ORAL ARGUMENT NOT YET SCHEDULED
No. 16-7076

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

D.L., *et al.*,
Plaintiffs-Appellees,
v.

DISTRICT OF COLUMBIA, *et al.*,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR AMICI CURIAE AARP, AARP FOUNDATION, NATIONAL FEDERATION OF THE BLIND, NATIONAL DISABILITY RIGHTS NETWORK, COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, THE JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW, NATIONAL HEALTH LAW PROGRAM, DISABILITY RIGHTS DC AT UNIVERSITY LEGAL SERVICES, AND LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW IN SUPPORT OF APPELLEES AND AFFIRMANCE

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CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

A. Parties and Amici

Except for AARP Foundation and the National Disability Rights Network, all parties, intervenors, and amici appearing in this court are listed in the Brief for the District of Columbia Appellants and/or the Brief of Plaintiffs-Appellees.

B. Rulings Under Review

References to the rulings under review appear in the briefs filed by the Appellants and/or Appellees.

C. Related Cases

References to the related cases appear in the briefs filed by the Appellants and/or Appellees.

D. Statutes and Regulations

All applicable statutes and regulations are contained in the briefs filed by the Appellants and/or Appellees.

CORPORATE DISCLOSURE STATEMENTS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Rules of the Court of Appeals for the District of Columbia Circuit,

AARP and AARP Foundation hereby certify that: The Internal Revenue Service has determined that AARP is organized and operated exclusively for the promotion of social welfare pursuant to Section 501(c)(4) of the Internal Revenue Code and is exempt from income tax. The Internal Revenue Service has determined that AARP Foundation is organized and operated exclusively for charitable purposes pursuant to Section 501(c)(3) of the Internal Revenue Code and is exempt from income tax. AARP and AARP Foundation are also organized and operated as nonprofit corporations under the District of Columbia Nonprofit Corporation Act. Other legal entities related to AARP and AARP Foundation include AARP Services, Inc. and Legal Counsel for the Elderly. Neither AARP nor AARP Foundation has a parent corporation nor issued shares or securities.

The National Federation for the Blind hereby certifies that: (1) The National Federation of the Blind does not have a parent corporation, and (2) The National Federation of the Blind does not issue stock.

National Disability Rights Network hereby certifies that: (1) The National Disability Rights Network does not have a parent corporation, and (2) The National Disability Rights Network does not issue stock.

The Council of Parent Attorneys and Advocates hereby certifies that: (1) COPAA does not have a parent corporation, and (2) COPAA does not issue stock.

The Judge David L. Bazelon Center for Mental Health Law hereby certifies that: (1) The Bazelon Center for Mental Health Law does not have a parent corporation, and (2) The Bazelon Center for Mental Health Law does not issue stock.

The National Health Law Program hereby certifies that: (1) The National Health Law Program does not have a parent corporation, and (2) The National Health Law Program does not issue stock.

Disability Rights DC at University Legal Services hereby certifies that: (1) Disability Rights DC at ULS does not have a parent corporation, and (2) Disability Rights DC at ULS does not issue stock.

The Lawyers' Committee for Civil Rights Under Law hereby certifies that: (1) the Lawyers' Committee for Civil Rights Under Law does not have a parent corporation, and (2) the Lawyers' Committee for Civil Rights Under Law does not issue stock.

Dated: December 8, 2016

s/ *Iris Y. González*
Iris Y. González
Counsel for Amici Curiae

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GLOSSARY

ADA	Americans with Disabilities Act
DABr	Brief for the District of Columbia Appellants
DCPS	District of Columbia Public Schools
DC OSSE	District of Columbia Office of the State Superintendent of Education
FAPE	Free and Appropriate Public Education
IDEA	Individuals with Disabilities Education Act
IEP	Individual Education Plan
PABr	Brief of Plaintiffs-Appellees

INTEREST OF AMICI

AARP, AARP Foundation, the National Federation of the Blind, the National Disability Rights Network, the Council of Parent Attorneys and Advocates, The Judge David L. Bazelon Center for Mental Health Law, the National Health Law Program, Disability Rights DC at University Legal Services, and the Lawyers' Committee for Civil Rights Under Law respectfully submit this brief as amici curiae in support of Plaintiffs-Appellees. This case is of particular interest to amici because each advocates on behalf of individuals with disabilities to enforce their rights under federal anti-discrimination laws. Here, amici support children seeking to ensure that they and others like them receive the free appropriate public education guaranteed by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq. (2012). A statement of interest for individual amici organizations is included in the appendix to this brief.

Amici urge the court to reject Defendants-Appellants' mis-readings of the IDEA and Fed. R. Civ. P. 23, which would erode enforcement of federal civil rights laws by impeding class action litigation as a means to redress systemic failures to comply with such laws. Accordingly, the Court should affirm the decisions of the district court on appeal.

SUMMARY OF ARGUMENT

The district court carefully applied the guidance of this Court regarding issues of class certification, then considered voluminous evidence at trial, and ultimately concluded that the District of Columbia ("D.C.") continues to fail to comply with its affirmative obligations to the Plaintiffs-Appellees—children to whom D.C. has denied special education and related services in violation of the IDEA, 20 U.S.C. §§ 1400 et seq., Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), and District of Columbia law. After eleven years of litigation, D.C. is engaged in a last-ditch effort to avoid liability for its continued violations of laws intended to protect our most vulnerable citizens. D.C. now challenges the district court's detailed, well-reasoned, and amply supported findings of fact and conclusions of law by mischaracterizing governing law under the IDEA and Fed. R. Civ. P. 23.

The district court correctly certified four subclasses of plaintiffs based on both allegations and evidence that D.C. failed to implement effective steps to fulfill its "Child Find" obligations under the IDEA in four discrete areas: (1) to identify disabled children; (2) to timely evaluate identified children; (3) to ensure timely eligibility determinations for preschool age children; and (4) to provide smooth and effective transitions between early intervention and preschool special education services. The district court properly identified D.C.'s failure to carry out these

discrete obligations under the IDEA as the "glue," required by *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), that binds the common contentions of, the common harms endured by, and the "indivisible" injunctive relief sought by the four subclasses certified under Fed. R. Civ. P. 23(a)(2) and (b)(2). D.C.'s appeal ignores numerous post-*Wal-Mart* rulings finding commonalty under Rule 23(a)(2) and relying on Rule 23(b)(2) as the basis for similar requests for indivisible injunctive relief to redress comparable failures to comply with affirmative duties under federal civil rights laws by centralized public authorities.

As permitted by the IDEA, the district court issued an order requiring D.C. to carry out systemic changes to remedy its violations of federal and state law. Moreover, the trial court tailored this injunctive relief to address D.C.'s systemic pattern of violations of the IDEA's Child Find obligations. Thus, all children in each subclass will benefit from the reforms ordered to redress common harms endured by each subgroup. The Court should reject D.C.'s argument that the IDEA does not authorize such relief because it ignores settled authority approving systemic relief for IDEA violations and would contravene both the broad enforcement language of the IDEA and its legislative history.

Overturning the district court's certification of subclasses or finding that the IDEA does not authorize systemic injunctive relief, as D.C. urges, would not only clash with precedent, but also would deny children with disabilities protections that

often only can be secured in the context of class action claims for broad-based injunctive relief. For these reasons, and those stated in Plaintiffs-Appellees' brief, this Court should affirm.

ARGUMENT

I. D.C. Failed to Meet Its Affirmative Child Find Obligations Under the IDEA.

A. The IDEA Requires D.C. to Identify, Locate, and Evaluate Children With Disabilities Early So That They May Receive Intervention and Preschool Services That Increase the Likelihood of Attending Kindergarten Alongside Non-Disabled Peers.

This case concerns D.C.'s affirmative obligations to provide services to children aged three to five who have disabilities. The IDEA requires D.C. to have policies and procedures *to ensure* that these children are "identified, located, and evaluated" for special education and related services. 34 C.F.R. § 300.111(a)(1) (2012); 20 U.S.C. § 1412(a)(3)(A) (2006). As explained in the district court's June 21, 2016 opinion:

> In order to achieve its aim, the IDEA provides federal funding to states, including the District of Columbia, on the condition that they "establish policies and procedures *to ensure* . . . that free appropriate public education [FAPE] . . . is available to disabled children." *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005) (internal quotations omitted); *see also* 20 U.S.C. § 1412(a)(1)(A). More specifically, the IDEA imposes an *affirmative obligation* on school systems to "*ensure* that all children with disabilities residing in the State . . . regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated." *Reid*, 401 F.3d at 519–20 (internal quotations

> omitted); 20 U.S.C. § 1412(a)(3)(A). The District's laws implementing the IDEA require that once a potential candidate for special education services is identified, the District must conduct an initial evaluation and make an eligibility determination within 120 days. D.C. Code § 38-2561.02(a)(1). The duties to identify, locate, and evaluate disabled children are collectively known as the "Child Find" obligation. 20 U.S.C. § 1412(a)(3)(A).

D.L. v. District of Columbia, No. 05-1437, 2016 U.S. Dist. LEXIS 65157, at *1-2 (D.D.C., June 21, 2016) ("Mem. Op.") (emphasis added).

Finding and serving children with disabilities early in their lives is crucial, because early services set them on a path toward educational success alongside their peers without disabilities. As national expert Dr. Carl J. Dunst testified, approximately "75 to 80 percent of the disabled children who are found in the community and served by quality early intervention programs will go on to kindergarten alongside every other ordinary five-year-old—without needing further supplemental special education." *D.L. v. District of Columbia*, 845 F. Supp. 2d 1, 5 (D.D.C. 2011). The district court described this phenomenon as "special education [that] can work a miracle." *Id.*

B. The District Court Correctly Found That D.C. Fails to Meet Its Child Find Obligations Because It Is Not Timely Identifying, Locating, or Providing Eligibility Determinations to Children, or Affording Children a "Smooth and Effective" Transition to Preschool Programs.

The district court correctly found that D.C. failed to meet its Child Find obligations. Mem. Op. at 25-26. Consequently, District children are not receiving

the preschool services they need and to which they are entitled. The district court made its factual findings and reached its legal conclusions with an important principle in mind: "For [D.C.] to comply with the IDEA and District law, its policies and procedures must produce the proper results…." Mem. Op. at 25.

Because the IDEA imposes an affirmative obligation on D.C. to produce results, its argument that the district court erred because it did not define the subclasses based on "specific policies or practices common to all members" must fail. Brief for the District of Columbia Appellants at 39, *D.L. v. District of Columbia*, No. 16-7076 (D.D.C., Oct. 17, 2016) ("DABr"). As explained in more detail in Section II, *infra*, evaluating compliance with the commonality requirement of Rule 23 "necessarily overlaps" with an evaluation of elements necessary to prove liability under the particular law at issue. *Wal-Mart*, 564 U.S. at 351-52 (2011) (noting that in a "Title VII claim, the crux of the inquiry is 'the reason for a particular employment decision'"). Here, the crux of the IDEA claim is whether D.C. did—in fact—find, evaluate, timely determine eligibility, and smoothly transition children with disabilities. Thus, "[w]hile [D.C.'s] policies, procedures, and practices are important, the outcomes of those policies,

procedures, and practices are even more crucial." Mem. Op. at 25-26. The evidence demonstrated that D.C.'s Child Find system failed to produce results. *Id*.[2]

II. The Revised Class Certification Order Properly Applied *Wal-Mart v. Dukes* and This Court's Prior Decision Finding Commonality Under Rule 23, and Is Consistent With Other Decisions Certifying Civil Rights Class Actions That Sought to Remedy Systemic Violations of Legal Affirmative Obligations.

This Court and the district court have considered *Wal-Mart v. Dukes*, as well as its progeny and forebears, with great care. However, D.C. dismisses these efforts as trivial and advances a simplistic reading of *Wal-Mart* and Rule 23. If D.C.'s arguments are accepted, children with disabilities would be denied their right to seek systemic relief from government failure to meet affirmative obligations owed them under the IDEA—and so would others challenging similar deficiencies under other federal civil rights laws.

A. The District Court's Revised Class Certification Order Properly Applied Rule 23(a)(2), Consistent with This Court's Prior Ruling Interpreting *Wal-Mart*.

The district court's revised class certification order focused on commonality, the question this Court described as "the crux of plaintiffs' claim." *See D.L. v. District of Columbia*, 713 F.3d 120, 124 (D.C. Cir. 2013). D.C.'s appeal

[2] Even if the Court believes that evidence of deficiencies in policies, practices, and procedures are necessary in this case, the district court made ample findings of such deficiencies. *See* Brief of Plaintiffs-Appellees at 5-9, *D.L. v. District of Columbia*, No. 16-7076 (D.D.C., Dec 1, 2016) ("PABr") (citing to district court's findings of absent or deficient policies, practices, and procedures).

challenges the district court's certification of four subclasses, alleging that the subclasses do not meet the "commonality" requirement of Rule 23(a)(2), which requires plaintiffs to raise at least one question of law or fact common to all class members, capable of generating common answers that "resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. at 350. In its analysis, the district court squarely addressed the "broadness" issue, *D.L. v. D.C.*, 302 F.R.D. 1, 12 (D.D.C. 2013), that precluded certification of a single class, *D.L*, 713 F.3d at 126-27, by approving four subclasses based on D.C.'s distinct affirmative obligations under the IDEA and the harm caused by D.C.'s failure to meet them. *D.L. v. D.C.*, 302 F.R.D. at 12-13 & n.4. These cohesive categories constituted a plausible taxonomy of what Plaintiffs' alleged harms were "due to" or "caused by." *D.L.*, 713 F.3d at 128.

On remand, D.C. argued that the proposed subclasses lacked commonality because they each could not show that their members were harmed by a specific, common unlawful policy or practice, allegedly just like the *Wal-Mart* plaintiffs. However, the district court rejected this contention and the parallel to *Wal-Mart*. Instead, it reasoned that "systemic deficiencies," even in the absence of a singular specific unlawful policy or practice (explicit, deliberate, or unintentional), are appropriate grounds for establishing Rule 23(a)(2) commonality in institutional

reform litigation against public entities that have defaulted on affirmative duties under federal law. *D.L.*, 302 F.R.D. at 12-14.

This Court—in taking seriously the possibility that subclasses might solve Plaintiffs-Appellees' broadness problem—cited Fifth and Second Circuit rulings approving subclasses to pursue institutional reform litigation, as in this case, on behalf of vulnerable children. *D.L.*, 713 F.3d at 128 (citing *M.D. v. Perry*, 675 F.3d 832, 848 (5th Cir. 2012) (challenge to alleged widespread unconstitutional practices in Texas's foster care system)), and *Marisol A. v. Giuliani*, 126 F.3d 372, 378-79 (2d Cir. 1997) (challenge to extensive flaws in New York City's child welfare system)).[3] The Court thereby implicitly endorsed the Second Circuit's conclusion that "[o]ne possible method of developing proper subclasses would divide the present class based on the commonality of the children's particular circumstances, the type of harm the children allegedly have suffered, and the particular systemic failures which the plaintiffs assert have occurred." *Marisol A.*, 126 F.3d at 379. In *M.D.*, the Fifth Circuit reversed class certification on commonality grounds because the district court did not properly evaluate the claim that "systemic deficiencies in Texas's administration of its [foster care system] violate the constitutional rights of every child in the [system]" "with reference to

[3] *Marisol A.* affirmed in part a district court's certification of a single class of children "to redress injuries caused by the alleged systemic failures of [New York] City's child welfare system," but directed the trial court to modify its certification order so as to create "appropriate" subclasses. 126 F.3d at 375, 378-79.

the elements and defenses and requisite proof for each of the proposed class claims." 675 F.3d at 843. On remand, the district court certified one general class of all children in the Texas child foster care system and three subclasses that categorized the children based on the type of foster placement or service they had received or would receive from the state of Texas. *M.D. v. Perry*, 294 F.R.D. 7, 66-67 (S.D. Tex. 2013). That is precisely the approach the district court took in this case.

Therefore, this Court should reject D.C.'s argument that each certified subclass is founded merely on having "suffered a violation of the same provision of law." DABr 37 (quoting *Wal-Mart*, 564 U.S. at 350). As the district court noted, the claims in *Wal-Mart* differ significantly from governmental reform litigation against entities with duties to carry out specific federal directives. That is, the problem of identifying a common corporate policy or practice of "discriminatory [sex] bias among [Wal-Mart] mangers from over 3,000 stores [dispersed] throughout the entire country," on the one hand, contrasts with the much simpler task of defining a "failure to enact [adequate] policies and procedures" where "there is a statutory obligation to act" on the part of a single governmental entity (or subdivisions, as here, DCPS and DC OSSE). *D.L.*, 302 F.R.D. at 27. In the latter circumstances, "even after *Wal-Mart*, courts have

properly certified classes challenging uniform practices of failure or inaction." *Id.* at 27-28 (citing examples).

B. The District's Misreading of *Wal-Mart* Contravenes Myriad Class Action Certifications Premised on Proof of Systemic Failure to Comply With Affirmative Duties Under Federal Law by Centralized Public Authorities.

A robust body of precedent supports the district court's distinguishing of *Wal-Mart* and its finding that Plaintiffs-Appellees' proposed subclasses satisfy the commonality requirements of Rule 23(a)(2). These decisions recognize that the proper breadth of asserted grounds for Rule 23 commonality is a matter of case-by-case analysis and trial court discretion. Yet D.C. argues that these issues should be constrained by a rigid rule: that a class may never be certified if members claim they have been harmed by a defendant's systemic failure to properly implement a legal obligation that it owes to each of them. If adopted, this argument could have far-reaching deleterious effects in confining judicial discretion to manage class actions.

1. *Olmstead* Cases Have Been Properly Certified Under Analogous Circumstances.

A major category of rulings rejecting D.C.'s restrictive view of Rule 23(a)(2) commonality concerns government failures to carry out the "integration mandate" that the Supreme Court recognized in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 587-88 (1999), based on the Americans with Disabilities Act of

1990 (ADA), Title II, 42 U.S.C. §§ 12201-12213 (2012), and the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791-97 (2012).

In *Lane v. Kitzhaber*, a post-*Wal-Mart* case under the ADA and the Rehabilitation Act,[4] the court observed:

> A common question posed in this case is whether defendants have failed to plan, administer, operate and fund a system that provides . . . services [for] persons with disabilities . . . in the most integrated setting.

283 F.R.D. 587, 598 (D. Or. 2012) (certifying class alleging systemic violations by state agencies operating segregated "sheltered workshops" for people with intellectual disabilities). Similarly, the instant case concerns the failure of the District to "plan, administer, operate and fund" each of four discrete components of the IDEA-mandated special education Child Find services.

Many other civil rights class certification decisions are contrary to D.C.'s contention that class members have nothing in common except for the fact that they each alleged a violation of the same provision of law. *See, e.g.*, *Kenneth R. v. Hassan*, 293 F.R.D. 254, 267 (D.N.H. 2012) (approving class action where

[4] The ADA and the Rehabilitation Act "[b]oth prohibit discrimination, mandate the administration of services in the most integrated setting appropriate, and relieve affected entities of that obligation only where the modifications would fundamentally alter the nature of the service (ADA) or impose an undue hardship (Rehabilitation Act)." *Lane*, 283 F.R.D. at 590. Within such limits, the "integration mandate" creates an affirmative obligation on public entities to provide services to "individuals with disabilities" in "a setting that enables [them] to interact with nondisabled persons to the fullest extent possible." *Id.*

"[s]ubstantial evidence suggests that the State's policies and practices have created a systemic deficiency in the availability of community-based mental health services, and that that deficiency is the source of the harm alleged by all class members"); *In re: District of Columbia*, 792 F.3d 96, 99-100 (D.C. Cir. 2015) (upholding certification of *Olmstead* class based on conclusion that class members showed more than mere "violations of the same provision of law" because they identified "concrete systemic deficiencies" in D.C.'s services to nursing home residents under the Medicaid program); *N.B. v. Hamos*, 26 F. Supp. 3d 756, 772 (N.D. Ill. 2014) (two common questions justified class certification because both asked whether asserted inadequate services were "mandatory for the state to provide," and, thus, did not pose "a question of individual violations, but of systemic failure"); *Connor B. ex rel. Vigurs v. Patrick*, 278 F.R.D. 30, 34 (D. Mass. 2011) (finding "the 'glue' that unite[d] Plaintiffs' claims" in allegations of "specific and overarching systemic shortcomings" in a state foster care program that placed children at risk of harm).

The court in *Kenneth R.*, like the district court here, rejected the defendants' demand that putative class members identify and challenge "separate, discrete practices" instead of systemic deficiencies. 293 F.R.D. at 267; *accord O.B. v. Norwood*, No. 15 C 10463, 2016 U.S. Dist. LEXIS 64574 (N.D. Ill., May 17, 2016) (certifying class of children with disabling and chronic health conditions

allegedly eligible but not receiving adequate Medicaid-funded in-home shift nursing services and, thus, subject to serious risk of institutionalization in violation of federal statutory integration mandates, based on alleged "illegal and systemic failures" to provide such services, and rejecting state agency defendant's claim that Rule 23(a)(2) is not satisfied due to plaintiffs' failure to allege any specific defendant policy or practice "that operates to cause the same injury to [all] putative class members").

Finally, the *Olmstead* cases support the district court's conclusion that class certification is appropriate to allow persons with disabilities to challenge systemic deficiencies in the provision of federally mandated supports, notwithstanding "dissimilarities in class members' needs and preferences" for such services. *Kenneth R.*, 293 F.R.D. at 268 (dissimilarities "do not impede the generation of common answers"); *see also Lane*, 283 F.R.D. at 598 (acknowledging that "some plaintiffs or putative class members may need more or different . . . services than others," but emphasizing that "all plaintiffs are qualified for, but not receiving the full benefit of [the legally-mandated] services" at issue). The same can be said of each *D.L.* subclass. That is, each subclass is appropriate to challenge systemic deficiencies in the provision of federally mandated Child Find services, notwithstanding dissimilarities in each child's specific age, disability, family situation, and other individual characteristics.

The District's contrary position, *see* DABr 39-42, is untenable, as it is antithetical to the role of Rule 23:

> Under defendants' interpretation, differences with respect to the needs and preferences of persons with disabilities would always preclude the certification of a class . . . .

Lane, 283 F.R.D. at 598. It should be rejected.

2. Accessibility Cases Seeking Accommodations for Persons With Physical Disabilities Have Been Properly Certified Under Analogous Circumstances.

Post-*Wal-Mart*, suits brought under the ADA or the Rehabilitation Act by persons alleging systemic deficiencies that bar access to public spaces have been certified as class actions under Rules 23(a) and 23(b)(2), even though class members had different disabilities and may have required different accommodations. For example, in *Gray v. Golden Gate Nat'l Rec. Area*, 279 F.R.D. 501, 502-03 (N.D. Cal. 2011), the court certified a class of "[a]ll persons with mobility and/or vision disabilities who are being denied programmatic access under the Rehabilitation Act of 1973 due to barriers at park sites owned and/or maintained by Golden Gate National Recreation Area." The *Gray* court rejected the defendants' arguments that the proposed class lacked commonality because of "individualized attributes of park assets, differences in disabilities across the proposed class, and differences in the efficacy and reasonableness of any remedial accommodations." *Id*. at 503, 510, 513-20. Instead, the court held that the

evidence showing "inadequate," "pervasive," "system-wide" policies and practices that demonstrated noncompliance with the affirmative obligation to make the parks accessible was sufficient to show commonality. *Id*. at 513-14, 516. In *Holmes v. Godinez*, 311 F.R.D. 177, 216-18 (N.D. Ill. 2015), the court certified a class of inmates with hearing disabilities alleging that the department of corrections systemically failed to make accommodations so that they could participate in programs and follow safety warnings and directives. In so doing, the court held that "[e]ven if determining appropriate hearing accommodations requires individualized considerations down the line, common issues bind the Plaintiffs' claims together if [defendant's] high level policies and practices do not conform to the law." *Id*.

3. Other Federal Civil Rights Cases Have Been Properly Certified Under Analogous Circumstances.

Suits alleging that government agencies systematically failed to protect prisoners' or detainees' civil and due process rights have been certified as class actions post-*Wal-Mart*, despite differences in detainees' needs or despite lacking identification of a singular practice or policy that affects every prisoner in the same way. *See, e.g.*, *Parsons v. Ryan*, 754 F.3d 657, 681 (9th Cir. 2014) ("since *Wal-Mart*, numerous courts have concluded that the commonality requirement can be satisfied by proof of . . . systemic policies and practices that allegedly expose inmates to a substantial risk of harm"). In *Unknown Parties v. Johnson*,

undocumented immigrants who were detained by border patrol agents and warehoused in inhumane conditions in violation of their due process rights sought class-wide relief. 163 F. Supp. 3d 630 (D. Ariz. 2016). The defendants argued that the claims lacked commonality because the plaintiffs could not point to a specific policy to which all putative class members were subjected; and because conditions of detention could be different "based on variables such as age, immigration history, criminal history, location of apprehension and processing, and the availability of beds at [different facilities]." *Id*. at 638. The court certified the class and held that the plaintiffs need not show that all "have been or will be subject to identical harms," as long as they are challenging systemic deficiencies in practices or policies. *Id*. 638-40*; see also Hernandez v. County of Monterey*, 305 F.R.D. 132, 153-59 (N.D. Cal. 2015) (finding commonality in class of inmates challenging safety and health policies and practices of a county jail and a subclass of inmates challenging disability policies and practices, because all class and subclass members shared exposure to substantial risk of serious harm from conditions of health care and confinement); *Dockery v. Fisher*, No. 3:13-cv-326-WHB-JCG, 2015 U.S. Dist. LEXIS 135853, *27-29, 41-45 (D. Miss., Sept. 29, 2015) (certifying subclasses of inmates alleging violations of Constitutional rights by prison authorities' systemic failure "to act in the face of actual or constructive

knowledge that prisoners . . . were being denied humane conditions of confinement").

C. The District Court Correctly Certified this Class Action Under Rule 23(b)(2) , Consistent With Courts That Have Approved Rule 23(b)(2) Class Actions Based on Analogous Claims for Indivisible Injunctive Relief From Systemic Violations of Federal Civil Rights Laws.

In no more than a paragraph, and without any decisional support, D.C. argues that the certified subclasses must "fail[] under Rule 23(b)(2)." DABr 43. D.C. broadly asserts that "variations in claims" among the members of each subclass render impossible any "indivisible . . . injunctive or declaratory remedy" that "would provide relief to each member of [each] [sub]class," as required by Rule 23(b)(2). *Id.* (citing and quoting *Wal-Mart*, 564 U.S. at 360). D.C.'s myopic focus on differences rather than similarities in the harms facing the Plaintiffs and in the remedies ordered to redress those injuries is fatally flawed.

1. The District Court Correctly Ruled That Each of the Plaintiff Subclasses Seeks an Indivisible Equitable Remedy.

The district court appropriately rejected D.C.'s Rule 23(b)(2) challenge. The court observed that "each of the four proposed subclasses asserts that D.C. failed to meet its statutory obligations under the IDEA," and, therefore, concluded that Plaintiffs-Appellees satisfy Rule 23(b)(2)'s requirement that a "the party opposing the class [or subclass] must have '. . . failed to perform a legal duty on grounds generally applicable to all class members.'" *D.L.*, 302 F.R.D. at 16 (quoting Fed.

R. Civ. P. 23 (b)(2)). The nature of the relief that Plaintiffs-Appellees proposed was indivisible: "because each [sub]class alleges a uniform harm ([i.e.,] not being identified, evaluated, determined eligible, and afforded a smooth and effective transition), injunctive relief requiring [D.C.] to perform its statutory duty will 'settl[e] the legality of the behavior with respect to [each] [sub]class as a whole.'" *Id.*[5]

D.C.'s statutory violations of the IDEA's Child Find requirements are appropriate for class action treatment under Rule 23(b)(2) because they affect each subclass, and the court's injunctive relief is designed to remedy those subclass-wide violations. For example, requiring that D.C. enroll a certain number of preschool children in special education services and that D.C. accurately track enrollment dates, Mem. Op. at 118, benefits all class members because, in striving to meet this requirement, D.C. will identify more children in need of services. Similarly, the requirement that D.C. meet certain numerical benchmarks in making timely eligibility determinations, Mem. Op. at 119, will benefit all subclass

[5] The district court correctly distinguished *Jamie S. v. Milwaukee Public Schools*, an IDEA class action in which certification was reversed because the plaintiffs' focus from the outset was on individualized relief. No. 01-C-928, 2009 U.S. Dist. LEXIS 51238 *1 (E.D. Wis., June 9, 2009), *vacated*, 668 F.3d 481 (7th Cir. 2012). The injunction sought in *Jamie S.* consisted of a process "to evaluate each class member to determine whether there was a denial of FAPE, and if so, to determine whether compensatory services were appropriate." *D.L.*, 302 F.R.D. at 16 (quoting *Jamie S.* 2009 U.S. Dist. LEXIS 51238, at **72-85. The Plaintiffs-Appellees' approach in this case has been quite different.

members. The required modifications to specific practices that have proven ineffective in meeting Child Find obligations will also benefit all subclass members. *See*, *e.g.*, Mem. Op. at 121-25. This injunctive relief is appropriate because D.C.'s IDEA violations are not specific to any one child, but rather due to the failure of D.C.'s system to produce results for the subclasses as a whole. As the district court held:

> The aim of the subclasses here—to rectify the District's systemic failure to comply [with] four specific statutory duties to all class members—fits the prototype of the (b)(2) class, which is the "most frequent[] . . . vehicle for civil rights actions and other institutional reform cases that receive class action treatment."

D.L., 302 F.R.D. at 16 (quoting *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 58-59 (3d Cir. 1994)).

2. Courts Have Approved Rule 23(b)(2) Class Actions Based on Analogous Claims for Indivisible Injunctive and Declaratory Relief From Systemic Failures to Comply With Affirmative Duties Under Federal Civil Rights Laws.

Since *Wal-Mart*, courts have continued to certify Rule 23(b)(2) classes in cases following this "prototype"—claims for injunctive relief for systemic failures to comply with affirmative legal duties. In *Lane v. Kitzhaber*, for example, the district court certified a Rule 23(b)(2) class seeking "to have the defendants administer their employment services to persons with [intellectual and/or developmental disabilities] in the most appropriate setting appropriate to their needs" in accordance with the ADA's integration mandate. 283 F.R.D. at 602;

accord N.B. v. Hamos, 26 F. Supp. 3d 756, 775 (N.D. Ill. 2014) (approving (b)(2) class seeking order that would "require policy modifications to properly implement [Medicaid requirements] and the integration mandate"); *Kenneth R. v. Hassan*, 293 F.R.D. at 270-71 ("the requirements of Rule 23(b)(2) are met where plaintiffs show that the 'State engages in a pattern or practice of agency action or inaction—including a failure to correct a structural ***deficiency*** within the agency . . . with respect to the class.'") (quoting *M.D.*, 675 F.3d at 841) (emphasis in original); *O.B. v. Norwood*, 2016 U.S. Dist. LEXIS 64574 at *15-16 (approving (b)(2) class because systemic failure to meet Medicaid requirements "can and should be addressed on a class-wide basis").

Cases outside the *Olmstead* and Medicaid contexts have likewise stressed differences between suits for injunctive and declaratory relief, as here, to address "overarching systemic deficiencies" in government administration and *Wal-Mart*'s rejection of Rule 23(b)(2) as a vehicle for millions of individuals seeking money damages. *See, e.g.*, *Connor B. v. Patrick*, 278 F.R.D. at 34 (approving (b)(2) class action challenging practices of Massachusetts Department of Children and Families "that place children at risk of harm" and holding that "[a]ny new rules of law that *Wal-Mart* may have created for Rule 23(b)(2) class actions were limited to its specific holding regarding the [im]propriety of claims for monetary relief"); *Parsons v. Ryan*, 754 F.3d at 687 (upholding (b)(2) class action to challenge

"systemic deficiencies" in "isolation" policies and practices creating "substantial risk of serious harm" to state prisoners); *Gray v. Golden Gate National Recreational Area*, 279 F.R.D. at 521-22 (N.D. Ca. 2011) (upholding (b)(2) class action seeking injunction requiring correction of ADA access violations, and distinguishing *Wal-Mart*'s denial of (b)(2) class where Title VII back-pay claims were not incidental to injunctive relief claims). These decisions eviscerate D.C.'s claim that Rule 23(b)(2) subclasses are invalid in this case because of differences within each subclass.

In light of the authorities cited above, any decision which undermines the district court's certification of the four subclasses would have serious adverse consequences. It would damage the life prospects of District children with disabilities ages 3-5 who need compliant Child Find services, and similarly situated children nationwide. It could also impede other litigation efforts to reform deficient institutions, on behalf of individuals that amici represent—the very litigation that Rule 23(b)(2) class actions are meant to facilitate and resolve.

III. The IDEA Authorizes Systemic Injunctive Relief of the Kind Ordered by the District Court.

Arguing that the IDEA does not allow for systemic relief, D.C. asks this Court to overturn the district court's injunctive remedy designed to ensure that D.C. complies with its statutory obligations to provide a FAPE to preschool-age children with disabilities. Mem. Op. 117-25. This Court should reject this

argument because it ignores years of precedent providing for systemic relief for IDEA violations and would contravene the broad enforcement language of the IDEA supported by its legislative history.

For years, courts nationwide have ordered systemic injunctive relief commensurate with proven systemic IDEA violations, in both class actions and individual cases, to remedy inadequate policies and practices resulting in denial of a FAPE. *See, e.g., E.R.K v. Dep't of Educ.*, No. 10-00436 SOM/KSC, 2016 U.S. Dist. LEXIS 25041 at *1, 3 (D. Haw., Mar. 1, 2016) (ordering that members of the class receive compensatory services for wrongful application of aging out policy to class members); *Gaskin v. Pennsylvania*, 389 F. Supp. 2d 628, 631-33 (E.D. Pa. 2005) (upholding IDEA class action settlement agreement providing systemic relief to the class, including a requirement to develop and implement policies to ensure FAPE, development of an advisory panel to evaluate progress under the agreement, and changes to the Individualized Education Program format); *Corey H. v. Bd. of Educ. of City of Chicago*, 995 F. Supp. 900, 918 (N.D. Ill. 1998) (ordering declaratory and injunctive relief to remedy systemic violations of the IDEA); *Reusch v. Fountain*, 872 F. Supp. 1421, 1438 (D. Md. 1994) (ordering systemic injunctive relief in a lawsuit brought by individual plaintiffs under the IDEA to correct the school district's systemic failure to provide needed extended school year services).

This precedent faithfully implements the broad enforcement language of the IDEA. *See* 20 U.S.C. §1415(i)(2)(c)(iii) ("In any action brought under this paragraph, the court …[may] grant such relief as [it] determines is appropriate"). Congressional action on the IDEA after its initial passage demonstrates that the courts' interpretation of its enforcement provision is, indeed, correct. Congress has repeatedly reauthorized the IDEA knowing that courts have long recognized systemic injunctive relief under the Act, and it did not amend the IDEA to prohibit courts from granting such relief.[6] "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change." *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239-40 (2009) (quoting *Lorillard v. Pons*, 434 U.S. 575, 580 (1978)) (holding that Congress was presumed to adopt a court's interpretation of a provision that was not altered in the reauthorized IDEA).

Furthermore, the legislative history of the IDEA confirms that Congress intended that class-wide injunctive relief would be available to enforce the Act. The Supreme Court has cited this legislative history to point out that the impetus

[6] The predecessor to the IDEA, the Education for All Handicapped Children Act, was enacted in 1975. *See* Education for all Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773; Education of the Handicapped Act Amendments of 1990, Pub. L. No. 101-476, 104 Stat. 1103; Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No. 105-17, 111 Stat. 37; Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647 (2004).

for the passage of the IDEA was a series of cases seeking to remedy widespread denials of public education to children with disabilities:

> As the Senate Report states, passage of the act "followed a series of landmark court cases establishing in law the right to education for all handicapped children." S. Rep. No. 94-168, supra, at 6. The first case, *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (PARC)*, 334 F. Supp. 1257 (1971) and 343 F. Supp. 279 (1972), was a suit on behalf of retarded children challenging the constitutionality of a Pennsylvania statue which acted to exclude them from public education and training. The case ended in a consent decree which enjoined the State from "den[ying] to any mentally retarded child access to a free public program of education and training." 334 F. Supp. at 1258 (emphasis added). *PARC* was followed by *Mills v. Board of Education of the District of Columbia*, 343 F. Supp. 866 (DC 1972), a case in which the plaintiff handicapped children had been excluded from the District of Columbia public schools.

Bd. of Educ. v. Rowley, 458 U.S. 176, 192-93 (1982). This legislative history thus demonstrates that the IDEA was intended to remedy widespread denials of public education to children with disabilities, not just to remedy such injustices on a child-by-child basis.

Even the IDEA's individual administrative remedies provision, *see* 20 U.S.C. §1415(l), allows for collective action when class-wide remedies are appropriate. The statute's original supporters declared that the IDEA does not "require each member of the class to exhaust [administrative remedy procedures] in any class action brought to redress an alleged violation of the statute." 121 Cong. Rec. S20, 433 (Nov. 19, 1975) (statement of Sen. Williams) (exhaustion is

not required for individual or class plaintiffs when it would be "futile as a legal or practical matter"). *See also* H.R. Rep. No. 99-296 at 7 (1985) (exhaustion of administrative remedies is not required when agency has adopted an illegal policy or practice of general applicability).

Accepting D.C.'s argument that class-wide injunctive relief is unavailable under the IDEA would damage the enforcement scheme set forth in the Act and thus, improperly limit the rights of children with disabilities. Under D.C.'s interpretation of the IDEA, if a school district refuses to provide services set forth in all students' individual education programs (IEPs) during the first weeks of the school year, every student harmed would be forced to file their own IDEA lawsuit to prove their own need for services. *See generally R. A-G ex rel. R.B. v. Buffalo City Sch. Dist. Bd. of Educ.*, No. 12-cv-960S, 2013 U.S. Dist. LEXIS 93924, (W.D.N.Y., July 3, 2013) (certifying class with claims for injunctive and declaratory relief), *aff'd sub nom. R.A.G. ex rel. R.B. v. Buffalo City Sch. Dist. Bd. of Educ.*, 569 F. App'x 41 (2d Cir. 2014).[7] Likewise, each injured child with a

[7] This Court should also reject D.C.'s argument that, under 34 C.F.R. § 300.323(c)(2), it may make services available "as soon as possible" following the development of an individualized educational plan, and not by the child's third birthday. *See* DABr 50. This reading of the IDEA would result in the denial of a FAPE to many children. Using the "as soon as possible" standard will inevitably result in children experiencing a break in services as they transition from early intervention to preschool services. Such a break in continuity of services negatively impacts children and families and creates a barrier to successful transitions.

disability would be forced to litigate their claims about widespread practices affecting them without any prospect of a remedy correcting the systemic causes of their injuries. This result would be contrary to IDEA class action law. *See*, *e.g.*, *M.G. v. N.Y. City Dep't of Educ.*, 162 F. Supp. 3d 216 (S.D.N.Y. 2016) (certified class seeking systemic injunctive and declaratory relief for violations of the IDEA by school district that adopted policy forcing *all* students with autism to transfer out of their neighborhood schools to obtain services); *P.V. ex rel. Valentin v. Sch. Dist. of Philadelphia*, 289 F.R.D. 227, 228 (E.D. Pa. 2013) (same); *E.R.K. ex rel. R.K. v. Hawaii Dep't of Educ.*, 728 F.3d 982 (9th Cir. 2013) (certified class seeking systemic injunctive and declaratory relief for violations of the IDEA by school district that denied *all* students with disabilities over 20 years old access to free, public educational programs available to their nondisabled peers); *see Corey H. v. Bd. of Educ. of City of Chicago*, 995 F. Supp. 900 (N.D. Ill. 1998) (certified class seeking systemic injunctive and declaratory relief for violations of the IDEA by a board of education that systemically failed to educate *many* children with disabilities in the least restrictive educational environment). This untenable reading of the IDEA would force courts to issue nothing more than individual relief for system-wide failures, such as: a school district's failure to have effective procedures to ensure that blind children receive their curriculum materials in an accessible format at the same time as their sighted peers; or a school district's

failure to retain teachers licensed and trained to meet the educational needs of blind children or others with disabilities; or a school district's policy of denying interpreters for deaf students or braille education for blind students who possess some residual vision; or a school district's systemic failure to refer for evaluation students with a particular disability. Individual litigation is costly, time-consuming, and impractical for public school children with disabilities, many of whose families have limited income. The same is true of members of other vulnerable populations seeking injunctive relief from governmental failures to comply with federal civil rights laws. In short, the net potential effect of the construction of the IDEA that D.C. advances is to deny a FAPE to countless children.

The language of the statute itself, *see* 20 U.S.C. §1415(i)(2)(c)(iii), the logic of its enforcement scheme, well-established judicial precedent, and the Act's legislative history all confirm the availability of systemic injunctive relief under the IDEA.

CONCLUSION

For the foregoing reasons, Amici urge the court to affirm the decisions of the District Court.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 8, 2016, electronic copies of this amicus brief were served through the Court's ECF system to:

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

(1) this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 37(a)(7)(B) because this brief contains 6,724 words, excluding the parts of the brief exempted by 32(f);

(2) this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Word 2010 in Times New Roman 14 Point Font;[8]

(3) pursuant to Fed. R. App. P. 29(a)(2), all parties have consented to the filing of this brief; and

(4) pursuant to Fed. R. App. P. 29(b)(5), no party or party's counsel authored this brief in whole or in part; and no person other than amici contributed money intended to fund the brief's preparation or submission.

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[8] The certificate describes compliance with Rule 32 prior to the recent amendment because the briefing schedule commenced, and appellants' brief was filed, prior to the effective date of the rule change.

APPENDIX: Statements of Interest

AARP and AARP Foundation

AARP is a nonprofit, nonpartisan organization dedicated to fulfilling the needs and representing the interests of people age fifty and older. AARP fights to protect older people's financial security, health, and well-being. AARP's charitable affiliate, **AARP Foundation**, creates and advances effective solutions that help low-income individuals fifty and older secure the essentials. Among other things, AARP and AARP Foundation advocate for disability rights and for access to the courts to enforce such rights, including through participation as amicus curiae in state and federal courts.

AARP and AARP Foundation submit this brief because the decisions of the district court below, certifying four subclasses under Rules 23(a)(2) and (b)(2) and granting injunctive relief to remedy systemic violations of the IDEA, are correct as a matter of law, and because reversing these decisions would have harmful effects of other litigation efforts to address systemic violations of civil rights laws through class actions. AARP Foundation is class counsel for nursing facility residents whose long term care is funded by Medicaid and who allege that D.C.'s systemic failures in the administration of its Medicaid-funded long term care system have resulted in their unnecessary institutionalization in violation of the ADA's integration mandate.

National Disability Rights Network

The **National Disability Rights Network** ("NDRN") is the non-profit membership association of protection and advocacy ("P&A") and Client Assistance Program ("CAP") agencies located in all 50 states, the District of Columbia, Puerto Rico and the United States Territories, with a Native American Consortium affiliate located in the Four Corners region. P&A / CAP agencies are authorized under federal law to represent and advocate for, and investigate abuse and neglect of and rights violations against, individuals with disabilities. The P&A / CAP system comprises the nation's largest provider of legally-based advocacy services for persons with disabilities. NDRN provides to its members training and technical assistance, legal support, and legislative advocacy. It works to create a society in which people with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination. Education-related cases make up a large percentage of the P&A/CAP Network's casework, with over 10,000 such matters handled in the most recent year for which data is available.

Council of Parent Attorneys and Advocates

Council of Parent Attorneys and Advocates ("COPAA") is a not-for-profit organization for parents of children with disabilities, their attorneys and advocates. COPAA believes effective educational programs for children with

disabilities can only be developed and implemented with collaboration between parents and educators as equal parties. COPAA does not represent children but provides resources, training, and information for parents, advocates, and attorneys to assist in obtaining the free appropriate public education ("FAPE") such children are entitled to under the Individuals with Disabilities Education Act ("IDEA" or "Act"), 20 U.S.C. § 1400, et seq. Our attorney members represent children in civil rights matters. COPAA also supports individuals with disabilities, their parents, and advocates, in attempts to safeguard the civil rights guaranteed to those individuals under federal laws, including the Civil Rights Act of 1871, ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. §1983) ("Section 1983"), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504") and Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. ("ADA"). COPAA brings to the Court the unique perspective of parents and advocates for children with disabilities. Many of these children experience significant challenges. Their success depends not only on the right to secure the IDEA's guarantee of a FAPE, but also upon the enjoyment of all rights under federal law guaranteed to students, whether or not they receive special education.

The Judge David L. Bazelon Center for Mental Health Law

The Bazelon Center has been a leader in the field of mental disability law since its founding in 1972. Over the course of its history, much of the Center's work has focused on the needs of children with mental disabilities. The Center was instrumental in the passage of the IDEA. Among other things, it brought a landmark case, *Mills v. Bd. of Education*, 248 F. Supp. 866 (D.D.C. 1972), which helped lay the groundwork for the IDEA's passage. Since the IDEA became law, the Center has litigated groundbreaking actions seeking to improve educational and health services for children with mental disabilities, including *Blackman-Jones v. District of Columbia*, Civil Action No. 97-1629 (D.D.C.). The Center has also released a variety of publications on these issues, including *Way to Go: School Success for Children with Mental Health Care Needs* and *Teaming Up: Using the IDEA and Medicaid to Secure Comprehensive Mental Health Services for Children and Youth*. The Center has also been counsel on non-IDEA disability rights actions in which classes were certified cited in this brief. As a result of this expertise, the Center is well-positioned to advise the Court on the key issues of law raised in the instant matter regarding systemic relief.

National Health Law Program

National Health Law Program ("NHeLP") is a 48-year old public interest law firm working to advance access to quality health care and protect the legal

rights of lower-income people, people with disabilities and children. As such the NHeLP works extensively with the IDEA and its interplay with the Medicaid program, particularly Medicaid Early and Periodic Screening, Diagnostic and Treatment services for children and youth under age 21. NHeLP works to advance access to health care through education, policy analysis, class action and individual litigation, and administrative advocacy.

Disability Rights DC at University Legal Services

Disability Rights DC at University Legal Services ("DRDC") is a private, non-profit organization that serves as the federally mandated protection and advocacy program for people with disabilities in the District of Columbia. DRDC advocates for the human and civil rights of people with disabilities, including the right to self-determination, to be free from harm, to be afforded due process, and to be included and integrated in community life with the opportunities and choices these rights imply.

DRDC advocates for hundreds of people with disabilities every year through monitoring, investigations, individual advocacy, and systemic litigation, acting as plaintiffs' counsel in several class actions. We have represented scores of children and youth in need of special education services. As a result of our extensive experience, DRDC is well aware of the systemic problems that people with disabilities have accessing the services to which they are entitled by federal and

state law, including the ability of students with disabilities to access special education services. In our experience, the individual relief that can be sought in a special education due process hearing cannot resolve the larger, systemic failures for which a class action may be the most effective and efficient remedy.

National Federation of the Blind

National Federation of the Blind ("NFB) is the largest and most influential membership organization of blind people in the United States. With more than 50,000 members, and affiliates in all fifty states, in the District of Columbia, and in Puerto Rico, and over 700 local chapters in most major cities, the ultimate purpose of the NFB is the complete integration of the blind into society on an equal basis. Since its founding in 1948, the NFB has devoted significant resources toward advocacy, education, research, and development of programs to ensure that children and students who are blind or have low-vision receive an equal and appropriate public education. The NFB was actively involved in the passage of the Individuals with Disabilities in Education Act (IDEA) and continues to be involved in legislative and programmatic efforts to improve the education of blind children. The NFB actively engages in litigation on behalf of blind children throughout the country to ensure that they receive the educational services to which they are entitled and to address systemic barriers.