Nos. 18-1778, 18-1813, 18-1867, 18-1976

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

THE PARENT/PROFESSIONAL ADVOCACY LEAGUE; DISABILITY LAW CENTER, INC.; M.W., a minor, by his parents, L.N. and A.N., on behalf of himself and other similarly situated students,
Plaintiffs-Appellants/Cross-Appellees,

S.S., a minor, by his mother, S.Y., on behalf of himself and other similarly situated students,
Plaintiff,

v.

CITY OF SPRINGFIELD, MASSACHUSETTS; SPRINGFIELD PUBLIC SCHOOLS,
Defendants-Appellees/Cross-Appellants,

DOMENIC SARNO, in his official capacity as Mayor of City of Springfield; SUPERINTENDENT DANIEL J. WARWICK, in his official capacity as Superintendent of Springfield Public Schools,
Defendants.

On Appeal from the United States District Court for the District of Massachusetts (Springfield), No. 3:14-cv-30116-MGM

BRIEF OF FORMER U.S. DEPARTMENT OF EDUCATION OFFICIALS, MASSACHUSETTS ADVOCATES FOR CHILDREN, MASSACHUSETTS ASSOCIATION FOR MENTAL HEALTH, AND MENTAL HEALTH AMERICA AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS/CROSS-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* state that they have no parent corporations, nor is there any public held corporation owning 10 percent or more of their stock.

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STATEMENT OF INTEREST[1]

Amici individuals and organizations are dedicated to advancing the interests of students with disabilities. Individual *amici* are former U.S. Department of Education officials responsible for special education policy, with expertise in the benefits of inclusion of students with disabilities in general education public schools. They also have experience implementing strategies that make inclusion successful in major public school systems. *Amici* organizations are Massachusetts and national organizations dedicated to advancing and protecting the civil rights of students with disabilities, fostering their integration into all aspects of school communities, and furthering their ability to succeed academically and socially.

Amicus Dr. Thomas Hehir is the Silvana and Christopher Pascucci Professor of Practice in Learning Differences at the Harvard Graduate School of Education. Dr. Hehir has extensively studied the impact of inclusion on students with disabilities in Massachusetts public schools. Dr. Hehir also served as the Director of the U.S. Department of Education's Office of Special Education Programs from 1993 to 1999 under President William J. Clinton. Dr. Hehir has extensive experience implementing and supervising special education at the school district

[1] No counsel for a party authored this brief in whole or in part, and no party or party's counsel made a monetary contribution intended to fund its preparation or submission. No person other than the *amici*, its members, and its counsel made a contribution intended to fund the preparation or submission of this brief.

level, serving as associate superintendent for Chicago Public Schools, where he was responsible for special education and student support services, and as director of special education for the Boston Public School system.

Amicus Dr. Alexa Posny has almost four decades of experience in education, from classroom teacher to Chief State School Officer to an Assistant Secretary in the U.S. Department of Education. Dr. Posny served as Assistant Secretary of the Office of Special Education and Rehabilitative Services in the U.S. Department of Education from 2009 to 2012 under President Barack Obama. In this position, she played a pivotal role in policy and management issues affecting special education and rehabilitative services across the country. She also served as the principal adviser to the U.S. Secretary of Education on all matters related to special education. Dr. Posny previously served as the Commissioner of Education for the Kansas State Department of Education ("KSDE") (2007-2009), Director of the Office of Special Education Programs for the U.S. Department of Education (2006-2007) under President George W. Bush, Deputy Commissioner of Education at KSDE (2001-2006), State Director of Special Education at KSDE (1999-2001), and the Director of Special Education for the Shawnee Mission School District in Overland Park, KS (1997-1999). Prior to that, she was the Director of the Curriculum and Instruction Specialty Option as part of the Title 1 Technical Assistance Center network across the United States and a Senior Research

Associate at Research and Training Associates in Overland Park, Kansas. Dr. Posny has also served on the board of directors for the Chief State School Officers and the National Council for Learning Disabilities, and she chaired the National Assessment Governing Board's Special Education Task Force. Dr. Posny was most recently the Senior Vice President of State and Federal Programs for Renaissance Learning.

Amicus Dr. Melody B. Musgrove is Co-Director of the Graduate Center for the Study of Early Learning and Associate Professor of Special Education at the University of Mississippi. Dr. Musgrove served as the Director of the Office of Special Education Programs under President Barack Obama. She previously served as a classroom teacher, school administrator, district special education director, assistant superintendent, and State Director of Special Education for the Mississippi Department of Education.

Amicus Massachusetts Advocates for Children ("MAC") is a statewide public interest organization that advocates for the rights of children who face significant barriers to equal educational and life opportunities, particularly those who have disabilities, are low income, and/or are racially, culturally, or linguistically diverse. MAC is a leader in statewide special education advocacy, including recognizing the impact of trauma on learning, promoting appropriate school discipline, and reforming education in the Boston Public School system.

Amicus Massachusetts Association for Mental Health ("MAMH") is a public policy and health advocacy organization composed of members with lived experience of mental illnesses, their family members and advocates, medical and academic leaders, and services providers. MAMH, founded in 1913, is the Commonwealth's oldest and leading community-based nonprofit mental health organization, dedicated to advancing mental health and well-being by promoting prevention, early intervention, effective treatment, and research to address social, emotional, and mental health challenges. MAMH strives to eliminate stigma and discrimination and ensure full social, economic, and political inclusion for children and adults at risk of and with social, emotional, and mental health conditions in all aspects of community life. MAMH leads public policy, legislative advocacy, and service delivery initiatives promoting infant and early childhood mental health screening and intervention. In collaboration with the Children's Mental Health Campaign, MAMH provides community education, policy research, and services demonstrations to improve timely and targeted access to integrated education and treatment services for children and adolescents. MAMH promotes full inclusion in classrooms, securing funding for school-based behavioral health, early intervention, and reintegration services for children, adolescents, their family caregivers, and teachers.

Amicus Mental Health America ("MHA"), formerly the National Mental Health Association, is a national membership organization composed of individuals with lived experience of mental illnesses and their family members and advocates. The nation's oldest and leading community-based nonprofit mental health organization, MHA has more than 200 affiliates dedicated to improving the mental health of all Americans. Through advocacy, education, research, and service, MHA helps to ensure that people with mental illnesses are accorded respect, dignity, and the opportunity to achieve their full potential. In particular, MHA is focused on ensuring that young people have access to needed supports and treatments. Prevention and early intervention requires that youth have access to education that will maximally prepare them for adulthood. Minimizing isolation and segregation, facilitating inclusion in regular classrooms, and providing school-based behavioral health supports is scientifically supported and the best option for youth with mental illnesses.

Amici's research and experience has proven that integrating disabled students into school communities best promotes their academic and social success in school and as adults. *Amici* therefore strongly support integrating students with mental health disabilities into general education settings, using methods proven to make integration successful.

INTRODUCTION

Title II of the Americans with Disabilities Act ("ADA") mandates integration of students with disabilities, with the goal of providing them opportunities to learn alongside their peers without disabilities. Segregating students with disabilities into inferior schools is antithetical to that goal, inherently discriminatory, and illegal.

Moreover, research confirms that segregating students with disabilities produces poor academic and social results, depriving students of equal educational opportunities guaranteed by the ADA. Results at the segregated Springfield Public Day School — where academics, facilities, and extracurricular activities are all inferior — are consistent with this research. Students assigned to the Public Day School perform far worse in core academic areas and drop out at far higher rates than students in Springfield's system as a whole.

By contrast, research shows that students with disabilities who are educated in inclusive settings consistently perform better in school and after they leave school than do segregated students, regardless of race, class, gender, and type of disability. In fact, studies specifically show that inclusion yields better outcomes for Massachusetts students with mental health disabilities, like those in the proposed class.

Professional consensus has emerged around a set of strategies that facilitate successful integration, including for students with mental health disabilities. Plaintiffs term these strategies school-based behavior services (or "SBBS") for purposes of this lawsuit, but whatever the name, they represent a concrete set of services educational professionals agree are essential to integrating students with mental health disabilities like those in the proposed class. Schools across the country are successfully implementing these services, proving that students with disabilities can be educated in general education classrooms and schools when the proper supports are provided.

The district court's order denying class certification is based in part on two erroneous assumptions: that there is inadequate research identifying a set of effective practices for integration and that disabled students like those in the proposed class cannot be successfully integrated. *Amici* write to clarify that segregated schools like the Springfield Public Day School are both harmful and unnecessary, and that inclusion works when schools use the appropriate methods.

ARGUMENT

I. The Americans with Disabilities Act Proscribes Needless Segregation

In 1990, Congress found that "discrimination against individuals with disabilities persists in such critical areas as . . . education," and enacted the ADA to provide a remedy for such discrimination. 42 U.S.C. § 12101(a)(3), (b)(1).

Congress also specifically found that "segregat[ion]" is a "form[ ] of discrimination against individuals with disabilities." *Id.* § 12101(a)(2). Title II of the ADA outlaws this and other forms of discrimination in the provision of public services such as education. *Id.* § 12132; 28 C.F.R. § 35.130.

To implement Title II, the Attorney General issued an "integration regulation," which reads: "A public entity shall administer services, programs, and activities in the *most integrated setting* appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d) (emphasis added). The preamble to this regulation defines "the most integrated setting" to mean "a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible." *Id.* pt. 35 app. B, at 708.

Thus, as the Supreme Court recognized nearly two decades ago, needless segregation of individuals with disabilities violates the ADA. *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 600 (1999) ("[U]njustified institutional isolation of persons with disabilities is a form of discrimination . . . .").

Title II regulations further require public schools to "make reasonable modifications" to their programs and services "when the modifications are necessary to avoid discrimination." 28 C.F.R. § 35.130(b)(7)(i). A public school system therefore violates the ADA whenever it segregates students because of their disabilities without making reasonable modifications that would enable such

students to learn in an integrated, general education environment. *See* U.S. Dep't of Justice, Civ. Rights Div., *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and* Olmstead v. L.C. at 2 (June 22, 2011) (explaining that the ADA's "integration mandate" requires public entities to "reasonably modify their policies, procedures or practices when necessary to avoid discrimination"). The ADA's integration mandate is clearly implicated when a public school system "directly or indirectly operates facilities and/or programs that segregate individuals with disabilities." *Id.* at 3.

It is undisputed that the Springfield Public Day School to which members of the proposed class were assigned is just such a segregated facility. *See* Mem. and Order on Pls.' Mot. for Class Cert. at 4, Dkt. 191 (Dec. 16, 2016) ("Order").

Further, in denying class certification, the district court did not discredit plaintiffs' evidence that the Public Day School offers inferior academics, inferior extracurricular activities, inferior facilities, and a non-therapeutic, punitive environment that makes students' mental health disabilities worse. *See* Pls.' Suppl. Mem. in Supp. Mot. for Class Cert. at 12-16, Dkt. 157 (July 15, 2016) ("Pls.' Mem."); Order at 2-3 (noting the "troubling" but disputed allegations concerning the Public Day School; finding those allegations "not relevant to Plaintiffs' Motion for Class Certification"). Beyond violating the integration mandate, segregating

disabled students into such a school denies them equal educational opportunities, independently violating Title II of the ADA. *See* 28 C.F.R. § 35.130(b)(1)(ii)-(iii).

II. Students with Disabilities Benefit from Inclusion in General Education Classrooms and Schools with Non-Disabled Peers

The ADA's integration mandate reflects Congress's determination that segregation is inherently discriminatory. The wisdom of this determination is supported by research demonstrating the benefits of inclusion, on the one hand, and the harm caused by segregation, on the other.

A. Research Confirms the Benefits of Inclusion Generally

The positive effects of integration are well documented. Longitudinal research sponsored by the Department of Education, as well as independent studies, reveal that students with disabilities who are included in general education classrooms do better in school than students with disabilities in segregated schools or classrooms. For example, the Department has found that, even controlling for cognitive abilities, students with disabilities who spend most of their time in general education classes "are closer to grade level in their reading and math abilities, and have higher test scores in those same areas" than students who spend more time in segregated settings.[2]

[2] *See* Mary Wagner & Jose Blackorby, SRI Int'l, *Overview of Findings from Wave 1 of the Special Education Elementary Longitudinal Study (SEELS)* 24 (June 2004), http://www.seels.net/designdocs/seels_wave1_9-23-04.pdf; *see also* Jose Blackorby et al., SRI Int'l, *What Makes a Difference? Influences on Outcomes for*

Greater participation in integrated classrooms also leads to positive social outcomes for students with disabilities, including belonging to school or community groups, missing fewer days of school, and having fewer disciplinary incidents.[3] And the positive outcomes from inclusion are sustained into adulthood, as inclusion leads to better postsecondary results, including in employment, postsecondary education, and income.[4]

At the same time, research shows that including students with disabilities in general education classrooms provides benefits for students without disabilities.[5]

Students with Disabilities 7-7 (Feb. 2007), http://www.seels.net/designdocs/SEELS_W1W3_FINAL.pdf (noting, for example, greater reading ability among students who spent more time in general education settings).

[3] *What Makes A Difference?*, *supra* note 2, at 7-17 (noting "[f]ewer disciplinary actions . . . associated with taking a large majority of academic classes in general education settings for students in the behavior and sensory disability clusters"); *id.* at 9-18 ("More inclusion in general education classrooms for academics . . . is positively associated with higher scores in both reading and mathematics, with more positive social adjustment, and with a higher rate of growth in group memberships over time."); *Overview of Findings from Wave 1*, *supra* note 2, at 24 (noting that inclusion is associated with missing fewer days of school).

[4] *See* Mary Wagner et al., SRI Int'l, *What Makes a Difference? Influences on Postschool Outcomes of Youth with Disabilities: The Third Comprehensive Report from the National Longitudinal Transition Study of Special Education Students* 4-8 to 4-9 & tbl. 4-5 (Dec. 1993), http://files.eric.ed.gov/fulltext/ED365085.pdf.

[5] *See, e.g.*, Gary L. Peltier, *The Effect of Inclusion on Non-Disabled Children: A Review of the Research*, 68 Contemp. Educ. 234-37 (1997) (citing research showing that inclusive education promotes and enhances all students' social growth within inclusive classrooms and does not negatively affect typical students' academic growth); Wayne S. Sailor & Amy B. McCart, *Stars in*

One reason is because the added staff and services placed in integrated classrooms to support students with disabilities often benefit their non-disabled peers as well.[6]

B. Research Confirms the Benefits of Inclusion for Students with Mental Health Disabilities Specifically

An extensive analysis of student and school district data from Massachusetts showed that including students with disabilities in general education classrooms led to better performance on state academic proficiency tests.[7] These higher scores

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Alignment, 39 Res. & Prac. for Persons with Severe Disabilities 55, 57-58 (2014) (collecting studies and noting benefit to all students of educational practices that support inclusion). To the extent there are adverse academic impacts, other research indicates that teachers with more experience, including special education experience, mitigate those effects. *See* Michael A. Gottfried et al., *Does the Presence of a Classmate with Emotional/Behavioral Disabilities Link to Other Students' Absences in Kindergarten?*, 36 Early Childhood Res. Q. 506, 514-16 (2016).

[6] *See, e.g.*, News Release, Univ. of Kan., *Study Shows Students with, Without Disabilities Recognize Benefits of Inclusive Schools* (Mar. 29, 2016), https://news.ku.edu/2016/03/25/study-shows-students-without-disabilities-all-recognize-benefits-inclusive-schools (describing University of Kansas study finding that students without disabilities in inclusive settings reported, among other benefits, receiving more help themselves); Understood.org, *5 Benefits of Inclusion Classrooms*, https://www.understood.org/en/learning-attention-issues/treatments-approaches/educational-strategies/5-benefits-of-inclusion-classrooms (last visited Dec. 5, 2018) (noting that "[a]ll students can benefit from the additional resources and supportive techniques used in an inclusion classroom").

[7] Thomas Hehir et al., Thomas Hehir & Assocs., *Review of Special Education in the Commonwealth of Massachusetts* 1, 5 (Apr. 2012), http://www.doe.mass.edu/sped/hehir/2012-04sped.pdf ("Holding constant other student and district-level characteristics . . . , students with disabilities who spend more time being educated with their typically developing peers, on average, earn

for integrated students were not explained by income, race, English-language proficiency, or type of disability. Across all disability groups, Massachusetts students with disabilities in integrated classrooms were more likely to graduate than students who spent all or most of the day in segregated settings.[8]

This research specifically confirms that, for students with mental health disabilities, like those in the proposed class, prospects of on-time graduation "more than double for students who had full inclusion placements versus substantially separate placements."[9] Based on their research and experience, *amici* have found that segregation, by contrast, does not benefit students with mental health disabilities.

The poor outcomes for students consigned to the segregated Public Day School, as reported to the district court by plaintiffs, are consistent with this research. For example, *no* students at the Public Day School were reported as proficient or advanced based on standardized testing in science. *See* Pls.' Mem. at 13. And the drop-out rate for Public Day School students was more than five

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higher scores on the MCAS than students who spend much of their time in substantially-separate, non-mainstream classes.").

[8] Thomas Hehir et al., Thomas Hehir & Assocs., *Review of Special Education in the Commonwealth of Massachusetts*: *A Synthesis Report* 9-10 & n.14 (Aug. 2014), http://www.doe.mass.edu/sped/hehir/2014-09synthesis.pdf.

[9] *Id.* at 9-10.

times greater than in the Springfield Public Schools District overall. *See id.* at 16 n.8.

As with evidence highlighting the Public Day School's inferior services, *see supra* p. 9, the district court did not discredit plaintiffs' evidence showing inferior results for purposes of ruling on class certification. *See* Order at 3 (deeming such facts irrelevant to the determination). Thus, the district court denied class certification despite accepting that the proposed class, all of whom have disabilities, might prove they received a completely segregated and manifestly inferior public education than their non-disabled peers.

III. Research Confirms That Virtually All Students with Disabilities Can Be Integrated with School-Based Behavior Services

Amici's research and experience confirms that inclusion of students with mental health disabilities in general education schools and classrooms is feasible through use of a set of proven strategies, and that using these strategies renders segregation in settings like the Springfield Public Day School unnecessary.

Consistent with this widely held view, in its motion for class certification, plaintiffs submitted evidence supporting two critical facts: (1) there is professional consensus that integrating students with mental health disabilities, like those who attend the Public Day School, requires a set of school-based behavior services, which are routinely provided at schools throughout the nation, Pls.' Mem. at 4-5;

and (2) students at the Public Day School could be successfully integrated if such services were provided, *id.* at 4, 11.

In denying class certification, the district court rejected the first factual premise, concluding that "school-based behavior services" is not "a term that refers to a well-defined program that can be implemented in a manner that will benefit all members of the proposed class," and noting that the court was not provided "any academic studies that include the concept of an actual [school-based behavior services] program." Order at 21. The district court also rejected the second factual premise, finding "insufficient evidence" that segregating disabled students into the Public Day School could have been prevented by providing SBBS. *Id.* at 21-22. *Amici*, based on their professional experience and research, disagree with both conclusions.

In fact, results in schools nationwide confirm that integration of students with mental health disabilities like those at the Springfield Public Day School is possible through the use of four core, proven school-based behavior services: (1) a comprehensive, strength-based assessment; (2) a school-based intervention plan, focusing on positive behavior supports; (3) training for staff, students, and parents in implementing the plan; and (4) coordination with non-school providers involved with the child.

"[C]onsiderable professional literature" documents that public schools regularly implement these four core services, regardless of what they are called.[10] Experts offering professional development and advice to educators — including experts working on behalf of major public school systems — also regularly endorse these services and provide guidance for effectively implementing them.[11]

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[10] Mary Wagner et al., *Educating Students with Emotional Disturbances: A National Perspective on School Programs and Services*, 14 J. Emotional & Behav. Disorders 12, 27 (2006) (noting prevalence of "independent learning strategies" including academic and behavioral supports; documenting empirical support for training parents and teachers to provide a "strong repertoire of behavior-management skills" and working with mental health professionals); *see also* Hanover Research, *Effective Programs for Emotional and Behavioral Disorders* 5, 15-16, 22 (Jan. 2013) (reviewing effective practices nationwide; describing "[k]ey points" including behavior assessment, behavior plans with positive behavior supports, providing teachers and staff "with the tools to implement . . . academic and behavioral interventions," and ensuring parents are "actively involved . . . and informed of the student's progress, or lack of, throughout the process").

[11] *See, e.g.*, Greta Colombi & David Osher, *Advancing School Discipline Reform*, Educ. Leaders Rep., at 9-11 (Aug. 2015), http://www.nasbe.org/wp-content/uploads/ELR_Advancing-School-Discipline-Reform.pdf (noting that many schools implement interventions relying on assessment, intensive support plans and training in implementation of those plans, and noting successful efforts by educators partnering with family, health agencies, law enforcement, and juvenile justice agencies); Michelle R. Davis et al., *School Success for Kids with Emotional and Behavioral Disorders* 54, 63-64, 80, 129-55, 173-206 (2011) (noting importance of assessment, developing individual plans, ensuring that staff are trained and "qualified to deliver services," and valuing "parent partnerships"); Bob Algozzine & Jim Ysseldyke, *Teaching Students with Emotional Disturbance: A Practical Guide for Every Teacher* 15-16, 24, 30 (2006) (discussing use of assessments; describing strategies for developing behavior plans, including "reward[ing] appropriate behavior"); Lynne Guillot Miller & John S. Rainey, *Students with Emotional Disturbances: How Can School Counselors Serve?* 13-15

Further, SBBS have been acknowledged as a critical component of multi-tiered systems of support ("MTSS") incorporating schoolwide positive behavioral interventions and supports ("PBIS"), a standard approach among schools to meet the academic and behavioral needs of students, including students with mental health disabilities.[12] An MTSS system incorporates the core school-based behavior services needed to facilitate integration of students with mental health disabilities. Specifically, widely accepted MTSS practices include assessment (*i.e.*, "screening to identify need"), "positive behavioral interventions" as part of a comprehensive plan, training, and coordination (*i.e.*, a "[c]ollaborative, team-based approach to

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(2008) (endorsing "models of collaboration" across home and school environments); UCLA Ctr. for Mental Health in Schools, *Steps and Tools to Guide Planning and Implementation of a Comprehensive System to Address Barriers to Learning and Teaching* A-3 to A-4 (Apr. 2011), http://smhp.psych.ucla.edu/pdfdocs/stepsandtoolstoguideplanning.pdf (discussing supports schools should provide, including "assessment," "interventions for . . . mental health," "personalizing professional development," "community outreach," and "student and family assistance"); Diana Browning Wright et al., *The BIP Desk Reference* (Nov. 2013), http://www.pent.ca.gov/dsk/bipmanual.html (manual for developing school-based intervention plans developed by the California Department of Education).

[12] *See* OSEP Tech. Assistance Ctr., *Positive Behavioral Interventions & Supports, Multi-tiered System of Support (MTSS) & PBIS*, http://www.pbis.org/school/mtss (last visited Dec. 3, 2018) (defining MTSS as providing instruction and interventions "matched to student need, monitoring progress frequently to make decisions about changes in instruction or goals, and applying child response data to important educational decisions").

development, implementation, and evaluation of alternative interventions" and "[e]xpectations for parent involvement").[13]

After identifying students who need additional support, including students with mental health disabilities, schools should (and regularly do) effectively provide evidence-based interventions to address the individual learning challenges of each student. These inclusion strategies, focused on differentiated instructional and behavioral supports for individual students as well as schoolwide programs, engage and support all students in the school, including those with mental health disabilities, making inclusion possible.[14]

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[13] *Id.* The research discussed above (*supra* notes 10-11) cataloging use of SBBS in schools nationwide is by no means limited to schools implementing an MTSS approach. Research does suggest, however, that SBBS may be most effective in schools using MTSS. *See* OSEP Tech. Assistance Ctr., *Positive Behavioral Interventions & Supports, What is Tier 3 PBIS?*, https://www.pbis.org/school/tier-3-supports/what-is-tier-3-pbis (last visited Dec. 3, 2018) ("Tertiary (tier 3) prevention is most effective when there are positive primary (school-wide) and secondary (group-based) systems in place. . . . [T]he design and implementation of individualized supports are best executed when they are conducted in a comprehensive and collaborative manner. . . . Support should (a) be tailored to the student's specific needs and circumstances, (b) involve a comprehensive approach to understanding and intervening with the behavior, and (c) include multi-element interventions to address needs in different area[s] of the student's life.").

[14] *See, e.g.*, OSEP Tech. Assistance Ctr., *Positive Behavioral Interventions & Supports, Wraparound*, http://www.pbis.org/school/tertiary-level/wraparound (last visited Dec. 3, 2018) (discussing schoolwide positive behavior supports; describing "wraparound," a philosophy of care with defined planning and services used to build constructive relationships and support networks among students with emotional or behavioral disabilities and their families); Am. Insts. for Res., Ctr. on Response to Intervention, *MTSS/RTI Glossary of Terms*,

Using school-based behavior services, including positive behavioral supports, is a proven way to reduce the use of restraint and seclusion to discipline students with disabilities.[15] The Safe Schools/Healthy Students initiative, sponsored by the Substance Abuse and Mental Health Services Administration ("SAMHSA") of the Department of Health and Human Services, has also incorporated these services and achieved positive outcomes for children and youth with mental health disabilities.[16]

The widespread acceptance of these core school-based behavior services is further reflected in the Massachusetts school system itself, which supports use of

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https://www.rti4success.org/resources/mtssrti-glossary-terms#MTSS (last visited Dec. 3, 2018) ("MTSS allows for the early identification of learning and behavioral challenges and timely intervention for students who are at risk for poor learning outcomes."); Schoolwide Integrated Framework for Transformation, *SWIFT Guide: Inclusive Academic Instruction*, http://guide.swiftschools.org/multi-tiered-system-of-support/inclusive-academic-instruction (last visited Dec. 3, 2018) ("Schools use multi-tiered instructional strategies[and] differentiation . . . to support instruction [for] all students, including those with the most extensive support needs. Academic and behavior supports are integrated within one multi-tiered system of support.").

[15] *See* Jenny Stonemeier et al., SWIFT Ctr., *School Discipline Policy Considerations in a SWIFT Framework*, Issue Brief #6, at 2-3 (Dec. 2014), http://guide.swiftschools.org/sites/default/files/documents/SWIFT%20Issue%20Brief%206.pdf; *supra* note 11.

[16] SAMHSA, *The Safe Schools/Healthy Students Initiative: A Legacy of Success* 3 (2013) (noting the success of programs focused on "[s]creening and assessment," "intervention," "training," and "community involvement").

such services in its schools.[17] Massachusetts also guides schools in implementing the principles of Universal Design for Learning ("UDL"). UDL principles ensure that students receive "behavioral supports that include differentiation and extension activities" to help schools progress "toward an integrated approach."[18] UDL thus reflects that individualizing approaches to teaching and learning and fostering positive behavior supports facilitate the inclusion of students with disabilities in general education classrooms.

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[17] *See, e.g.*, Mass. Dep't of Elementary & Secondary Educ., *Technical Assistance Advisory SPED 2014-2: Children's Behavioral Health Initiative* (Mar. 20, 2014), http://www.doe.mass.edu/sped/advisories/2014-2ta.html (explaining benefits of "critical" collaboration between schools and community-based behavioral health providers, including helping parents use positive discipline; describing how clinical staff can work with school staff to develop a behavior plan that helped student "more effectively generalize his skills from one setting to another"); Mass. Dep't of Elementary & Secondary Educ., *Interim Report to the Legislature: The Behavioral Health and Public Schools Task Force* 2, 6 (Dec. 2009), https://archives.lib.state.ma.us/handle/2452/47792 (reporting on the Department's efforts to develop an assessment tool for schools to measure their capacity to provide SBBS, including whether schools have adequate professional development and sufficient access to services such as "community behavioral health services," whether schools are in compliance with "medical treatment plans," and whether they can provide appropriate collaboration with families).

[18] Mass. Dep't of Elementary & Secondary Educ., *System for Student Success (SfSS)*, http://www.doe.mass.edu/sped/mtss.html (last updated Oct. 11, 2011) (explaining that schools are guided by UDL principles); *see* Nat'l Ctr. on Universal Design for Learning, *UDL Guidelines, FAQ, What's the goal of UDL?*, http://udlguidelines.cast.org/more/frequently-asked-questions#goal (last visited Dec. 3, 2018).

United States Department of Education guidance similarly emphasizes accepted school-based behavior services, including implementing a "multitiered behavioral framework" and individualized services for students who exhibit problematic behavior.[19] The Department has affirmed that behavioral services include assessments and behavior intervention plans.[20]

The Department's guidance is based on "[r]esearch show[ing] that school-wide, small group, and individual behavioral supports that use proactive and preventative approaches, address the underlying cause of behavior, and reinforce positive behaviors are associated with increases in academic engagement, academic achievement, and fewer suspensions and dropouts."[21] Department research further demonstrates "that children with disabilities who struggle in reading and mathematics can successfully learn grade-level content and make

[19] *See* U.S. Dep't of Educ., Office of Special Educ. & Rehab. Servs., *Effective Evidence-based Practices for Preventing and Addressing Bullying* 2 (enclosure to Aug. 20, 2013 Dear Colleague Letter on Bullying), http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-enclosure-8-20-13.pdf.

[20] U.S. Dep't of Educ., Office of Special Educ. & Rehab. Servs., *Dear Colleague Letter on Ensuring Equity and Providing Behavioral Supports to Students with Disabilities* 1, 4 (Aug. 1, 2016), http://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf.

[21] *Id.* at 5.

significant academic progress when appropriate instruction, services, and supports are provided."[22]

Additional research confirms that implementing appropriate school-based behavior services has drastically improved outcomes for students with disabilities, making inclusion more feasible than ever.[23] This is true for students who, like those assigned to the Springfield Public Day School, have significant mental health disabilities.[24]

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[22] U.S. Dep't of Educ., Office of Special Educ. & Rehab. Servs., *Dear Colleague Letter on Free and Appropriate Education (FAPE)* 1 (Nov. 16, 2015) (citing Final Rule, Improving the Academic Achievement of the Disadvantaged; Assistance to States for the Education of Children with Disabilities, 80 Fed. Reg. 50,773, 50,776 (Aug. 21, 2015)), https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/guidance-on-fape-11-17-2015.pdf.

[23] *See, e.g.*, Thomas E. Scruggs et al., *Do Special Education Interventions Improve Learning of Secondary Content? A Meta-Analysis*, 31 Remedial & Special Educ. 437-49 (2010) (meta-analysis of 70 independent studies investigating effects of special education interventions on student achievement found that students with disabilities made significant progress across different content areas and across different educational settings when they received systematic, explicit instruction; learning strategy instruction; and other evidence-based instructional strategies and supports), *cited in* 80 Fed. Reg. at 50,774; *see also* U.S. Dep't of Educ., Inst. of Educ. Sciences, *A Compendium of Social-Behavioral Research Funded by NCER and NCSER: 2002-2013*, at 99 (2016), http://ies.ed.gov/ncer/pubs/20162002/pdf/20162002.pdf.

[24] *See generally* Thomas Hehir, *New Directions in Special Education: Eliminating Ableism in Policy and Practice* 18-39 (2005). The Department of Education has sponsored research that has tested the effectiveness of many such interventions; evidence-based tools and supports for teachers and families are available at https://ccrs.osepideasthatwork.org/.

The foregoing undermines the district court's erroneous conclusions that school-based behavior services are neither supported by academic consensus nor capable of facilitating integration for students like those in the proposed class with mental health disabilities. The widespread acceptance of such services is reflected in the practices schools actually use, programs professional development experts recommend, learning and teaching techniques researchers have developed, advice from mental health organizations, Massachusetts and U.S. Department of Education guidance, and federal law.

Under the ADA, relegating disabled students to inferior, segregated schools is impermissible. Rather than resorting to segregation, in view of what is now known about the feasibility and benefits of integration, schools must implement services proven to make inclusion work.

CONCLUSION

This Court should reverse the judgment of the district court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limit,
Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because this brief contains 5,222 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point Times New Roman.

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Dated: December 7, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on December 7, 2018, I electronically filed the foregoing Brief of Former U.S. Department of Education Officials, Massachusetts Advocates for Children, Massachusetts Association for Mental Health, and Mental Health America as *Amici Curiae* in Support of Plaintiffs-Appellants/Cross-Appellees with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

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