IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

C.D. AND P.D., THROUGH L.D. AND B.D. AS NEXT FRIENDS,	§	
Plaintiffs,	§	Case No. ____________________
v.	§	JURY TRIAL DEMANDED
DALLAS INDEPENDENT SCHOOL DISTRICT AND, IN THEIR OFFICIAL CAPACITIES, MICHAEL HINOJOSA, PAMELA LEAR, TIFFANY HUITT, BETH WING, RYAN ZYSK, AND MARNIE GLASER,	§	
Defendants.	§	

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, C.D. and P.D., minors acting through their parents as next friends, L.D. and B.D. (the minors are referred to as "Plaintiffs," they and their parents are the "D-Family," the parents individually are "L.D.," and "B.D."), file this Complaint against Defendants, Dallas Independent School District ("DISD"); Michael Hinojosa, former Superintendent of Dallas Independent School District; Pamela Lear ("Lear") in her official capacity as the Superintendent's Chief of Staff and Chief Racial Equity Officer; Tiffany Huitt ("Huitt") in her official capacity as Superintendent Hinojosa's "Chief of Schools"; Beth Wing ("Wing"), in her official capacity as principal of George Bannerman Dealey Montessori Academy ("Dealey"); Ryan Zysk ("Zysk"), in his official capacity as Executive Director, Dallas Independent School District Magnet Schools and Director of School Leadership, and Marnie Glaser ("Glaser"), in her capacity as chairperson of the Dealey Site-Based Decision Making Committee and allege as follows:

INTRODUCTION

"The function of education is to teach one to think intensively and to think critically … intelligence plus character – that is the goal of true education."

–Martin Luther King, Jr.

"This is going to be traumatic."

–Michael Hinojosa,
Former DISD Superintendent

1. Those rights you fail to exercise and protect are rights you will surely lose, thus you must defend each of them with vigor and without hesitation. Plaintiffs base this lawsuit on that notably and fundamentally Texan and American concept.

2. As Texas and the United States struggled through the confusion and uncertainty of the initial months of the Covid catastrophe, the Governor of Texas issued a series of executive orders to provide guidance to state and local leaders, businesspeople, and schools, and to ensure stability and uniformity throughout the state in Covid responses. By the second quarter of 2021, the Governor had begun to relax restrictions on Texans, and one of those relaxed restrictions was the requirement that all visitors to government buildings and schools be masked. Effective June 4, 2021, Governor Abbott's Executive Order GA – 38 specifically named schools in its list of entities that could no longer make or enforce such a requirement.

3. On August 9, 2021, Defendant Michael Hinojosa ("Hinojosa"), then the Superintendent of DISD, announced he had decided DISD would defy Governor Abbott's order and the state statute that gave the Governor's emergency orders the force and authority of law. Instead, Hinojosa said, he would impose his own, personal mask mandate (the "Hinojosa Mandate") for Dallas Independent School District ("DISD") "temporarily." For medical reasons

further discussed below (supported by written documentation from their physician), Plaintiffs C.D. and P.D. respectfully refused to wear masks while attending Dealey. Like their parents, C.D. and P.D, believe the fabric of society derives its strength from weaving into daily life the principles espoused in the Constitution of the United States, the Texas Constitution, and the laws enacted by the Texas Legislature. They believed Defendant Hinojosa was wrong to break the law and translate his personal views into school district policy, forcing everyone in physical contact with publicly owned school real estate to wear a mask.

4. Plaintiffs knew extended mask wearing would be detrimental to their health, and they believed the proper place for Defendant Hinojosa to challenge Governor Abbott's executive orders (if he truly thought the Governor lacked authority to issue them) was the courtroom – not the classroom. Thus, with a hastily devised policy demanding strict compliance with action Plaintiffs found medically unacceptable and morally, ethically and legally repugnant, the table was set for conflict.

5. The Hinojosa Mandate created a gold rush of sorts among DISD executives. Dealey administrators, teachers and staff raced to outperform each other in demonstrating their zeal, ferocity, and innovation when it came to enforcing Hinojosa's Mandate. DISD executives, administrators, teachers, and staff hastened to display fealty to their Superintendent. They required complete compliance with the Hinojosa Mandate and allowed no opposition to the groupthink dictated from DISD headquarters that gave lip service (but no practical effect) to masking exceptions. They began a three-month campaign of abuse and neglect, targeting Plaintiffs and their parents for their audacity in standing on their Constitutional, Statutory, and Natural rights, and for demanding Defendants recognize and honor those rights.

6. It was not so long ago that our Founding Fathers recognized the rights Plaintiffs demanded Defendants acknowledge, and which Plaintiffs now bring to this Court as the basis for this lawsuit, are derived from God. They are the same rights for which American Patriots took to arms in 1775, fighting for ideas with words and for freedom with steel and blood, pledging to their struggle and to each other "their lives, fortunes and sacred honor."[1]

7. These are the rights we take for granted today with a sense of casual entitlement, yet they are the rights that transcend political parties and politics itself, the rights that bind together disparate peoples into a single People, the rights that fuel the annealing forging separate states into a Nation.

8. The plagues DISD and its employees visited on P.D. and C.D. (aged 13 and 11 at the time) because they could not wear masks, include, among others, the following:[2]

(a) Forcing Plaintiffs into a toxic, unventilated, plexiglass cage that subjected them to ridicule from classmates as if Plaintiffs were captive mammals in a zoo exhibit;[3]

(b) Physically separating Plaintiffs through daily isolation in the school library;

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[1] U.S. Declaration of Independence. Defending rights has never been easy; fifty-six American colonists – ordinary men who were swept from comfortable lives into treason, but who knew right from wrong and had the strength of character to act on that knowledge – signed the Declaration. Thirty percent of them died as a consequence.

[2] This is a partial list of coercive acts Defendants visited upon Plaintiffs, acts intended to force Plaintiffs to give up their medical, philosophical/religious, constitutional, and statutory rights not to wear a mask. There are 11 oppressive and coercive acts described here that enforcers of the Hinojosa Mandate visited upon Plaintiffs, but it is just a partial list of the plagues Defendants personally visited upon Plaintiffs or permitted others to wreak upon them. Even the Egyptians only got ten.

[3] Defendant Wing was quick to point out the room had *two* air purifiers (for the safety of those who had to interact with the children and not for the benefit of P.D and C.D.) but missed completely that it lacked a supply of fresh air. *See* par. 63, *infra.*

(c) Emotionally isolating Plaintiffs through academic stagnation, including extended periods (days) with no academic work and/or instruction;

(d) Isolating and separating Plaintiffs at lunch when no one wore masks anyway;

(e) Bullying Plaintiffs, who each had medical conditions known to Defendants and documented by their federally recognized and protected status under Section 504 of the Rehabilitation Act of 1973;

(f) Repeatedly having private conversations with Plaintiffs outside the presence of their parents about compliance with the Hinojosa Mandate and other matters contrary to L.D.'s and B.D.'s clearly expressed instructions;

(g) Selectively enforcing the Hinojosa Mandate by allowing Plaintiffs to go maskless when attending certain events, such as (for example) Gay Straight Alliance meetings, in the same classrooms where Defendants required masks for every other purpose;

(h) Manufacturing a false "major school disruption" and blaming it on Plaintiffs with the intent of using the incident to send them to alternative school and exclude them from the DISD magnet school program entirely;

(i) Falsifying a serious (Level IIB) disciplinary offense against Plaintiffs in a further attempt to intimidate them with the threat of alternative school and exclusion from the DISD magnet school program;

(j) Falsifying an allegation of an inappropriate sexual display by P.D., and subsequently refusing to withdraw it after another student confessed to performing the act; and

(k) Releasing confidential school and private health information about Plaintiffs.

9. The Hinojosa Mandate violated Plaintiffs' fundamental constitutional rights, both facially and through Defendants' application of it to Plaintiffs. It also violated Texas state law. In adopting and enforcing the Hinojosa Mandate, DISD officials and these named Defendants were arbitrary and capricious to the point their actions were legally irrational, served no legitimate governmental purpose, and were so unnecessary, vicious, and vindictive that they ceased being legitimate government efforts to enforce an impermissible, ill-conceived policy[4] and became

[4] Throughout this lawsuit, Plaintiffs rely on the benefit of hindsight: we know mask use is only effective in certain limited, controlled environments and not in the way DISD mandated it. We

tortiously actionable conduct intended to (i) isolate, humiliate, and denigrate Plaintiffs; (ii) discredit P.D.; (iii) minimize C.D.; and (iv) embarrass, inconvenience, and pillory P.D.'s and C.D.'s parents, L.D. and B.D., ultimately denying Plaintiffs the constitutional rights and statutory benefits afforded to students and parents.

10. In implementing the Hinojosa Mandate, school district employees and others acting under the authority and aegis of DISD[5] adopted facially unconstitutional standards and policies, acting unlawfully to enforce those meters by subjecting Plaintiffs to *per se* unconstitutional inquisitions motivated by ignorance, fear, and lack of compassion, resembling more the spit-flecked collective attacks of hyenas or the hysterical accusations of the Salem witch trials than the reasoned, thoughtfully-adopted, and uniformly-applied enforcement policy of the 16th largest school district in the nation.

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know the knowledge and research demonstrating mask use would be ineffective in a school environment existed at the time of this lawsuit's events. However, whether it was or wasn't effective is irrelevant to this Complaint, as is who knew what. Either way, Plaintiffs were entitled to have their statutory and constitutional rights respected and honored, not trampled.

The fact these abhorrent events occurred to children, and the fact adults entrusted with the care and well-being of those children unhesitatingly initiated, participated in, or failed to do *anything* to stop or ameliorate these acts, is bad. The fact they occurred in an environment where each one of those adults violated state law is worse. That everything occurred in an effort to force these children to wear masks that science shows didn't make a difference anyway … should leave people with conscience, compassion, and common sense speechless. *See also* fn. 6 and fn. 10, *infra.*

[5] As explained below in the "Parties" section, Defendant Glaser was chairperson of the Site-Based Decision Making ("SBDM") Committee, a formal committee of the school district and created by state law. In that capacity, she gained access to confidential data about P.D. and C.D., later using that information to foment and further online harassment and disparagement of the children and their parents.

11. Leadership – influenced by groupthink, poorly understood and unquestioned scientific data and conclusions,[6] ignorance or disregard of basic principles of constitutional government, and a disturbing willingness to politicize the Covid health crisis[7] – combined to create an environment at Dealey where no action was excessive when enforcement of the Hinojosa

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[6] Plaintiffs note the official – yet ever-changing – guidance of the Centers for Disease Control ("CDC") and National Institutes of Health. Plaintiffs believe the conflicting statements from Anthony Fauci, M.D., then the Director of the National Institutes of Health's ("NIH") National Institute of Allergy and Infectious Diseases, combined with the constantly-changing and contradictory recommendations from the CDC regarding distancing, masking, immunizations, and other Covid-related matters, should have given the Superintendent pause and reason to ask questions before venturing into the busy and high-stakes intersection of law, government, science, and politics. In any event, the former Superintendent has given multiple interviews on the Hinojosa Mandate and has never mentioned relying on CDC or NIH guidance.

[7] By proclamation on May 18, 2021, Governor Greg Abbott issued Executive Order GA 36. Executive Order GA 36 began by observing that certain political subdivisions of the state had failed to comply with Executive Order GA 34, which the Governor had issued on March 2, 2021. Executive Order GA 34 was the Order homogenizing the varied local Covid rules, policies, and requirements. It prohibited – in plain language – any governmental entity in Texas from requiring workers or customers to wear masks. Yet even as Texas' massive economic engines began to fire again, awakened by Executive Order GA 36 from a year-long medically-induced coma, some political subdivisions – notably including DISD – continued to defy the Governor's Order, transforming the question of whether to wear masks from a personal decision to a political statement (Defendant Hinojosa boasted he received a telephone call of thanks from President Biden… *after* he announced he was ignoring the Texas Supreme Court's decision to lift a stay on Executive Order GA 36 and would require masks in DISD – even if he received fines of $1,000 per day) and from an individual issue to a formal district requirement. *See* Chris Sadeghi (WFAA), August 16, 2021; https://www.dallasisd.org/mask.

Yet Executive Order GA 36 was the Governor's response to political subdivisions of the state ignoring Executive Order 34, directly addressing the political subdivisions that had elected to withdraw from Texas' republican (lowercase "r") representative democracy on that issue, choosing instead to continue policies and regulations requiring masks. Executive Order GA 36 *specifically addressed and suspended* a school district's ability to require masking (Executive Order GA 36 at par. 2). There is no dispute Governor Abbott had the statutory and constitutional authority to issue Executive Order GA 36 (later reinforced by Executive Order GA 38); neither is there any dispute Defendants Hinojosa and DISD had no authority to refuse to comply with the Governor's Order, which had the force of law.

Mandate was at issue. Apparently interested more in political positioning and accolades than in the very real impact and consequences to individuals of the decisions he made, Superintendent Hinojosa unilaterally decided to demand covering the mouths and noses of a population known at the time to be generally immune or resistant to the virus, and to suffer only mild or no symptoms when testing positive.[8]

12. Evidently extending his mandate to include covering his eyes and ears as well, Defendant Hinojosa heard, saw, and said nothing as he avoided the facts offered by many strong voices from the medical and infectious disease community, along with the steady drumbeat of information indicating that masks were ineffective in preventing transmission of the illness. That same data revealed that to the extent they were at any risk at all, children were safer in schools than anywhere else.

13. Those facts, and the recognition that human history is a story of adaptation and not hibernation, led Governor Abbott and the Texas Education Agency ("TEA") to order school districts to lift mask mandates. That order required school districts' compliance not later than June 4, 2021. Remarkably, the Hinojosa Mandate unlawfully remained in place until February 23, 2022.

14. As a result of the actions taken or committed by Defendants, Plaintiffs needlessly suffered and continue to suffer from the effects of separation, humiliation, ostracism, disparate treatment, and a variety of other tortious behavior detailed in this lawsuit, behavior perpetrated on them by the very adults the State charged with their care, nurturing, and education.

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[8] Children usually don't contract Covid and when they do, it is generally mild. *See, e.g.,* Dana Sparks, *Covid-19 in Babies and Children,* Mayo Clinic News Network (Aug. 18, 2020), https://newsnetwork.mayoclinic.org/discussion/covid-19-in-babies-and-children

15. As described further below, Defendants boldly, knowingly, intentionally, and without hesitation repeatedly violated Plaintiffs' Constitutional rights guaranteed by the First, Sixth, Eighth, Tenth, and Fourteenth Amendments to the Constitution of the United States. With respect to Plaintiff P.D., Plaintiffs further allege violations of the Rehabilitation Act of 1973 (29 U.S.C. §794), the Family Educational Rights and Privacy Act 20 U.S.C. §1232(g), and violations of state law, along with tortious acts including intimidation, defamation, bullying, stalking, and/or harassment. Plaintiffs allege C.D. suffered each of those violations as well.

16. Consequently, Plaintiffs seek nominal, compensatory, actual, and punitive damages, attorneys' fees and other remedies for harms arising from the violation of their foregoing state and federal rights based on, among other things: 1) the order of Superintendent Hinojosa requiring all students, faculty and visitors to wear masks while on DISD property (**Exhibit 1**) (the "Hinojosa Mandate"); 2) discriminatory practices, policies, and actions adopted by DISD employees in their official roles as part of their efforts to enforce implementation of the Hinojosa Mandate; 3) a conspiracy to attack, degrade, humiliate, and diminish Plaintiffs in retaliation for refusing to comply with the Hinojosa Mandate; 4) discriminatory and tortious actions committed by the named Defendant employees in their official capacities as DISD employees (purportedly as part of their efforts to enforce the Hinojosa Mandate); and 5) discriminatory and tortious actions committed by the named Defendants in their official capacities as members of a state-mandated, DISD-recognized school committee, purportedly as part of their efforts to enforce implementation of the Hinojosa Mandate.

THE PARTIES

17. Plaintiffs C.D. and P.D. are both minor children and, at all times relevant to these proceedings, were enrolled as students in DISD attending Dealey Academy.

18. L.D. and B.D. are the parents of C.D. and P.D. and residents of Dallas County, Texas. Both are Christians committed to their religion and believe their actions are important to defining the world in which they live. Owners of an upscale, franchised chain of men's barbershops/clubs, they seek out ways to provide opportunities in the community for the homeless, mentally ill, addicted, or otherwise unfortunate. Both L.D. and B.D. are active in the community. L.D. recently ran for office to draw attention to the work that she believed Dallas County needed to do on issues such as homelessness, economic development, mental illness, and governmental efficiency, transparency, and accountability. B.D. was active in her campaign and remains active in various community groups.

19. Defendant DISD is a government entity that can be served with process and a copy of this lawsuit by serving its President of the Board of Trustees, Joe Carreon, 5151 Samuell Boulevard, Dallas, Dallas County, Texas 75228, or at his place of business located at Hermes Law, 2550 Pacific Avenue, Suite 700, Dallas, Dallas County, Texas 75226.

20. Defendant Hinojosa is a Texas resident who can be served with process and a copy of this lawsuit by serving him at his residence located at 2300 Wolf Street, Unit 11C, Dallas, Dallas County, Texas 75201. At the time of the events described in this Complaint, Defendant Hinojosa was the Superintendent of DISD. After a career in education administration including a previous period as DISD Superintendent, Hinojosa returned to DISD to reprise his role as Superintendent. The events relevant to the lawsuit occurred at the end of his second tenure. He retired in 2022 and is the individual responsible for DISD intentionally disregarding gubernatorial executive orders

banning mandatory mask policies in Texas public schools in 2021. The current Superintendent of DISD is Stephanie Elizalde.

21. Defendant Ryan Zysk ("Zysk") is a Texas resident who can be served with process and a copy of this lawsuit by serving him at Dallas Independent School District Administrative Offices, 9400 N. Central Expressway, Dallas, Dallas County, Texas 75231. He was the Executive Director of Magnet Schools for DISD and Director of School Leadership. In those capacities, he had direct oversight responsibility for and authority over Beth Wing, principal of Dealey Academy and the events complained of in this lawsuit. He is now an Associate Superintendent for DISD.

22. Defendant Pamela Lear ("Lear") is a Texas resident who can be served with process and a copy of this lawsuit by serving her at Dallas Independent School District Administrative Offices, 9400 N. Central Expressway, Dallas, Dallas County, Texas 75231. She was the Superintendent's Chief of Staff and Chief Racial Equity Officer (and one of the people who helped formulate the Hinojosa Mandate policy, such as it was). She decided the First Amendment to the U.S. Constitution, an Amendment with protections of free speech, assembly, and the right to redress grievances that grimly but proudly has shouldered the duty of carrying this nation through some of its most divisive moments, did not apply to this situation.

23. Defendant Tiffany Huitt ("Huitt") is a Texas resident who can be served with process and a copy of this lawsuit by serving her at Dallas Independent School District Administrative Offices, 9400 N. Central Expressway, Dallas, Dallas County, Texas 75231. She was Superintendent Hinojosa's "Chief of Schools," and actively participated in Lear's decision that First Amendment to the U.S. Constitution, an Amendment with protections of free speech, assembly, and the right to redress grievances that grimly but proudly has shouldered the duty of carrying this nation through some of its most divisive moments, did not apply to this situation.

24. Defendant Beth Wing ("Wing") is a Texas resident who can be served with process and a copy of this lawsuit by serving her at Dallas Independent School District Administrative Offices, 9400 N. Central Expressway, Dallas, Dallas County, Texas 75231. She was the principal of Dealey during the 2021-2022 school year. It was under Wing's administration that Plaintiffs became the outlet for the pent-up fears, frustrations, and ambitions of teachers, administrators, students, and parents. Wing failed to protect P.D. and C.D., violated or countenanced others who violated the children's federal privacy rights, and encouraged a gang mentality culture among the school's teachers and administrative staff, where school district employees felt at liberty – even encouraged – to attack differences in opinions and beliefs, and where harsh treatment of those who were disfavored was acceptable, no matter how emotionally brutal. She left Dealey shortly after the events described in this Complaint and DISD now employs her at another school.[9]

25. Defendant Marnie Glaser ("Glaser") is a Texas resident who can be served with process and a copy of this lawsuit by serving her at 4305 Emerson Avenue, Dallas, Texas 75205. Glaser was the chairperson of Dealey Academy's Site-Based Decision Making ("SBDM") Committee. SBDM is a legislatively mandated process in which DISD representatives from all levels join with parents and community members to make decisions about ways to improve performance. The law specifically describes the official nature of the Committee this way, citing the Committee's purpose: "… for decentralizing decisions to improve the educational outcomes at every school campus through a collaborative effort by which principals, teachers, campus staff,

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[9] For reasons never made clear, Wing left Dealey mid-semester, in February of 2022. Dealey was a sought-after, smaller, elementary and middle magnet school assignment with active and supportive parents and students who generally performed well. DISD apparently decided Wing's skills could be better applied and were urgently needed at a large, non-magnet, non-Montessori, non-elementary, non-middle school with substantial room for academic improvement. The announcement from DISD simply said her transfer was effective "immediately."

district staff, parents, and community representatives assess educational outcomes of all students, determine goals and strategies, and ensure that strategies are implemented and adjusted to improve student achievement." The law, found at §11.251 of the Texas Education Code, requires the Board of Trustees of independent school districts to implement these school specific SBDM committees to evaluate each school's performance and make recommendations on how to improve a campus. At all times relevant to the events giving rise to this Complaint, Defendant Glaser was acting under color of state law.

JURISDICTION AND VENUE

26. This court has jurisdiction to adjudicate all federal claims raised in this matter under 28 U.S.C. § 1331, which confers original jurisdiction on federal district courts to hear suits arising under the laws and Constitution of the United States; the Supremacy Clause of the Constitution of the United States, which allows federal district courts to hear suits alleging preemption of state and local laws by the Constitution and federal laws made in pursuance thereof; and 42 U.S.C.§ 1983 and 28 U.S.C. § 1343 in relation to Defendants' deprivation and infringement under color of law of the Plaintiffs' rights, privileges, and immunities secured by the United States Constitution and laws, as detailed further herein.

27. This court has supplemental jurisdiction over the common law and state law claims asserted herein because they are so related to the claims in this action that arise under federal law as to constitute part of the same case or controversy pursuant to 28 U.S.C. § 1367(a).

28. This Court has the authority to award the requested compensatory and punitive relief and attorney's fees and costs under 42 U.S.C. § 1988.

29. Venue is proper in the United States District Court for the Northern District of Texas for this action pursuant to 28 U.S.C. § 1391(b)(1) and (2) because it is the district in which Defendants unlawfully deprived the Plaintiffs of their rights under the laws and Constitution of the United States, as further alleged herein. It is also the district in which a substantial part of the events giving rise to Plaintiffs' claims occurred and continue to occur.

BACKGROUND

A. Covid 19, generally

30. The Texas Disaster Act of 1975 grants the Governor of Texas broad authority to act in response to dangers posed to the state or her citizens, and to meet those challenges. That Act devolves upon the Governor the authority to issue executive orders having the force of law. *See* Tex. Govt. Code §§ 418.011-418.012.

31. In March 2020, state governments throughout the United States began responding to the apparent threat posed by the Covid-19 virus. In Texas, exercising the legislatively granted powers of his office, Governor Abbott issued Executive Order GA-08, mandating social distancing restrictions that conformed to the latest guidelines from the Centers for Disease Control and Prevention (the "CDC"). That Order is attached as **Exhibit 2** and specifically "supersede[d] all previous orders on this matter that are in conflict or inconsistent with its terms…." At the time Governor Abbott issued Executive Order GA-08, the only orders in place were local orders. DISD complied with this Order and did not challenge the Governor's authority to issue it.

32. As scientists and doctors learned more about the Covid-19 virus over the succeeding fourteen months, Governor Abbott issued a series of superseding executive orders

aimed at containing the risk the virus posed to the public while still maintaining the greatest amount of individual liberty as possible.

33. By March 2, 2021, Governor Abbott issued Executive Order GA-34, beginning the process of relaxing state-mandated safety precautions. In that Order, the Governor lifted the state face masking requirement and ordered that "no jurisdiction may impose a penalty of any kind for failure to wear a face covering …." He then ordered public schools to follow mask wearing guidance promulgated by the TEA.

34. On May 18, 2021, Governor Abbott filed Executive Order GA-36. In that Order, the Governor noted that failure to comply with an Order issued under the authority of the Texas Disaster Act was "an offense" carrying a fine of up to $1,000. Tex. Govt. Code § 418.173. Executive Order GA-36 also specifically ordered that no governmental entity – including school districts – and no government official could require anyone to wear a face covering or to mandate that another person wear a face covering. The Governor's Order provided a grace period until June 4, 2021 (the end of the academic school year) for the Texas Education Agency's ("TEA") compliance guidance to become mandatory for school districts, at which time the TEA would revise its guidance to reflect school districts were prohibited from requiring any person – student, employee, or visitor – to wear a mask.

35. As the Delta variant of Covid-19 presented itself in the middle of 2021, government leaders were learning significant and meaningful doubt existed regarding the information supporting Covid precautions and vaccines.[10] On July 29, 2021, Governor Abbott issued Executive

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[10] On June 2, 2024, shortly before Plaintiffs filed this lawsuit, Dr. Anthony Fauci, the former 38-year Director of the National Institutes of Health Institute of Allergy and Infectious Diseases and the face of the nation's response to Covid (the architect and leading advocate of the government's masking, social distancing and vaccination directives), admitted he knew of neither scientific

Order GA-38 which, among other things, reinforced the executive ban on public schools requiring masks and prohibited any governmental entity and any governmental official (including local governments, public schools, or public health authorities) from "requiring any person to wear a face covering or mandating another person to wear a face covering."

B. <u>The 2021-2022 School Year</u>

"Education's purpose is to replace an empty mind with an open one.'

-Malcolm Forbes

36. Heading into the new school year, the Governor's executive orders provided uniform direction to all Texans. The State of Texas prohibited public schools from requiring staff, students, or visitors to wear face masks. The Governor's Executive Order GA-38, attached as **Exhibit 3**, was clear, unambiguous, and had the force of law. It remained the law until June 2023 and was in full force and effect until then, covering the entire period of events that are the subject of this Complaint.

37. P.D. and C.D. welcomed the Governor's Order. Both had medical conditions that made wearing masks difficult at all, let alone for hours every day.[11] Compounding the situation's

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evidence to support six feet for social distancing nor could he recall any scientific research supporting the efficacy of masking for children. See James Lynch, *Dr. Fauci Could Not Recall Evidence for Child Masking, Admitted Six-Foot Distancing Came from Nothing, Transcripts Show,* National Review, May 31, 2024.

[11]P.D. has a cardiovascular deficit that has required four open-heart operations. As with any cardiovascular challenge, P.D.'s causes particular sensitivity to a reduction in the quantity or quality of oxygen P.D. gets. C.D. has an anxiety disorder that, among other manifestations, causes intrusive thoughts and perseveration over a distorted image of C.D.'s face. Both P.D. and C.D. had missed school – P.D. for surgery and C.D. for regular therapy during school hours – but Dealey's administrators and staff had never allowed the children's medical conditions, well-known to them, to be an academic problem.

medical complexity, L.D. and B.D.'s beliefs about morality, ethics, and compliance with the law, which they have inculcated in their children, require obedience to proper secular authority. P.D.'s and C.D.'s strongly held philosophical views conflicted with wearing masks. They knew the Governor's Executive Orders were written so that people who wanted to wear masks could do so, while those who did not want to would not be required to wear one. It was a completely reasonable order that accommodated each community's widely disparate masking comfort levels.

"'Tis pride that pulls the country down."

--William Shakespeare

38. Yet by August 9, 2021, with school beginning in a week, Defendant Hinojosa decided DISD would defy Governor Abbott's Executive Orders and would require students, staff, and visitors to wear masks. Calling a press conference and tipping off a reporter with the teaser, "*[t]his is big*," Hinojosa announced DISD would break the law, require masks, and he personally would accept the consequences for violating the law. DISD joined with Dallas County to sue the Governor, claiming it had independent authority to require masks within the boundaries of its own jurisdiction.[12]

39. Originally promising the mask requirement was temporary, fewer than three weeks later, Hinojosa subsequently made the mandate indefinite, saying, "Until there's an official order of the court that applies to the Dallas Independent School District, we will continue to have the

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[12] Rudolph Bush, *Listen: Defying Governor Abbott. How DISD's Michael Hinojosa decided to lead Texas' School Mask Movement*, Dallas Morning News, August 26, 2021

mask mandate."[13] It was an aggressive litigation posture to take and a risky bet. It was also completely unnecessary grandstanding, given that the Governor's Order simply prohibited *requiring* masks. Schools could encourage masking, provide incentives for masking, and provide any information they deemed important to the decision whether to wear a mask. As is the case today, anyone was free to wear a mask at any time. Nevertheless, despite all the incentives, motivations, and non-coercive tools Superintendent Hinojosa had at his disposal, he (and two of his senior staff advisors) decided DISD had to go all in. DISD bet large, rolled, and lost.[14]

40. For P.D. and C.D., with their medical reasons for not wearing masks and who had counted on attending school without them, the Superintendent's decision was crushing. Despite Superintendent Hinojosa's claim that student safety was his motivation, statements he made about his Mandate, such as "[w]e are a blue district, in a purple county, in a red state," caused confusion and cast doubt on how or why politics impacted the Hinojosa Mandate, particularly in light of rumors he intended to challenge Governor Abbott directly, or perhaps run for Mayor of Dallas.[15],[16]

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[13] By "court," the Superintendent meant the Texas Supreme Court. DISD had joined with other political subdivisions in an ultimately unsuccessful challenge to the authority of the Governor of Texas to issue such an executive order. While the challenge was pending, DISD chose to ignore the nearly 50-year-old, previously unchallenged state law granting that power to the governor. DISD challenged only the governor's authority to *ban* a mask requirement. It did not challenge, then or at any other time, the governor's authority to *order* a statewide mandate under the same statute. As long as the governor issued orders Defendant Hinojosa agreed were appropriate, there was no legal issue.

[14] *Abbott v. Harris County,* 672 S.W.3d 1 (Tex. 2023).

[15] Hinojosa also said, "[s]afety of the kids comes first. I can walk away. I can be more courageous than others. What are they gonna do? Fire me, fine me, remove me…whatever…. I can afford risks at the end of my career."

[16] *Supra,* fn. *12.*

C. The School Year Begins

We don't need no education
We don't need no thought control
No dark sarcasm in the classroom
Teacher, leave them kids alone
Hey! Teacher! Leave them kids alone!

-Pink Floyd (Roger Waters)
Another Brick in the Wall

41. School began on August 16, 2021. P.D. and C.D. had discussed at length with their parents the question of whether they should try to wear masks and, if so, whether there was a way they could. After much thought, talking, and prayer, the answer to both questions remained "no." On August 16, 2021, they walked toward Dealey maskless.

42. Aaronda Smith, a teacher at Dealey, stopped the two students immediately after they entered the school. She loudly and confrontationally (in front of other students who were unloading in the carpool lane) asked Plaintiffs if they knew they were supposed to be wearing masks, why they were not wearing them, and if they were disenrolling in the school. Throughout the day, school staff repeatedly approached both P.D. and C.D. and asked them to use masks. Without asking why the students were not running with the pack and wearing masks, staff and teachers at the school directed P.D. to carry a piece of plexiglass wherever he went and put it between himself and anyone he was near, and then physically separated P.D from his classmates while in class. C.D. found herself ostracized in class, seated away from other students in a remote corner of the class.

"The fact that a great many people believe something is no guarantee of its truth."

--W. Somerset Maugham

43. The second day of school was a similar experience for P.D. and C.D., except it was a physical education day. Judging them to be a substantial risk to everyone else in the school, the school administration, by and through Principal Wing, decreed and required both students to stand or sit behind cones doing nothing, while the other students ran around and played, getting the exercise all students are entitled to receive and Texas law requires.[17] Dealey teaching staff required C.D. to sit by herself, in an area cordoned off by cones, while the other children played. C.D. began to cry at the unfairness of the circumstance, leading the other students to run by and laugh at her as they called her "Karen." Dealey teachers did nothing to stop the bullying, nor did they explain why P.D. and C.D. were supposed to sit, separated from other students, even as the other students were running around, playing, not observing social distancing and carelessly and improperly wearing masks during the physical education. L.D. subsequently brought the name calling to the attention of the school's principal, Wing, who said she would "look into it." Nothing happened and the relentless taunting continued.

44. August 18, 2021 was another physical education day. This time, the teacher tried to make P.D. sit alone behind cones. Avoiding the obvious attempt to humiliate him, P.D. refused. The teacher directed him to wait for his class (alone) in the library. P.D. received no credit for P.E. class that day. Wing subsequently claimed to L.D. the school had received calls from parents complaining about the maskless students and requesting they be kept separate from other students. Despite requests from L.D. and B.D., Wing never provided documentation of those calls.

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[17] *See, e.g.*, 19 TAC §116.28)[1], 19 TAC §116.13)[2], 19 TAC §116.12)[3], 19 TAC §116.16)[4], TEX. ED. CODE §28.002[6]. Wing required it, but P.D. refused the directive.

'It is the supreme art of the teacher to awaken joy in creative expression and knowledge."

-Albert Einstein

45. August 19, 2021 brought more humiliation for C.D. After suffering the same coned-off separation and taunting during P.E. that she experienced earlier, C.D.'s science teacher refused to allow her to participate in group classroom activities. At lunch, Dealey-designated monitors (teachers or staff members assigned to supervise lunch) required her to separate from her peers, pick up her lunch, and move to the end of a table where they required her to eat alone, obviously estranged from her classmates and the object of verbal ridicule and scorn because she was not wearing a mask. The lunchroom monitors – people who had decided to dedicate at least part of their lives to the nurturing, development, and education of children – willingly acted at the direction or with the approval of the school's administration to ensure C.D. was humiliated, isolated, mocked, and treated as a pariah for not wearing a mask at school – *even though no one wore masks at lunch.*

"Those who know how to think need no teachers."

-Mahatma Gandhi

46. For both P.D. and C.D., mask shaming by school employees was commonplace. For example, when C.D. and P.D. were in circumstances where other students were physically proximate, teachers regularly thanked students for "those of you who are" wearing masks or being cooperative with keeping everyone healthy, all while looking pointedly and disapprovingly at P.D. or C.D. These events inevitably led to further teasing, mocking, and on at least one occasion, repeated encouragement to C.D. from a peer that she "deserve[d]to die." On multiple occasions, B.D. and L.D. brought the merciless bullying to Wing's attention and the attention of others in the

school administration. On the occasions she agreed the conduct they related was bullying, Wing plied the D family with platitudes and promises, assured them she would take care of the problem … and nothing happened. Students are kids, and kids are observant. They took their cues from adult school employees, who watched Wing to see how to behave, who in turn sought approbation from her supervisor, Zysk, who executed the instructions of his supervisor, Tiffany Huitt (the DISD Chief of Schools and one of the two people Superintendent Hinojosa consulted who encouraged adopting the Hinojosa Mandate), who modeled her attitude and actions after Superintendent Hinojosa. [18]

"Humility is nothing but truth, and pride is nothing but lying."

-St. Vincent de Paul

47. Superintendent Hinojosa was the problem, at least in part. Three weeks into the Hinojosa Mandate, the Superintendent publicly discussed his decision to require masks and the aftermath of his decision. During that discussion, he boasted (among many other things) that implementation of the Hinojosa Mandate largely occurred without problems. "A couple of parents said they wouldn't comply, so we communicated with them," he lied.[19] In fact, given that L.D. and B.D. are "a couple of parents," they must be the couple to which Superintendent Hinojosa referred – and they never heard from the Superintendent.

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[18] On September 29, 2021, L.D. wrote an email to Wing expressing frustration with the principal over continued bullying of her children. In that communication, L.D. asked Wing whether she had considered the relentless and "rampant bullying" C.D. encountered was attributable to the behavior of Wing herself. Wing never responded to her.

[19] *Supra,* fn. 12.

48. Despite multiple electronic mail messages and efforts to get his direct input, B.D. and L.D. received no communications from Superintendent Hinojosa. Not once. Not even an auto-reply.

49. Another part of the problem might have been DISD and its employees had quickly determined L.D. and B.D. were bad news for them, just waiting to happen. There just were no answers (no good ones, at least) to the questions B.D. and L.D. were asking. Searching for consistency, some sort of logic behind a plan that was looking increasingly arbitrary and capricious, B.D. wrote to the Superintendent and his staff as early as August 23, 2021, repeatedly asking for the DISD's written policies on masking. He asked for the Hinojosa Mandate itself, of course, but also the policies relating to compliance, to enforcement, to religious exceptions, medical exceptions, in-school exceptions, outside exceptions, physical education exceptions, and any other exceptions.

50. To their requests to see written policies, B.D. and L.D. received no answers from Superintendent Hinojosa or his staff. Not once. Not even an auto-reply.

"It was merely the substitution of one piece of nonsense for another."

-George Orwell
1984

51. B.D. and L.D. both asked more difficult questions as well: why were students required to socially distance themselves at least six feet from each other and wear masks indoors, but allowed to play and ignore social distancing outside, without masks? Why were students allowed to sit next to each other at lunch and unmask, but required to re-mask after lunch? What was special about lunch time, such that attending a club meeting over lunch meant masks were

not necessary in a classroom packed with students, but masks were mandatory in the same room the next hour? If Covid took a break from transmitting itself over lunch and recess, why (when the school finally permitted P.D. and C.D. to eat with their peers in the cafeteria) did the school require anyone C.D. ate with to bring permission slips from home… and why did P.D.'s peers not have to do the same?

52. To their requests to see written answers to these questions, B.D. and L.D. received no answers. Not once. Not even an auto-reply.[20]

53. But that was not the end of Superintendent Hinojosa's misrepresentations about how he intended to and did treat people who opposed him and the Hinojosa Mandate. What he *said* was "[w]e're going to be benevolent. We're going to be nice, but we're gonna be firm."[21] What he *did* or countenanced to be done in the enforcement of his Mandate, as detailed in this Complaint, and supported by numerous emails, documents, and chronology, was far from benevolent, nice and firm. Instead, it was by any measure cruel, mean-spirited, and brutal.

"It would be so nice if something made sense for a change."

-Lewis Carroll, Alice in Wonderland

54. August 20, 2021 began as the others, but ended with a twist. This day, lunch monitors again required C.D. to eat separately from her friends, but did not require that from P.D.

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[20] To be fair, B.D. did receive a type of response to one email he sent asking about what was happening to his children at school and why. On August 23rd, Zysk confirmed to B.D. unmasked students would remain in a separate classroom from masked peers. However, Zysk assured B.D., the segregated students would receive the same work and same teacher help and support. Separate but equal, in other words… a modern, health-based *Plessy v. Ferguson*. That concept worked so well the first time, what could go wrong?

[21] *Supra,* fn. *12*.

While restrictions on P.D. seemed to ease slightly, that was not the case with C.D. Teachers still required C.D. to remain separated from her peers, and P.D. took a picture of his sister during physical education as she sat, coned off from the other students. That information made its way to Principal Wing, who then called L.D. to report she would be acting on this and there would be some "punishment." Unfortunately, Wing was not thinking of punishment for the malefactors who were mistreating and humiliating a child. Rather, she planned to punish P.D. for documenting the institutional cruelty Dealey employees were inflicting upon and encouraging others to inflict upon his sister. Wing told L.D. that she (Wing) had passed this serious situation "up the chain."

"Those who know the least obey the best."

-George Farquhar, Irish dramatist

55. August 23, 2021 began a new week and with it, a new approach to enforcing mindless obeisance to the DISD policy that violated state law. Principal Wing called L.D. at 7:30 AM to explain that – for the safety of all – P.D. and C.D. would need to report to the school library rather than to their normal classrooms. P.D. and C.D. did as Wing instructed. They sat in the library alone all day, at a table and behind a plexiglass shield. Other students went to the library and laughed at them. P.D. and C.D. received no instruction of any type. Apparently eager to get rid of a problem it envisioned should unmasked children wait for a ride home while standing outside next to masked students, the school released P.D. and C.D. early to walk home. Except P.D. and C.D. rarely walked home; L.D. picked them up. Unaware of the children's unplanned, unauthorized, and ill-advised early dismissal, L.D. arrived at the normal time and place to pick them up after school. Twenty minutes of frantic scrambling ensued to find the two minors who had walked home.

56. August 24, 2021 was almost a better day. Both P.D. and C.D. were in the library, again receiving no instruction. This day, they were joined by two other students who were not masking, either.[22] The four students were talking when Eryn Davila, a teacher (and C.D.'s science teacher), approached them and told them they were not to talk with each other. Shortly after that, Wing came in to tell P.D. and C.D. the silence requirement was punishment for all four children and was their fault because P.D. and C.D. had left early the day before.[23]

57. August 25, 2021 brought more tears. Although both P.D. and C.D. had medical conditions the school knew about, Dealey teachers and staff, at Wing's direction, refused to honor the medical reasons the children could not wear masks and continued to ostracize them instead, violating federal and state law, and even the unlawful DISD policy they claimed to enforce.[24]

58. And there were smaller hurts, as well. After school, on August 25th, C.D. got into her mother's car crying. She was no longer allowed to see P.D. or spend time with him at recess, the only time they were allowed out of the library to talk and play. Wing announced the change during recess, stating it was "policy" that grades 4-6 must play on the playground while grades 7 and 8 played on the soccer field. C.D., already emotionally fragile and stressed because of the

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[22] Where those students had been previously is unclear.

[23] Retaliating against innocents for the behavior of others is a long-standing tactic employed by autocratic, repressive regimes to break the will of anyone resisting submission. Despite an abundance of documentation that this approach actually has the opposite effect, authoritarians gravitate to it. *See, e.g.*, the Nazi SS murders of 342 civilians in Lidice, Czechoslovakia in retaliation for the Czech Resistance's assassination of Reinhardt Heydrich in 1942. The Czech Resistance became much larger and more active after that, transforming into a deadly effective symbol of national pride and national resistance. There are many other examples through the centuries; a quick talk between Wing and the school's best history teacher could have been helpful. "Those who cannot remember the past are condemned to repeat it." (George Santayana).

[24]"We're going to be benevolent. We're gonna be nice…." *Supra*, fn. 12.

tension and pressure during school hours, became disconsolate. P.D. asked Wing for permission to take C.D. to the counselor because she was in such distress. Wing, in what P.D. described as an "aggressive" tone, refused. After L.D. requested to see the "policy" that required separating the siblings at recess, Wing was unable to produce one.

59. Later, on August 25th after P.D. and C.D. were remonstrated again about talking in the library, another teacher came in and said, "I heard you don't have enough work to do," then dropped assignments on the table, overloading the students with assignments as "busy work" with no direction or instruction.

60. August 27, 2021 brought more unpleasantness. During lunch, a teaching assistant saw P.D., C.D, and two friends attempting to meet outside in violation of Wing's undocumented "policy" separating the younger grades (which included C.D.'s grade) from the upper grades (which included P.D.'s grade).

61. Physically placing herself between C.D. and the others, the assistant then pushed C.D. back and blocked her with an arm. P.D. expressed his frustration in coarse language and found himself meeting with Wing, who used the opportunity to ask him, not for the first time, how long "this library thing is going to last." P.D. repeated his response from the other times (which was that it wasn't a "thing," it was his beliefs and his family's beliefs). Like the other times she tried to drive a wedge between his parents and him, Wing tried to cajole him into wearing a mask. In response, P.D. told the principal to call his parents. Wing never made that call. Later, P.D. called L.D. to express his frustration – C.D. had a diagnosed condition the school knew about, but the school officials were acting in a manner calculated to exacerbate that condition. They were isolating her, taking her away from friends she had tried so hard to make, causing her to be the brunt of jokes, and doing all they could to cause her emotional pain.

62. By August 30, 2021, the school determined the "library thing" was more a siege than a skirmish. It relocated P.D., C.D., and the other non-mask wearers to a higher, more secluded area in the library and assigned a teaching assistant to enforce the no talking rule, to ensure the children stayed confined during the day, and to monitor them to prevent them from doing something that might "risk" the health of everyone in school -- such as walk unescorted to the bathroom.[25] With no instruction, schoolwork was becoming much more difficult for the students. The school could not find the resources to provide direct instruction to the children but readily deployed the resources necessary to ensure they stayed quiet all day and escorted them, like prisoners, anywhere in the school they went.

63. Principal Wing had other plans to increase pressure on P.D., C.D. and their parents, as well. The newer, more separate area of the library was situated loft-like, higher than the rest of the facility, and could be completely isolated easily. Wing, with the approval of Ryan Zysk and other DISD officials, ordered construction of a plexiglass wall and a doorway providing access to the area, where they could isolate C.D. and P.D. and force them to remain (silent) all day.

64. Defendants authorized and built this plexiglass box for Plaintiffs without disclosing to Plaintiffs' parents what they were doing. B.D. and L.D. learned of the plexiglass cage when Plaintiffs went home and complained of heat, light-headedness, nausea, and headaches. After several of these complaints, on September 13, 2021 L.D. called Defendant Wing to find out what

[25] Even if the children had posed a risk (which of course, they did not), how an escort to and from the bathroom would minimize or eliminate that risk is unclear.

was happening and received no information -- Wing would not or could not provide even proof a professional had inspected the plexiglass cage and certified it usable.[26]

65. As an example of Defendants' callous disregard for Plaintiffs' well-being, Defendants claimed this plastic box was necessary and that some (undefined) harm would result from the children's unmasked breathing. That argument was prescient, but in a slightly modified form: Wing and Zysk (and potentially others) had approved construction of the plexiglass cage from floor to ceiling. No air exchange could occur, and the sealed confinement, built by DISD and those it charged with decision making, was slowly poisoning the children with carbon dioxide. Compounding the problem was the broken air conditioning, which had been non-functioning since the school year began. Ironically, elementary school children in biology class learn living creatures – frogs, butterflies, other insects, and the like – need holes in otherwise sealed containers so they can breathe and survive.[27] That concept, so familiar to any child with a Mason jar of fireflies on a summer's evening, eluded DISD "leadership" as Defendants built the container for Plaintiffs.

66. Ultimately, a call to the Fire Marshal resulted in an on-scene inspection of the cage, after which the school received a deficiency notice and an order to provide better ventilation and remove some of the plexiglass. An inspection incident to a certificate of occupancy – such as the certificate L.D. requested and that Wing failed to produce – would have revealed the container's

[26] Interestingly, the secrecy behind construction of the cage was intentional. A draft email from Wing to the D-Family went from Wing to Zysk for approval first. The email Wing ultimately sent to the D-Family was identical to the version she sent to Zysk for approval, except the draft's first paragraph revealed the cage's construction and the final version did not. Zysk had removed the paragraph from the version the D-Family received.

[27] Not only do students learn that, Defendants *test* them on it. *See, e.g.*, *TEKS Guide K.10.C*, https://www.teksguide.org/teks/sk10c/overview.

potentially fatal design flaw.[28] Perhaps not surprisingly, other roadblocks appeared on the path to L.D. and B.D. seeing (or not seeing, because it wasn't there) the certificate of occupancy. Zysk made clear how DISD saw Plaintiffs and their parents when he responded to L.D.'s request for information on the cage where DISD segregated and confined her children for most of each school day. He told her to file a Public Information Request.[29]

67. In effect, Wing and Zysk, enforcing Hinojosa's Mandate, had created a plexiglass holding cell for C.D. and P.D. that was less like a classroom and more like the primate cage at a zoo – except that captive primates can choose when they leave the plexiglass viewing area and zookeepers care about the living beings the zoos entrust to their care. Meanwhile, the other students regularly pointed at and made fun of C.D. and P.D. as they remained jailed in their see-through cage in full view.

68. DISD executives and administrators continued to enforce the Hinojosa Mandate by isolating, belittling, and bullying the children who refused to comply with the terms of an illogical, rashly imposed, unexplained, and unlawful edict – a demand that also happened to be contrary to the best interests of their health. DISD's enforcement efforts were remarkable in that

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[28] Even a cage has air exchange, and both P.D.'s and C.D.'s medical conditions can be compromised by oxygen deprivation.

[29] His glee in collecting evidence of the D-Family's frustrations is palpable in his response to the email of Catlin Knoll, Dealey's assistant principal, who had relayed to him, at his request, the exchange she and L.D. had that morning regarding the plexiglass cage the school built to detain P.D. and C.D. during school hours. His response: "*Perfect. Thank you. I'm sorry you were on the other end of that interaction, but we're glad to have you back on campus.*" Within days, he told B.D. to file a Public Information Request. One month later, DISD Trustee Edwin Flores was forced to admit to a reporter that Dallas Fire and Rescue had ordered the cage modified (because it was jeopardizing the children's health).

they were a real-life study in the development of pack mentality.[30] Without fail, Defendants demonstrated unprofessionalism. Their efforts to crush the spirits and will to resist of children were heartless, cruel, and relentless, ranging from major offenses that – if a parent did them – would be grounds for CPS involvement and temporary removal of the child from home to a series of petty, narrow-minded, and hurtful acts.

69. On September 13, 2021, B.D. continued the D. Family's defense against DISD's faulty and unlawful Hinojosa Mandate, the Wing/Zysk enforcement effort, and the disparate, arbitrary, and capricious manner in which school staff attempted to enforce the Mask Mandate. Pointing out – again – that the school required C.D. to eat separated from her peers (either in the library or outside), B.D. wrote an email requesting the school apply common sense and allow C.D. to join other children for lunch and eat with her mask off. It was a request to treat C.D. normally and to give her the same freedom every other student had enjoyed since the school year began. Two days later, Wing replied, stating she had consulted with DISD Health Services and had determined it was "OK" for C.D. to eat lunch maskless, in the cafeteria like everyone else. However, inexplicably, she still had to eat alone. Apparently thinking she had done a great humanitarian thing, Wing made sure C.D. knew who was responsible for this new mask freedom. She sought C.D. out at lunch to tell her the news and inform her that she (Wing) *personally* had

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[30] Researchers at the University of Leeds discovered that it takes a minority of just five percent to influence a crowd's direction — and that the other 95 percent follow without realizing it. Pack mentality (also known as herd mentality, mob mentality, or gang mentality), is defined by elements of hostility and fear: If you're inside the pack, you better play by the rules or risk having the pack turn on you. If you're outside of the pack, you're the enemy and pose a threat that must be neutralized.

allowed the maskless lunchtime.[31] C.D. reported later she had no reply, and that Wing impatiently said, "you're welcome," and stalked off.[32]

70. On September 16, 2021, P.D. decided to follow his friends to a school club meeting held during lunch. Because there weas no mask requirement during lunch, P.D. assumed the meeting would be maskless, but Wing intercepted him – not his friends – to tell him he had to have permission to attend the meeting. L.D. discovered later neither Wing nor any other District employee required any other student to obtain permission.

71. P.D. called L.D. for permission to attend the meeting (held by the Gay Straight Alliance). L.D. emailed her permission to Wing who responded with an email asking "[i]s it OK for [P.D.] to wear a mask?" (an inexplicable request, given that no one would be wearing one). L.D. refused and asked why P.D. would have to wear one when no one else did. Wing did not reply.

72. Dealey teacher Matthew Mazur was the faculty sponsor for the meeting, which occurred in Mazur's art classroom – the same classroom where school employees told C.D. earlier she could not attend art class because she refused to wear a mask.

73. When he arrived in the classroom, P.D. saw that, unlike what Wing had just told his mother and unlike earlier when C.D. was refused admission to art class, the room was overflowing with students, none of whom were wearing masks. Students stood and sat everywhere,

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[31] Wing did not allow P.D. and C.D. back into the cafeteria with other students until September 15th, one day after she requested permission from DISD Health Services to allow them lunchtime with their friends. In a remarkable coincidence, Wing made her request to DISD Health Services the day after Spectrum News broadcast a story about the situation C.D. and P.D. were in and could not escape.

[32] Wing waited to "call DISD Health Services" until B.D. pushed her to treat C.D. more rationally and local news took an interest. If the news station had overlooked the story, or if B.D. hadn't re-urged his request for the school to treat C.D. like *every other child*, Wing never would have made that call on her own.

tightly packed into the classroom. With a favored group and a favored teacher, there were no masking restrictions on attendees.

74. Neither Wing nor anyone at DISD central administration such as Hinojosa, Tiffany Huitt, or Zysk – could explain to the D-Family later that day why a room packed at lunch time with maskless students laughing, joking, and coughing could not also sustain a single maskless student during a regularly scheduled, much less crowded class.[33]

75. When no district employee could explain the inconsistency and apparent arbitrariness of the masking requirement, L.D. emailed Wing and noted that because there was no apparent logical or uniformly applied policy or rule surrounding mask protocol, she assumed her children could attend regular classes from then on. Wing responded with a non-sequitur, telling L.D. that she had requested the teacher take future meetings outside.[34]

76. On September 17, 2021, having learned the policy relating to wearing masks was – at best – lax, dependent on who the enforcing authority was and against whom the enforcers were acting, and realizing the school's enforcement of the Hinojosa Mandate was arbitrary and capricious, P.D. and C.D. decided they should leave the library confines and go to class as they would normally. Tired of their children being bullied, scorned, and abused by adults who wanted conformity and compliance at any cost, the D-Family sent their children to school with permission to go to class and instructions to call home if they had trouble.

[33] Neither has anyone explained why the Covid virus takes lunchtime off or does not attend meetings in classrooms over lunch. It is similarly unknown how Covid impacts staggered lunch periods in larger schools, when scheduling lunches (and Covid virus off time) requires more than just an hour.

[34] See Exhibit 4.

77. For P.D., first period was normal, except for the office staff that continued trying to lure him out into the hallway to "talk." Second period Physics was more challenging, as Wing and her staff came in and began evacuating students from the room, whispering in their ears and removing them three at a time. Eventually, only P.D. remained. He was there for the remainder of the day, learning nothing and doing nothing except waiting for the dismissal bell.

78. For C.D., things were more difficult. Realizing after she went to class she did not have her books, she left her classroom and went to the library to get them. On the way back to her classroom, she was stopped by a troika comprised of Davila (her science teacher), another teacher and a teaching assistant. They had locked the door to the classroom so C.D. could not enter. Davila laughed at C.D., then told her she was "not welcome" in science class again. The teachers then evacuated all the students from the classroom and instructed C.D. to go into the room with her homeroom teacher. C.D. did as she was told and spent the remainder of the day with her homeroom teacher alone. The other students in her class, ironically, went to the library.

79. While C.D. was isolated with her homeroom teacher, P.D. called L.D., confused and worried because his entire class had been evacuated quietly – but not him. He was alone in the classroom and unsure what to do. L.D. immediately went to the school and requested to see her children but could not gain admission. Instead, Wing and Zysk came to the door, reassured her everything was fine, that her children were fine, and that her children could not come to the door because they were "in classrooms."

80. Zysk was a district-level employee. His titles on the morning he met L.D. at the door to Dealey were "Director of School Leadership" and "Executive Director for Magnet Schools," but his job that day was to be an enforcer, to help put an end to an insurgent, unmasked problem that was resisting the Hinojosa Mandate and that simply was not going away.

81. Before Covid, DISD developed district-wide disciplinary policies and procedures, which, if applied fairly, produced generally uniform discipline in schools. Minor disciplinary problems are called Level I offenses, while more serious violations are documented at Level II. A Level II offense is no minor thing. DISD defines Level II offenses this way:

> Level II Offenses – Serious offenses [that] disrupt or threaten to disrupt the educational process and require removal of the student from the regular classroom. The offense may have been committed on school property or a school-sponsored event on or off school property. Parents will be notified and requested to attend a disciplinary conference with the administrator. Note: Self-defense may be a factor to be considered in a decision to order suspension, removals to a Disciplinary Alternative Education Program, or expulsion.

82. Together with Wing, Zysk affirmatively avoided telling L.D. he and Wing had used P.D.'s. and C.D.'s decision to go to class as the basis for manufacturing a crisis, with P.D. and C.D. in the middle of it. By evacuating students from each of the two classrooms where P.D. and C.D. were trying to assimilate, Defendants Wing, Zysk and others believed they could make a case for the children having caused a "major disruption" in the school. That was significant because a "major disruption" qualifies as a Level IIB disciplinary offense in DISD. Two or more offenses at that level open a broad array of remedial actions the school district can impose and make it possible for a magnet school (such as Dealey) to require an offending student reapply for admission the following year. Admission would not be guaranteed and, absent that guarantee, DISD easily had the leverage it needed to solve its P.D./C.D. non-compliance problem.

83. Although the Hinojosa Mandate did not provide specific exceptions for objections to the requirement that students and visitors on school premises wear masks, federal law required the school district to exercise flexibility. Section 504 of the Rehabilitation Act of 1973,[35] as

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[35] Known as "Section 504." 29 U.S.C. §794.

amended, gives every student in a district's jurisdiction the right to a Free Appropriate Public Education ("FAPE"), regardless of the nature and severity of disability. Under section 504, FAPE consists of a school district providing regular or special education and related aids and services designed to meet these students' individual educational needs as adequately as it meets the needs of non-disabled students.

84. Section 504 requires recipients to provide students with disabilities the appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities. An appropriate education for a student with a disability under section 504 regulations can include, without limitation, education in regular classrooms, education in regular classes with supplementary services, and education in regular classes with special education and related services.

85. Importantly, section 504 prohibits retaliation against any person for the purpose of interfering with any right or privilege secured by section 504. No one can engage in behavior that is intimidating, threatening, coercive, or discriminatory against anyone who receives protection under that law.

86. On September 19, 2021, B.D. and L.D. had provided the school with recent, updated letters from their children's primary care doctor, in which he described their medical conditions and medically exempted them from wearing masks. Defendants refused to allow the exemption, forcing the D-Family to seek section 504 status for both P.D. and C.D., and the protections and accommodations it offered. [36]

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[36] P.D. and C.D. had attended daily for their entire academic careers. The school was well aware of their conditions, because both students had been out of school over the years for appointments and/or procedures.

87. Normally, setting a section 504 meeting is no more involved than organizing a meeting around the schedules of the people attending. A meeting can occur in days or a week. Slightly more, perhaps. In this case, Dealey was unable to coordinate schedules for the three DISD employees who were to attend the section 504 meetings for P.D. and C.D. until October 13 – nearly a full month – and even then tried to cancel it the day before it was set.[37] Based upon the children's health histories, the meeting resulted in approved section 504 plans. Among other provisions in the plan, DISD acknowledged and accepted P.D. and C.D. were medically exempted from wearing a mask.

88. On Monday, September 20, 2021,[38] and without notifying either L.D. or B.D. (contrary to their instructions), Wing spoke to P.D. and C.D. privately about the Level IIB "offense" she had documented in their files the week before. The "major disruption" in school activities she relied upon to support the discipline was her decision to remove every other student from the classrooms P.D. and C.D. had gone to, unmasked, on September 17, an action Wing claimed had affected 100 students and 10 teachers. During her talk with P.D. and C.D. (which occurred after she received the medical exemptions), Wing encouraged them to defy their doctor's medical judgment, mislead their parents, and give up refusing to wear a mask, telling P.D. one more Level IIB meant he would be expelled from the magnet program. She encouraged P.D. and C.D. to "find another way to protest masks." P.D. again refused, explaining they were not "protesting anything," and told Wing to talk with his parents.

[37] B.D.'s strong objection and reminder the school was not complying with section 504 requirements for timeliness put the meeting back on the schedule.

[38] The day after receiving an email with the doctor's notes exempting the D-Family's children from wearing a mask.

89. Although there was comparatively very little verbal communication between the D-Family and Defendants during the events described in this Complaint, during a Zoom conference call with the D-Family three days after the classroom attendance "disruption" (after Wing spoke to the D-Family's children without their parents' knowledge), Zysk, Wing and Janet Allen (DISD Manager of Student Engagement and Support) presented themselves, ready to discuss the "major disruption" that had given rise to the purported Level IIB offense referrals. However, the district officials refused to discuss any events leading up to P.D. and C.D. attending class on September 17, 2021 – by any measure, important information to have when determining whether a "major disruption" had occurred at all. In rote, irrelevant answers, each of the school district's employees took turns refusing (in word-for-word identical responses) to explain why the administration (Zysk and Wing) decided to remove all the other students from the rooms when P.D. and C.D. attempted to rejoin their regular classes, what risk P.D. and C.D. posed, and why P.D. and C.D. posed a risk at some times but not others.[39] To each of these questions, the DISD officials offered no concrete answer.[40] The DISD officials' most frequent answer was similar to "[w]e are not here to discuss anything except the incident on the 17th…."[41]

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[39] P.D. and C.D. began the year attending classes in the classroom. Students routinely ate lunch and played outdoors without masks. P.D. had attended a school club meeting where the classroom was filled with unmasked students.

[40] For example, when B.D. asked directly why P.D. could attend a Gay Straight Alliance meeting in a classroom jammed with maskless students on one day but have every student removed from the same room the very next day because P.D. was there without a mask, Principal Wing replied with the *non-sequitur* that she had requested the sponsor, Matteo Mazur, to hold future meetings outside.

[41] Neither were they there to discuss the inanity of sanctioning P.D. and C.D. for going to class maskless, even though the Defendants knew the children had medical exemptions and were entitled – even under the absurd, Alice in Wonderland rules of the Mask Mandate – to decline wearing masks.

90. During that Zoom call, B.D. made a point of asking Wing what she told P.D. about the impact another Level IIB offense would have on his record. Wing replied, claiming she had cited the correct potential outcome to a Level IIB offense: required re-application to a magnet program. Except that was not what she said to P.D. What Wing actually told P.D. was that a second level IIB offense would result in his *expulsion from the program.* P.D. had a recording of Wing's threat to prove it. Once Wing realized she had been caught lying in an attempt to intimidate P.D., she apologized to the D-Family, writing by way of excuse that she "must have misspoke" [sic]. That was a remarkable claim, not just for the grammar used by a professional educator but because it came from a principal who acted in concert with the jointly titled "Director of School Leadership" and "Executive Director for Magnet Schools" (together, the principal and Director/Executive Director were two people who surely knew the DISD disciplinary policies, particularly in these circumstances) to create a sham "major disruption" they blamed on P.D. and C.D.

91. Zysk and Wing, acting on behalf of DISD, had no intent to change the punishment they had already assessed. Apparently realizing their manufactured major disruption had a major

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Of course, this ignores the 800-pound gorilla in the plexiglass room: none of this should have happened at all. The federal law the D-Family was trying to force Defendants to comply with would give P.D. and C.D. an exception to the unwritten rules of the Hinojosa Mask Mandate, which was itself completely illegal. Sadly, the law (that is, the real law and not Defendant Hinojosa's law), along with common sense, fairness, and constitutionality – had no place in the Hinojosa Mandate enforcement plan.

proof problem,[42] and *looked* a whole lot like punishment for not wearing a mask (because it was),[43] Zysk and Wing pivoted.[44] To keep the Level IIB violation, the "major disruption" became poor decision making. The specific acts were P.D.'s and C.D.'s failures to follow "an adult's" instructions. The instructions the students failed to obey were from adult Dealey staff when they told P.D. and C.D. to "follow me" out of the classrooms.[45] In this way, Zysk, Wing and the other defendants could hide behind the fig leaf fiction that the violation was not a failure to wear a mask, but rather that P.D. and C.D. did not follow instructions "an adult" gave them that were designed to re-isolate and re-confine them…for not wearing masks. Despite this obvious effort to sidestep the children's medical and mental health reasons for not masking, Wing refused to retract the disciplinary record and the sham Level IIB offense remained on P.D.'s and C.D.'s school records.

92. None of what P.D. and C.D. were experiencing occurred in a vacuum. L.D. had a close friend, Marnie Glaser. Glaser's sons attended Dealey and were close friends with P.D. Glaser

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[42] That is, P.D. already had been in class maskless and had extensive maskless exposure to and with his maskless classmates, while C.D. had been in class maskless and had masking restrictions relaxed. The decision to remove all students from classrooms where P.D. and C.D. were sitting, maskless, was Wing's and Zysk's. The "major disruption" they said resulted from their decision – was not. What it was, was a setup.

[43] Perhaps because C.D. was locked out of the classroom after leaving to retrieve books, or because when Wing got the two students in her office the following Monday, she discussed why they should wear masks, and never brought up to the children that they should obey "adults."

[44] Punishing a student for eschewing a mask when a valid plan under section 504 was in place violated federal law, not just state law.

[45] To summarize in context, the new Level II violation was that P.D. and C.D. failed to follow Dealey staff out of the classrooms where the students had a right to be, so P.D. and C.D. could be confined in the library and deprived of the education they had a right to get, because they were not wearing masks they had a right not to wear, to prevent (ineffectively) the transmission of a virus the students never had, as part of an organized effort of retaliation and bullying designed to force the students to comply with a vague and ambiguous school district policy that was unconstitutional and illegal in the first place.

herself was exceptionally active in Dealey parental support activities. Well-known to the teachers, administrators, and staff at Dealey, she was an obvious and natural choice to chair the Site-Based Decision-Making Committee, the committee state law required the school board to constitute and charge with identifying methods and manners of improving school performance.

93. As the SBDM chair, Glaser had regular and frequent contact with Wing. That worked out fine because Glaser was also a friend of Principal Wing. Having previously been an executive at the Texas Education Agency, Glaser enjoyed being at the school, enjoyed being consulted about ways to improve the school and its performance, and enjoyed being seen as one of the people who ran the school. Above all, she enjoyed being positioned to gain confidential knowledge about what was happening to, in, and around the school. She just enjoyed *knowing* – the apparent authority and leadership inside knowledge conveyed on her. To the extent there were Dealey cognoscente, she was royalty.

94. Glaser also was a firm Hinojosa Mandate acolyte. On August 17, 2021, Glaser emailed Wing, proposing to post a statement on the Dealey Discussion Group Facebook page, moderated by the SBDM vice-chairman:

> *Hi Ms. Wing! Please see our draft joint statement on the mask policy below. The plan for now is for us to hold it until you see that making a joint statement to our Dealey community would be helpful or is necessary. We realize that we may have to change the statement if the District policy changes. Would love your thoughts.*
>
> The Dealey SBDM and PTA recognize that concerns have been raised regarding the District's policy of requiring all adults and property to wear masks. While it is neither the SBDM nor the PTA's role to weigh in on the merits or support Ms. Wing, school leadership and our teachers as they strive to provide the best education possible for our children.
>
> Until the District policy of requiring masks changes, we please ask that all children and adults follow the policy. We do not want our school leaders and educators to be put in the position of enforcing the District mask policy in lieu of spending their

> time and energy on supporting our children's academic and social-emotional well being.
>
> While we are not seeing widespread disagreement with the mask policy, if you do disagree with it, we encourage you to contact your Dallas ISD Trustee or other elected officials.

95. The Dealey Discussion Group was a Facebook page where Dealey parents (and students) could go to learn about school happenings, events, and announcements – a sort of electronic town square. The recommendation in Glaser's proposed statement to contact elected representatives was an excellent idea. Unfortunately, it was not a course open to the D-Family, who by late September had apparently contacted the Board of Trustees too much – at least for Trustee Dustin Marshall. Trustee Marshall received copies of B.D.'s emails to various school officials (as did all other Trustees and some executives at DISD). He found B.D.'s emails too time consuming or upsetting to receive and read, yet apparently was unable to resist opening them and reading them. Trustee Marshall – elected to his government office to represent constituents who have a Constitutional right to free speech and to redress grievances with the government – requested from Superintendent Hinojosa directly the D-Family's emails to any DISD email address be blocked, other than those addressed to the "Legal Team."

96. Fewer than twelve hours later, he had a response from Pamela Lear, Ed.D., the Superintendent's Chief of Staff and Chief Racial Equity Officer (and one of the people who helped formulate the Hinojosa Mandate policy, such as it was). She decided the First Amendment to the U.S. Constitution, a battle-tested Amendment with protections of free speech, assembly, and the right to redress grievances that grimly but proudly has shouldered the duty of carrying this nation

through some of its most divisive moments, did not apply to this situation. Incomprehensibly, she wrote back to Trustee Marshall that DISD "would proceed as recommended."[46]

97. As the D-Family would later learn, on September 17, 2021 (the day P.D. and C.D. went to class maskless) and not shy of using tools she had at her disposal, Glaser learned of P.D.'s and C.D.'s attempt to attend classes normally. Showing immediate and rote support for the District's masking policy and employees (if not an especially comprehensive – or even passing -- grasp of the Constitution, law, or events), Glaser wrote to Wing seeking to revisit the issue she had raised a month earlier and permission to post a masking statement from the SBDM and PTA on the Dealey Discussion Group Facebook page:

> *Ms. Wing,*
>
> Would you like to rebid it [sic] [revisit] this conversation? We can post it on Dealey page, send out to members…
>
> Marnie Rulfs Glaser

98. Wing responded with an email introducing Glaser to Ryan Zysk, and the two scheduled a meeting to discuss how Glaser could be useful using the Dealey Discussion Group Facebook page to send out the Superintendent's enforcement message to the Dealey community.

99. Before the incidents described in this Complaint, Glaser and L.D. had a close friendship, but like most friends, they disagreed on some issues. The issues they disagreed on, including whether requiring wearing masks was a matter that could – or should – be a school district decision, proved stronger than their friendship. They drifted apart, and by the time P.D. and C.D. were experiencing daily misery at school, their mother, L.D., and Glaser were no longer talking

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[46] This was not a solo decision. Days earlier, Tiffany Huitt, Superintendent Hinojosa's "Chief of Schools," had cryptically instructed Wing and Zysk by email to "*not copy all trustees. Take them off when responding or make it BCC. I will update you later on the why.*"

with each other. As certain as L.D. was that her children had medical, legal, and moral reasons and rights to eschew masks in school, Glaser was just as convinced going without a mask was irresponsible and posed an unacceptable risk to everyone else.

100. Because of her unique position stemming from her multiple roles: part school official, part friend of Dealey Principal and staff, part Dealey mom, part busybody and part gossip, it was inevitable that Glaser would know in real time – and find herself square in the middle of – all there was to know about P.D.'s and C.D.'s refusal to mask, the reasons for it, and DISD's response and planned responses.

101. Thus, when confidential scholastic and medical information about their children, along with other confidential school-related information, became public knowledge, bandied about the Dealey community and discussed freely on the Dealey Discussion Group Facebook page and other social media, B.D. and L.D. knew Glaser was the source.

102. In the conflagration of emotions that resulted, if P.D.'s and C.D.'s unwillingness to wear masks and the negative perceptions that went with it was the kindling and Glaser was the spark, social media was the high-octane fuel. Glaser, Chair of the school's SBDM Committee, was a regular participant on the Dealey Discussion Group Facebook page, frequently dropping a post in to stay relevant, provide extra information, or stir up action and interest.

103. Although exactly when Glaser and Zysk met is unclear, what is apparent is that immediately after their email exchange organizing a meeting to explore what Glaser could do to help the DISD enforce the Mask Mandate against P.D. and C.D., the Dealey Discussion Group began to focus attention on P.D.'s and C.D.'s mask refusal. On September 19th, Glaser made a series of posts that disclosed private information no one else in the discussion group had or *could* have had. The information Glaser knew and revealed had to come from a small group of people

who knew both P.D. and C.D. had health issues that had warranted implementing section 504 plans for them, and that their health issues exempted them from the Hinojosa Mandate.

104. On October 13th, Glaser posted (in reference to P.D. and C.D.), "[n]o one knew they had health issues." Then, "I don't know," (answering a question about why B.D. and L.D. did not provide medical notes sooner). She also disclosed the children had health issues by posting this defense of the DISD policy in reference to P.D. and C.D.: "District policy has been that children with health conditions and doctors notes do not have to wear masks." Then came a query from a person calling herself "Dimple Sureka" who had yet more information from Glaser: "Is anxiety a medical reason not to wear a mask?"

105. Between October 13th and the beginning days of November 2021, the D-Family tried to get Defendants to take affirmative steps to limit or eliminate, or at least impose consequences for, the bullying P.D. and C.D. experienced daily (including from school employees). During that period (corresponding to the time immediately after the children received formal protections under section 504), the D-Family filed a minimum of **33** bullying reports. As the responding (or non-responding) authority for Dealey, Defendant Wing either refused to act or failed to respond at all to well over half of those complaints.

106. Complaints the D-Family filed against school district employees remained unaddressed, closed with no action or, in the case of the D-Family's complaints about Wing, referred to Zysk for "investigation" – despite the fact Zysk himself had been involved in the very events he was purportedly investigating as a neutral evaluator.

107. By October 29, 2021, the lines had been drawn and the trenches dug. P.D. and C.D. had demonstrated they had an articulate understanding of their ethical, constitutional, and

medical rights not to wear masks, and had no intention of complying with what the School District expected. DISD and the other Defendants were not backing down, either.

108. The stalemate broke that day, at the end of the day. While he was waiting for L.D. to pick him up from school, Connie Meinhardt, P.D.'s math teacher just the year before, claimed she saw P.D. simulate a sexual act in front of a young child. She relayed her claim to Jill Emery, another teacher, who reported it to Wing. Wing instructed Emery to file a "pink slip," another Level II violation.

109. Again, P.D. had a surprise for Wing. This time, he went home and sent a text message to the student who really had made the gesture. The true offender sent P.D. a text in return, acknowledging it was he, not P.D., who made the gesture. B.D. took the exculpatory information and sent it to Meinhardt, Wing and Emery so they would know they accused the incorrect student. P.D. returned to school the following day and asked Wing whether she had removed the offense from his record. She simply said, "no."

110. And there it remained. Meinhardt refused to change what she claimed she saw. Emery refused to change the complaint she drafted at Wing's direction, despite the exculpatory evidence P.D. obtained. And, on November 3, 2021, Wing refused in writing to remove the violations from P.D.'s record, claiming that it was "minor" and she handled it with a verbal warning.[47] Despite B.D. sending a copy of the exculpatory text message to Wing, the D-Family's requests that she remove any record of violation fell on deaf ears. Wing said she had addressed the

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[47] Given that P.D. established he had not exhibited the behavior giving rise to the pink slip disciplinary record, it is not clear what the "it" was that Wing addressed, why it was "minor," – or was anything at all – and what she possibly could have warned P.D. about verbally (or any other way). It is also unclear why she couldn't simply tell P.D.'s parents that the incident was not in P.D.'s school record… or if it is.

matter, handled it, and the matter was closed. She had a second Level II violation against P.D. and had no interest in allowing the truth to undo the hard work it had taken her to get it.

111. On November 5, 2021, after two months and three weeks during which every day subjected their children to a denial of their educational rights and privacy, humiliation, bullying, intimidation, deprivation of their federal statutory and constitutional rights, and a school district bent on enforcing an illegal masking directive from its Superintendent, along with a concerted effort to put masks on P.D. and C.D. (which included a false report of an offensive and potentially criminal act), the D-Family made the difficult decision to withdraw their children from DISD.

112. Yet even after the D-Family withdrew P.D. and C.D. from Dealey, they could not disentangle from the personal attacks and harassment of the staff. Writing on February 23, 2022 Dealey teacher Matthew Mazur falsely stated, "She [L.D.] pulled her kids because the oldest was going to be suspended for cell phone violations and bullying. He recorded a Gay Straight Alliance meeting and was going to be sent to an alternative school for a week. Thats [sic] the real reason she pulled the kids but that doesn't fit her narrative."

FIRST CAUSE OF ACTION: VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION; 42 U.S.C. §1983

(Both Plaintiffs Against Defendants DISD, Hinojosa, Zysk and Wing for Violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution)

113. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

114. Plaintiffs were students enrolled in the Dallas Independent School District, attending a magnet school program at George Bannerman Dealey Montessori Academy. Attending Dealey was a privilege and determined by selection only.

115. Plaintiffs live inside the boundaries of the Dallas Independent School District.

116. At all times relevant to this Complaint, Michael Hinojosa was the Superintendent of DISD. He had the authority to set policies, regulations and procedures the employees of the school district were obligated to follow.

117. At all times relevant to this Complaint, Pamela Lear was the Chief of Staff to the DISD Superintendent and DISD's Chief Racial Equity Officer. She had broad, district-wide responsibilities and her directives had the authority of the Superintendent.

118. At all times relevant to this Complaint, Tiffany Huitt was the DISD "Chief of Schools." Upon information and belief, she had authority over and responsibility for DISD school performance. She was Defendant Zysk's supervisor.

119. At all times relevant to this Complaint, Ryan Zysk was the Executive Director of Magnet Schools for DISD and the Director of School Leadership. He was a school executive responsible for implementing the Superintendent's edicts, mandates, and directions at the school level.

120. At all times relevant to this Complaint, Beth Wing was the Principal of Dealey Academy. She was responsible for school discipline and ensuring the school employees and students complied with Superintendent Hinojosa's mandates.

121. At all times relevant to this Complaint, Marnie Glaser was the chair of the Site Based Decision Committee, a state-mandated committee comprised of DISD staff and community

members and required by state law at each public school, designed to increase successes at each campus.

122. At all times relevant to this Complaint, the unlawful actions of each natural defendant were possible only by each of them occupying positions of official authority and exercising the power of that office.

123. At all times relevant to this Complaint, Governor Greg Abbott's 38th Executive Order prohibiting schools from requiring anyone to wear a mask was in effect. The Governor's Order was mandatory and carried the force of law.

124. Superintendent Hinojosa, at all times acting under color of state law, joined a multi-school district lawsuit challenging the Governor's authority to issue Executive Order 38. While waiting for the Texas Supreme Court to decide that lawsuit, Defendant Hinojosa implemented a mandate requiring anyone on DISD property to wear a face mask or risk disciplinary action.

125. Defendant Hinojosa, either directly or through subordinates, directed Defendant Zysk to enforce the Hinojosa Mandate across all schools. Acting under color of law, Zysk, along with Defendants Wing and Glaser, conferred, collaborated, and conspired with Defendant Hinojosa, each other and others unknown to Plaintiffs, to deprive P.D. and C.D. of their rights to substantive due process, procedural due process, and equal protection of the law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

126. Among the acts undertaken by Defendants in furtherance of their conspiracy to violate the Constitutional rights guaranteed to P.D. and C.D. were the following: denying Plaintiffs equal educational opportunities by failing to provide instruction; requiring Plaintiffs to remain physically separated from other students and school personnel because they refused to wear masks; releasing Plaintiffs' private and protected health information to individuals who had no right or

authority to have it; coordinating the release of Plaintiffs' private and protected health information for unlawful purposes; manufacturing circumstances to create the appearance Plaintiffs committed actionable disciplinary rule violations; failing to exert meaningful efforts to comply with DISD's then-existing process and procedure for investigating student rule or policy violations (or failing to make efforts to comply with that process and procedure at all); retaliating against Plaintiffs for exercising their rights to free speech, freedom of assembly, and freedom of expression; and imposing punishment on Plaintiffs without proper investigation or meaningful opportunity for appeal.

127. Defendants are responsible for the education of all Dallas public school students, for the system of Dallas public schools, including magnet programs such as Dealey Academy.

128. Defendants have denied Plaintiffs the fundamental right of access to education and fundamental interest in access to education, as compared to other students in the State of Texas receiving an education in Texas Public Schools, by functionally excluding Plaintiffs from DISD's system of public education, as described above, in violation of their substantive right to due process of law, their liberty interest, and their right to equal protection under law protected by the Fourteenth Amendment to the United States Constitution.

129. At all relevant times, Defendants were acting under color of state law, thereby violating Title 42, Section 1983.

SECOND CAUSE OF ACTION: VIOLATIONS OF THE RIGHT TO PETITION AND RIGHT TO FREEDOM OF EXPRESSION CLAUSES OF THE FIRST AMENDMENT TO THE U.S. CONSTITUTION; 42 U.S.C. §1983

(Both Plaintiffs Against Defendants DISD, Hinojosa, Huitt, and Lear (Right to Petition) and all Defendants (Freedom of Expression) Clauses of the First Amendment to the United States Constitution)

130. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

131. Defendants Huitt and Lear, and upon information and belief, Defendant Hinojosa, conferred, collaborated, and conspired with each other and others unknown to Plaintiffs, to deprive Plaintiffs, through their parents, from petitioning the DISD School Board Trustees to seek redress for Plaintiffs' grievances.

132. Defendants Huitt and Lear, and upon information and belief, Defendant Hinojosa and others unknown to Plaintiffs, agreed among themselves to limit the ability of Plaintiffs to communicate with DISD employees directly and DISD Trustees at all, contrary to the guarantee in the First Amendment to the United States Constitution to peaceably assemble and petition the government to redress grievances.

133. In furtherance of this conspiracy, Defendant Lear authorized the DISD information technology department to block email addresses belonging to Plaintiffs' parents so that DISD School Board Trustees could not see and would never receive electronic claims, complaints, and grievances from the es.

134. Also in furtherance of this conspiracy, Defendant Huitt instructed her subordinates, Defendants Zysk and Wing, to discontinue copying DISD School Board trustees when responding to emails from the es (or to use the "bcc" function).

135. Upon information and belief, the actions described in the preceding two paragraphs could not occur absent the approval of Defendant Hinojosa, who did approve them.

136. In addition to the foregoing, all Defendants conferred, collaborated, and conspired with each other and others unknown to Plaintiffs to cause Plaintiffs to acquiesce to wearing masks, contrary to the best interests of their health, and the decisions they and their parents made.

137. In furtherance of this conspiracy, Defendant Wing repeatedly tried to convince Plaintiffs to abandon their refusal to wear masks, using a combination of persuasion, threats, and punishments outside the presence and without the knowledge of L.D. and B.D., including confining Plaintiffs in a plexiglass cage and limiting their access to other students. Upon information and belief, Wing took these actions only after receiving the consent and approval of Defendants Zysk, Huitt, Lear and Hinojosa.

138. Also in furtherance of this conspiracy, Defendant Glaser agreed to publicize, and did publicize, private information about Plaintiffs in an effort to humiliate and ostracize Plaintiffs and thereby force them to wear masks or withdraw from Dealey.

139. Defendants' action violated Plaintiffs' rights to express freely their support for Governor Abbott's executive orders and return to pre-Covid normalcy. Further, they made efforts to interfere with decisions L.D. and B.D. made that were in the bests interests of their children and were unreasonable intrusions into decisions their parents made, constituting violations of Plaintiffs' constitutional right to privacy.

140. At all relevant times, Defendants were acting under color of state law, thereby violating Title 42, Section 1983.

THIRD CAUSE OF ACTION—VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

(Both Plaintiffs Against Defendants DISD, Hinojosa, Zysk and Wing for Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution – State-Created Danger)

141. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

142. By the acts and omissions described above, Defendants affirmatively created or increased the risk that Plaintiffs would be exposed to dangerous conditions, which placed Plaintiffs specifically at risk, and Plaintiffs were harmed as a result.

143. Defendants knew or should have known that their acts or omissions endangered Plaintiffs. Specifically, and without limitation, in enacting and enforcing the Hinojosa Mandate, Defendants built a Plexiglas cage and forced Plaintiffs to remain in that cage during school hours.

144. DISD, through Zysk and Wing, authorized constructing the Plexiglas cage. Neither Zysk nor Wing sought or otherwise obtained an inspection of the cage's construction, despite Plaintiffs' parents' request. Plaintiffs' confinement in the cage caused Plaintiffs to suffer humiliation as well as physical pain and discomfort through improper construction methods which lead to inadequate carbon dioxide exchange.

145. At all relevant times, Defendants were acting under color of state law, thereby violating Title 42, Section 1983.

FOURTH CAUSE OF ACTION—VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

(Both Plaintiffs Against All Defendants for Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution – Discrimination Based on Political Beliefs)

146. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

147. Defendants, who are responsible for the education of all Dallas public school students and for the system of Dallas public schools, denied Plaintiffs the fundamental right of access to education and fundamental interest in access to education, pursuant to the Fourteenth Amendment to the United States Constitution, by intentionally discriminating against them based on their belief the Superintendent of DISD did not have authority to compel wearing face masks in contravention of a lawful gubernatorial executive order carrying the force of state law.

148. Defendants functionally excluded Plaintiffs from DISD's system of public education because of their political views, denied Plaintiffs access to education equal to the access provided to students in other schools in the Dallas Independent School District on the basis of their political beliefs, and responded with deliberate indifference to such exclusion and such denial, as described above.

149. At all relevant times, Defendants were acting under color of state law, thereby violating Title 42, Section 1983.

FIFTH CAUSE OF ACTION: VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973

(Both Plaintiffs against all Defendants)

150. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

151. Plaintiffs are children with disabilities that substantially limit one or more major life activity, and therefore, are persons with a disability under Section 504 of the Rehabilitation Act, as amended. *See* 29 U.S.C. § 705(9)(B), as amended by the ADA Amendments Act, Pub. L. 110-325, Sec. 7,122 Stat. 3553 (Sept. 25, 2008).

152. Plaintiffs are otherwise qualified under Section 504 of the Rehabilitation Act because they meet the essential eligibility requirements for public education in the State of Texas.

153. At all times relevant to this Complaint, Defendant Hinojosa, in his official capacity, the Dallas Independent School District, and Defendants Ryan Zysk and Beth Wing were the recipients of federal financial assistance, including funding from Title I of the Elementary and Secondary Education Act and from the Elementary and Secondary School Emergency Relief of the American Rescue Plan Act of 2021.

154. Defendant Hinojosa's Mandate that all students, staff, and visitors to DISD facilities must wear masks violated Governor Abbott's Executive Orders 36 and 38, which made Defendant Hinojosa's Mandate unlawful. Defendants Zysk, Wing, and Glaser each acted on behalf of DISD or in furtherance of DISD policy to enforce or help enforce the Hinojosa Mandate. Those actions violated the regulations and provisions of Section 504, and/or caused DISD to violate the regulations and provisions of Section 504, as follows:

155. The Hinojosa Mask Mandate denied Plaintiffs the opportunity to attend school safely by encouraging an enforcement attitude of complete compliance, with attendant intolerance toward any exceptions.

156. Defendants, despite being fully aware of Plaintiffs' medical and emotional health limitations, took no action to recommend to P.D.'s and C.D.'s parents they consider seeking Section 504 classification for their children and, when the parents sought Section 504 protections, Defendants intentionally delayed the evaluation meeting for nearly a month, as they perpetrated a series of harassing, intimidating, and hostile acts designed to coerce Plaintiffs' acquiescence to the Hinojosa Mandate or establish a basis to remove Plaintiffs from Dealey.

157. Defendants failed to create, prepare, or accept accommodations Plaintiffs needed to attend school.

158. Defendants excluded, and/or caused Dealey to exclude, Plaintiffs from participation in public education, in violation of 29 U.S.C. § 794(a) and 34 C.F.R. § 104.4(b)(1)(i).

159. Defendants used methods of administration and enforcement of the illegal Hinojosa Mandate that subjected Plaintiffs to discrimination on the basis of disability, in violation of 34 C.F.R. § 104.4(b)(4).

160. During the course of events described in this Complaint and contrary to Section 504 protections, each and all Defendants permitted and/or participated in bullying, intimidating, coercing, and harassing Plaintiffs, knowing they were medically and/or emotionally fragile and either had or merited protection under Section 504. The offending behavior included but was not limited to repeated efforts to persuade Plaintiffs to wear masks (in the absence of their parents), multiple engineered or falsified events worthy of disciplinary action, and isolating Plaintiffs from other students.

161. During the course of events described in this Complaint and contrary to Section 504 protections, each and all Defendants permitted and/or participated in at least the following (non-exclusive) acts: applying policies differently and more harshly to Plaintiffs; modifying or making new policies to apply to Plaintiffs; isolating Plaintiffs with a stated purpose that was irrational; retaliating against Plaintiffs after they asserted their federal statutory rights under Section 504, in violation of 34 C.F.R. §104.61, and depriving Plaintiffs of a Free Appropriate Public Education ("FAPE").

162. Defendants used methods of administration that had the effect or purpose of defeating or substantially impairing the objectives of the public education expected from and usually offered by DISD, in violation of 34 C.F.R. § 104.4(b)(4).

163. Defendants did not have the authority to circumvent Section 504 and its protections for students with disabilities through superintendent fiat, nor did they have the right to enforce Defendant Hinojosa's Mandate at all, as that Mandate defied both state law and executive order.

164. Excluding children from public school classrooms because of a disability is precisely the type of discrimination and segregation that Congress enacted Section 504 to prohibit and prevent.

SIXTH CAUSE OF ACTION (STATE. LAW) – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - CONSPIRACY

(Both Plaintiffs Against All Defendants)

165. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

166. Defendants, each and all, agreed to act in combination with each other in a common plan or scheme to harm and to humiliate and/or cause Plaintiffs a loss of community respect and support, in an effort to coerce Plaintiffs into wearing facemasks. Defendants' agreement to act together to achieve that objective was unlawful because its purpose was unlawful and/or the manner and means by which defendants attempted to achieve that objective, detailed in the acts described by the paragraphs above, were unlawful.

167. In furtherance of this conspiracy, Defendants intentionally or recklessly transmitted or caused to be transmitted false, inflammatory, disparaging, and/or private statements about Plaintiffs. Defendants intended the statements to harm, humiliate, and cause Plaintiffs a loss of community respect and support. Defendants intended their acts to impact adversely Plaintiffs' social acceptance at school, their academic progress, and/or their emotional and psychological well-being, and it did so, proximately causing Plaintiffs severe emotional distress. Defendants' conduct was extreme, outrageous, and Plaintiffs suffered damages for which they now sue and claim relief.

168. Plaintiffs' damages include but are not limited to anxiety, school aversion, post-traumatic stress, sleeplessness, depression, and the costs and remedies therefor.

SEVENTH CAUSE OF ACTION (STATE LAW) – FALSE IMPRISONMENT

(Both Plaintiffs Against Defendants Hinojosa, Zysk and Wing)

169. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

170. Upon information and belief, Defendants Hinojosa, Zysk and Wing made and/or approved the decision to confine P.D. and C.D. in a Plexiglas cage every day.

171. Defendants intended to confine Plaintiffs in a small, Plexiglas cage rather than allow them free access to the school, as other students enjoyed. Plaintiffs had no choice except to spend hours each day in the plexiglass cage and did not consent to being detained. Defendants had no legal authority to order Plaintiffs to be confined in this manner.

CONDITIONS PRECEDENT

172. All conditions precedent to filing this Complaint have been met.

DEMAND FOR TRIAL BY JURY

173. Plaintiffs demand a trial by jury.

ATTORNEY'S FEES

174. Because Defendants violated Title 42 U.S.C. §1983 and Title 42, §1988, Plaintiffs are entitled to and hereby demand attorney's fees.

PRAYER FOR RELIEF

FOR THESE REASONS, Plaintiffs C.D. and P.D. through their parents as next friends, respectfully request that Defendants be cited to appear and answer, and that upon a final hearing of this matter, the Court enter judgment in favor of Plaintiffs and against Defendants, and award to Plaintiffs their actual damages in amounts to be determined at trial as well as prejudgment and post-judgment interest at the maximum rate allowed by law, attorneys' fees, costs of court, and such other and further relief to which Plaintiffs may be entitled at law or in equity.

Respectfully submitted,

/s/ Jack Stick

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