

No. 21-887

In the
Supreme Court of the United States

MIGUEL LUNA PEREZ,
Petitioner,

v.

STURGIS PUBLIC SCHOOLS; STURGIS PUBLIC SCHOOLS
BOARD OF EDUCATION,
Respondents.

ON A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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APPENDIX

ITEMS PREVIOUSLY REPRODUCED

In accordance with Supreme Court Rule 26.1, the following items have been omitted in printing this joint appendix because they appear on the following pages of the appendix to the Petition for a Writ of Certiorari (December 13, 2021):

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RELEVANT DOCKET ENTRIES

**U.S. Court of Appeals for the Sixth Circuit
Case No. 20-1076**

Date	No.	Docket Text
01/23/2020	1	Civil Case Docketed. Notice of appeal filed by Appellant Maria Perez. Hearings held: n. (BLC) [Entered: 01/23/2020 10:56 AM] * * *
01/24/2020	4	Mediation Office is involved in this appeal. (LMR) [Entered: 01/24/2020 12:59 PM]
01/24/2020	5	MEDIATOR-INITIATED CALL: A Telephone Mediation conference has been scheduled for 02/14/2020 at 10:00 AM (ET) with Rod McFaull. [Please open notice for important details and deadlines.] (LMR) [Entered: 01/24/2020 01:01 PM] * * *
01/29/2020	7	TRANSCRIPT ORDER filed - no hearings held in District Court. Filed by Mr. Mitchell Sickon for Maria Perez. Certificate of Service: 01/29/2020. [20-1076] (MS) [Entered: 01/29/2020 04:51 PM] * * *

JA-2

Date	No.	Docket Text
02/06/2020	9	MOTION filed by Mr. Mitchell Sickon for Maria Perez to amend case caption. Certificate of Service: 02/06/2020. [20-1076] [Stipulation also signed by counsel Kenneth B. Chapie for appellees] --[Edited 02/12/2020 by Case Manager Bryant Crutcher] (MS) [Entered: 02/06/2020 04:27 PM]
02/06/2020	10	CIVIL APPEAL STATEMENT OF PARTIES AND ISSUES filed by Attorney Mr. Mitchell Sickon for Appellant Maria Perez. Certificate of Service: 02/06/2020. [20-1076] (MS) [Entered: 02/06/2020 04:28 PM]
02/06/2020	11	CORPORATE DISCLOSURE STATEMENT filed by Attorney Mr. Mitchell Sickon for Appellant Maria Perez Certificate of Service: 02/06/2020. [20-1076] (MS) [Entered: 02/06/2020 04:28 PM]
02/12/2020	12	RULING LETTER SENT granting stipulation to amend caption [9] filed by Mr. Mitchell Sickon. The amended caption is enclosed. (BLC) [Entered: 02/12/2020 07:15 AM]
02/19/2020	13	BRIEFING LETTER SENT by Mediation Office, resetting briefing schedule: appellant brief now due 03/24/2020. appellee brief

JA-3

Date	No.	Docket Text
		now due 04/23/2020. (LMR) [Entered: 02/19/2020 12:15 PM]
02/20/2020	14	Mediation Office is no longer involved in this appeal. (MLB) [Entered: 02/20/2020 10:18 AM] * * *
05/11/2020	26	AMICUS BRIEF filed by <i>Catherine Merino Reisman</i> for Council of Parent Attorneys and Advocates, without parties' consent. Certificate of Service:05/11/2020. [20-1076] (CMR) [Entered: 05/11/2020 11:38 AM] * * *
05/11/2020	28	CORRECTED APPELLANT BRIEF filed by Ms. Ellen Marjorie Saideman for Miguel Luna Perez. Certificate of Service:05/11/2020. Argument Request: requested. [20-1076] (EMS) [Entered: 05/11/2020 04:20 PM] * * *
06/30/2020	31	APPELLEE BRIEF filed by Mr. Kenneth Bennett Chapie for Sturgis Public Schools and Sturgis Public Schools Board of Education Certificate of Service:06/30/2020. Argument Request: requested. [20-1076] (KBC) [Entered: 06/30/2020 12:47 PM]

JA-4

Date	No.	Docket Text
		* * *
08/20/2020	34	REPLY BRIEF filed by Attorney Ms. Ellen Marjorie Saideman for Appellant Miguel Luna Perez. Certificate of Service: 08/20/2020. [20-1076] (EMS) [Entered: 08/20/2020 02:25 PM]
08/26/2020	35	ORDER filed GRANTING motion of Council of Parent Attorneys and Advocates to file amicus brief [27]. Entered by order of the court. (BLC) [Entered: 08/26/2020 03:24 PM]
08/28/2020	36	ORAL ARGUMENT SCHEDULED for 1:30 p.m. (Eastern Time) on Friday, October 9, 2020. (JRH) [Entered: 08/28/2020 03:52 PM]
		* * *
10/09/2020	42	CAUSE ARGUED, (via video), by Ms. Ellen Marjorie Saideman for Appellant Miguel Luna Perez and Mr. Kenneth Bennett Chapie for Appellees Sturgis Public Schools and Sturgis Public Schools Board of Education before Judges: Boggs, Stranch and Thapar. (LTK) [Entered: 10/09/2020 03:14 PM]
10/13/2020	43	LETTER BRIEF filed by Ms. Ellen Marjorie Saideman for Miguel Luna Perez. Certificate of Service:

JA-5

Date	No.	Docket Text
		10/13/2020.. [20-1076] (EMS) [Entered: 10/13/2020 06:10 PM]
10/21/2020	44	SUPPLEMENTAL BRIEF filed by Attorney Mr. Kenneth Bennett Chapie for Appellees Sturgis Public Schools and Sturgis Public Schools Board of Education. Certificate of Service:10/21/2020. [20-1076] (KBC) [Entered: 10/21/2020 04:50 PM]
10/22/2020	45	LETTER BRIEF filed by Ms. Ellen Marjorie Saideman for Miguel Luna Perez. Certificate of Service: 10/22/2020.. [20-1076] (EMS) [Entered: 10/22/2020 04:57 PM]
03/02/2021	46	The case manager for this case is now: Roy G. Ford (AEG) [Entered: 03/02/2021 10:11 AM]
06/25/2021	47	OPINION and JUDGMENT filed : AFFIRMED. Decision for publication. Danny J. Boggs, Jane Branstetter Stranch (DISSENTING), and Amul R. Thapar (AUTHORING), Circuit Judges. (CL) [Entered: 06/25/2021 10:59 AM]
07/09/2021	48	PETITION for en banc rehearing filed by Ms. Ellen Marjorie Saideman for Miguel Luna Perez. Certificate of Service: 07/09/2021. [20-1076] (EMS) [Entered:

JA-6

Date	No.	Docket Text
		07/09/2021 03:23 PM] * * *
07/15/2021	51	AMICUS BRIEF filed by Council of Parent Attorneys and Advocates, Disability Rights Education and Defense Fund, Education Law Center, Minnesota Disability Law Center, National Disability Rights Network, National Federation of the Blind and New Jersey Special Education Practitioners , without parties' consent. Certificate of Service:07/15/2021. [20-1076] (LOCKED; motion for leave to file pending).--[Edited 07/15/2021 by BLH] (CMR) [Entered: 07/15/2021 01:27 PM]
07/15/2021	52	MOTION to file AMICUS BRIEF filed by Catherine Merino Reisman for Council of Parent Attorneys and Advocates, Disability Rights Education & Defense Fund, Education Law Center, MN Disability Law Center, National Disability Rights Network, National Federation of the Blind, NJ Special Education Practitioners. Certificate of Service: 07/15/2021. [20-1076] (CMR) [Entered: 07/15/2021 01:48 PM]

JA-7

Date	No.	Docket Text
07/15/2021	53	TENDERED brief in support of the petition for rehearing en banc. Received from Attorney Catherine Merino Reisman for Disability Rights Education and Defense Fund, National Disability Rights Network, Council of Parent Attorneys and Advocates, National Federation of the Blind, Education Law Center, Minnesota Disability Law Center and New Jersey Special Education Practitioners. (BLH) [Entered: 07/15/2021 01:56 PM]
07/15/2021	54	AMICUS BRIEF filed by Council of Parent Attorneys and Advocates, Disability Rights Education and Defense Fund, Education Law Center, Minnesota Disability Law Center, National Disability Rights Network, National Federation of the Blind and New Jersey Special Education Practitioners , without parties' consent. Certificate of Service:07/15/2021. [20-1076] (LOCKED; duplicate).--[Edited 07/15/2021 by BLH] (CMR) [Entered: 07/15/2021 01:57 PM]
07/19/2021	55	ORDER filed: Upon consideration of the motion of Council of Parent Attorneys and Advocates, Disability Rights Education and Defense Fund, Education Law

Date	No.	Docket Text
07/19/2021	56	Center, Minnesota Disability Law Center, National Disability Rights Network, National Federation of the Blind and New Jersey Special Education Practitioners, for leave to file a brief as amici curiae in support of the petition for rehearing en banc, It is ORDERED that the motion is GRANTED [52]. Danny J. Boggs, Jane Branstetter Stranch, and Amul R. Thapar, Circuit Judges. (BLH) [Entered: 07/19/2021 09:03 AM]
07/19/2021	56	AMICUS BRIEF filed by Catherine Merino Reisman for Disability Rights Education and Defense Fund, National Disability Rights Network, Council of Parent Attorneys and Advocates, National Federation of the Blind, Education Law Center, Minnesota Disability Law Center and New Jersey Special Education Practitioners in support of the petition for rehearing en banc. Certificate of Service:07/15/2021. (BLH) [Entered: 07/19/2021 09:08 AM]
07/29/2021	57	ORDER filed denying petition for en banc rehearing [48] filed by Ms. Ellen Marjorie Saideman. Danny J. Boggs, Jane Branstetter Stranch, and Amul R. Thapar,

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Date	No.	Docket Text
		Circuit Judges. (BLH) [Entered: 07/29/2021 08:05 AM]
08/06/2021	58	MANDATE ISSUED with no costs taxed. (GSA) [Entered: 08/06/2021 11:47 AM]
12/17/2021	59	U.S. Supreme Court notice filed regarding a petition for a writ of certiorari filed by Appellant Miguel Luna Perez. Supreme Court Case No:21-887, 12/13/2021. (CL) [Entered: 12/17/2021 04:45 PM]

RELEVANT DOCKET ENTRIES
U.S. District Court for the
Western District of Michigan
Case No. 1:18-cv-01134-PLM-RSK

Date	No.	Docket Text
10/02/2018	1	COMPLAINT with jury demand against All Defendants filed by Maria Perez (Cody, Mark) Modified text on 10/2/2018 (jlg) (Entered: 10/02/2018) * * *
12/03/2018	10	AMENDED COMPLAINT against Sturgis Public Schools, Sturgis Public Schools Board of Education filed by Maria Perez (clw) (Entered: 12/04/2018)
12/20/2018	11	MOTION to dismiss for failure to state a claim by defendant Sturgis Public Schools; (Attachments: # 1 Index, # 2 Exhibit 1. Due Process Complaint, # 3 Exhibit 2. Opinion and Order re Richards v Sturgis, # 4 Exhibit 3. Christine v Espanola Public Schools) (Mullins, Timothy) (Entered: 12/20/2018)
01/02/2019		(NON-DOCUMENT) ORDER REFERRING MOTION to dismiss for failure to state a claim 11 to Magistrate Judge Ray Kent pursuant to 28 U.S.C. 636(b)(1)(B) (Judge Paul L. Maloney, acr)

JA-11

Date	No.	Docket Text
		(Entered: 01/02/2019) * * *
01/17/2019	12	RESPONSE TO MOTION to dismiss for failure to state a claim 11 filed by Maria Perez (Attachments: # 1 Index Index of Exhibits, # 2 Exhibit A – Plaintiff’s Proposed Secod Amended Complaint, # 3 Exhibit B - Order Following Prehearing Conference) (Sickon, Mitchell) (Entered: 01/17/2019)
01/31/2019	13	REPLY to response to motion 11 filed by Sturgis Public Schools (Mullins, Timothy) (Entered: 01/31/2019)
02/04/2019		(NON-DOCUMENT) ORDER REFERRING MOTION to dismiss for failure to state a claim 11 to Magistrate Judge Ray Kent pursuant to 28 U.S.C. 636(b)(1)(B) (Judge Paul L. Maloney, acr) (Entered: 02/04/2019)
02/22/2019	14	MOTION for leave to file <i>Sur-Reply</i> by plaintiff Maria Perez; (Sickon, Mitchell) (Entered: 02/22/2019)
02/22/2019	15	SURREPLY TO MOTION to dismiss for failure to state a claim 11 filed by Maria Perez (Attachments: # 1 Exhibit A -

JA-12

Date	No.	Docket Text
		Affidavit) (Sickon, Mitchell) (Entered: 02/22/2019)
02/25/2019		(NON-DOCUMENT) ORDER REFERRING MOTION for leave to file <i>Sur-Reply</i> 14 to Magistrate Judge Ray Kent pursuant to 28 U.S.C. 636(b)(1)(A) (Judge Paul L. Maloney, acr) (Entered: 02/25/2019)
04/10/2019	16	ORDER granting 14 motion for leave to file sur-reply; signed by Magistrate Judge Ray Kent (Magistrate Judge Ray Kent, fhw) (Entered: 04/10/2019) * * *
04/23/2019	18	ORDER granting 17 attorney Caroline E. Jackson's motion to withdraw as attorney of record for plaintiff; signed by District Judge Paul L. Maloney (Judge Paul L. Maloney, acr) (Entered: 04/23/2019) * * *
06/20/2019	19	REPORT AND RECOMMENDATION re 10 , 11 ; objections to R&R due within 14 days; signed by Magistrate Judge Ray Kent (Magistrate Judge Ray Kent, fhw) (Entered: 06/20/2019)
06/28/2019	20	MOTION to dismiss for failure to state a claim <i>with brief in support</i>

JA-13

Date	No.	Docket Text
		by defendants Sturgis Public Schools, Sturgis Public Schools Board of Education; (Mullins, Timothy) Modified text on 7/1/2019 (clw). (Entered: 06/28/2019)
06/28/2019	21	CERTIFICATE regarding compliance with LCivR 7.1(d) re MOTION to dismiss for failure to state a claim 20 filed by Sturgis Public Schools, Sturgis Public Schools Board of Education (Mullins, Timothy) (Entered: 06/28/2019) * * *
07/22/2019	25	OBJECTION by plaintiff Maria Perez to Report and Recommendation 19 (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3) (Sickon, Mitchell) Modified text on 7/23/2019 (clw). (Entered: 07/22/2019)
08/05/2019	26	RESPONSE TO MOTION to dismiss for failure to state a claim 20 filed by Maria Perez (Attachments: # 1 Exhibit A) (Sickon, Mitchell) (Entered: 07/22/2019)
08/05/2019	27	REPLY to response to motion 20 filed by Sturgis Public Schools, Sturgis Public Schools Board of

JA-14

Date	No.	Docket Text
		Education (Mullins, Timothy) (Entered: 08/05/2019)
08/05/2019	28	RESPONSE TO OBJECTION to Report and Recommendation 25 by defendants Sturgis Public Schools, Sturgis Public Schools Board of Education (Mullins, Timothy) (Entered: 08/05/2019)
12/19/2019	29	OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION 19 ,Granting 11 ; signed by District Judge Paul L. Maloney (Judge Paul L. Maloney, cmc) (Entered: 12/19/2019)
12/19/2019	30	ORDER granting 20 motion to dismiss; signed by District Judge Paul L. Maloney (Judge Paul L. Maloney, cmc) (Entered: 12/19/2019)
12/19/2019	31	JUDGMENT; signed by District Judge Paul L. Maloney (Judge Paul L. Maloney, cmc) (Entered: 12/19/2019)
01/17/2019	32	NOTICE OF APPEAL re 30 , 29 , 31 by plaintiff Maria Perez (Sickon, Mitchell) (Entered: 01/17/2020)
		* * *
01/23/2020		CASE NUMBER 20-1076 assigned by the Sixth Circuit to appeal 32

JA-15

Date	No.	Docket Text
		(mkc) (Entered: 01/23/2020)
01/23/2020	33	LETTER FROM CCA regarding appeal 32 indicating Civil Case Docketed (clw) (Entered: 01/23/2020)
06/25/2021	34	OPINION of USCA re appeal 32 <i>affirming the district court's decision</i> (jem) (Entered: 06/25/2021)
06/25/2021	35	JUDGMENT of USCA re appeal 32 ; <i>mandate to issue</i> (jem) (Entered: 06/25/2021)
08/06/2021	36	MANDATE of USCA re appeal 32 <i>indicating costs as none</i> (jem) (Entered: 08/06/2021)
12/17/2021	37	LETTER from Supreme Court of the United States that a petition for writ of certiorari was filed by plaintiff Perez on December 13, 2021 and assigned case number 21-887 re Notice of Appeal 32 (slk) (Entered: 12/21/2021)

JA-16

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE
HEARING SYSTEM**

In the matter of:	Docket No.:
Miguel Luna Perez, Maria Perez, and Jose Luna	Case No.:
Petitioners,	Agency: Department of Education
v.	ALJ:
Sturgis Public Schools, Sturgis Public Schools Board of Education, St. Joseph Intermediate School District, St. Joseph Intermediate School District Board of Education,	
Respondents.	

[Counsel information omitted]

**COMPLAINT AND REQUEST FOR SPECIAL
EDUCATION DUE PROCESS HEARING**

I. INTRODUCTION

1. Petitioners, Miguel Luna Perez (“Miguel” or “the Student”), Maria Perez and Jose Luna (“the Parents”) (collectively “Petitioners”), by and through

their undersigned counsel, hereby submit the following Complaint and Request for a Special Education Due Process Hearing against Sturgis Public School (“Sturgis” or “the District”), Sturgis Public Schools Board of Education (“Sturgis Board”), St. Joseph Intermediate School District (“the ISD”), and St. Joseph Intermediate School District Board of Education (“the ISD Board”), (collectively “Respondents”), pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400 *et seq.*; the Michigan Administrative Rules for Special Education (“MARSE”), Michigan Admin. Code R. 340.1701 *et seq.*; the Michigan Persons with Disabilities Civil Rights Act (“PDCRA”), M.C.L. 37.1101 *et seq.*; Section 504 of the United States Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794; and Title II of the Americans with Disabilities Act (“Title II”), 42 U.S.C. §§ 12131 *et seq.*

2. Petitioners contend that throughout Miguel’s educational career, Respondents have failed to provide him with a free and appropriate public education (“FAPE”), as required by the IDEA and the MARSE, have failed to provide him with an equal educational opportunity, and have discriminated against him on the basis of his disability, in violation of Section 504 and the ADA.

II. JURISDICTION

3. The Michigan Department of Education (“MDE”) and the Michigan Administrative Hearing System (“MAHS”) have jurisdiction over this due process hearing request under 20 U.S.C. § 1415(b)(6) because this request concerns the legal obligations of Respondents under the IDEA regarding the

identification, evaluation, educational placement, and provision of a FAPE to a student with a disability.

III. PARTIES

4. Miguel Luna Perez is a 22-year-old student with a disability who resides with his parents, Maria Perez and Jose Luna, in the Sturgis Public School District. Their address is 605 Enterprise Street, Sturgis, MI 49091, Miguel currently attends the Michigan School for the Deaf (“MSD”) in Flint, Michigan. Previously, from 2004 through 2016, Miguel attended school in the District. Miguel is a student with a disability, as defined by the IDEA and the MARSE Wider the category of Hearing Impairment. He is also an individual with a disability within the meaning of Section 504, the ADA, and the PDCRA as he has a physical impairment that substantially limits one or more major life activities, including hearing and speaking.

5. Maria Perez and Jose Luna are Miguel’s biological parents. Ms. Perez and Mr. Luna were Miguel’s legal guardians until he reached the age of majority. Ms. Perez’s and Mr. Luna’s primary language is Spanish.

6. Sturgis Public Schools is Miguel’s home district and as such, is the local education agency (“LEA”) responsible for providing him with a FAPE and the procedural protections required under the IDEA. Sturgis is a recipient of federal financial assistance, subject to the requirements of Section 504, 34 C.F.R. § 104.11, and a public governmental entity subject to the provisions of the ADA, 42 U.S.C. §§ 12132, 12131(1)(A), (B).

7. Sturgis Public Schools Board of Education (“Sturgis Board”) is the Board of Education for Sturgis

Public Schools. The Sturgis Board “exists for the purpose of providing a system of free, public education for students in grades Pre-K- 12 inclusive.”¹ The Sturgis Board has the authority to supervise Sturgis.² Its powers include educating students and hiring, contracting for, scheduling, supervising, or terminating employees, independent contractors, and others who work at Sturgis.³ These powers also include making many different kinds of decisions regarding the evaluation, compensation, discipline, and discharge of individual Sturgis personnel.⁴ The Sturgis Board is responsible for ensuring Sturgis complies with state and federal laws, including special education and disability rights laws, and to establish district-wide policies.⁵

8. St Joseph Intermediate School District (“the ISD”) is the regional educational service agency, as defined in M.C.L. 380.4(3), of which Sturgis is a constituent school district. The ISD provides special education services and supports to its constituent LEAs, including speech and language therapy and services for deaf and hard of hearing students.⁶ Additionally, the ISD receives federal funding to provide special education services. MARSE R. 340.1801. St. Joseph ISD representatives have

¹ Sturgis Public Schools Bylaws and Policies, Section 0112 “Purpose,” available at <http://www.neola.com/Sturgis-mi/>.

² *Id.* Section 0121 “Authority.”

³ *Id.*, Section 0122 “Board Powers.”

⁴ *Id.*

⁵ *Id.*, Section 0123 “Philosophy of the Board.”

⁶ <http://www.michiganschoolforthe deaf.org/content/school-history>

participated in Miguel’s Individualized Education Program (“IEP”) meetings.

9. The ISD Board of Education (“ISD Board”) is the legal entity for providing specialized educational services within the ISD.⁷ The ISO Board “exists to serve as a liaison agency between the local school districts in St Joseph and portions of contiguous counties or the State Department of Education and to provide those educational programs and services requested by the constituent districts or mandated by the State.”⁸ The ISD Board supervises the ISD.⁹ Its powers include educating students and hiring, contracting for, scheduling, supervising, or terminating employees, independent contractors, and others who work at the ISD.¹⁰ These powers also include making many different kinds of decisions regarding the evaluation, compensation, discipline, and discharge of individual ISD personnel.¹¹ The ISD Board is responsible for ensuring the ISD complies with state and federal laws, including special education and disability rights laws and to establish district-wide policies.¹²

⁷ <http://www.michiganschoolforthe deaf.org/content/school-history>

⁸ <http://www.michiganschoolforthe deaf.org/content/school-history>

⁹ <http://www.michiganschoolforthe deaf.org/content/school-history>

¹⁰ <http://www.michiganschoolforthe deaf.org/content/school-history>

¹¹ <http://www.michiganschoolforthe deaf.org/content/school-history>

¹² <http://www.michiganschoolforthe deaf.org/content/school-history>

IV. STATEMENT OF FACTS

10. Miguel is deaf. He has no other disabilities.

11. Miguel began attending Sturgis Public Schools in 2004 at the age of nine, having just moved to the United States from Mexico with his parents.

12. Miguel's parents speak only Spanish. They require a Spanish-language interpreter to participate in school meetings, such as IEP team meetings, and they require Spanish-language translation of all written materials.

13. In Mexico, Miguel had had no formal education and arrived in the United States knowing only a few gestures that he used to communicate with his parents. He did not know a formal sign language. Miguel could not read lips, and he could not speak any words in Spanish or English. He could not read or write.

14. Despite this early setback, a cognitive evaluation conducted by the District in 2004 stated that Miguel's "intellectual potential is at least Low Average, and quite possibly higher." The report explained that "[c]onsidering his profound hearing loss and uncertain school history, the results of the [intelligence test] should be considered a minimal estimate of his potential level of intellectual functioning."

15. Miguel's teachers at the time described Miguel as curious, hard-working student who loved to learn, and would willingly use the signs taught to him.

16. St. Joseph Intermediate School District provided a Teacher of the Deaf, who recommended that Miguel receive instruction in American Sign Language ("ASL").

17. ASL is the predominant language used by deaf and hard of hearing individuals in the United States. It is a complete language with its own vocabulary, grammar, and discourse structure.

18. Sturgis recognized the recommendation to instruct Miguel in ASL, but failed to implement the recommendation in a manner reasonably calculated to enable Miguel to learn.

19. Instead, Sturgis provided limited access to sign language models, primarily relying on an individual who had attempted to learn sign language from a book. Further, there were lengthy periods of time in which Sturgis provided no direct instruction in sign and no interpreting services at all.

20. Consequently, after attending school in the District without interruption for 12 years, Miguel still did not know any formal sign language. Indeed, he could not even follow simple directions given in sign language. He could not speak any words or understand speech. His reading and writing ability did not approach functional literacy.

21. Instead, Miguel communicated through an idiosyncratic method of invented signs that Sturgis misled Miguel and his family to believe was “Signed English.” However, this signing system was insufficient to allow Miguel to communicate with anybody unfamiliar with his unique signing method, and was insufficient to allow Miguel to understand even simple instructions given in Signed English or ASL.

22. In a 2016 test of his ability to understand words and sentences conveyed in sign language he scored at a level less than 1% of his peers.

23. In a 2016 test of his ability to recognize sight vocabulary words, he achieved a score of less than 0.1% of his peers.

24. Miguel spent 12 years at Sturgis Public Schools in an environment that did not teach him language and did not give him language access to his surroundings.

25. Beginning In 2004, Sturgis Implemented an IEP that was not reasonably calculated to ensure that Miguel made appropriate progress in light of his circumstances or that he had communication access to his learning environment.

26. Since 2004, Miguel's IEP consistently noted that he "cannot hear or speak complete sentences to communicate." Nevertheless, from 2004-2016, Sturgis placed Miguel in a general or special education classroom without instruction in ASL or an ASL interpreter.

27. From 2004-2008, his IEP noted "[a] teaching assistant will be available to him throughout the day to sign information to him, but not necessarily with him individually all day."

28. Beginning in 2009, Sturgis described the teaching assistant as "with him during academic classes to provide tutoring and sign instruction as needed."

29. In addition, Sturgis provided Miguel with a few hours per week with the Teacher of the Deaf and/or with speech and language services.

30. On information and belief, this "teaching assistant" did not hold a teaching credential, had no training or experience in teaching deaf students, had no training or experience as an interpreter, and did not know any sign language.

31. On information and belief, this teaching assistant's sole qualification for her position was her attempt to teach herself Signed English by reading a book.

32. Signed English is not ASL. Signed English borrows from the ASL lexicon, adapts the signs to correspond exactly with English words, and is produced according to English rules for grammar, etc. Although Signed English can be suitable for the educational setting, it cannot be learned solely from a book.

33. On information and belief, Sturgis did not choose Signed English over ASL for pedagogical reasons or with consideration for Miguel's needs. Rather, Sturgis chose Signed English because of the belief it would be easier for the teaching assistant to learn.

34. Because the teaching assistant, who attempted to learn Signed English from a book, is not an interpreter, she could not provide Miguel with access to the general or special education teachers in his environment. Rather, she served as Miguel's only source of instruction.

35. In 2012, Miguel received a cochlear implant. Although the implant enabled Miguel to detect sound, he could not detect any patterns in the sounds he perceived. The cochlear implant did not improve his ability to understand speech.

36. Beginning in approximately 2015, Sturgis took away Miguel's teaching assistant for four hours per day, leaving Miguel with no means of communicating with staff or students.

37. Sturgis discontinued speech-language services in 2015, incorrectly deeming Miguel “able to functionally communicate through sign and writing.”

38. In May 2016, Miguel’s IEP describes him as using Signed English as his primary mode of communication. The IEP states he can participate in a conversation in Signed English only on familiar topics—meaning that at the age of 20, having no intellectual disability of any kind, after 12 years in Sturgis Public Schools, Miguel still had no ability to discuss unfamiliar topics regardless of how communication occurred.

39. In reading and writing, he tested at a 1st to 3rd grade level. The IEP noted that Miguel is “unfamiliar with basic vocabulary of things he uses regularly (food that he eats regularly for example).” “This datum suggests that Miguel’s functional ability to read and write was in fact much lower.

40. This IEP also described Miguel as unable to independently communicate with peers or instructors. He was entirely reliant on the teaching assistant for all communication.

41. Therefore, the IEP did not address Miguel’s social needs nor consider his opportunity for direct communication with peers.

42. On information and belief, Sturgis briefly paired Miguel with a different teaching assistant in the spring of 2016.

43. On information and belief, this new teaching assistant could communicate in both ASL and Signed English. At first, Miguel and the new teaching assistant could not understand each other because Miguel, in fact, had not learned ASL or Signed English during his time in Sturgis. Therefore, the

District's statement that Miguel uses Signed English as his primary mode of communication was raise, as Miguel did not know Signed English.

44. The May 2026 IEP does not attempt to attribute lack of progress to any deficiencies in Miguel's attendance or in his desire to learn. As late as 2016, Miguel's IEP continued to describe him as "an extremely hard-working student . . . He is attentive to instruction and desires to learn new things . . . He is self-driven, has a good attitude, and wants to succeed at life."

45. Rather, Miguel's inability to communicate with anybody but the previous teaching assistant is attributable solely to the fact that she had not learned Signed English. On information and belief, she had inadvertently invented a novel sign system that only she and Miguel understood.

46. Over his twelve-year period at Sturgis the District created many deficient IEPs for Miguel.

47. The goals written into Miguel's IEPs were much too low to be appropriate for a student who simply is deaf, even if the student did not begin learning language until age nine.

48. Miguel made minimal to no progress on many of his IEP goals. Many of his progress reports lacked data regarding his progress.

49. Sturgis failed to provide Miguel with a qualified sign language interpreter at any point during his 12 years at Sturgis.

50. Sturgis failed to provide Miguel with sufficient exposure to any language to enable him to acquire even basic proficiency in that language, whether it be ASL, Signed English, or English.

51. Sturgis did not collect and consider sufficient data to determine whether or not Miguel needed extended school year (“ESY”) services. Consequently, Sturgis did not provide Miguel with ESY services at any point, despite his severe lack of educational progress.

52. Sturgis made no attempt to assist Miguel’s parents in learning ASL, Signed English, or whatever method the school was using to communicate with him, to ensure that Miguel’s exposure to language continued after the school day ended and on weekends. Therefore, over the summer and during school breaks, Miguel had no access to language at all.

53. Despite repeatedly documenting Miguel’s *de minimis* progress, Sturgis made no effort to increase the services for teaching Miguel language or to provide a teaching assistant or interpreter who actually knew ASL or Signed English.

54. Sturgis assessed Miguel periodically over this twelve-year period, and consistently identified Miguel has having a profound hearing loss and no other disability.

55. Therefore, Sturgis knew or should have known that *de minimis* progress in all areas of language development was not appropriate progress for Miguel.

56. Sturgis made no reasonable effort to adjust the education services it provided Miguel in light of his failure to make appropriate progress.

57. Sturgis also failed to ensure Miguel’s parents, Maria Perez and Jose Luna, could exercise their right to participate in educational decisions.

58. Over the 12-year period that Miguel attended Sturgis, Sturgis provided Spanish-language interpreters of varying ability, including students, so that his parents frequently could not participate in the IEP meetings they attended.

59. Sturgis failed to provide Ms. Perez or Mr. Luna with a Spanish-language version of the Parental Notice of Procedural Safeguards and failed to otherwise advise them of their procedural rights under the IDEA.

60. Consequently, Ms. Perez and Mr. Luna did not know about their procedural rights under the IDEA until the Spring of 2016.

61. Due to their lack of awareness of the procedural rights, Ms. Perez and Mr. Luna were not able to advocate for their son's substantive educational rights.

62. Due to the grossly inadequate education that Respondents provided to Miguel, he also has not been aware of his own procedural rights and could not advocate for his substantive educational rights.

63. Sturgis also made inaccurate or misleading representations to Miguel, Ms. Perez and Mr. Luna regarding the services that Miguel received.

64. For example, Sturgis told Ms. Perez and Mr. Luna that Miguel was receiving instruction in Signed English and had a teaching assistant who knew Signed English.

65. This information was incorrect, Miguel's teaching assistant did not know Signed English. Indeed, nobody working with Miguel knew Signed English, with the possible exception of the Teacher of the Deaf, who spent at most three hours per week with Miguel.

66. Therefore, Sturgis's representation that Miguel was receiving instruction in Signed English and had a teaching assistant who knew Signed English was inaccurate, misleading, and further prevented Miguel and Miguel's parents from exercising their procedural rights.

67. On information and belief, the Teacher of the Deaf from St. Joseph ISD objected to the IEP and informed Sturgis that the services Sturgis was providing did not ensure that Miguel would receive an appropriate education.

68. Sturgis did not adequately respond to the objections or recommendations from the Teacher of the Deaf.

69. Of its own volition, Respondents never considered or suggested placement at the Michigan School for the Deaf for Miguel.

70. In August 2016, Miguel, through his advocate, requested that Sturgis invite MSD to his IEP team meeting.

71. For the first time in 12 years, Sturgis invited MSD to Miguel's IEP meeting to assist with developing an appropriate program to meet Miguel's needs. The IEP team, for the first time, considered placement at MSD and decided that it was necessary to meet Miguel's needs.

72. MSD serves deaf and hard of hearing students in Michigan. In 1937, the school was placed under the jurisdiction of the State Board of Education, an arrangement that remains in place to this day.¹³

¹³ <http://www.michiganschoolforthe deaf.org/content/school-history>

73. MSD's mission is to be the leader in educating Deaf and Hard of Hearing children in Michigan, and to provide services to their families and the community.¹⁴

74. The Michigan Department of Education and the Michigan Board of Education are responsible for developing, disseminating, and implementing policies and practices that ensure local and intermediate school district are aware of MSD and use MSD as a resource for serving deaf and hard of hearing students, both by consulting with MSD and by inviting MSD to attend IEP meetings for deaf and hard of hearing students.

75. Sturgis failed to contact MSD prior to 2016, in part due to the Michigan Department of Education and the Michigan Board of Education's failures in developing, disseminating, and implementing policies and practices that ensure local and intermediate school district are aware of MSD and use MSD as a resource for serving deaf and hard of hearing students.

76. Miguel began attending MSD in the fall of 2016.

77. Miguel lives on campus in the dormitories at MSD while school is in session going home for weekends and holidays.

78. At MSD, Miguel is immersed in ASL from the time he wakes up until he goes to bed. He receives instruction in ASL from teachers who have the training and experience to teach ASL, and to teach deaf students with Miguel's unique background.

¹⁴ <http://www.michiganschoolforthe deaf.org/content/visionmissionbeliefs>

Miguel also has exposure to a variety of peers who use ASL.

79. Since arriving at MSD, Miguel has made great strides in acquiring ASL, given his severe linguistic deficiencies prior to arriving on campus.

80. In September 2016, Miguel was evaluated by Dr. Peter K. Isquith, Ph.D., a licensed psychologist with a clinical specialty in working with deaf and hard of hearing individuals. This evaluation revealed the Miguel is not proficient in sign or any other form of communication, describing him as having “very limited language, mostly relying on a collection of atypical and incorrect signs that were not familiar to other students or teachers who sign.”

81. When tested on visual/nonverbal tasks, Miguel demonstrated intellectual functioning within the average range.

82. Dr. Isquith noted that Miguel demonstrated severe deficits in language, language related processing, and academic skills. Consistent with his long-standing history of limited language development and teacher observations, Miguel’s ability to understand and produce language was very limited. The evaluation also revealed that Miguel reads at a 1st to low 2nd grade level with partial comprehension.

83. Dr. Isquith also noted that Miguel’s language deficit was akin to that seen in individuals who have experienced language deprivation rather than a language disorder per se, which was consistent with his history of limited access to language, secondary to hearing loss.

84. Miguel’s teachers at MSD report that he has made substantial progress in communication over the

past year, yet Dr. Isquith stated that Miguel's limited language competence and the impact on his linguistic reasoning, knowledge base and academic skills is permanent. Although Miguel has already shown growth in communication skills since entering MSD and although this may give him greater access to social information, knowledge about the world and perhaps somewhat better academic skills, those gains are likely to remain small relative to the substantial gap between what he can do and normal expectations.

85. Dr. Isquith characterized the District's treatment of Miguel as a form of severe neglect, called "linguistic deprivation," which he defined as a neurodevelopmental syndrome stemming from the choices made for children by their educational and medical professionals. He described such neglect as a "pattern of very limited early exposure to an accessible language and chronic absence of a linguistically accessible environment" for most of Miguel's life. Linguistic deprivation is not a disability that a child is born with, but a syndrome caused by the severe educational shortcomings of those responsible for the child's development

86. Dr. Isquith described the impact of linguistic deprivation as "varied and far-reaching," associated with numerous long-term cognitive, academic, social and psychiatric risks, along with vocational, educational, and financial consequences.

87. Given Miguel's cognitive ability and strong work ethic, Dr. Isquith declared that if Sturgis had provided him with necessary accessible language models, he would likely have been able to attend college. Unfortunately, due to the District's neglect and failure to accommodate, this is no longer an option for Miguel. As Sturgis did not provide Miguel

with appropriate language exposure or instruction for well over a decade, he will never develop the language fluency or literacy levels needed to pursue higher education.

88. Currently, Miguel is unable to learn through reading and writing, or even through explanations presented in sign language. He must learn through hands-on training. These deficiencies suggest he will never develop the reading, writing and math skills necessary to enter most vocational or technical programs.

89. Dr. Isquith explained that Miguel's history of linguistic deprivations at Sturgis also leaves him susceptible to numerous cognitive, social, and psychiatric risks. For example, he is likely to have less satisfying relationships with peers and family, he is at a greater risk for maltreatment, for emergence of depression and anxiety, for limited academic, vocational, and financial achievement, and for more limited independence as an adult. His work prospects will most likely be limited to unskilled labor.

90. Miguel requires social work support, which he does not currently receive. The social work support would help him develop and maintain friendships, a skill he has not been able to develop naturally due to the severe isolation he experienced at Sturgis.

91. Miguel likely will need significant support in vocational rehabilitation and independent living to compensate for the prior deficiencies in his education. Otherwise, it is unlikely that he will develop the skills necessary to obtain employment on his own.

92. At all times relevant to this Complaint, Sturgis and the Sturgis Board knew they were not providing appropriate educational services to address

Miguel's needs. Nevertheless, Sturgis and St. Joseph ISD continued to engage in a practice of failing to provide for Miguel's educational needs.

93. On information and belief, the District acted according to a policy and widespread practice of failing to provide a FAPE to deaf and hard of hearing students.

94. The Sturgis Board is responsible for setting policies for the District and therefore is responsible for any injuries that Petitioners sustained.

95. The Sturgis Board has sufficient powers regarding the hiring, firing, and supervision of Sturgis employees to be held liable for their acts.

96. An ISD representative consistently attended Miguel's IBP meetings and participated in the acts and omissions alleged in this Complaint.

97. On information and belief, the ISD acted according to a policy and widespread practice of failing to provide a FAPE to deaf and hard of hearing students.

98. The ISD Board is responsible for setting policies for the ISD and therefore is responsible for any injuries that Petitioners sustained.

99. The ISD Board has sufficient powers regarding the hiring, firing, and supervision of ISD employees to be held liable for their acts.

100. Respondents' acts have deprived Miguel of the FAPE he is entitled to by law.

101. Respondents' acts have deprived Ms. Perez and Mr. Luna of their right to have their child receive a FAPE.

102. Respondents' acts have deprived the Luna Perez family of their equal opportunity to receive the

benefits that other participants in Respondents' programs and services enjoy.

103. Respondents' acts were knowing and intentional.

104. Respondents acted in bad faith and/or exercised gross misjudgment. As a result of Respondents' conduct, the members of the Luna Perez family have experienced severe emotional distress, such as humiliation, frustration, anxiety, sadness, hopelessness, and other forms of mental and emotional anguish.

V. ALLEGATIONS

A. RESPONDENTS VIOLATED THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, 20 U.S.C. §§ 1400 *et seq.*

105. Petitioners incorporate by reference all previous paragraphs, of the Complaint herein.

i. Respondents Failed to Provide Miguel with a FAPE.

106. Congress passed the Individuals with Disabilities Education Act ("IDEA") to ensure "that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living" and "to ensure that the rights of children with disabilities and parents of such children are protected." 20 U.S.C. § 1400(1)(A), (B).

107. The IDEA requires states receiving IDEA funds to have "in effect policies and procedures to ensure that the State meets each of the following conditions": (1) "A free appropriate public education is available to all children with disabilities residing in

the State between the ages of 3 and 21, inclusive, . . .”¹⁵; (2) “An individualized education program or an individualized family service plan that meets the requirements section 1436(d) of this title, is developed, reviewed, and revised for each child with a disability in accordance with section 1414(d) of this title”; and (3) “Children with disabilities and their parents are afforded the procedural safeguards required by section 1415 of this title,” among others. 20 U.S.C. § 1412.

108. The IDEA requires local education agencies receiving IDEA funding to “submit[] a plan that provides assurances to the State educational agency that . . . [t]he local educational agency in providing for the education of children “with disabilities within its jurisdiction, has in effect policies,” procedures, and programs that are consistent with the State policies and procedures established under section 1412 of this title.” 20 U.S.C. § 1413(a).

109. The IDEA carries additional provisions outlining the substantive and procedural requirements of the Act, including the obligation to evaluate each child and to provide an IEP that ensures the student receives a FAPE in the least restrictive environment able to meet the child’s needs, as well as various procedural protections. 20 U.S.C. §§ 1414, 1415.

110. The District and the Sturgis Board are each a Local Education Agency within the meaning of 20 U.S.C. § 1413 and are thus subject to the IDEA.

¹⁵ In Michigan, a FAPE must be provided to students with disabilities through age 26, pursuant to the MARSE. *See* R. 340.1102.

111. The ISD and the ISD Board participated in the denial of FAPE to Miguel and are thus proper parties to this administrative proceeding per 20 U.S.C. § 1415(b).

112. At all times relevant to this complaint, Miguel Luna Perez has been a student with a disability under 20 U.S.C. § 1401(3).

113. At all times relevant to this complaint, Maria Perez and Jose Luna have been the parents of a student with a disability under the IDEA.

114. Respondents violated the Miguel's rights, Ms. Perez's rights, and Mr. Luna's rights under the IDEA by knowingly failing to provide Miguel with a FAPE and by failing to satisfy certain procedural requirements.

115. Respondents continue to violate the Miguel's rights, Ms. Perez's rights, and Mr. Luna's rights under the IDEA by knowingly failing to provide Miguel with social work support. Such services are necessary for Miguel to receive a FAPE.

116. Respondents did not provide the intensive language instruction required in order for Miguel to develop effective communication skills.

117. Respondents did not provide Miguel with consistent exposure to an accessible mode of language such as ASL.

118. Respondents did not address Miguel's lack of progress towards the goals in his IEP.

119. Respondents did not address Miguel's functional needs, such as his need for socialization.

120. Respondents discontinued speech and language services without any data to support the change.

121. Respondents failed to consider opportunities for direct instruction and direct instruction with peers.

122. Respondents failed to consider the total continuum of services for students who are deaf or hard of hearing.

123. Respondents did not provide Miguel with extended school year services nor did it keep data to determine whether extend school year services were necessary.

124. Respondents failed to provide training and education to Ms. Perez and Mr. Luna.

125. Respondents otherwise violated Miguel's, Ms. Perez's, and Mr. Luna's right for Miguel to receive a FAPE.

ii. Respondents Failed to allow the Parents Meaningful Participation in the Education Process

126. Respondents did not provide written materials, including procedural safeguards, to the Parents in a language they could understand.

127. Respondents misrepresented Miguel's progress to the Parents.

128. Respondents misrepresented to the Parents the services and supports that it was providing to Miguel.

129. Respondents otherwise failed to allow the parents meaningful participation in Miguel's education process.

**B. RESPONDENTS VIOLATED THE
MICHIGAN ADMINISTRATIVE RULES FOR
SPECIAL EDUCATION**

130. Petitioners incorporate by reference all previous paragraphs of the Complaint herein.

131. The Michigan Administrative Rules for Special Education (MARSE), R. 340.1700 *et seq.* set the administrative rules for special education and related services in the state of Michigan.

132. MARSE defines special education as “specially designed instruction, at no cost to the parents, to meet the unique educational needs of the student with a disability and to develop the student’s maximum potential. Special education includes instructional services defined in R. 340.1701b(a) and related services.” R. 340.1701c(c).

133. Pursuant to MARSE, “[t]he individualized education program team shall determine the programs and services for a student with a disability in accordance with 34 CFR part 300. The individualized education program shall not be restricted to the programs and services available.” R. 340.1721e(4).

134. Further, “[t]he Michigan school for the deaf shall be considered a part of the total continuum of services for students who are deaf or hard of hearing. The resident district shall conduct the individualized education program team meeting that initiates an assignment into the Michigan school for the deaf. Representatives of the intermediate school district of residence and the Michigan school for the deaf shall be invited to participate in the individualized education program team meeting. R. 340.1721e(5).

135. Miguel is a student receiving special education services under MARSE.

136. Jose Luna and Maria Perez are the parents of a child receiving special education services under MARSE.

137. Respondents are covered entities subject to MARSE.

138. Respondents failed to provide Miguel with instruction to develop his maximum potential, in violation of MARSE.

139. Respondents restricted Miguel's individualized education program to the programs and services available, in violation of MARSE.

140. Respondents failed to consider the Michigan School for the Deaf as part of the total continuum of services for Miguel, in violation of MARSE.

141. Respondents engaged in additional violations of MARSE with respect to Miguel Luna Perez, Jose Luna and Maria Perez.

**C. RESPONDENTS VIOLATED
SECTION 504 OF THE REHABILITATION ACT,
29 U.S.C. § 794**

142. Petitioners incorporate by reference all previous paragraphs of the Complaint herein.

143. Pursuant to Section 504 of the Rehabilitation Act of 1973 ("Section 504") and its regulations, "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ." 29 U.S.C. § 794.

144. The regulations regarding Preschool, Elementary, and Secondary Education apply to “preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.” 34 C.F.R. § 104.31.

145. In general, “[a] recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient’s jurisdiction, regardless of the nature or severity of the person’s handicap. 34 C.F.R. § 104.33(a).

146. Respondents Sturgis and Sturgis Board are recipients of federal financial assistance and operate a public elementary or secondary education program or activity. Therefore, they are covered entities under 29 U.S.C. § 794.

147. Respondents St. Joseph ISD and the ISD Board are recipient of federal financial assistance and operate public elementary or secondary education programs or activities. Therefore, they are covered entities under 29 U.S.C. § 794.

148. Miguel Luna Perez is a person with a disability within the meaning of 29 U.S.C. § 794.

149. Maria Perez and Jose Luna are his parents and are associated with a person with a disability within the meaning of 29 U.S.C. § 794.

150. Respondents have intentionally discriminated against Miguel Luna Perez, Maria Perez and Jose Luna in violation of Section 504 by failing to provide a FAPE to Miguel Luna Perez.

151. Respondents have intentionally discriminated against Miguel Luna Perez by failing to provide the auxiliary aids and services needed to ensure effective communication.

152. Respondents have otherwise intentionally discriminated against Miguel Luna Perez, Maria Perez and Jose Luna in violation of Section 504. As a direct and proximate cause of Respondents' violation of Section 504, Miguel Luna Perez, Maria Perez and Jose Luna have suffered and continue to suffer severe and grievous mental and emotional suffering, humiliation, stigma, and other injuries they will continue to suffer.

**D. RESPONDENTS VIOLATED TITLE 11 OF
THE AMERICANS WITH DISABILITIES ACT,
42 U.S.C. §§ 12131 *et seq.***

153. Petitioners incorporate by reference all previous paragraphs of the Complaint herein

154. Title II of the ADA and its regulations provide that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. (*See also* 28 C.F.R. Part 35).

155. Respondents are each a public entity subject to Title II of the ADA, 42 U.S.C. § 12131.

156. Miguel Luna Perez is a person with a disability within the meaning of 42 U.S.C. § 12102.

157. Maria Perez and Jose Luna are his parents and are associated with a person with a disability within the meaning of 42 U.S.C. § 12102.

158. Respondents intentionally violated Miguel's rights under the ADA and the regulations promulgated here under by excluding him from participation in and denying him the benefits of Respondents' services, programs, and activities, and by subjecting him to discrimination in violation of 42 U.S.C. § 12132.

159. Respondents have intentionally discriminated against Miguel Luna Perez by failing to provide the auxiliary aids and services necessary to ensure effective communication.

160. Respondents intentionally discriminated against Maria Perez and Jose Luna based on their association with Jacob Connell, in violation of 42 U.S.C. § 12132.

161. Respondents otherwise intentionally discriminated against Miguel Luna Perez, Maria Perez and Jose Luna, in violation of 42 U.S.C. § 12132.

162. As a direct and proximate cause of Respondents' violation of the ADA, Miguel has suffered and continues to suffer severe and grievous mental and emotional suffering, humiliation, stigma, and other injuries he will continue to suffer.

E. RESPONDENTS VIOLATED THE PERSONS WITH DISABILITIES CIVIL RIGHTS ACT, M.C.L. 37.1101 *et seq.*

163. Petitioners incorporate by reference all previous paragraphs of the Complaint herein.

164. The Persons with Disabilities Civil Rights Act ("PDCRA") guarantees, as a civil right, the full and equal utilization of public accommodations, public services, and educational facilities

without discrimination because of a disability. M.C.L. 37.1102.

165. The PDCRA further prohibits educational institutions from “[d]iscriminat[ing] in any manner in the full utilization of or benefit from the institution, or the services provided and rendered by the institution to an individual because of a disability that is unrelated to the individual’s ability to utilize and benefit from the institution or its services, or because of the use by an individual of adaptive devices or aids.” M.C.L. 37.1402.

166. Respondents are each an educational facility within the meaning of M.C.L. 37.1102 and an educational institution within the meaning of M.C.L. 37.1401.

167. Miguel has a disability as defined in M.C.L.A. 37.1103.

168. Miguel’s disability is unrelated to his ability to utilize and benefit from Respondents’ services.

169. Respondents discriminated against Miguel in the full utilization of or benefit from the services provided and rendered by Respondents due to Miguel’s disability.

170. Respondents otherwise violated Miguel’s rights under the PDCRA.

VI. PRAYER FOR RELIEF

WHEREFORE; Petitioner request the following relief:

- A. Find that Respondents violated state and federal law;
- B. Order compensatory education for Miguel Luna Perez;

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- C. Order related services, such as social work services, for Miguel Luna Perez;
- D. Order compensatory family support services for Jose Luna and Maria Perez;
- E. Enjoin the Respondents from implementing all policies and practices that violate or have the effect of violating the federal protected rights of Petitioner;
- F. Find that Petitioners are the prevailing party;
- G. Award Petitioners compensatory damages;
- H. Award Petitioners their reasonable attorneys fees and costs under 42 U.S.C. § 1988 and/or other applicable statutes; and
- I. Any other relief deemed necessary.

Respectfully submitted,

Dated: 10/5/17 By: s/ Miguel Luna Perez
Miguel Luna Perez
Petitioner

Dated: 10/15/17 By: s/ Ma. Angela Perez
Maria Perez
Petitioner

Dated: 10/5/17 By: s/ Jose Javier Luna Ramirez
Jose Luna
Petitioner

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
MICHIGAN**

In the matter of:

**Miguel Luna Perez,
Plaintiff,**

v.

**Sturgis Public
Schools and Sturgis
Public Schools Board
of Education,
Defendants.**

Hon. Paul L. Maloney

**Case No.: 1:18-cv-
01134-PLM-RSK**

**JURY TRIAL
DEMANDED**

[Counsel information omitted]

PLAINTIFF'S FIRST AMENDED COMPLAINT

I. INTRODUCTION

1. Plaintiff, Miguel Luna Perez ("Miguel" or the "Student"), by and through his undersigned counsel, hereby submits the following Amended Complaint against Sturgis Public School ("Sturgis" or "the District") and Sturgis Public School Board of Education ("Sturgis Board"), (collectively "Defendants"), pursuant to Title II of the Americans with Disabilities Act ("Title II"), 42 U.S.C. §§ 12131 *et seq.*; and the Michigan Persons with Disabilities Civil Rights Act ("PDCRA"), M.C.L. 37.1101 *et seq.*

2. Defendants have intentionally discriminated against Plaintiff by failing to provide him a qualified sign language interpreter, access to English Language Learner services, access to after school

activities, and access to other programs, services and benefits of the school while he was a student in Sturgis Public Schools, because of his disability. Plaintiff brings this claim for compensatory damages and attorneys' fees.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

4. Plaintiff has exhausted all administrative remedies pursuant to 20 U.S.C. § 1415(l).

5. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. § 1391 because: (i) each Defendant operates a place of business within the District and has sufficient contacts with this District to subject it to personal jurisdiction at the time this action is commenced; and (ii) the acts and omissions giving rise to this claim have occurred within the District.

III. PARTIES

6. Miguel is a 23-year-old deaf individual who resides in the Sturgis Public School District.

7. From 2004, when Miguel was 9 years old, through 2016, when he was 20 years old, Miguel attended school in the Sturgis Public School District.

8. Miguel is a qualified individual with a disability within the meaning of Title II of the ADA, and the PDCRA, as he has a physical impairment and a mental impairment that substantially limits one or more major life activities, including hearing, speaking, and communicating. See 42 U.S.C. §§ 1202, 12131(2).

9. Sturgis Public Schools is a public governmental entity subject to the provisions of Title II of the ADA, 42 U.S.C. §§ 12131, *et seq.*, and United

States Department of Justice regulations implementing Title II, 28 C.F.R. Part 35.

10. Sturgis Public School Board of Education (“Sturgis Board”) is the Board of Education for Sturgis Public Schools. The Sturgis Board is a public governmental entity subject to the provisions of Title II of the ADA, 42 U.S.C. §§ 12131, *et seq.*, and the United States Department of Justice regulations implementing Title II, 28 C.F.R. Part 35. The Sturgis Board “exists for the purpose of providing a system of free, appropriate public education for students in grades Pre-K – 12 inclusive.”¹ The Sturgis Board has the authority to supervise Sturgis.² Its powers include educating students and hiring, contracting for, scheduling, supervising, or terminating employees, independent contractors, and others who work at Sturgis.³ These powers also include making many different kinds of decisions regarding the evaluation, compensation, discipline, and discharge of individual Sturgis personnel.⁴ The Sturgis Board is responsible for ensuring Sturgis complies with state and federal laws, including disability rights laws, and to establish district-wide policies.⁵

IV. FACTS

11. Miguel is deaf. He is substantially limited in one or more major life activities, including hearing, speaking, and communicating.

¹ Sturgis Public Schools Bylaws and Policies, Section 0112 “Purpose,” available at <http://www.neola.com/Sturgis-mi/>.

² *Id.*, Section 0121 “Authority.”

³ *Id.*, Section 0122 “Board Powers.”

⁴ *Id.*

⁵ *Id.* Section 0123 “Philosophy of the Board.”

12. Miguel requires a qualified sign language interpreter to communicate with individuals who do not know sign language.

13. Miguel began attending Sturgis Public Schools in 2004 at the age of 9, having just moved to the United States from Mexico with his parents.

14. Miguel's parents speak only Spanish. They are not deaf. They require a Spanish-language interpreter to communicate with any non-Spanish-speaking school personnel and they require Spanish-language translation of all written materials.

15. From 2004 to 2016, Sturgis and the Sturgis Board (collectively, "Sturgis") engaged in an ongoing practice of failing to provide Miguel with the auxiliary aids and services necessary for him to participate in and receive the benefits of Sturgis and otherwise discriminated against Miguel solely because he is deaf.

16. During this time, the St. Joseph Intermediate School District (ISD) provided information and support that Sturgis relied on to make decisions regarding how to accommodate Miguel, including the accommodations necessary to ensure effective communication.

Denial of English Language Learner Services

17. When Miguel arrived at Sturgis, he did not know English and only Spanish was spoken in his home.

18. Sturgis did not provide English Language Learner (ELL) services to Miguel.

19. On information and belief, Sturgis provides ELL services to all other students who speak a language other than English at home.

20. On information and belief, Sturgis failed to provide ELL services to Miguel because he is deaf.

***Denial of a Qualified Sign Language
Interpreter***

21. From the time Miguel began at Sturgis, school personnel noted he could not understand speech and relied on sign language to access communication. However, Sturgis never once provided a qualified sign language interpreter to enable Miguel to access classroom instruction or to benefit from social interaction with his peers.

22. Instead of providing a qualified sign language interpreter, Sturgis provided an educational assistant named Gayle Cunningham to assist Miguel.

23. Sturgis knew that Ms. Cunningham was not a qualified sign language interpreter, because she did not know sign language when they hired her. Ms. Cunningham had no credentials whatsoever indicating that she was qualified to interpret to ensure effective communication with a deaf student.

24. Ms. Cunningham attempted to learn sign language from a book and from incidental instruction from a teacher of the deaf employed by the ISD.

25. After Sturgis hired her, Ms. Cunningham never took any formal classes intended to improve her sign language skills or to serve as a qualified sign language interpreter.

26. Even after working with Miguel for several years, Ms. Cunningham's command of sign language remained so poor that, when briefly paired with a different deaf student who used sign language, the other deaf student could not understand her at all.

27. Ms. Cunningham served as Miguel's sole communication facilitator from approximately 2006 until approximately May 2016.

28. Between 2012 and 2016, Sturgis provided qualified sign language interpreters to another deaf student at Sturgis.

29. Sturgis obtained a qualified sign language interpreter for this other student and replaced the qualified sign language interpreter if he or she left the position.

30. Over a 12-year period, Sturgis made no attempt at any time to secure a qualified sign language interpreter to provide Miguel with meaningful access to the classroom or any other Sturgis activities.

31. Over this 12-year period, Miguel's parents did not know and could not have known that Ms. Cunningham was not a qualified sign language interpreter or otherwise qualified to enable Miguel to access his education.

32. Over this 12-year period, Miguel did not and could not have known that Ms. Cunningham was not a qualified sign language interpreter or otherwise qualified to enable him to access his education.

33. Over this 12-year period, Miguel and his parents relied on misrepresentations from Sturgis and ISD personnel that Ms. Cunningham was qualified to work with Miguel.

34. Sturgis never told Miguel or his parents that Ms. Cunningham did not know sign language.

35. Sturgis misrepresented to Miguel and his parents that Ms. Cunningham used "Signed English."

36. Ms. Cunningham did not know Signed English. She essentially invented the signing system she used.

37. Miguel did not know and could not know that Ms. Cunningham did not know Signed English because, when he arrived at Sturgis, he did not know Signed English and he did not have meaningful access to other individuals who knew Signed English.

38. Miguel's parents could not know that Ms. Cunningham did not know Signed English because they did not know Signed English or any other form of sign language.

39. Miguel did not and could not have known that Ms. Cunningham was not a qualified sign language interpreter, because Sturgis never provided him with a qualified sign language interpreter.

40. Sturgis had access to a sign language proficiency evaluation provided through the Michigan Department of Education that would have reflected Ms. Cunningham's proficiency in sign language.

41. Sturgis never attempted to have Ms. Cunningham undergo an evaluation of her sign language proficiency during the time that she worked with Miguel.

42. Multiple different evaluations exist that reflect an individual's ability to interpret between English and sign language.

43. Sturgis never attempted to have Ms. Cunningham undergo an evaluation of her interpreting ability during the time that she worked with Miguel.

44. Beginning in approximately 2015, Sturgis took away Ms. Cunningham for multiple hours per

day, leaving Miguel with no means of communicating with staff or students during that time.

Access To Extra-Curricular Activities And Other Programs And Services

45. Sturgis denied Miguel the opportunity to participate in extra-curricular activities offered to non-deaf students throughout his time at Sturgis because he is deaf.

46. Sturgis denied Miguel access to other programs, services and benefits routinely provided to other students because he is deaf.

Sturgis' Misrepresentations Regarding Miguel's Communication Access to Academics

47. Sturgis misrepresented to Miguel and his parents that Miguel had access to the same educational services that other students had.

48. Sturgis misrepresented to Miguel and his parents that Sturgis provided Miguel with auxiliary aids and services sufficient for him to participate and benefit from classroom instruction at Sturgis.

49. Sturgis misrepresented to Miguel and his parents that Sturgis believed that Miguel did not need other educational services that Sturgis denied to Miguel because he is deaf.

50. Sturgis intentionally misrepresented Miguel's academic achievement.

51. Sturgis awarded Miguel "A" or "B" grades in nearly all his classes.

52. During the four years that Miguel spent at Sturgis Public High School, he was on the Honor Roll every semester or trimester.

53. The grades that Sturgis awarded Miguel did not in any way reflect the education he was receiving

or not receiving. Rather, these grades masked the fact that Miguel was learning nothing in his classes due to the absence of a qualified sign language interpreter.

54. Neither Miguel nor his parents knew or could have known that Sturgis was lying to them about Miguel's opportunity to access the curriculum. Miguel had never experienced sign language interpreters elsewhere other than Sturgis, so he could not compare his experience. Miguel's parents do not know English or sign language, so they could not discuss with Miguel his experience in school.

55. Based on all the misrepresentations by Sturgis, including his honor roll status for four years, his "A" and "B" grades, and the falsehood that Ms. Cunningham knew sign language, Miguel and his parents believed that Miguel had been receiving meaningful communication access to his classes and would be graduating with a regular high school diploma in June 2016 and going to college thereafter.

56. In March 2016, Miguel and his parents learned for the first time that Miguel would not be receiving a regular high school diploma but instead would be receiving a certificate of completion.

57. In May 2016, Miguel's parents and Sturgis agreed that Miguel should attend the Michigan School for the Deaf for the following school years.

58. In June 2016, Miguel earned a certificate of completion from Sturgis.

59. In August 2016, Miguel began attending the Michigan School for the Deaf (MSD).

60. All the classes at MSD are conducted in American Sign Language. Therefore, Miguel has full access to all his classes at MSD.

61. It is expected that Miguel will graduate from MSD with a Michigan Merit Diploma.

62. The Sturgis Board is responsible for setting policies for the District and therefore is responsible for any injuries that Plaintiff sustained.

63. The Sturgis Board has the power to hire, fire, and supervise Sturgis employees

64. Defendants' acts have deprived Miguel of his meaningful opportunity to participate in and receive the benefits that other students in Defendants' programs and services participate in and benefit from such as access to ELL services, teachers, classroom instruction, and extra-curricular activities.

65. Defendants' acts were knowing and intentional.

66. Defendants acted with deliberate indifference toward Miguel's federally protected rights.

67. Defendants' actions were taken in bad faith or with gross misjudgment.

68. As a result of Defendants' conduct, Miguel has experienced severe emotional distress, such as humiliation, frustration, anxiety, sadness, hopelessness, isolation, and other forms of mental and emotional anguish.

69. On December 27, 2017, Miguel filed an administrative due process claim alleging violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401, *et seq.*, Title II of the ADA, Section 504 of the Rehabilitation Act, the Persons with Disabilities Civil Rights Act (PDCRA), and Michigan Administrative Rules for Special Education (MARSE), MARSE Rules 340.1701, *et seq.*

70. On May 18, 2018, the administrative law judge dismissed all claims brought pursuant to the ADA, Section 504, and PDCRA for lack of jurisdiction.

71. On August 15, 2018, the administrative law judge dismissed with prejudice all claims brought pursuant to the IDEA and MARSE, due to the parties' having reached an agreement resolving such claims.

V. LEGAL CLAIMS

COUNT I

DEFENDANTS VIOLATED TITLE II OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §§ 12131 *et seq.*

72. Plaintiff incorporates by reference all previous paragraphs of the Complaint herein.

73. Title II of the ADA and its regulations provide that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. (*See also* 28 C.F.R. Part 35).

74. Defendants are each a public entity subject to Title II of the ADA, 42 U.S.C. § 12131.

75. Miguel is an individual with a disability within the meaning of 42 U.S.C. § 12102.

76. Miguel is a qualified individual with a disability within the meaning of 42 U.S.C. § 12131(B).

77. Defendants intentionally violated Miguel's rights under Title II of the ADA and its regulations by intentionally excluding him from participation in and denying him the benefits of Defendants' services, programs, and activities, on the basis of disability, and by subjecting him to discrimination.

78. Defendants intentionally violated Miguel's rights under Title II of the ADA and its regulations by failing to provide the auxiliary aids and services necessary to ensure that communication with him was as effective as communication with others.

79. Defendants otherwise intentionally discriminated against Miguel in violation of Title II of the ADA.

80. Defendants exhibited bad faith and/or gross misjudgment in engaging in the conduct that violated Miguel's rights under Title II of the ADA.

81. Defendants acted with deliberate indifference toward Miguel's rights protected by Title II of the ADA.

82. Due to Defendants' violations of Title II of the ADA, Miguel has suffered and continues to suffer mental and emotional suffering, humiliation, frustration, anxiety, sadness, hopelessness, isolation, and other forms of mental and emotional anguish.

COUNT II

DEFENDANTS VIOLATED THE PERSONS WITH DISABILITIES CIVIL RIGHTS ACT, M.C.L. 37.1101 *et seq.*

83. Plaintiff incorporates by reference all previous paragraphs of the Complaint herein.

84. The Persons with Disabilities Civil Rights Act ("PDCRA") guarantees, as a civil right, the full and equal utilization of public accommodations, public services, and educational facilities without discrimination because of a disability. M.C.L. 37.1102.

85. The PDCRA prohibits educational institutions from "[d]iscriminat[ing] in any manner in

the full utilization of or benefit from the institution, or the services provided and rendered by the institution to an individual because of a disability that is unrelated to the individual's ability to utilize and benefit from the institution or its services, or because of the use by an individual of adaptive devices or aids." M.C.L. 37.1402.

86. Defendants are each an educational facility within the meaning of M.C.L. 37.1102 and an educational institution within the meaning of M.C.L. 37.1401.

87. Miguel has a disability as defined in M.C.L.A. 37.1103.

88. Miguel's disability is unrelated to his ability to utilize and benefit from Defendants' services.

89. Defendants discriminated against Miguel in the full utilization of or benefit from the services provided and rendered by Defendants due to Miguel's disability.

90. Defendants' acts were knowing and intentional, and exhibited bad faith, gross misjudgment, and deliberate indifference toward Miguel's rights.

91. Defendants otherwise violated Miguel's rights under the PDCRA.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

- A. Find that Defendants violated federal and state law;
- B. Find that Plaintiff is the prevailing party;
- C. Award Plaintiff compensatory damages;

JA-59

D. Award Plaintiff his reasonable attorneys fees and costs; and

E. Any other relief deemed necessary.

Respectfully submitted,

Dated: November 16, 2018

/s/ Mark A. Cody _____

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
MICHIGAN**

In the matter of:

**Miguel Luna Perez,
Plaintiff,**

**Case No.: 1:18-cv-
01134-PLM-RSK**

v.

**Sturgis Public
Schools and Sturgis
Public Schools Board
of Education,
Defendants.**

**Hon. Paul L. Maloney

JURY TRIAL
DEMANDED**

[Counsel information omitted]

**PLAINTIFF'S PROPOSED SECOND
AMENDED COMPLAINT**

I. INTRODUCTION

1. Plaintiff, Miguel Luna Perez (“Miguel” or the “Student”), by and through his undersigned counsel, hereby submits the following Amended Complaint against Sturgis Public School (“Sturgis” or “the District”) and Sturgis Public School Board of Education (“Sturgis Board”), (collectively “Defendants”), pursuant to Title II of the Americans with Disabilities Act (“Title II”), 42 U.S.C. §§ 12131 *et seq.*; and the Michigan Persons with Disabilities Civil Rights Act (“PDCRA”), M.C.L. 37.1101 *et seq.*

2. Defendants have intentionally discriminated against Plaintiff by failing to provide him a qualified sign language interpreter, access to English

Language Learner services, and access to after school activities, and access to other programs, services and benefits of the school while he was a student in Sturgis Public Schools because of his disability. Plaintiff brings this claim for compensatory damages and attorneys' fees.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

4. Plaintiff has exhausted all administrative remedies pursuant to 20 U.S.C. § 1415(l).

5. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. § 1391 because: (i) each Defendant operates a place of business within the District and has sufficient contacts with this District to subject it to personal jurisdiction at the time this action is commenced; and (ii) the acts and omissions giving rise to this claim have occurred within the District.

III. PARTIES

6. Miguel is a 23-year-old deaf individual who resides in the Sturgis Public School District.

7. From 2004, when Miguel was 9 years old, through 2016, when he was 20 years old, Miguel attended school in the Sturgis Public School District.

8. Miguel is a qualified individual with a disability within the meaning of Title II of the ADA, and the PDCRA, as he has a physical impairment and a mental impairment that substantially limits one or more major life activities, including hearing, speaking, and communicating. *See* 42 U.S.C. §§ 1202, 12131(2).

9. Sturgis Public Schools is a public governmental entity subject to the provisions of Title II of the ADA,

42 U.S.C. §§ 12131, *et seq.*, and United States Department of Justice regulations implementing Title II, 28 C.F.R. Part 35.

10. Sturgis Public School Board of Education (“Sturgis Board”) is the Board of Education for Sturgis Public Schools. The Sturgis Board is a public governmental entity subject to the provisions of Title II of the ADA, 42 U.S.C. §§ 12131, *et seq.*, and the United States Department of Justice regulations implementing Title II, 28 C.F.R. Part 35. The Sturgis Board “exists for the purpose of providing a system of free, appropriate public education for students in grades Pre-K - 12 inclusive.”¹ The Sturgis Board has the authority to supervise Sturgis.² Its powers include educating students and hiring, contracting for, scheduling, supervising, or terminating employees, independent contractors, and others who work at Sturgis.³ These powers also include making many different kinds of decisions regarding the evaluation, compensation, discipline, and discharge of individual Sturgis personnel.⁴ The Sturgis Board is responsible for ensuring Sturgis complies with state and federal laws, including disability rights laws, and to establish district-wide policies.⁵

¹ Sturgis Public Schools Bylaws and Policies, Section 0112 “Purpose,” available at <http://www.neola.com/sturgis-mi/>.

² *Id.*, Section 0121 “Authority.”

³ *Id.*, Section 0122 “Board Powers.”

⁴ *Id.*

⁵ *Id.*, Section 0123 “Philosophy of the Board.”

IV. FACTS

11. Miguel is deaf. He is substantially limited in one or more major life activities, including hearing, speaking, and communicating.

12. Miguel requires a qualified sign language interpreter to communicate with individuals who do not know sign language.

13. Miguel began attending Sturgis Public Schools in 2004 at the age of nine, having just moved to the United States from Mexico with his parents.

14. Miguel's parents speak only Spanish. They are not deaf. They require a Spanish-language interpreter to communicate with any non-Spanish-speaking school personnel and they require Spanish-language translation of all written materials.

15. From 2004 to 2016, the Sturgis Public Schools and the Sturgis Board (collectively, "Sturgis") engaged in an ongoing practice of failing to provide Miguel with the auxiliary aids and services necessary for him to participate in and receive the benefits of Sturgis Public Schools and otherwise discriminated against Miguel solely because he is deaf.

16. During this time, the ISD provided information and support that Sturgis relied on to make decisions regarding how to accommodate Miguel, including the accommodations necessary to ensure effective communication.

Denial of English Language Learner Services

17. When Miguel arrived at Sturgis Public Schools, he did not know English and only Spanish was spoken in his home.

18. Sturgis did not provide English Language Learner (ELL) services to Miguel.

19. On information and belief, Sturgis provides ELL services to all other students who speak a language other than English at home.

20. On information and belief, Sturgis failed to provide ELL services to Miguel because he is deaf.

***Denial of a Qualified Sign Language
Interpreter***

21. From the time Miguel began at Sturgis, school personnel noted he could not understand speech and relied on sign language to access communication. However, Sturgis never once provided a qualified sign language interpreter to enable Miguel to access classroom instruction or to benefit from social interaction with his peers.

22. Instead of providing a qualified sign language interpreter, Sturgis provided an educational assistant named Gayle Cunningham to assist Miguel.

23. Sturgis knew that Ms. Cunningham was not a qualified sign language interpreter, because she did not know sign language when they hired her. Ms. Cunningham had no credentials whatsoever indicating that she was qualified to interpret to ensure effective communication with a deaf student.

24. Ms. Cunningham attempted to learn sign language from a book and from incidental instruction from a teacher of the deaf employed by St. Joseph Intermediate School District.

25. After Sturgis hired her, Ms. Cunningham never took any formal classes intended to improve her sign language skills or to serve as a qualified sign language interpreter.

26. Even after working with Miguel for several years, Ms. Cunningham's command of sign language remained so poor that, when briefly paired with a

different deaf student who used sign language, the other deaf student could not understand her at all.

27. Ms. Cunningham served as Miguel's sole communication facilitator from approximately 2006 until approximately May 2016.

28. Between 2012 and 2016, Sturgis provided qualified sign language interpreters to another deaf student at Sturgis Public Schools.

29. Sturgis obtained a qualified sign language interpreter for this other student and replaced the qualified sign language interpreter if he or she left the position.

30. Over a 12-year period, Sturgis made no attempt at any time to secure a qualified sign language interpreter to provide Miguel with meaningful access to the classroom.

31. Over this 12-year period, Miguel's parents did not know and could not have known that Ms. Cunningham was not a qualified sign language interpreter or otherwise qualified to enable Miguel to access his education.

32. Over this 12-year period, Miguel did not and could not have known that Ms. Cunningham was not a qualified sign language interpreter or otherwise qualified to enable him to access his education.

33. Over this 12-year period, Miguel and his parents relied on misrepresentations from Sturgis and ISD personnel that Ms. Cunningham was qualified to work with Miguel.

34. Sturgis never told Miguel or his parents that Ms. Cunningham did not know sign language.

35. Sturgis misrepresented to Miguel and his parents that Ms. Cunningham used "Signed English."

36. Ms. Cunningham did not know Signed English. She essentially invented the signing system she used.

37. Miguel did not know and could not know that Ms. Cunningham did not know Signed English because, when he arrived at Sturgis, he did not know Signed English and he did not have meaningful access to other individuals who knew Signed English.

38. Miguel's parents could not know that Ms. Cunningham did not know Signed English because they did not know Signed English or any other form of sign language.

39. Miguel did not and could not have known that Ms. Cunningham was not a qualified sign language interpreter, because Sturgis never provided him with a qualified sign language interpreter.

40. Sturgis had access to a sign language proficiency evaluation provided through the Michigan Department of Education that would have reflected Ms. Cunningham's proficiency in sign language.

41. Sturgis never attempted to have Ms. Cunningham undergo an evaluation of her sign language proficiency during the time that she worked with Miguel.

42. Multiple different evaluations exist that reflect an individual's ability to interpret between English and sign language.

43. Sturgis never attempted to have Ms. Cunningham undergo an evaluation of her interpreting ability during the time that she worked with Miguel.

44. Beginning in approximately 2015, Sturgis took away Ms. Cunningham for multiple hours per day, knowing leaving Miguel with no means of

communicating with staff or students during that time.

Access To Extra-Curricular Activities And Other Programs And Services

45. Sturgis denied Miguel the opportunity to participate in extra-curricular activities offered to non-deaf students throughout his time at Sturgis because he is deaf.

46. Sturgis denied Miguel access to other programs, services and benefits routinely provided to other students because he is deaf.

Sturgis's Misrepresentations Regarding Miguel's Communication Access to Academics

47. Sturgis misrepresented to Miguel and his parents that Miguel had access to the same educational services that other students had.

48. Sturgis misrepresented to Miguel and his parents that Sturgis provided Miguel with auxiliary aids and services sufficient for him to participate and benefit from classroom instruction at Sturgis.

49. Sturgis misrepresented to Miguel and his parents that Sturgis believed that Miguel did not need other educational services that Sturgis denied to Miguel because he is deaf.

50. Sturgis intentionally misrepresented Miguel's academic achievement.

51. Sturgis awarded Miguel "A" or "B" grades in nearly all his classes.

52. During the four years that Miguel spent at Sturgis Public High School, he was on the Honor Roll every semester or trimester.

53. The grades that Sturgis awarded Miguel did not in any way reflect the education he was receiving

or not receiving. Rather, these grades masked the fact that Miguel was learning nothing in his classes due to the absence of a qualified sign language interpreter.

54. Neither Miguel nor his parents knew or could have known that Sturgis was lying to them about Miguel's opportunity to access the curriculum. Miguel had never experienced sign language interpreters elsewhere other than Sturgis, so he could not compare his experience. Miguel's parents do not know English or sign language, so they could not discuss with Miguel his experience in school.

55. Based on all the misrepresentations by Sturgis, including his honor roll status for four years, his "A" and "B" grades, and the falsehood that Ms. Cunningham knew sign language, Miguel and his parents believed that Miguel had been receiving meaningful communication access to his classes and would be graduating with a regular high school diploma in June 2016 and going to college thereafter.

56. In March 2016, Miguel and his parents learned for the first time that Miguel would not be receiving a regular high school diploma but instead would be receiving a certificate of completion.

57. In May 2016, Miguel's parents and Sturgis agreed that Miguel should attend the Michigan School for the Deaf for the following school years.

58. In June 2016, Miguel earned a certificate of completion from Sturgis.

59. In August 2016, Miguel began attending the Michigan School for the Deaf (MSD).

60. All the classes at MSD are conducted in American Sign Language. Therefore, Miguel has full access to all his classes at MSD.

61. It is expected that Miguel will graduate from MSD with a Michigan Merit Diploma, the standard high school diploma for the state of Michigan, in June 2020.

62. The Sturgis Board is responsible for setting policies for the District and therefore is responsible for any injuries that Plaintiff sustained.

63. The Sturgis Board has the power to hire, fire, and supervise Sturgis employees

64. Defendants' acts have deprived Miguel of his meaningful opportunity to participate in and receive the benefits that other students in Defendants' programs and services participate in and benefit from such as access to ELL services, teachers, classroom instruction, and extra-curricular activities.

65. Defendants' acts were knowing and intentional.

66. Defendants acted with deliberate indifference toward Miguel's federally protected rights.

67. Defendants' actions were taken in bad faith or with gross misjudgment.

68. As a result of Defendants' conduct, Miguel has experienced severe emotional distress, such as humiliation, frustration, anxiety, sadness, hopelessness, isolation, and other forms of mental and emotional anguish.

Procedural History

69. On December 27, 2017, Miguel filed an administrative due process claim alleging violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401, *et seq.*, Title II of the ADA, Section 504 of the Rehabilitation Act, the Persons with Disabilities Civil Rights Act (PDCRA), and

Michigan Administrative Rules for Special Education (MARSE), MARSE Rules 340.1701, *et seq.*

70. On March 1, 2018, Miguel’s IEP Team met at and determined, for the first time in more than a decade, that Miguel should be placed on a track to receive a regular high school diploma. His expected graduation date is June 2020.

71. Sturgis did not oppose the decision to place Miguel on track to receive a regular high school diploma.

72. Sturgis has never opposed Miguel’s ongoing placement at Michigan School for the Deaf.

73. On May 18, 2018, the administrative law judge dismissed all claims brought pursuant to the ADA, Section 504, and PDCRA for lack of jurisdiction.

74. On June 2, 2018, Sturgis’s then-counsel served Miguel with a “Ten Day Offer,” pursuant to 20 U.S.C. § 1415(i)(3)(D).

75. On June 14, 2018, the parties met for a Resolution Session, as required under 20 U.S.C. § 1415(f)(1)(B)(i).

76. On June 15, 2018, the parties agreed to settle the case.

77. On August 15, 2018, the administrative law judge dismissed with prejudice all claims brought pursuant to the IDEA and MARSE.

V. LEGAL CLAIMS

COUNT I

DEFENDANTS VIOLATED TITLE II OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §§ 12131 *et seq.*

78. Plaintiff incorporates by reference all previous paragraphs of the Complaint herein.

79. Title II of the ADA and its regulations provide that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. (*See also* 28 C.F.R. Part 35).

80. Defendants are each a public entity subject to Title II of the ADA, 42 U.S.C. § 12131.

81. Miguel is an individual with a disability within the meaning of 42 U.S.C. § 12102.

82. Miguel is a qualified individual with a disability within the meaning of 42 U.S.C. § 12131(B).

83. Defendants intentionally violated Miguel’s rights under Title II of the ADA and its regulations by intentionally excluding him from participation in and denying him the benefits of Defendants’ services, programs, and activities, on the basis of disability, and by subjecting him to discrimination.

84. Defendants intentionally violated Miguel’s rights under Title II of the ADA and its regulations by failing to provide the auxiliary aids and services necessary to ensure communication with him was as effective as communication with others.

85. Defendants otherwise intentionally discriminated against Miguel in violation of Title II of the ADA.

86. Defendants exhibited bad faith and/or gross misjudgment in engaging in the conduct that violated Miguel’s rights under Title II of the ADA.

87. Defendants’ acted with deliberate indifference toward Miguel’s rights protected by Title II of the ADA.

88. Due to Defendants' violations of Title II of the ADA, Miguel has suffered and continue to suffer mental and emotional suffering, humiliation, frustration, anxiety, sadness, hopelessness, isolation, and other forms of mental and emotional anguish.

COUNT II
DEFENDANTS VIOLATED THE PERSONS
WITH DISABILITIES CIVIL RIGHTS ACT,
M.C.L. 37.1101 *et seq.*

89. Plaintiff incorporates by reference all previous paragraphs of the Complaint herein.

90. The Persons with Disabilities Civil Rights Act ("PDCRA") guarantees, as a civil right, the full and equal utilization of public accommodations, public services, and educational facilities without discrimination because of a disability. M.C.L. 37.1102.

91. The PDCRA prohibits educational institutions from "[d]iscriminat[ing] in any manner in the full utilization of or benefit from the institution, or the services provided and rendered by the institution to an individual because of a disability that is unrelated to the individual's ability to utilize and benefit from the institution or its services, or because of the use by an individual of adaptive devices or aids." M.C.L. 37.1402.

92. Defendants are each an educational facility within the meaning of M.C.L. 37.1102 and an educational institution within the meaning of M.C.L. 37.1401.

93. Miguel has a disability as defined in M.C.L.A. 37.1103.

94. Miguel's disability is unrelated to his ability to utilize and benefit from Defendants' services.

95. Defendants discriminated against Miguel in the full utilization of or benefit from the services provided and rendered by Defendants due to Miguel's disability.

96. Defendants' acts were knowing and intentional, and exhibited bad faith, gross misjudgment, and deliberate indifference toward Miguel's rights.

97. Defendants otherwise violated Miguel's rights under the PDCRA.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

- A. Find that Defendants violated federal and state law;
- B. Find that Plaintiff is the prevailing party;
- C. Award Plaintiff compensatory damages;
- D. Award Plaintiff his reasonable attorneys' fees and costs; and
- E. Any other relief deemed necessary.

Respectfully submitted,

Dated: January 17, 2019

/s/ Mitchell D. Sickon

Mark A. Cody (P42695)

Mitchell Sickon (P82407)

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Caroline Jackson

(Admitted April 11, 2018)

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
MICHIGAN

In the matter of:

Miguel Luna Perez,
Plaintiff,

Case No.: 1:18-cv-
01134-PLM-RSK

v.

Sturgis Public
Schools and Sturgis
Public Schools Board
of Education,
Defendants.

Hon. Paul L. Maloney

[Counsel information omitted]

AFFIDAVIT OF MITCHELL D. SICKON

STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

1. I am over 18 years old and of sound mind and body.
2. I have personal knowledge of the contents of the Due Process Complaint that was filed in December 2017, under the caption *Miguel Luna Perez, et al. v. Sturgis Public Schools, et al.*, (the Due Process Complaint).
3. I have personal knowledge of all communications with Sturgis Public Schools regarding the Due Process Complaint.

4. Miguel Luna-Perez never alleged that he had incurred any expenses as a result of the school's malfeasance.
5. Miguel Luna-Perez has never requested reimbursement of "retroactive expenses."
6. In June 2018, the parties jointly agreed to settle the Due Process Complaint.
7. The settlement was limited to solely those claims brought pursuant to the Individuals with Disabilities Education Act and the Michigan Administrative Rules for Special Education.
8. The agreement between the parties designated specific compensatory education.
9. The agreement between the parties included a specific designation of funds for Petitioners' attorneys' fees and costs.
10. The agreement contained additional relief.
11. The agreement is legally binding and enforceable.

I declare under penalty of perjury that the foregoing is true and correct and if called I am able and willing to testify to that effect in a hearing if required by the Court.

February 22, 2019

/s/ Mitchell D. Sickon
Mitchell D. Sickon

Sworn and subscribed to before me this 22nd day of February, 2019.

[Notary public information omitted]

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
MICHIGAN**

In the matter of:

**Miguel Luna Perez,
Plaintiff,**

v.

**Sturgis Public
Schools and Sturgis
Public Schools Board
of Education,
Defendants.**

Hon. Paul L. Maloney

**Case No.: 1:18-cv-
01134-PLM-RSK**

State of California
County of San Francisco

Declaration of Caroline Jackson

I, Caroline Jackson, first being duly sworn, subscribe as true under penalty of perjury, pursuant to 28 U.S.C. § 1746 as follows:

1. I make this declaration in support of Plaintiff's Objections to the Report and Recommendation and Plaintiff's Response to the Motion to Dismiss filed by Sturgis Board of Education. I have personal knowledge of the matters in this declaration.
2. I was counsel for Plaintiff during the administrative due process hearing.
3. After the pre-hearing conference, in which the tribunal dismissed the ADA, Section 504, and PDCR claims, and prior to the hearing that was

then scheduled for June 25 through June 29, 2018, I received a letter from counsel for defendants. The letter was pursuant to 20 U.S.C. § 1415 and contained a written offer of settlement of the remaining claims in the case, namely the claims under the Individuals with Disabilities Education Act and MARSE.

4. Following that written offer, counsel for the parties negotiated a settlement.
5. The Defendants had agreed to provide Miguel Luna Perez with education at the Michigan School for the Deaf with the goal of Mr. Perez achieving a Merit Diploma. It is anticipated that he will receive his Merit Diploma in June 2020.
6. The Defendants also agreed to pay funds for post-secondary compensatory education and for attorneys' fees as well as to provide sign language instruction for Mr. Perez and for some of Mr. Perez's relatives.
7. After being advised that a settlement had been negotiated, the hearing officer dismissed the case with prejudice.
8. Having exhausted administrative remedies under the IDEA by achieving full relief and having had the ADA, Section 504, and PDRCA claims dismissed, Plaintiff filed the instant case in federal district court.

FURTHER DECLARANT SAYETH NOT

/s/ Caroline Jackson
Caroline Jackson