

May 30, 2007

VIA FACSIMILE AND
FEDERAL EXPRESS

Mississippi Department of Education
Office of Special Education
359 North West Street
Jackson, MS 39205
FAX NO: 601-359-2198
ATTN: Ann Moore, Director

Re: Administrative Complaint Regarding Systemic Allegations of Violations of the Individuals with Disabilities Education Improvement Act in Holmes County Public School System on Behalf of L.A., W.J., Jr., J.P., J.L., K.C., J.M., S.M., R.W., L.G., D.B. and a Class of All Similarly Situated and Treated Students with Disabilities (identified and not yet identified)

Administrative Complainants:

- I. Name: L.A.
DOB: XXXX
Grade: 8th
School: J.J. McClain
Address:
Exceptionality: Specific Learning Disabled
Parent's Name:
- II. Name: W.J., Jr.
DOB: XXXX
Grade: 8th
School: J.J. McClain
Address:
Exceptionality: Orthopedic Impairment
Parent's Name:
- III. Name: J.P.
DOB: XXXX

- Grade: 8th
School: J.J. McClain
Address:
Exceptionality: Educable Mentally Retarded
Parent's Name:
- IV. Name: J.L.
DOB: XXXX
Grade: 7th
School: William Sullivan High School
Address:
Exceptionality: Educable Mentally Retarded
Parent's Name:
- V. Name: K.C.
DOB: XXXX
Grade: 8th
School: J.J. McClain
Address:
Exceptionality: Educable Mentally Retarded
Parent's Name:
- VI. Name: J.M.
DOB: XXXX
Grade: 6th
School: William Sullivan H.S.
Address:
Exceptionality: Educable Mentally Retarded
Parent's Name:
- VII. Name: S.M.
DOB: XXXX
Grade: 1st
School: Lexington Elementary School
Address:
Exceptionality: Not Identified
Parent's Name:
- VIII. Name: R.W.
DOB: XXXX
Grade: 10th
School: formerly S.V. Marshall
Address:
Exceptionality: Not Identified

Parent's Name: N/A - Student is 18 years old

IX. Name: L.G.
DOB: XXXX
Grade: 10th
School: J.J. McClain
Address:
Exceptionality: Not Identified
Parent's Name:

X. Name: D.B.
DOB: XXXX
Grade: 1st
School: Lexington Elementary School
Address:
Exceptionality: Not Identified
Parent's name:

Dear Ms. Moore:

The undersigned interested parties, including the parents of the above-referenced students, file this Class Administrative Complaint on behalf of L.A., D.B., K.C., W.J., Jr., L.G. S.M., J.P., R.W., and all similarly situated disabled students identified as students with disabilities and unidentified as students with disabilities versus Holmes County School District (hereinafter "HCSD") for violations of the Individuals with Disabilities Education Improvement Act of 2004 (hereinafter "IDEA"), 20 U.S.C. § 1400 *et seq.*

Complainant L.A. is an 8th grade student at J.J. McClain High School. At all times relevant to this complaint, he has been determined eligible for special education services under IDEA.

Complainant W.J. is an 8th grade student at J.J. McClain High School. At all times relevant to this complaint, he has been determined eligible for special education services under IDEA.

Complainant J.P. is an 8th grade student at J.J. McClain High School. At all times relevant to this complaint, he has been determined eligible for special education services under IDEA.

Complainant J.L. is a 7th grade student at William Sullivan High School. At all times relevant to this complaint, she has been determined eligible for special education services under IDEA.

Complainant K.C. is an 8th grade student at J.J. McClain High School. At all times relevant to this complaint, he has been determined eligible for special education services under IDEA.

Complainant J.M. is a 6th grade student at William Sullivan High School. At all times relevant to this complaint, he has been determined eligible for special education services under IDEA.

Complainant S.M. is a 1st grade student at Lexington Elementary School. She has not been determined eligible for special education services under IDEA, but is suspected of being eligible under the categories of “emotional disturbance” or “other health impaired.”

Complainant R.W. is a former 10th grade student at S.V. Marshall High School. He has not been determined eligible for special education services under IDEA, but is suspected of being eligible under the category of “other health impaired.”

Complainant L.G. is a 10th grade student at J.J. McClain High School. He has not been determined eligible for special education services under IDEA, but is suspected of being eligible under the categories of “emotional disturbance” or “other health impaired.”

Complainant D.B. is 1st grade student at Lexington Elementary School. He has not been determined eligible for special education services under IDEA, but is suspected of being eligible under the category of “other health impaired.”

Class Claims on Behalf of Complainants and All Similarly Situated Disabled Students

Complainants contend that HCSD has engaged in an on-going and systemic pattern of violating the procedural and substantive rights of the complainants and similarly situated disabled students by failing to follow IDEA's "child find" requirements and, after identifying a child as eligible for services under IDEA, failing to provide him or her with a "free and appropriate public education" ("FAPE"). HCSD not only fails to appropriately identify children with disabilities ("child find"), but once children are identified as disabled, HCSD fails to provide a FAPE as follows:

1. HCSD does not develop Individualized Education Plans (IEPs) that are reasonably calculated to confer educational benefit;
2. HCSD does not appropriately identify students for and provide Extended School Year Services;
3. HCSD does not comply with IDEA's discipline regulations, including but not limited to an ongoing and systemic pattern of subjecting disabled students to repeated in-school and out-of-school disciplinary removals without the benefit of manifestation determination reviews (MDRs), behavior intervention plans (BIPs), or parental notification of the removal (notice); and unnecessary and inappropriate placement into the alternative school;
4. HCSD does not provide appropriate related services for disabled students with behavioral problems;

5. HCSD does not provide appropriate transition plans for disabled students, if transition plans are at all provided; and
6. HCSD does not educate its disabled students in the least restrictive environment;
7. HCSD does not provide parents access to their disabled child's records, and as a result, HCSD does not allow the parents of disabled children to participate as full members of IEP teams.

I. HCSD Fails To Develop Individualized Education Programs (IEPs) That Are Reasonably Calculated to Confer Educational Benefit.

HCSD denied complainants J.P., L.A., K.C., W.J., J.M., J.L., and all other similarly situated children with disabilities in the district FAPE by developing IEPs that failed to confer meaningful educational benefit as required by IDEA. Complainant J.P. was recently identified as a student with learning disabilities *this year* after being held back *four* times and even now, he has not been able to make any meaningful academic or non-academic (behavioral) progress for the past several years due the denial of FAPE.¹ His 2004-2005 Teacher Support Team (TST) "Summary Report Worksheet" -- completed when J.P. was a fifth grader in November 2004 -- states that he was retained in grades 1, 2, 3, and 4. It states, among other things, that J.P.'s behavior is not similar to that of his peers because he "is easily provoked to fighting," he mastered "0%" of the reading benchmarks, and mastered "0" science benchmarks. Inexplicably and despite these findings, J.P. was referred for an initial special education evaluation almost a full year after this report in October 2005.² While the report states that J.P. was "referred for a

¹ Prior to this year, J.P. was receiving speech language services and academic accommodations under the Response to Intervention/Teacher Support Team (RTI/TST) Model. He did not have an IEP in place according to his parent.

² See 10/12/2005 Evaluation of J.P. On March 9, 2005 the parent signed a parental consent form allowing her child to be evaluated for special education. HSCD also produced a May 2005 document signed by the parent showing that she refused the initial assessment after the child find specialist in the district explained the procedural

Comprehensive Individual Assessment” and that the assessment “will aid in determining if a disability exists” the only examiner was a speech pathologist (L.B.) and in the three-page evaluation, it seems that the only test administered was the “Clinical Evaluation of Language Fundamentals” used to identify language skills deficits.³ Because J.P.’s evaluation was so deficient, he was denied FAPE and meaningful educational benefit.

J.P.’s initial evaluation resulted in nothing more than speech services being provided. He was not actually placed in special education until this school year (2006-2007) at J.J. McClain High School after a second evaluation was completed on March 6, 2006.⁴ The second evaluation, conducted when he was a 14 year-old sixth grader, included an intelligence test and an achievement test. J.P. tested with a full scale I.Q. of 52, as a result he was ruled “educable mentally retarded” as of the date of that test and finally received an IEP, albeit a deficient one that fails to address his behavior issues, fails to provide related services, has not allowed him to progress academically or non-academically. This is too little, too late.⁵

K.C.’s case is no different. K.C. is an 8th grader classified as Mentally Retarded (MR) and Speech/Language Impaired (“SL”). He is functioning between a first and second grade level in math and reading according to his most recent IEP dated May 26, 2006, which suggests he has not made any academic progress in nine years. While K.C.’s disability may account for a lack of progress that is inexplicable in cases concerning students with mild disabilities such as

safeguards in a face to face meeting. There is an easy explanation for what seems to be an inconsistent position by the parent. The parent has never wavered in her desire to get help for her son. The district preyed on the parent’s ignorance and asked her to sign both documents (one consenting to the evaluation, and after the district did not want to provide services, another refusing).

³ *Id.*

⁴ See 3/6/2006 Evaluation of J.P.

⁵ According to the minutes of his 5/8/06 IEP Meeting, the team developed his IEP for the 2006-2007 school year, rejected him for ESY, socially promoted him from 6th to 8th grade, and discussed accommodations and modifications for the remainder of his 6th grade year.

orthopedic impairments, what is inexcusable about his IEPs is the delivery of non-academic services. K.C.'s behavior has deteriorated each year. His IEP lists related services (psychological and social work services) from "Project Care" and "Life Health" (*sic*)—referring to the outside mental health agency "Life Help." While these services are listed, personnel from those organizations did not participate in the development of the IEP in order to ensure that it addressed K.C.'s growing behavior problems. This failure to coordinate the related services being provided to K.C. led to ineffective behavioral programming and, as a result, a denial of educational benefit.

The services in an IEP are supposed to be provided "in a coordinated and collaborative manner" by the "key stakeholders" as one indicator that the IEP is reasonably calculated to confer educational benefit.⁶ In K.C.'s case, had counseling professionals been involved in K.C.'s IEP and working with his teachers and schools, he might not have been repeatedly subject to disciplinary referrals this year following the sudden death of a parent.⁷ Instead of addressing his escalating behavior problems with additional counseling, or coordinating with his counselors, K.C. has been frequently punished. His failure to make non-academic progress, namely behavioral progress, is proof of the district's failure to develop IEPs that confer meaningful educational benefit.

Further evidence of the HCSD's systemic failure to confer meaningful educational benefit to its disabled students can be seen in Complainant L.A.'s experience. L.A.'s mother has tirelessly requested help for her child's learning needs. When L.A. enrolled in HCSD as a first

⁶ See *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 253 (5th Cir. 1997).

⁷ The May 2006 IEP was developed after the meeting was cancelled because Kenneth's special education teacher, TEACHER, made comments to the parents that offended them such as: "I don't have time for a 3 hour meeting" and "I am not [THE CONSERVATOR] or [THE SUPERINTENDENT] and I will be on vacation on the 30th." May 19, 2006 Letter from K.C. Sr. to XXXX [Principal of J.J. McClain High School] in cumulative file of K.C., Jr.

grader, he could not write his address. As a result, he was paddled mercilessly at Lexington Elementary School. Finally, he was identified as a child with disabilities because of his chronic headaches. His initial classification was “Other Health Impaired” (OHI). Last summer, his eligibility classification was changed to Specific Learning Disabled (SLD) because of his persistent academic deficiencies. Despite his mother’s persistent participation with her son’s IEP team, L.A. is an 8th grader functioning on about the third grade level in his academic subjects, he is a non-reader, his teachers claim that he talks too much, and he has been subject to numerous in-school, and recently, out-of-school suspensions. Instead of addressing his reading needs with intensive reading services, his IEP continues to ignore the fact that he is in 8th grade regular education classes without supplementary supports or services, but cannot read. This type of IEP does not confer meaningful educational benefit because it is not reasonable to believe that a student who cannot read will be able to function in regular 8th grade classes without intense reading remediation. This has never been provided, despite requests for this type of service. Instead, HCSD continues to discipline L.A. as if his classroom chatter were not a direct result of his failure to understand what is going on in the classroom. This failure to demonstrate either academic or non-academic progress (in fact, his behavior is regressing) is widespread and is evidence of the district’s failure to confer educational benefit.⁸

Complainant W.J. is yet another example of the district’s failure to develop IEPs that confer meaningful educational benefit. W.J. is an 8th grade disabled student at J.J. McClain High

⁸ See *Board of Education of Hendrick Central School Dist. v. Rowley*, 458 U.S. 176, 200-201 (1982); *Cypress-Fairbanks ISD v. Michael F.* 118 F.3d 245, 253-254 (5th Cir. 1997).

School. He is classified as “OI”⁹ on his most recent IEP because of a seizure disorder according to his initial evaluation. At 15-years-old, he shows no signs of academic¹⁰ or non-academic progress¹¹, which suggests that his IEPs have not been reasonably calculated to confer meaningful educational benefit. *See Cypress-Fairbanks*, 118 F.3d at 253.¹² Not only is W.J. performing approximately six years behind his grade level academically, he has actually *regressed* behaviorally following a series of escalations with his *special education* teacher during the 2004-2005 school year. Beginning in the 2003-2004 school-year – the year W.J. entered J.J. McClain High School -- W.J.’s parents complained that W.J. was coming home with bruises and being whipped by his special education teacher even though he has a seizure disorder and his parents asked that he not be disciplined with corporal punishment. W.J.’s frustration with school increased and his teacher accused him of having “outbursts.” HCS D referred him to a school psychologist (XXXX) in December 2003 for a “loss of ‘emotional control.’”¹³ In the report prepared by [SCHOOL PSYCHOLOGIST], it was noted that “no one was injured during the reported tantrum” and W.J.’s mother “was/is supportive of Wes receiving counseling on a regular basis.”¹⁴

⁹ A more accurate classification for W.J. would be “Other Health Impaired,” but his actual classification from the district is “Orthopedic Impairment” due to a seizure disorder. W.J. has never received physical or occupational therapy.

¹⁰ In an Assessment Team Report dated 3-3-2004, the team noted that he “continues to exhibit problems in the area of reading, math, language arts, science, social studies, and language impaired (*sic*).” W.J.’s academic struggles continue and, as noted, they are pervasive (in every core academic subject).

¹¹ W.J. has been suspended for over ten school days and is constantly written up for offenses such as: “cutting class – on 8th grade hall” (11/15/06); “walking hall” (10/27/06); “disrespect and excessive talking” (10/13/06) – which all resulted in three day out-of-school suspensions. As a result, he did not attend school for much of October or November (he received a 10-day in-school-suspension in November). His IEP placement in a resource setting is meaningless when it is compared to his disciplinary referrals to out-of-school and in-school suspensions.

¹² The case discusses four factors considered to determine whether or not an IEP is reasonably calculated to enable a child to receive educational benefits, including “[p]ositive academic and non-academic benefits are demonstrated.”

Id.

¹³ 3/31/2004 Confidential Report of Psychological Services for W.J. written by [school psychologist].

¹⁴ *Id.*

Issues for W.J. and his special education teacher at J.J. McClain culminated on March 30, 2005 when W.J.'s teacher called the police and threatened to kill him because, according to some reports, his teacher believed that W.J. had vandalized her automobile.¹⁵ W.J.'s special education teacher -- XXXX -- made statements such as "she did not want [the police] to find W.J. laying on the ground because she had lost control;" "she...did not have a gun" (implying that it was relevant) and "W.J. need[ed] to be somewhere else."¹⁶ One school witness, Mrs. R., reported that TEACHER threatened W.J.'s life in the presence of a police officer that TEACHER called police to the school to pick W.J. up on March 30, 2005.¹⁷ According to Ms. Redmond, TEACHER told the police officer that if W.J. "came to her house messing with her or her family.... and he, [the police officer], find (*sic*) him in a ditch by the house, then what happened will be between her and her God."¹⁸ W.J.'s parents, desperate to protect their child *from his special education teacher* (with whom he spent much of each day, every day in a self-contained placement in 2003-2004 and 2004-2005), withdrew their child from HCSD during the 2005-2006 school-year.

W.J. was re-enrolled at J.J. McClain High School at the beginning of the 2006-2007 school-year. He has made little academic or non-academic progress this year, both because his IEP is insufficient, because it does not provide any services to address his behavior issues (such as counseling, social work, and/or psychological services), nor does it provide any strategies designed to address his academic deficiencies in every core academic area. As a result, W.J. has fallen farther behind and grown more frustrated with school. As with the aforementioned

¹⁵ See Incident Regarding Teacher and W.J. 3/30/2005 in cumulative file of W.J.

¹⁶ *Id.*

¹⁷ Letter to Whom it May Concern of Mrs. R.

¹⁸ *Id.*

complainants and similarly situated disabled students, W.J. has not been given IEPs that are reasonably calculated to confer educational benefit. As a result, his special education services have left him several years behind his classmates and frustrated with school.

Complainants J.M. and J.L. and all similarly situated Educable Mentally Retarded (EMR) students in the district are being denied a FAPE and educational benefit in the most fundamental way. On information and belief, HCSD denies them a full day of school. Both students only attend school until one o'clock (1 PM), even though the regular school day continues for HCSD until three o'clock (3PM). Neither students IEP specifically calls for a shortened school day, suggests that either student needs a shorter school day, or suggests that this is an individualized decision. Rather, students who are in self-contained settings – as these two students are – are simply sent home earlier. This is a clear violation of IDEA, § 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.¹⁹

The reality for a significant portion of similarly situated disabled students, like the complainants, is that even if they are of average intelligence, by the time they reach Junior High School, they are typically performing years behind their chronological grade level and their peers. One result is that, coupled with the lack of any related services to address their resulting frustration with school, they are labeled as “behavior problems” and pushed out of the district and into the youth court and/or alternative school, which is the ultimate evidence of lack of meaningful educational benefit. The high school graduation rate for disabled in HCSD cannot be

¹⁹ “The United States Department of Education, Office of Civil Rights (“OCR”), has repeatedly held that a blanket policy of shortened school days for disabled students violates section 504 the Rehabilitation Act and the ADA.” *Christopher S. v. Stanislaus County Office of Educ.*, 384 F.3d 1205, 1212, note 4 (9th Cir. 2004) citing “Treutlen County (GA) Sch., 33 Individuals with Disabilities Educ. L. Rep. (LRP) 1068, 1069 (July 11, 2000); La Canada (CA) Unified Sch. Dist., 20 Individuals with Disabilities Educ. L. Rep. (LRP) 630, 631-32 (July 9, 1993); Hartford County (MD) Pub. Sch., 18 Individuals with Disabilities Educ. L. Rep. (LRP) 1114, 1115 (Jan. 16, 1992).

anything short of woeful, and it does not take into account the number of students that are pushed into the youth court system or drop out prior to reaching the age of 21. The bleak situation for disabled students in HCSD has already been confirmed by the Mississippi Department of Education (MDE).

During the Mississippi Department of Education's Special Education Monitoring Report of Holmes County, reported in a March 6, 2006 document, the auditing team confirmed almost all of the allegations herein, including the district's failure to provide FAPE, complete IEPs, place students in the least restrictive environment, address discipline issues, and address nonexistent or incomplete evaluations of students.²⁰ During their review of the school district, the monitoring team found that throughout the files reviewed at each school, "the IEPs either did not address, or inappropriately addressed, the statement of non-participation in regular education setting, including an explanation of non-participation in non-academic and extracurricular activities."²¹ While HCSD may be educating students in less restrictive environments, it seems to be an attempt to improve its numbers without providing any meaningful educational benefit to the disabled students. The purpose of the Least Restrictive Environment (LRE) mandate is to ensure that, to the extent appropriate, disabled students are educated with their non-disabled peers. Here, disabled students are being dumped into regular education classrooms to "sink or swim." As with our clients, when the audit occurred last year, no regular education teacher attended the IEP meetings of disabled students.²² There is no "buy-in" from the regular education teachers as to how to educate the disabled children in their classrooms. Alternatively,

²⁰ Special Education Monitoring Report on Services for Students with Disabilities: Holmes County, Mississippi Department of Education, p. 5 (March 6, 2006). (Hereinafter "March 2006 MDE Monitoring Report")

²¹ *Id.*

²² *Id.*

there is no support for the regular education teachers who now have classrooms with a high percentage of students who were in self-contained settings as recently as last year.

The cumulative result of the failure to properly develop IEPs, the failure to provide appropriate services, the failure to accommodate students transitioning from self-contained settings into regular education settings, the failure to collaborate with key stakeholders, and the failure to conduct full evaluations upon which IEPs can be based is that students are denied an education – literally, and as a matter of law.²³

II. HCSD Has Failed to Appropriately Identify and Provide Extended School Year Services.

Despite apparent need and/or qualification under Critical Point of Instruction, Regression Recoupment, and/or Extenuating Circumstance, complainants K.C., W.J., J.M., and other similarly situated students did not qualify for Extended School Year (ESY) services during the summer of 2007. On information and belief, HCSD consistently under-identifies disabled students for Extended School Year students. Parents are often not aware of the option, they are not involved in the decision (even though they are members of the IEP team that should be making these decisions), and the program is tiny in scope, despite the fact that disabled students are entitled to those services if they are necessary to provide FAPE.²⁴ This wholesale refusal to provide ESY services is a denial of FAPE to the disabled students --- like the complainants -- who would qualify for services and are never offered them.

Again, Mississippi Department of Education's (MDE) own audit has already confirmed the allegation herein. The team found that "ESY decisions were not always documented on the

²³ See *Board of Ed. v. Rowley*, 458 U.S. 176, 200-201 (1982); *Cypress-Fairbanks*, 118 F.3d at 253-254.

²⁴ See 34 C.F.R. 300.106(a)(1)-(2) "Each public agency must ensure that extended school year services are available as necessary to provide FAPE . . . if a child's IEP Team determines, on an individual basis, . . . that the services are necessary . . ."

page of the IEP designated for the ESY Determination Decision. This section was most often left blank.”²⁵ Complainants’ parents have reported not being invited to such a meeting or hearing about it unless informed by local education advocates. If parents are not being included in the decision to deny or provide ESY services, this is a violation of IDEA because parents are members of the IEP Team. See 34 C.F.R. 300.321(a)(1). A more likely a scenario, but no less a violation of IDEA, is a determination is never made regarding whether or not a disabled child in HCSD is eligible for ESY services. If the parents of the child do not ask for it, it is not offered.

III. HCSD Does Not Comply with IDEA’s Disciplinary Regulations.

HCSD has denied complainants L.A., W.J., and all other similarly situated disabled student in the district FAPE by failing to follow IDEA’s regulations regarding discipline. See 34 C.F.R. § 300.530-536. As stated earlier, L.A., W.J., and K.C. have been subjected to numerous disciplinary actions without an increase in services, without the development of a functional behavior assessment, and without the development of behavior management plans.²⁶ Anderson has been removed from class and sent to in-school-suspension on numerous occasions this year for offenses such as talking, being in the hallway, and being disruptive. These cumulative removals are not always documented, the parent is not notified unless her child tells her spent part of his day in the in-school-suspension room, and no services are being provided to address the cause of the behavior – which would be addressed by a functional behavior assessment (FBA). W.J. has been suspended to in-school or out-of-school suspension for well over ten school days this school year. HCSD never did an FBA, a behavior management or intervention plan (BIP), nor did they conduct a manifestation determination review (MDR) prior to additional

²⁵ March 2006 MDE Monitoring Report, p. 7.

²⁶ The parents of all three students requested their child’s educational records. None of them have a functional behavior assessment or a behavior management/intervention plan for the 2006-2007 school year.

removals to out-of-school or in-school suspension. While in-school-suspension does not always require an MDR, it does when it is a complete denial of education.²⁷

Once again, the experience of the complainants and similarly situated disabled students is consistent with the state's findings after it monitored HCSD.²⁸ The state's monitoring team found that "an abnormally large number of students received disciplinary referrals, yet no Functional Behavioral Assessments (FBA) had been conducted for many of these students."²⁹ The report stated that "[a]t one HCSD high school, two students with numerous disciplinary referrals never had a FBA conducted, nor a Behavior Intervention Plan (BIP) to address these problems."³⁰ Instead, the school would only handle disciplinary issues through the administration, In-School Suspension, Out of School Suspension, or placement at the alternative school in the district,³¹ which is, unfortunately, still the practice in the district despite training and goals designed to decrease these widespread and harmful practices.

IV. HCSD Has Failed to Provide Sufficient Related Services.

HCSD fails to provide appropriate related services such as psychological services, counseling services, parent training and/or social work services,³² to complainants K.C., W.J. and similarly situated disabled students who manifest behavior problems in violation of IDEA's

²⁷ In-school-suspension (ISS) at J.J.McClain is as detrimental as out-of-school suspension for disabled students. Students in ISS are housed in small carrels, they have to direct their own work, there is no talking, and most students are simply playing on the internet. For students with disabilities, this is as harmful as an out-of-school suspension. Therefore, prior to removing a child from their IEP placement, an MDR should be conducted if, as in W.J.'s case, a child is going to be placed in ISS with poor reading skills and without accommodations (after 9 days of out-of-school suspension).

²⁸ March 2006 MDE Monitoring Report, 9.

²⁹ *Id.*

³⁰ *Id.* at 10.

³¹ *Id.*

³² 34 C.F.R. 300.34 defining "Related services (as) transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and include . . . psychological services, . . . counseling services . . . social work services . . . and parent counseling and training."

mandate to provide a FAPE.³³ These services are to be provided to disabled students in order to “assist” them “to benefit from their special education services.” 34 C.F.R. 300.34. HCSD’s failure to provide such related services (in many cases providing no related services) in light of several disciplinary referrals/behavioral issues that led to complainants being assigned to restrictive settings reflects that the provision of related services in HCSD is based upon staff availability and bears no relationship to the actual individual needs of complainants or students similarly situated. Indeed, despite the circumstances for each of the complainants, the amount of counseling, social work and/or psychological services provided bears no discernable relation to the any of the complainants’ behaviors or placements.

The facts of K.C.’s case bear out this issue. Despite a personal tragedy this school year (2006-2007), his related services have not been adjusted or increased from the services that were in place in May 2006 (prior to the event). W.J. is another example of how services in HCSD are driven by staff availability rather than individual need. He was being provided counseling by XXXX, a school psychologist, in 2004-2005 as a result of his special education teacher’s allegation that he had a tantrum in her class. SCHOOL PSYCHOLOGIST is not with the district this school year, so all services are provided through Life Help. As a result, despite the fact that W.J.’s behavior has in fact deteriorated, no one who is familiar with his mental health needs is actually participating on or coordinating with his IEP team. Those services are not even reflected in his IEP. This puts W.J. and similarly situated students at risk of ending up in the

³³ 34 C.F.R 300.320(a)(4)(iii) defining IEPs as including “A statement of the special education and **related services** and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modification or supports for school personnel that will be provided to enable the child -to be educated and participate with other children with disabilities and non-disabled children in the activities described in this section.” (Emphasis added).

Youth Court system, not because he is a criminal, but because he is disabled and HCSD has failed to provide an appropriate public education.

V. HCSD Has Failed to Provide Appropriate Transition Plans for its Students with Disabilities.

HCSD failed to provide appropriate – if any – transition services for its disabled students despite the clear mandate of IDEA. *See* 34 C.F.R. 300.320(7)(b)(2) (“Transition services. Beginning *no later than the first IEP to be in effect when the child turns 16*, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include – (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where, appropriate, independent living skills; and (2) The transition services (including courses of study) needed to assist the child in reaching these goals.”)(Emphasis Added). Despite being 15, neither J.P. nor W.J. has an IEP that contains a transition plan. There is a pattern and practice in HCSD of failing to develop transition plans for disabled students who are eligible for them. When transition plans are developed, they are meaningless (*i.e.*, students who are mentally retarded, reading on a 1st grade level, have transition plans that state they are going to be truck drivers even though there is no hope or plan that they will ever get a driver’s license.). IDEA mandates that a transition plan be developed for 16-year-old students or the IEP in which the student will turn 16. Transition planning is crucial to transition disabled students from school to independent living. However, with both of these students performing well below grade level, without any hope of achieving a diploma, with frequent removals from school, HCSD has seemingly given up on them. Instead of preparing them for independent living, HCSD is attempting to prepare them for jail by constantly suspending them and punishing them for symptoms of their disabilities and their

under education. This is a violation of IDEA's transition requirement and of the spirit of IDEA's mandate to provide disabled children with a FAPE and with an opportunity to become independent, productive members of the community.

VI. HCSD Has Failed to Educate its Student with Disabilities in the Least Restrictive Environment Appropriate.

HCSD has denied complainants L.A., W.J., and all other similarly situated disabled students FAPE by failing to provide them educational services in the Least Restrictive Environment (LRE) as required by IDEA. See 20 U.S.C. § 1412 (a)(5); 34 C.F.R. § 300.114-117. L.A. is in a resource setting, with both regular education and special education classes. However, like many disabled students in HCSD, he is in a resource setting with absolutely no accommodation aimed at ensuring his success or understanding of his regular education classes. As stated earlier, his education in regular education classes without accommodations, is a recipe for disaster and has led to increased disciplinary referrals.

Likewise, W.J. is classified as having an orthopedic impairment because of a seizure disorder, however he has spent two years of his school experience in a self-contained special education classroom with the same teacher. With regard to all of the above petitioners there is no evidence in any of their records that HCSD ever attempted to increase the amount of counseling\social work\psychological services or implement any of the previously described supplemental aids\services\supports or curriculum modifications in order to enable them to access and succeed in a less restrictive general education settings. Such failures constitute clear violations of IDEA's LRE mandate. See 20 U.S.C. § 1412 (a)(5); 34 C.F.R. § 300.114-117.

According the 2006 state monitoring report, HCSD has continually failed to provide students with disabilities with the opportunity to be educated in the least restrictive environment,

based on their particular disability. In the experience of the complainants, when students with disabilities are placed in less restrictive settings, they are placed in those setting without any supports whatsoever. Last year’s report stated that there were only “two special education teachers at [one of HCSD’s high schools]; one teaches students in a self-contained setting and the other is a resource teacher.”³⁴ This is also still the case at J.J. McClain. This makes placement options extremely limited at the middle/high schools in the district. The state’s monitoring confirmed that teachers do not even understand the continuum of alternate placements and were therefore unable to describe possible placement options.³⁵ Finally, several decisions to place students in alternative settings were not made by the student’s IEP committee, but were made arbitrarily by the administration and teachers at the particular school.³⁶ Because of the limited understanding of IEP development at the school building level, there is little understanding of how to appropriately educate disabled students in a less restrictive setting. The complainants and similarly situated students are paying the price with less understanding of the material being taught, less specialized instruction, and more disciplinary referrals.

VII. HCSD Has Failed to Identify Children with Disabilities in Violation of IDEA’s “Child Find” Requirement.

Despite the *Mattie T.* Consent Decree, HCSD is still not appropriately identifying children with disabilities in violation of IDEA’s “child find” requirements. See 20 U.S.C. 1414 (a)(1)(A); 34 C.F.R. 300.111. On average, 12.07% of a district’s population is disabled in Mississippi.³⁷ In HCSD, only 8.31% of the population is identified as disabled.³⁸ If students

³⁴ *Id.* at 7-8.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Special Education District Data Profile 2005-2006.

³⁸ *Id.*

without speech/language impairments are excluded, the gap is even wider. Only 4.14% of HCSD's population is identified as disabled compared to a state average of 9.13%.³⁹ The experience of the following students offers an explanation for these statistics. HCSD is still failing to identify students who are suspected of being eligible for special education services under the categories of: "other health impaired" and "emotionally disturbed."

Complainant R.W.'s case is a clear example of the district's failure to identify its disabled students and its devastating results. R.W. was never identified as a child with a disability, but consistently struggled through school – failing both 3rd and 5th grades -- and was several years behind his chronological grade level peers by the time he reached high school. When R.W. failed for the second time, his mother requested special education testing from the guidance counselor, but was subsequently refused due to R.W. being told he was "too smart" for testing. Because he did not have a behavior problem, he was not forced out of school until he requested accommodations for his learning struggles and his chronic and severe asthma.⁴⁰ At that point, he was told to enroll in the district's new General Education Diploma (GED) program, which is housed with the Alternative School at the Holmes County Learning Center. There, he was blamed by the Principal for committing a crime he did not commit and was pushed out of the program prior to completing a GED for fear of being subject to further disciplinary measures, harassment, and possible arrest at school (a practice that is common in HCSD). Rather than receiving an evaluation and services for his possible "other health impairment," R.W. has been pushed out of HCSD without a diploma, a GED or a future. This is a violation of both the Child Find mandate and ultimately, the meaningful education benefit mandate of IDEA.

³⁹ *Id.*

⁴⁰ In high school, R.W. had to and continues to use an inhaler for severe bouts of asthma.

S.M. is a 9-year-old 1st grade student attending Lexington Elementary School (“LES”). S.M., despite failing kindergarten once and 1st grade twice, has yet to be tested to determine if she is a child with a disability by the HCSD. In October 2006, a written request to have S.M. evaluated was made by her legal guardian, her grandmother. A couple of months ago, her grandmother again requested to a teacher that S.M. be evaluated for special education services; however, the teacher never followed-up on the request. While in school at LES, the only satisfactory grade S.M. received on her report card was regarding her attendance. Essentially, while the LES is conducting a Teacher Support Team (“TST”) evaluation, neither LES nor the HCSD has taken any positive action pursuant to IDEA’s Child Find obligations. While TST interventions are necessary, they are not a “wait to fail” model and this child has already failed – over and over – and continues to do so both academically and non-academically. S.M. was suspended from school for 9 days for getting into a fight in October 2006.

L.G. is a 17-year-old 10th grade student regular education student in HCSD attending J.J. McClain High School. Despite failing the 8th grade once, and attending summer school during the prior four summers, L.G. has never received testing to determine whether he should be receiving special education services through the HCSD.

While attending J.J. McClain, the only classes L.G. has passed are Physical Education and his computer class. On the other hand, L.G. has consistently failed every class in the core curriculum, including Math, English, Science, and Social Studies. In fact, L.G., is currently taking in 8th grade Biology although he enrolled in the 10th grade. In an attempt to provide help to L.G., J.J. McClain offers L.G. after school tutoring; however, he maintains that it is simply a “babysitting event.”

As a result of falling behind in school, L.G. has developed *significant* discipline issues. In the past year, L.G. has been seen home numerous times for participating in fights and cutting class yet he has never been referred for an Emotional Disturbance eligibility meeting. According to his parents, the frequency of his behavior issues is increasing. Specifically, L.G. has been suspended from school at least four times during the 2006-2007 school-year. During the 2005-2006 school-year, he was suspended with even more frequency. In addition, the length of the suspensions this year has consistently been 5 days, while in the previous year the suspensions ranged from 5 days to 10 days. L.G. has never been suspended for more than 10 consecutive days for any one incident. Further, though L.G. has never been expelled from school, he has been told he will be sent to the Alternative School if he is suspended again -- not referred for a special education "emotional disturbance" ruling even though his parents and advocates have requested this type of testing from the district.

During the 2006-2007 school-year, complainant D.B. repeated first grade. Even though he was ostensibly being taught the same material, he received failing grades ("Fs") all year long. This, under any reasonable person's standard, constitutes the suspicion of a disability. His mother reports that he is hyperactive and often absent due to illness. The school is aware of this. As a result, this information, coupled with his school failure, suggests that he may be a child that is a child with a disability under IDEA and needs an IEP. For D.B.'s sake, he should be evaluated before he is in middle school.

VIII. HCSD Violates Parents' Right to Records

Complainants and similarly situated students are denied their right to their educational records and, as a result, to fully participate as members of their child's IEP Team. Under

IDEA⁴¹, for the disabled students, and under the Family Educational Rights and Privacy Act (FERPA)⁴², for the students not yet identified as disabled, parents have a right to access their child's educational records. Yet HCSD routinely denies parents this right. D.B.'s parent requested her child's records in October. She has still not received access to them. Complainant J.P.'s parent requested his records in October and received an incomplete set. Consistently, no parent gets complete access to their child's educational records without undue delay in HCSD. Without access to this information, parents cannot participate as informed members of their child's IEP team.⁴³

Remedies Requested to Settle This Class Complaint

While the state audited this district in March 2006 and developed a Corrective Action Plan, many of its goals have not been achieved and the district's special education students remain vulnerable to pervasive violations of the law. The Complainants request that the Mississippi Department of Education take the following action to redress HCSD's numerous systemic IDEA violations delineated in this class complaint:

- 1) Appoint a "Special Master" at HCSD's expense to direct, monitor, and evaluate HCSD's Children with Disabilities Program, to develop, implement, evaluate and monitor a Corrective Action Plan (CAP), and to conduct intensive trainings in the district for a minimum of three years. The Special Master shall submit in writing a quarterly progress report and meet quarterly with the undersigned interested parties to report on development, evaluation, and implementation of the CAP.

⁴¹34 CFR § 300.613

⁴²20 U.S.C. § 1232g

⁴³ See *Winkelman v. Parma City Sch. Dist.*, 2007 U.S. LEXIS 5902 (U.S. Sup. Ct., May 21, 2007) at 16 quoting *Shaffer v. Weast*, 546 U.S. 49, 53 (2005) (noting that §1415(b)(1) mandates "that States provide an opportunity for parents to examine all relevant records.").

- 2) Compel HCSD to develop, with the Special Master, and implement a systemic training program\protocol that shall include but not be limited to: implementation of school-wide Positive Behavior Intervention and Support Programs (PBIS) at all HCSD schools, the development of functional behavioral assessments (FBAs), the development and implementation of behavior intervention and modification plans, and conducting manifestation determination reviews. The PBIS training program\protocol shall include all pupil appraisal staff, teachers, paraprofessionals, disciplinarians, school administrators, and other educational service providers working at schools which serve students with disabilities and shall also include bus drivers who transport students with disabilities to such schools. The training protocol shall also include the active use of pupil appraisal staff for ongoing follow-up with staff in the designated schools above. The PBIS training protocol shall be made available to parents and the community, including youth court personnel.
- 3) Monitor HCSD pursuant to the *Mattie T.* Consent Decree for its compliance with IDEA's "Child Find" requirements no later than the end of the 2007-2008 school year and make the results of the monitoring visit available to the "interested parties" filing this complaint. If deficiencies are found, work with the below-referenced organizations and the Special Master to develop a new system to: identify students who are suspected of being disabled, administering a full evaluation to those students suspected of being "children with disabilities"

pursuant to IDEA, and training teachers, administrators, and psychometrists to implement the new system.

- 4) To address the district's failure to identify children with emotional/behavioral disabilities and the district's failure to comply with IDEA's discipline regulations, compel HCSD with the Special Master to conduct a review or audit of the number of disciplinary removals (to in-school-suspension, out-of-school suspension, and alternative school placement) and arrests of its students and to issue a report with specific recommendations from the Special Master for addressing these students' behavioral programming (prior to removal to more restrictive settings) and to develop specific strategies with the undersigned interested parties for reducing the number of suspensions, expulsions, arrests, and more restrictive placements.
- 5) Compel HCSD, with the Special Master and the school board's approval, to develop specific school system policies that are disseminated and enforced by the Superintendent to all school building administrators including principals, vice-principals, and disciplinarians outlining and mandating strict compliance with IDEA's discipline requirements including the requirements of Manifestation Determination Reviews; providing IEP services upon reaching the 11th cumulative day of out-of school suspensions; development of appropriate FBAs; development of BIPS involving positive behavioral supports, strategies and services; review and modification of BIPS after every 10 days of suspensions.
- 6) Compel HCSD IEP teams, with oversight from the Special Master, to make decisions with parents in a timely manner for eligibility for Extended School Year

services annually and to provide those services based upon individual need, not district resources.

- 7) Compel HCSD with the Special Master to review the IEPs of all students aged 15 and over and to provide meaningful transition planning based upon individual need and interest, in private programs, if necessary, regardless of what is available in the district.
- 8) Compel HCSD with the Special Master and the school board's approval to develop a school system policy that is disseminated by the Superintendent to all school building administrators, including principals, vice-principals, secretaries, and office staff outlining IDEA's requirements regarding parents' right to review and inspect records in order to fully participate in their disabled child's IEP meeting.
- 9) Compel HCSD with the Special Master to develop and implement specific annual strategies and objectives for significantly reducing the number of disabled students in self-contained classroom settings and concomitantly significantly increasing the number of disabled students' access to the general education curriculum/classrooms over the next 2-3 years.
- 10) Compel HCSD to develop strategies with the Special Master to place certified special education teachers in regular education classrooms in order to accommodate the ability of disabled students to succeed in regular education settings.

- 11) Compel HCSD to place certified special education teachers in its self-contained classrooms and its alternatives schools to allow properly developed IEPs to confer meaningful educational benefit.
- 12) Compel HCSD with the Special Master to significantly increase the frequency and duration of social work\counseling\psychological related services provided to disabled students who manifest behavior problems and are subject to repeated disciplinary removals and\or placement in alternative school settings in the HCSD and also ensure decisions involving such related services are based upon individual need and not staff availability. Ensure that the related services are indicated on the IEP and provided in a collaborative manner as required by law.
- 13) Compel HCSD to develop with the undersigned “interested parties” and the Special Master specific strategies and objectives for implementing intensive reading\math remediation programs for disabled students who are more than two years behind to ensure that they are reading and performing math functions at or within one year of their chronological grade level as measured by a curriculum based measurement by the time they reach high school.
- 14) Compel HCSD to develop with the undersigned “interested parties” and the Special Master specific strategies and objectives for ensuring families are provided access to special education and related services trainings and the financial resources to effectively participate in such trainings.
- 15) Compel HCSD to develop with the undersigned “interested parties” and the Special Master a “Holmes County Special Education Advisory Panel” to review

and have input on proposed special education policies, to review monitoring reports quarterly, and to make recommendations to the Special Master and HCSD on its Children with Disabilities Program.

Sincerely,

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