plaintiffs must make "a clear showing" that they are "entitled to such relief." *Winter*, 555 U.S. at 22. And while the Court of Appeals has not yet directly held that a plaintiff must make a clear showing on each of the four *Winter* factors, considered dicta in this jurisdiction favors that approach. *See In re Navy Chaplaincy*, 738 F.3d 425, 428 (D.C. Cir. 2013) (demanding proof on all four prongs); *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1296 (Kavanaugh, J., concurring) (observing that, after *Winter*, "the old sliding-scale approach to preliminary injunctions—under which a very strong likelihood of success could make up for a failure to show a likelihood of irreparable harm, . . . is no longer . . . viable" (internal quotation and citation omitted)).

III.

A.

The Court begins with the "most important factor"—Plaintiffs' likelihood of success on the merits. *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014). For the reasons discussed below, Plaintiffs have demonstrated that they are likely to succeed on their IDEA claims. Plaintiffs have shown that Defendants deviated from their IEPs, depriving them of any reasonable opportunity to "advance from grade to grade," and so failed to provide FAPE in violation of IDEA. *Reid ex rel. Reid*, 401 F.3d at 519.

Plaintiffs allege two primary material deviations: first, that Defendants deviated from every IYP student's weekly specialized education requirement by using work packets instead of virtual or in-person instruction led by a teacher, and second, that Defendants failed to provide (and so deviated from) the support services mandated in each student's IEP. P.I. Mem. at 17–26.

Beginning with the work packets, Plaintiffs have proffered essentially uncontested evidence from four IYP students (including all three named Plaintiffs) showing that each is entitled to receive at least 10 hours of specialized instruction per week. *See* Charles IEP at 14 (20 hours); Israel IEP at 9 (26.5 hours); Redacted Decl. ¶ 4 (10 hours); Am. Compl. ¶ 187 (Malik Z.'s IEP requires 10 hours). But IYP Principal Roane conceded during Charles H.'s administrative hearing that, from March 13, 2020, through December 1, 2020, IYP students received no teacher-led instruction, only hands-off instructional work packets. *See* Roane Test., Tr. 102:18–103:13. And those work packets remained the norm until at least April 21, 2021, shortly after Plaintiffs filed this lawsuit. *See* Charles Decl. ¶¶ 9–10; Israel Decl. ¶ 15; Redacted Decl. ¶¶ 1–17; Am. Compl. ¶¶ 190–203 (concerning Malik Z.).

Defendants' primary argument is that because teachers were directed to personalize work-packet materials for each student, those materials afforded Plaintiffs some measure of specialized education. *See* Opp'n at 18–19. But for several reasons Plaintiffs are likely to show that hands-off work packets cannot provide 10 (or any other number of) hours of specialized education each week:

First, without the help of a teacher, IYP students could not understand the work packets. Charles Decl. ¶ 18; Israel Decl. ¶ 16; Redacted Decl. ¶¶ 7–8; Am. Compl. ¶ 191 (Malik Z.). One anonymous student said, "[t]he instructions in the work packets do not help me understand how to do the work." Redacted Decl. ¶ 7. And because he/she "do[es] not know how to do the work," the student "ha[s] not finished any of [the] work packets." *Id.* ¶ 8. Defendants must employ teaching methods that allow students to "benefit educationally from that instruction." *Reid ex rel. Reid*, 401 F.3d at 519. As students did not and could not complete the work packets, they cannot

be said to have benefited educationally from that method of instruction. Plaintiffs have thus shown that Defendants failed to provide specialized education, and so deviated from each student's IEP.[14]

Second, Plaintiffs are likely to show that the system for delivering and reviewing work packets falls short of "specialized instruction" because students did not receive individualized answers to follow-up questions about the work. Indeed, Amy Lopez admitted that "when students did ask for help, they didn't receive responses." Lopez Test., Tr. 36:15–36:26; *see also* Charles Decl. ¶ 11. Moreover, IYP student Charles H. and former student Israel F. have stated in their declarations that although tablets include a two-way messaging feature, teachers either do not respond to student questions or remain otherwise inaccessible. *See* Charles Decl. ¶ 21; Israel Decl. ¶ 22. A method of instruction that fails to ensure students receive answers to their questions will not likely permit students to "benefit educationally from that instruction." *Reid ex rel. Reid*, 401 F.3d at 519.

Third, even if work packets could provide "specialized education," Plaintiffs are likely to show that Defendants never hit the 10-hour-a-week mark, let alone the 20-plus-hours required by more stringent IEPs. *See, e.g.*, Charles IEP at 14; Hr'g Officer Determination at 10 ¶¶ 12–14. Defendants delivered and tracked the work packets sporadically—not weekly. *See id.* Indeed, during a 30-week stretch running from March 13, 2020 to October 23, 2020, Charles H. received work packets on just five occasions. *Id.*; *see also* Charles Decl. ¶ 10.

To be sure, Defendants most recent supplemental declarations show that, as of May 24, 2021, some IYP students receive an average of "4 hours of classroom instruction" per week. Suppl. Jones ¶¶ 4–5. But 4 hours per week falls far short of the 10 hours required by Plaintiffs'

[14] Similar evidence led the hearing officer who reviewed Charles H.'s administrative due process challenge to conclude that "work packets . . . with no scheduled interaction with any teacher, do not constitute specialized instruction or virtual instruction." Hr'g Officer Determination at 20.

least stringent IEP. *See, e.g.*, Redacted Decl. ¶ 4. And Defendants' own declarant admits that Charles H., whose IEP entitles him to 20 hours of specialized instruction per week, received only 6.5 hours from May 10, 2021, to May 28, 2021, Suppl. Jones ¶ 8—an average of just more than 2 hours per week.

In sum, because Plaintiffs can show that IYP students are receiving (at most) less than half of the specialized education hours required by their IEPs, they are likely to establish that Defendants not only have deviated from the requirements of their IEPs, but that Defendants are continuing to do so. *See Turner v. D.C.*, 952 F. Supp. 2d 31, 35, 41 (D.D.C. 2013) (finding a material failure to implement an IEP when a school provided just half the hours of required specialized instruction).

Plaintiffs also allege that Defendants materially deviated from their IEPs by failing to provide required support services, like behavioral counseling and speech therapy. P.I. Mem. at 23–25. It is essentially undisputed here that—from the beginning of the pandemic to December 15, 2020—IYP "staff members [were] not able to provide the supports and services outlined in student IEPs." DCPS Closing Statement 5; *see also* Roane Test., Tr. 102:18–103:13. DCPS representatives and IYP Principal Dr. Roane conceded as much during the administrative hearing for Charles H., *see id.*, and the District does not argue otherwise now. Those admissions are confirmed by the evidence proffered by Charles H., who received counseling services only two times between March 2020 and March 2021 for a total of two hours, Charles Decl. ¶ 23, even though his IEP requires 3 hours and 30 minutes of related services each month, Charles IEP at 14.

As recently as June 1, 2021, Defendants' declarant Tamara Dukes said that "IYP students are receiving approximately 75% of their required related services each month." Suppl. Dukes ¶ 7; *see also* Am. Compl. ¶¶ 187, 199 (although Malik Z. is entitled to receive 120 minutes per

month of behavioral support services, he has only had one 20-minute session with a counselor since he "enrolled with IYP in February 2021"). At a minimum, then, Plaintiffs will likely show that Defendants have and continue to deviate from the hours specified in student IEPs.

Because Plaintiffs will likely establish that Defendants deviated from the specialized instruction and related services mandated by their IEPs, the Court must next determine whether Defendants' deviations are material. Again, if those deviations deprived disabled students of any reasonable opportunity progress and "advance from grade to grade," then Defendants' IEP implementation failures are material. *See Reid ex rel. Reid*, 401 F.3d at 519.

Plaintiffs are likely to make this showing. Charles H. declares that, without the guidance of a teacher, he does not "understand most of the material in the work packets or on the tablet" and feels "like [he] ha[sn't] learned in most of [his] classes this year." Charles Decl. ¶ 18, 26. Israel F. was unable to complete any work packet and notes that he was not even "given a calculator to help [him] do [his] Probability & Statistics work. Israel Decl. ¶¶ 16–17, 21. Israel says that he does not "feel like [he]'s learned anything." *Id.* ¶ 29. Instead, he is "scared of not getting a high school diploma or learning enough skills to get a job." *Id.* The lack of direct instruction and poor tablet functionality also hindered Malik Z. from progressing beyond the introductory materials for each of his classes. Am. Compl. ¶¶ 191, 196, 201; *see also* Redacted Decl. ¶¶ 7–8 ("I have not finished any of my work packets because I do not know how to do the work").

In short, based on the evidence presented thus far, Plaintiffs are likely to demonstrate that Defendants IEP deviations afforded IYP students little more than *de minimis* progress throughout the pandemic. *See Endrew F. ex rel Joseph F.*, 137 S. Ct. 988, 1001 (2017). As *de minimis*

progress hardly counts as "an education at all," the Court finds that Plaintiffs are likely to establish that Defendants failed to provide IYP students with FAPE in violation of IDEA.[15]

Defendants argue that, throughout the pandemic, they implemented the provisions in IYP student IEPs "to the greatest extent possible."[16] Opp'n 15–21. The Court disagrees. Defendants issued a written plan to provide IYP students with a blend of in-person and virtual instruction back in August 2020. ECF No. 12-20. But Defendants did not start that plan, or even begin the process of installing Wi-Fi to facilitate virtual instruction, until after Plaintiffs filed this suit. *See* Suppl. Lopez ¶ 17. Defendants have more recently found a way to "fully install[]" a secure Wi-Fi network to support virtual classes, but even that system is months away from being ready, at least under the current schedule. *See* Suppl. Lopez ¶ 6 (estimating that secure Wi-Fi will be ready by "the end of August 2021"). Defendants offer no credible explanation for why they put off installing Wi-Fi for over a year, especially as they were able to get virtual classes up and running for another group of incarcerated students by February 2021. *See* Russo Decl. ¶ 17.

In short, Plaintiffs are likely to demonstrate that Defendants did not implement student IEPs "to the greatest extent possible" throughout the pandemic. This first factor thus weighs in favor of granting Plaintiffs preliminary relief.

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[15] Because the Court concludes that Plaintiffs have demonstrated a likelihood of success on their IDEA claims, it need not analyze Plaintiffs' other statutory claims to decide whether they are entitled to preliminary relief.

[16] Although IDEA does not directly address the exceptional circumstances brought about by the COVID-19 pandemic, its implementing regulations state that if a local educational agency (like DCPS) continues to provide services to students in the regular curriculum, it "must ensure that, *to the greatest extent possible*, each student with a disability can be provided the special education and related services identified in the student's IEP." Dep't of Educ., Non-Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters 13 (Sept. 2018), https://www2.ed.gov/policy/gen/guid/disasters/disaster-guidance.pdf (citing 34 C.F.R. §§ 104.4, 104.33, 300.101, 300.201); *see also* Opp'n at 15–16 (discussing the same).

B.

The Court turns next to irreparable harm. "[P]roving 'irreparable' injury is a considerable burden, requiring proof that the movant's injury is '*certain, great and actual*—not theoretical—and *imminent*, creating a clear and present need for extraordinary equitable relief to prevent harm.' " *Power Mobility Coal. v. Leavitt*, 404 F. Supp. 2d 190, 204 (D.D.C. 2005) (quoting *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)). In addition, "the certain and immediate harm that a movant alleges must also be truly irreparable in the sense that it is 'beyond remediation.' " *Elec. Priv. Info. Ctr. v. U.S. Dep't of Just.*, 15 F. Supp. 3d 32, 44 (D.D.C. 2014) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). The movant must "substantiate the claim that irreparable injury is likely to occur" and "provide proof . . . indicating that the harm is certain to occur in the near future." *Wis. Gas Co.*, 758 F.2d at 674. That is because "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Courts in this District have long held that "[a] failure to provide a FAPE constitutes irreparable injury." *See Lofton v. D.C.*, 7 F. Supp. 3d 117, 124 (D.D.C. 2013) (citing *Massey v. D.C.*, 400 F. Supp. 2d 66, 75 (D.D.C. 2005)). "Where there is a denial of a free appropriate [public] education . . . there results a per se harm to the student and the irreparable injury requirement for a preliminary injunction has been satisfied." *Blackman v. D.C.*, 277 F. Supp. 2d 71, 79 (D.D.C. 2003). The Court agrees. "Any agency whose appointed mission is to provide for the education . . . [of disabled] children fails that mission when it loses sight of the fact that, to a young, growing person, time is critical." *Id.* (internal quotation and citation omitted). Indeed, "a few months can

make a world of difference in the life of that child," and he or she thus suffers irreparable injury when FAPE is denied for months on end. *Id.* That is especially true for IYP students because they have a short window to receive their educational services before they age out of the program or are transferred to another correctional facility. *See* Reply 19. As the Court has already found that Defendants failed to provide IYP students FAPE, it follows that they have also suffered a per se irreparable injury. *See Blackman*, 277 F. Supp. 2d at 79.

Defendants' primary response is that because some IYP students are now receiving limited in-person classes and related services, and because Defendants intend to offer more in-person classes and services in the future, Plaintiffs cannot demonstrate at this time that they face imminent and ongoing irreparable harm. Opp'n at 11–14. The Court disagrees.

While Defendants have certainly moved in the right direction through their efforts to restore in-person instruction, Defendants' own declarants admit that IYP students presently receive no more than an average of 4 hours of classroom time each week. Suppl. Jones ¶¶ 4–5. Four hours is less than half of the special education hours required by even Plaintiffs' least stringent IEP. *See* Charles IEP at 14 (20 hours); Israel IEP at 9 (26.5 hours); Redacted Decl. ¶ 4 (10 hours); Am. Compl. ¶ 187 (Malik Z.'s IEP requires 10 hours). Indeed, as noted above, Charles H.—who is supposed to receive 20 hours of special education per week—received only 6.5 hours over a 3-week period ending on May 28, 2021. *See* Suppl. Jones ¶ 8.

Defendants' failures in delivering special education are compounded by their simultaneous failure to provide at least 25% of the support services mandated by IYP students' IEPs. Suppl. Dukes ¶ 7. Moreover, Plaintiffs established that, as of May 27, 2021, some students receive much less than 75% of the support services they should be receiving. Am. Compl. ¶¶ 187, 199 (*e.g.*, although Malik Z. is entitled to 2 hours per month of behavioral support services, he has only had

one 20-minute session with a counselor since he "enrolled with IYP in February 2021"); Redacted Decl. ¶ 15 (anonymous student entitled to 2 hours of behavioral support services per week has received nothing except a brief 20-minute introduction to a counselor towards the beginning of May).

As the Court has already found that those imminent and ongoing IEP deviations deny IYP students FAPE, Plaintiffs are likely to show that they have and will continue to suffer irreparable harm absent injunctive relief.[17] This second factor therefore weighs in favor of granting a preliminary injunction.

C.

The Court now turns to the final two *Winter* factors—the balance of the equities and the public interest. When the government is the nonmovant in a request for a preliminary injunction, the harm to the opposing party and public interest merge and are considered "one and the same." *Pursuing America's Greatness v. Fed. Election Comm.*, 831 F.3d 500, 511 (D.C. Cir. 2016). That is because "the government's interest *is* the public interest." *Id.* In assessing these factors, courts consider the impacts of the injunction on nonparties as well. *See id.* at 511–12.

Defendants stress the public's interest in avoiding a preliminary injunction that would strip the District of its "discretion to allocate scarce resources among different operations necessary to fight the pandemic," especially in the prison context where flexibility and speed are necessary to balance the District's converging interests in containing COVID and maintaining security. *Swain*

[17] Plaintiffs also contend that Defendants' IEP implementation failures place every student at risk of failing to complete a high school diploma before they age out of the IYP (which occurs when they turn 23) or are transferred to a Bureau of Prisons facility. *See* Reply 19; Statement of Interest 11–12. Perhaps. But as Plaintiffs have already shown that Defendants' failure to provide FAPE is both ongoing and imminent, the Court need not decide whether these factors—standing alone—would establish imminent and irreparable harm.

*v. Junior*, 961 F.3d 1276, 1293 (11th Cir. 2020) (internal quotation marks omitted). Defendants also suggest that an injunction might conflict with Defendants' obligations in *Banks v. Booth*. 20-cv-849.

The Court is certainly mindful of these concerns. But the District's discretion is constrained by its statutory obligations under IDEA. State agencies "cannot suffer harm from an injunction that merely ends an unlawful practice." *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015) (quoting *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)). That is because "[t]here is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters*, 838 F.3d at 12. Rather, "there is a substantial public interest 'in having governmental agencies abide by the federal laws that govern their . . . operations.' " *Id.* (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)). An injunction compelling Defendants to fulfill their statutory obligations to IYP students would do no more than end Defendants' unlawful failure to provide each student a FAPE. As neither the balance of equities nor the public interest suggests that government agencies have the discretion to violate IDEA, these arguments are unpersuasive.

Indeed, the District has already received $386 million to safely reopen schools and meet student's needs during the pandemic. U.S. Dep't of Ed. Press Release, March 24, 2021, *available at* https://perma.cc/LFU6-WVF6; *see also* Statement of Interest at 13. If, as Defendants say, the IYP really is comprised of a comparatively "small number of students," the Court trusts that Defendants will find a way to financially accommodate the public's interest in ensuring that District residents receive "special education and related services . . . in accordance with applicable law." *DL v. D.C.*, 194 F. Supp. 3d 30, 98 (D.D.C. 2016), *aff'd*, 860 F.3d 713 (D.C. Cir. 2017).

Defendants also overstate the risk that doing more would subject them to "contempt" under the *Banks* injunction. Opp'n at 23–24. The *Banks* injunction merely requires that Defendants "comply with District of Columbia and Centers of Disease Control regulations on social distancing." *See Banks Injunction* at 1, ECF No. 12-16. Plaintiffs in this case have not sought to require only *in-person* instruction, which might be inconsistent with social distancing requirements. Defendants also appear to have made no effort to ask the *Banks* Court whether increasing the hours of in-person instruction for disabled IYP students would be consistent with that Court's injunction. In any event, Defendants will remain free to offer a blend of teacher-led virtual and in-person instruction.

The Court thus finds that both the balance of equities and the public interest favor preliminary relief.

IV.

As all four factors favor preliminary relief, the Court will enter an injunction. The final issue is whether the Court should grant relief to the named Plaintiffs only or to the entire putative class of IYP students. During a telephonic conference on April 21, 2021, the Court invited Defendants to respond to Plaintiffs' Motion to Certify Class or address the scope of provisional relief in their Opposition to Plaintiffs' Motion for a Preliminary Injunction. Defendants declined that request and have opted to remain entirely silent on the question of whether the class should be provisionally certified (*i.e.*, certified for the limited purpose of ordering preliminary relief) or whether relief should be extended to all IYP students. *See, e.g.*, *United States v. Real Prop. Identified as: Parcel, 03179–005R*, 287 F. Supp. 2d 45, 61 (D.D.C. 2003) (failures to respond may be treated as a concession).

Whether or not Defendants have waived their opportunity to contest class certification, the Court is satisfied that Plaintiffs have shown enough to provisionally certify the class. "Although a plaintiff requesting provisional certification must still demonstrate that Rule 23's requirements are met, the court's normally rigorous analysis" is calibrated by the reality that "such certifications may be altered or amended before the decision on the merits." *Damus v. Nielsen*, 313 F. Supp. 3d 317, 329 (D.D.C. 2018) (internal quotation marks omitted) (collecting cases).

Plaintiffs seek to certify a class of persons who, as of March 24, 2020, (1) were or will be entitled to received special education and/or related services pursuant to an IEP, (2) were or will be detained in the D.C. Jail, and (3) did not, do not, or will not, receive direct instruction and/or related services in conformity with the specialized instruction and/or related services mandated by their IEPs while in the D.C. Jail. *See* Mot. Certify Class at 4.

That putative class appears to meet all of Rule 23(a)'s prerequisites. First, concerning Rule 23(a)(1) numerosity, "[i]n this district, courts have found that numerosity is satisfied when a proposed class has at least forty members." *Richardson v. L'Oreal USA, Inc.*, 991 F. Supp. 2d 181, 196 (D.D.C. 2013). The putative class is made up of at least forty members. *See* DCPS IYP School Profile, Pls.' Ex. 6, ECF No. 11-8 (showing 44 students enrolled for the 2019-2020 school year); *see also* Lopez Decl., Tr. 50:23–50:26. And every IYP student has an IEP that requires specialized instruction and/or related services under IDEA. *See* Russo Decl. ¶ 6. Moreover, the class includes future IYP students whose "joinder" is "plainly impracticable" given the transitory nature of a detention facility. *A.T. by and through Tilman v. Harder*, 298 F. Supp. 3d 391, 407 (N.D.N.Y. 2018) (inmates housed in local jails are "precisely the sort of revolving population that often makes joinder of individual members impracticable").

Second, Plaintiffs have made a provisional showing of commonality. Rule 23(a)(2) demands that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality turns on the "capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The Court of Appeals has held that commonality is established when Plaintiffs challenge "a uniform policy or practice that affects all class members." *D.L. v. D.C.*, 713 F.3d 120, 128 (D.C. Cir. 2013). Here, Plaintiffs have sufficiently alleged that DCPS adopted a policy of eliminating direct in-person or virtual instruction, in favor of hands-off work packets. Roane Test., Tr. 93:16–96:17; Charles Decl. ¶¶ 8–13; Israel Decl. ¶¶ 13–15, 25; Russo Decl. ¶¶ 10–13. That policy has and continues to harm the entire class. If that policy were reversed in favor of direct in-person or virtual instruction, the reversal (subject to common proof) would "resolve an issue that is central to the validity of each of the claims in one stroke." *See D.L. v. D.C.*, 312 F.R.D. 1, 3–4 (D.D.C. 2015) (quoting *Wal-Mart Stores, Inc.*, 564 U.S. at 350).

Third, concerning typicality, Plaintiffs have also established that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Typicality "ensures that the claims of the representative and absent class members are sufficiently similar so that the representatives' acts are also acts on behalf of, and safeguard the interests of, the class." *Littlewolf v. Hodel*, 681 F. Supp. 929, 935 (D.D.C. 1988), *aff'd sub nom*., *Littlewolf v. Lujan*, 877 F.2d 1058 (D.C. Cir. 1989). The claims of the named class members parallel the putative class because those claims arise from a shared status as disabled students with IEPs that mandate specialized education and/or related services. Charles Decl. ¶ 5; Israel Decl. ¶ 5.

The named Plaintiffs have also suffered the same injury as all the putative class members: they have all been denied FAPE in violation of IDEA. That injury, in turn, arises from a common course of conduct on the part of Defendants—the decision to stop all direct instruction, and the failure to have resumed such instruction. And the named Plaintiffs have no interests that ostensibly conflict with the putative class; they seek declaratory, injunctive, and compensatory relief for the whole class. *See* Am. Compl. at 58–60.

Finally, the Court is satisfied that Plaintiffs will fairly and adequately protect the interests of the class. *See* Fed. R. Civ. P. 23(a)(4). This requirement is satisfied so long as the named representatives do not have "conflicting interests with the unnamed members of the class" and the representatives appear "able to vigorously prosecute the interests of the class through counsel." *Twelve John Does v. D.C.*, 117 F.3d 571, 575 (D.C. Cir. 1997) (internal quotations and citation omitted). The named Plaintiffs seek only forms of relief that will benefit the entire class, and they have all represented that they understand and are ready to carry out the obligations of named class members. Charles Decl. ¶ 27; *see also Garnett v. Zeilinger*, 301 F. Supp. 3d 199, 211 (D.D.C. 2018). Plaintiffs' counsel is also well-suited to vigorously litigate the case, as counsels' collective experience in complex litigation and education law as well as commitment to investing substantial resources into this litigation are thoroughly established. *See* Class Certification Mem. at 16–22, ECF No. 11-1.

Plaintiffs have sufficiently cleared Rule 23's prerequisites, at least for provisional purposes, so the Court turns last to the Plaintiffs' requested form of relief. Plaintiffs seek hybrid certification under Rule 23(b)(2) and (b)(3) for injunctive and declaratory relief, as well as damages in the form of compensatory education. *Id.* at 22–23. But because "IEP meetings" to design plans for compensatory education are not specifically required by the terms of each IYP

student's IEP, the Court declines at this provisional stage to order that relief. The Court will thus address only the requirements of Rule 23(b)(2), which pertain to injunctive and declaratory relief.

Rule 23(b)(2) requires that (1) the party opposing the class must have "acted or refused to act on grounds that apply generally to the class," and (2) "final relief of an injunctive nature . . . must be appropriate." In short, Rule 23(b)(2) establishes the "presumption that the interests of the class members are cohesive." *Lightfoot*, 273 F.R.D. at 329. The Court is satisfied on both counts. The Court has already found that Plaintiffs are likely to demonstrate that Defendants' policy of substituting hands-off work packets for teacher-led virtual or in-person instruction violates every IYP student's right to FAPE. It is also clear that an injunction requiring Defendants to provide specialized education and related services by means of either virtual or in-person instruction would remedy that class-wide violation. The Court is thus satisfied, at least provisionally, that preliminary injunctive relief is appropriate.

V.

For the forgoing reasons, the Court grants Plaintiffs' Motion for a Preliminary Injunction and provisionally certifies Plaintiffs' putative class. An Order will accompany this Memorandum Opinion.

DATE: June 16, 2021

CARL J. NICHOLS
United States District Judge