



**Southern Poverty Law Center**

School to Prison Reform Project

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September 21, 2007

VIA FACSIMILE & U.S. MAIL

ATTN: Legal Department, Ms. Adrienne DuPont  
Louisiana Department of Education  
P.O. Box 94064  
Baton Rouge, LA 70804-9064  
Fax No: (225) 342-1197

**RE:**

- I. Class Administrative Complaint on Behalf of J. D., C. W., and a Class of All Similarly Situated and Treated Emotionally Disturbed Students as well as on behalf of D. K. and a Class of All Similarly Situated Special Education Students who manifest behavioral issues and are subject to repeated disciplinary removals totaling more than ten school days (including In-School Suspensions, Out-of-School Suspensions and undocumented, illegal removals from school- “cool off removals”) and/or placement in alternative school settings in the Calcasieu Parish Public School System;**
- II. Class Administrative Complaint on Behalf of all Special Education Students in the Calcasieu Parish Public School System;**
- III. Administrative Complaint on Behalf of J. D. (Individually);**
- IV. Section 504 Complaint on Behalf of J. D.**
  1. J. D.  
DOB: 2/27/97  
Grade: 4<sup>th</sup>  
School: Brentwood Elementary School  
ID No: 301833  
Exceptionality: Emotional Disturbance

2. C. W.  
DOB: 7/16/90  
Grade: 12<sup>th</sup>  
School: LaGrange High School  
ID No: 9403489  
Exceptionality: Emotional Disturbance

3. D. K.  
DOB: 6/20/99  
Grade: 3<sup>rd</sup>  
School: Gillis Elementary School  
ID No: 302966  
Exceptionality: Developmental Delay

Dear Ms. DuPont:

The undersigned counsels are filing a Class Administrative Complaint (on behalf of J. D., C.W., and all similarly situated Emotionally Disturbed students, and on behalf of D. K. and all similarly situated special education students who manifest behavioral issues and are subject to repeated disciplinary removals totaling more than ten school days), and a Class Administrative Complaint (on behalf of all special education students) against the Calcasieu Parish Public School System [hereinafter CPPSS] for violations of the Individuals with Disabilities Education Improvement Act of 2004 [hereinafter IDEA], 20 U.S.C. § 1400 *et seq.*

The undersigned counsels are also filing an individual Administrative Complaint on behalf of J. D. against CPPSS for violations of IDEA and a Complaint under Section 504 of the Rehabilitation Act of 1973 on behalf of J. D.

Petitioner J. D. is a student at Brentwood Elementary School. At all times relevant to this complaint and since 2005, he has been determined eligible for special education services under IDEA.

Petitioner C. W. is currently a student at LaGrange High School. During the 2006-2007 school year, Petitioner W. was a student at LaGrange High School, the Career Center (CPPSS's alternative school), and a student receiving homebound services. At all times relevant to this complaint and since 1999, he has been determined eligible for special education services under IDEA.

Petitioner D. K. is a student at Gillis Elementary School. At all times relevant to this complaint and since 2002, he has been determined eligible for special education services under IDEA.

**I. CLASS CLAIMS ON BEHALF OF J. D., C. W., AND ALL SIMILARLY SITUATED AND TREATED EMOTIONALLY DISTURBED STUDENTS AND CLASS CLAIMS ON BEHALF OF D. K. AND ALL SIMILARLY SITUATED SPECIAL EDUCATION STUDENTS WHO MANIFEST BEHAVIORAL ISSUES AND ARE SUBJECT TO REPEATED DISCIPLINARY REMOVALS TOTALING MORE THAN TEN SCHOOL DAYS (INCLUDING IN-SCHOOL SUSPENSIONS, OUT-OF-SCHOOL SUSPENSIONS AND UNDOCUMENTED, ILLEGAL REMOVALS FROM SCHOOL- “COOL OFF REMOVALS”) AND/OR PLACEMENT IN ALTERNATIVE SCHOOL SETTINGS IN THE CALCASIEU PARISH PUBLIC SCHOOL SYSTEM:**

- **Denial of FAPE: Failure to Provide Sufficient Related Services**
- **Denial of FAPE: Failure to Provide Educational Services in the Least Restrictive Environment**
- **Denial of FAPE: Failure to Comply with IDEA’s Discipline Regulations**
- **Denial of FAPE: Failure to Confer Meaningful Educational Benefit**
- **Denial of FAPE: Failure to Provide Necessary and Appropriate Transition Services**

Petitioners contend that CPPSS has engaged in an ongoing and systemic pattern of violating their substantive and procedural rights under IDEA, and those of similarly situated Special Education Students, including Emotionally Disturbed students and all other special education students who manifest behavioral issues and are subject to repeated disciplinary removals totaling more than ten school days (including In-School Suspensions, Out-of-School Suspensions or undocumented, illegal removals from school- “cool off removals”) and/or placement in alternative school settings in CPPSS, resulting in a denial of Free and Appropriate Public Education [hereinafter FAPE].

**A. CPPSS Has Failed to Provide Sufficient Related Services**

CPPSS has denied Petitioners D., W., and all other similarly situated Emotionally Disturbed students FAPE by failing to provide specialized instruction and related services that address the inherent behavioral characteristics and issues associated with the classification of Emotional Disturbance and which adversely affect such students’ educational performance. *See* 20 U.S.C. § 1401 (26) (A), § 1412 (a)(1), § 1414 (d); 34 C.F.R. § 300.34, § 300.101, § 300.320-328; Bulletin 1706, Subpart A § 101, § 440-446. Specifically, CPPSS has furnished Petitioners and all other similarly situated students with woefully inadequate levels of social work, counseling, and psychological services, *if any services at all*. Moreover, the provision of related services appears unrelated to the students’ individual needs and are instead either non-existent or cookie-cutter in nature and based upon the limited availability of CPPSS personnel at any given school. Similar violations were documented during the Louisiana Department of Education’s On-Site Compliance Visit in November 2004. A review of 47 of 61 records of students with Emotional Disturbance revealed that the students were not receiving counseling services from the school system, nor were counseling services documented on the students’ IEPs. Although a Corrective Action Plan was developed in June 2005 to address CPPSS’s non-compliance, it is evident that

CPPSS continues to engage in systemic violations of IDEA by failing to provide appropriate related services to students with Emotional Disturbance.

Petitioner D. was placed in a highly restrictive self-contained setting immediately upon being classified as emotionally disturbed during the 2004-2005 school year, and yet has not been provided any related services for the past three years. Despite his ED classification and multiple suspensions and removals from school, CPPSS has *never* included the provision of any social work, psychological or counseling related services on petitioners IEP in order to address obvious behavioral concerns and to enable him to return to a less restrictive setting where he could access the general curriculum and work toward his IEP goals and objectives. The lack of related services has effectively denied him an opportunity to avoid repeated disciplinary removals from school and the opportunity to return to a less restrictive setting.

Petitioner W., who is also classified as a student with emotional disturbance, spent significant periods of time during the 2005-2006 and the 2006-2007 school years in an alternative school or on homebound instruction. He was subject to multiple disciplinary suspensions and removals for his behavior from his regular school as well as from the alternative school. Despite these circumstances, Petitioner W. received *no related services* during either school year, nor is he receiving related services upon his return this year to the regular education setting. Consequently, the failure of CPPSS to provide Petitioner W. with any related services can only be explained by the district's profound indifference to the petitioner's specific needs.

CPPSS has also denied FAPE to Petitioner K. and all other similarly situated students with disabilities who manifest behavioral issues and have been subject to repeated disciplinary removals totaling more than ten school days and/or placement in CPPSS's alternative school due to behavior/discipline issues by failing to provide specialized instruction and the appropriate levels of related services (such as social work, counseling, and school psychological services) necessary to address this class of students' behavioral challenges.

Petitioner K. was subject to repeated disciplinary removals during the 2005-2006 and the 2006-2007 school years. Although he was repeatedly removed due to his behavior, Petitioner K.'s IEP, like Petitioners D. and W., indicates that *no social work or counseling services* were provided during the 2006-2007 school year. Petitioner K. is only currently receiving 30 minutes once a week of social work services for the 2007-2008 school year. In addition, Petitioner K. was moved from a regular education setting to a "maximum resource" setting during the 2006-2007 school year without any increase in his related services prior to his placement in this more restrictive setting.<sup>1</sup> CPPSS has provided Petitioner K. with woefully inadequate levels of related services such as social work and counseling and consequently has failed to appropriately address his behavioral challenges, denying him the opportunity to avoid repeated disciplinary removals from school.

CPPSS's failure to provide sufficient related services (and in a number of instances *no related services*) in light of the disciplinary referrals and behavioral issues that led to petitioners being

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<sup>1</sup> At an IEP meeting held on September 20, 2007, at which Petitioner K. was represented by counsel, he was moved from a "maximum resource" setting back to a regular education setting.

repeatedly suspended and/or subject to undocumented, illegal removals from school (cool-off removals) or assigned to an alternative school clearly manifests that the provision of related services in CPPSS bears no relationship to the actual individual needs of petitioners or students similarly situated, and is instead cookie-cutter in nature and based upon the limited availability of such personnel at any given school. Despite the above circumstances for each of the petitioners, the amount of related services provided has no discernable relation to any of the petitioners' behaviors or restrictive placements. This is a pervasive CPPSS failure that is true for all similarly situated students. Consequently, the ongoing and systemic pattern of inadequate related service provision has resulted in the denial of FAPE for the petitioners and for all those similarly situated. *See* 20 U.S.C. § 1401 (26) (A), § 1412 (a)(1), § 1414 (d); 34 C.F.R. § 300.34, § 300.101, § 300.320-328; Bulletin 1706, Subpart A § 101, § 440-446.

**B. CPPSS Has Failed to Provide Educational Services in the Least Restrictive Environment**

CPPSS has denied FAPE to Petitioners D., W., and all other similarly situated students with Emotional Disturbance and to Petitioner K. and all other similarly situated special education students who manifest behavioral issues and are subject to repeated disciplinary removals by failing to provide them educational services in the Least Restrictive Environment (LRE) as required by IDEA.<sup>2</sup> *See* 20 U.S.C. § 1412 (a) (5); 34 C.F.R. § 300.114-117; Bulletin 1706, Subpart A § 446, 448.

Petitioner D., an African-American student, has been in a self-contained setting since being evaluated and classified as a student with Emotional Disturbance during the 2005-2006 school year. At this time, he was removed from his placement in the regular classroom at his neighborhood school, Fairview Elementary, to a self-contained classroom at Brentwood Elementary. During the 2005-2006 and the 2006-2007 school years, CPPSS failed to provide Petitioner D. with access to the general education setting for any academic subject. CPPSS's decision to place Petitioner D. in a self-contained setting immediately upon classifying him as Emotionally Disturbed is clear evidence that no attempt was made to provide sufficient related

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<sup>2</sup> Moreover, it bears emphasis that CPPSS's 2005-06 Performance Profile as reported by the Louisiana Department of Education indicates that there is a significant disparity/disproportionality in the racial and ethnic composition of self-contained placements in Calcasieu Parish. Specifically, 38.54% of the special education student population in CPPSS is African-American; however, 50.10% of African-American students are placed in a self-contained setting. Thus, the rate of African-American students being placed in self-contained settings is approximately 130% of their representative proportion of the student population which constitutes a significantly disproportionate rate. Conversely, white students are significantly under-represented in self-contained placements in CPPSS. Although white students comprise 59.74% of special education students, only 48.54% of white students are placed in self-contained settings. The result is that white students are placed in self-contained settings at approximately 81% of their representation in the student population. The significant disparity between the rates of African-American students and white students placed in self-contained settings in Calcasieu Parish is profound and indefensible. It can only be explained by a systemic and illegal attempt to segregate students not only based upon their disability, but based upon their race. The district's over-representation of African American students in self-contained settings is clearly indicative that a student's race, rather than his or her unique needs, is motivating placement determinations. CPPSS's failure to consider each student's individualized needs constitutes a denial of FAPE in violation of IDEA. 20 U.S.C. § 1400 (d) (1); 34 C.F.R. § 300.1(a).

services, supplementary aids and services and/or curriculum modifications in the regular education setting so that he could remain in some of his core academic classes. CPPSS also failed to pursue any number of strategies that would have allowed Petitioner D. to continue accessing general education classes, including: the use of paraprofessional aides and/or the use of special education teachers in general education settings; modifications of the curriculum; provision of increased related services from social workers or school psychologists; school-wide and classroom based positive behavioral support plans; and peer supports, coaching, and/or peer tutoring. Instead of implementing any of these prior to removing Petitioner D. from regular education, CPPSS chose to segregate Petitioner D. in a highly restrictive self-contained setting. Moreover, at no point did CPPSS provide any cogent justification or reasoning for its determination that Petitioner D. was capable of functioning in a regular education setting for ancillary subjects such as Physical Education and other non-academic electives but not for academic subjects. Similar systemic violations were documented during the Louisiana Department of Education's On-Site Compliance Visit in November 2004. Interviews with school personnel and a review of teachers' lesson plans indicated that modifications such as those listed above were not being provided in regular classroom settings. Although a Corrective Action Plan was developed in June 2005 to address CPPSS's non-compliance, it is evident that CPPSS continues to engage in systemic violations of IDEA by failing to provide appropriate supplementary aids and services and/or curriculum modifications in the regular education setting so that Petitioners and those similarly situated may return to a less restrictive environment.

Petitioner W. is an African-American student who was not only in a self-contained setting, but placed at the alternative school and subsequently on homebound services for the 2006-2007 school year. Moreover, during the entire month of February 2007 he was placed in an isolation room at the alternative school with no interaction whatsoever with his peers. Petitioner W.' placement was changed in April 2007 from the alternative school to homebound services, the most restrictive setting on the placement continuum, with no rational justification or reasoning listed on the IEP. As with Petitioner D., CPPSS made no effort to provide Petitioner W. with related services, supplemental aids or services and/or curriculum modifications to enable him to participate in the general education curriculum. Furthermore, CPPSS has returned Petitioner W. to the general education setting for the 2007-2008 school year without providing him any related services, or supplemental aids or services to ensure a successful transition.

Petitioner K., a bi-racial student, was moved from the general education setting to a "maximum resource" placement during the beginning of the 2006-2007 school year. Prior to moving him to a more restrictive setting, CPPSS made no effort to increase his related services or to provide him with any of the above listed supplemental aids and services to enable him to access the general education curriculum. In light of the change of placement to a more restrictive setting, CPPSS should have provided Petitioner K. with increased related services as well as supplemental aids and supports prior to his removal from general education. Such services should have also been provided after his removal to a more restrictive environment. At an IEP meeting held on September 20, 2007, at which Petitioner K. was represented by counsel, he was moved from a "maximum resource" setting back to a regular education setting, however, his supplemental aids and supports remain the same.

CPPSS's placement decisions with respect to the petitioners and all those similarly situated violate IDEA's mandate that, to the maximum extent possible, students with disabilities be educated in the least restrictive environment. *See* 20 U.S.C. § 1412 (a) (5); 34 C.F.R. § 300.114-117; Bulletin 1706, Subpart A § 446, 448. There is no evidence in any of the petitioners' records that CPPSS ever attempted to increase the amount of counseling, social work, or psychological services or implement any of the previously described supplemental aids and services in order to enable petitioners to access and succeed in a less restrictive general education setting. This reflects CPPSS's *systemic* failure to provide the appropriate supplemental aids and services, accommodations, supports, and modifications necessary to enable the petitioners and similarly situated students to participate in general education. Such failures constitute clear violations of IDEA's LRE mandate. 20 U.S.C. § 1412 (a) (5); 34 C.F.R. § 300.114-117; Bulletin 1706, Subpart A § 446, 448.

### **C. CPPSS Has Violated IDEA's Discipline Provisions**

CPPSS has further denied Petitioners and all other similarly situated students FAPE by violating IDEA's discipline provisions involving students with disabilities who have been removed from their educational placement for more than 10 school days in a school year. These provisions require CPPSS to conduct Manifestation Determination Reviews within 10 days of the change of placement; to provide on-going educational services that enable students with disabilities to continue to participate in the general education curriculum and to progress toward meeting the goals set out in their IEPs; to have IEP committees conduct appropriate functional behavioral assessments; and to draft, review, or modify as necessary behavior intervention plans that also include positive behavioral interventions, strategies, and supports. *See* 20 U.S.C. § 1415 (k) (1) (A)-(H); 34 C.F.R. § 300.121; 34 C.F.R. § 530-536; Bulletin 1706, Subpart A § 519. At all times relevant to this administrative complaint, CPPSS has failed to comply with all of these IDEA requirements.

Petitioner D.'s case reflects many of the illegal disciplinary practices perpetrated by CPPSS. Petitioner D. was formally suspended at least three times for a total of seven days from Brentwood Elementary School during the 2006-2007 school year; however, Petitioner D.'s grandmother and legal guardian reports that there were additional removals from school and out-of-school suspensions where they received no justification for the suspension and no paperwork from the school. In addition to these formal suspensions, Petitioner D.'s grandmother is frequently called to the school to pick him up and bring him home for a "cool off" day. These informal, undocumented and illegal removals from school (and which constitute suspensions under IDEA) occurred during the 2006-2007 school year an average of two to three times a week. She was never given any sort of documentation or reason for these informal "cool off" removals. Moreover, cool-off removals represent a pervasive disciplinary practice throughout the CPPSS.

CPPSS is currently engaging in similar practices for the 2007-2008 school year. Petitioner's grandmother reported that Petitioner D. has already been suspended two times for a total of six

days this school year.<sup>3</sup> She has not been provided any sort of documentation or justification for these removals in spite of her multiple attempts to contact the school administration. Although Petitioner D. was removed from school during the 2006-2007 school year well over 10 cumulative school days, there is no record that CPPSS has ever conducted a Manifestation Determination Review, nor have they provided the petitioner with any educational services during these illegal removals that allow him to continue to work toward his IEP goals and objectives. Furthermore, there is no record that CPPSS has conducted a functional behavioral assessment for Petitioner D. and his Behavior Intervention Plan has not been revised since the 2005-2006 school year.<sup>4</sup>

Petitioner W. was suspended from school for a recorded total of 15 days for offenses such as disobedience, cursing, leaving class, and being disrespectful to the faculty. He received at least an additional six days of in-school-suspensions for similar offenses. As previously noted, CPPSS did not revise his IEP to include any counseling or social work related services, did not revise his behavioral goals, and did not revise his Behavior Intervention Plan. CPPSS's failure to revise Petitioner W.'s behavior plan in light of its obvious failure and in light of Petitioner's ED classification is evidence of the district's failure to follow the discipline regulations. In October 2006, he was suspended indefinitely to the alternative school as a result of his numerous referrals for leaving class and general disobedience. Prior to Petitioner's placement in the alternative school, a Manifestation Determination Review was conducted, the IEP committee determined that Petitioner W.' behavior was a manifestation of his disability, and yet he was still removed from LaGrange High School and sent to the Career Center, CPPSS's alternative school, indefinitely. Such action was patently illegal. Upon finding that the behavior was a manifestation of his disability, the contemplated action of moving the petitioner to the alternative school was in direct violation of IDEA. Petitioner's mother was threatened and coerced by the school administration that if she did not agree to the removal, that the administration would fabricate a claim that Petitioner W. made a bomb threat toward the school. An indefinite removal to an alternative educational setting is contrary to IDEA and the federal and state regulations. Petitioner W.'s preceding referrals did not involve weapons, drugs, or serious bodily injury. IDEA does not permit this severe a penalty for minor offenses; major offenses involving weapons, drugs, and serious bodily injury only warrant a 45 day suspension to an alternative educational setting. 20 U.S.C. § 1415 (k) (1) (G); 34 C.F.R. § 300.530 (g); Bulletin 1706, Subpart A § 519 (B) (2). Petitioner W.' indefinite removal from his general education setting was unwarranted and illegal. He was subsequently placed in isolation for over a month at the alternative school, and then placed on homebound services for the remainder of the school year.

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<sup>3</sup> Petitioner D.'s grandmother reports that Petitioner was given an out-of-school suspension for August 21-22, 2007 and for September 11-14, 2007. She has not received any documentation of the suspensions nor has she been provided with a reason for the suspensions. She was simply told by the office personnel at Brentwood Elementary School that Petitioner D. was suspended and unable to return to school during that time.

<sup>4</sup> Petitioner D.'s records indicate that a Behavior Intervention Plan was completed on February 2, 2007, however, the plan is identical to the one developed during the 2005-2006 school year. There were no modifications to the plan, and there was no indication that the school increased Petitioner D.'s supports or accommodations in response to his perpetual suspensions and removals from school.



These considerable and numerous violations of IDEA's discipline provisions have ultimately resulted in a denial of FAPE for Petitioner W..

CPPSS has similarly violated IDEA's disciplinary provisions in the case of Petitioner K. In addition to two formal suspensions from school during the 2006-2007 school year, Petitioner K. was subject to at least eight informal, undocumented and illegal "cool off" removals from Gillis Elementary School.<sup>5</sup> Petitioner's mother was called by the school on multiple occasions and told to pick Petitioner up for the day due to his behavior. No educational service was provided during these illegal removals from school, nor was Petitioner K.'s behavior plan modified. Concurrent with these repeated removals from the academic environment, CPPSS eschewed compliance with IDEA's discipline procedures and protections: CPPSS did not conduct any Manifestation Determination Reviews in accordance with the law for Petitioner K. despite the fact that he was removed from school well over the 10 cumulative days, nor did it provide him with educational services as required under IDEA. 20 U.S.C. § 1415 (k) (1) (D); 34 C.F.R. § 300.530 (d); Bulletin 1706, Subpart A § 519 (E) (1).

CPPSS has denied petitioners and those similarly situated their substantive and procedural rights mandated by IDEA regarding the discipline of students with disabilities, resulting in a denial of FAPE. The circumstances of the above petitioners indicates that CPPSS has established a pattern and practice of illegally removing students with behavioral challenges from their placements and sending them home and/or to the alternative school, and/or to self-contained settings without the provision of educational or related services to allow them to continue to participate in the general curriculum and to meet their IEP goals and objectives.

#### **D. CPPSS Has Failed to Confer Meaningful Educational Benefit**

CPPSS has denied Petitioner D. and all other similarly situated students FAPE by failing to confer meaningful educational benefit as required by IDEA. The pervasive reality for a significant portion of Emotionally Disturbed students across CPPSS is that even though they are of average intelligence, by the time they reach Junior High School, they are typically performing years behind their chronological grade level and that of their peers. One result is that Emotionally Disturbed students are typically placed in restrictive self-contained settings and this greatly reduces the proportion of these students receiving a high school diploma.<sup>6</sup> This reality reflects an obvious and systemic practice of providing inappropriate special education and

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<sup>5</sup> Petitioner K.'s mother made notes in her calendar of a few of the dates that she was called by the school to pick up her son (D. K.) from school. Some of the dates were: 9/7/06; 9/14/06; 10/16/06; 10/17/06; 10/30/06; 11/17/06; 11/27/06; 11/28/06.

<sup>6</sup> The high school graduation and drop out rates for students with disabilities in CPPSS is questionable because of a flaw in the data reported to the State. In the 2005-2006 Performance Profile of CPPSS, the exiting data is suspect because the percentage of special education students who obtain a high school diploma, earn a GED and/or Skills Option, earn a Certificate of Achievement, or drop out only adds up to approximately 64% of the special education population. This leaves 36% of the special education student population unaccounted for by the district. Thus, CPPSS is unable to accurately account for the nature in which a large portion of their students with disabilities exited the school system.

related services to Emotionally Disturbed students. This is particularly true with Petitioner D., as he is already several years behind his non-disabled peers.

Consistent with the policies and practices reflected throughout the district, Petitioner D. has not been able to make any meaningful academic and non-academic (behavioral) progress for the past several years due to CPPSS's failure to provide appropriate special education and related services. Petitioner D.'s Curriculum Based Assessment indicates that he is between the first and second grade level for reading and listening comprehension and in the second grade level for math. As a fourth grade student he is already functioning two to three years behind grade level in all subjects. The petitioner was placed in a self-contained classroom immediately upon classification as a student with Emotional Disturbance and has had little or no access to the general education curriculum. CPPSS's failure to provide appropriate educational and related services for Petitioner D. and other similarly situated students has resulted in the denial of an education that confers meaningful educational benefit as required under IDEA. *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); 34 C.F.R. § 300.39 (b)(3)(ii); Bulletin 1706, Subpart A § 444.

#### **E. CPPSS Has Failed to Provide Necessary and Appropriate Transition Services**

CPPSS has denied Petitioner W. and all other similarly situated students 16 years of age and older FAPE by failing to provide the necessary and appropriate transition services that will prepare these students for employment, post-secondary education, vocational training, and/or independent living as required by IDEA. Specifically, CPPSS has failed to provide timely transition services that account for and consider the particular student's unique strengths, preferences, and interests. Moreover, Petitioner W. and other similarly situated students' IEP objectives are not derived from, directly related to, nor indicative of the outcome/action steps listed on the Transition Services Form of the IEP. *See* 34 C.F.R. § 300.43; Bulletin 1706, Subpart A, § 444 (M). Similar violations were reported during the Louisiana Department of Education's On-Site Compliance Visit in November 2004. A review of student records revealed that IEPs did not include a statement of the transition service needs of the students under the applicable components of the students' IEP that focuses on the students' course of study and a statement of needed transition services and needed linkages. The monitoring team also found that transition plans were written identically from year-to-year, and that the services were not adequate to insure that students transition to post-secondary settings. Although a Corrective Action Plan was developed in June 2005 to address CPPSS's non-compliance, it is evident that CPPSS continues to engage in systemic violations of IDEA by failing to provide appropriate transition services.

Although he has been eligible for transition services since the 2005-2006 school year, Petitioner W. was not provided any sort transition service plan from CPPSS until his most recent IEP in May 2007. While a transition plan was included in the IEP, it failed to incorporate Petitioner W.'s preferences, interests, or plans following the completion of high school. Moreover, the transition services listed were cookie-cutter in nature and not specific to Petitioner W.'s unique strengths, abilities, and interests. For example, Petitioner W. has expressed an interest in pursuing a post-secondary education and a career in mathematics, yet his transition service plan

lacked specific action steps for him to pursue these interests. Petitioner's mother reports that Petitioner W. has not received any guidance or assistance from CPPSS on how to pursue a post-secondary education nor have they provided assistance in assessing relevant independent living skills. Furthermore, there is little or no nexus between Petitioner W.'s transition plan and his IEP goals and objectives. Accordingly, CPPSS's failure to provide Petitioner W. and all other similarly situated students the necessary and appropriate transition services to prepare them for further education, employment, and independent living as required by IDEA has denied these students FAPE.

#### **F. Systemic Remedies Necessary to Settle This Class Complaint**

The Louisiana Department of Education will need to ensure that the following actions are taken to redress CPPSS's prolific systemic IDEA violations as described in this class administrative complaint:

1. Appoint a Special Master to redress the allegations in this Complaint, many of which reflect ongoing systemic IDEA violations that were identified by LDE in 2004 and which still have not been corrected three years later.
2. Ensure the Special Master develops and implements a systemic Positive Behavioral Intervention and Supports (PBIS) training program/protocol that shall include but not be limited to strategies, objectives, and timelines for students with disabilities related to: implementation of district-wide and school-wide PBIS; the development of Functional Behavioral Assessments (FBAs); the development and implementation of Behavior Intervention Plans involving the use of PBIS; 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 that 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 above-designated schools. The Special Master shall have the authority to contract with a nationally recognized expert in PBIS to assist with designing and implementing the above PBIS Training Program.
3. Ensure the Special Master conducts within 60 days of his/her appointment a review/audit of CPPSS's Special Education programs for students with Emotional Disturbance and all other students with disabilities who manifest behavioral issues and are subject to repeated disciplinary removals and/or placement in alternative school settings in the Calcasieu Parish Public School System and to issue a report with specific recommendations for systemically addressing these students' behavioral programming needs.
4. Ensure the Special Master in conjunction with CPPSS develops specific school system policies that are disseminated 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; provision of IEP services upon reaching the 11<sup>th</sup> 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; elimination of illegal and undocumented “cool-off” removals; provision of due process rights (including written notice of and justification for the removal) for parents and students upon suspension from school;

5. Ensure the Special Master creates and implements a reliable central administrative electronic tracking system for recording the number of disciplinary referrals and removals from school for special education students in CPPSS;
6. Ensure the Special Master develops and implements specific strategies and objectives for significantly reducing the number of suspensions of students with disabilities;
7. Ensure the Special Master develops and implements specific annual strategies and objectives for significantly reducing the number of Emotionally Disturbed students and special education students who manifest behavioral issues who are placed in self-contained classroom settings and concomitantly significantly increasing these students’ access to the general education curriculum/classrooms over the next three to four years;
8. Ensure the Special Master compels CPPSS to place certified special education teachers in its self-contained classrooms and in its alternative schools, and compel CPPSS to provide all IEP services at its alternative schools;
9. Ensure the Special Master develops and implements specific strategies and objectives, to significantly increase the frequency and duration of social work/counseling/psychological related services provided to Emotionally Disturbed students and all other students who are subject to repeated disciplinary removals and/or placement in alternative school settings in CPPSS and also ensure decisions involving such related services are based upon individual need and not staff availability;
10. Ensure the Special Master develops specific strategies and objectives for implementing intensive reading/math remediation programs at all elementary schools serving Emotionally Disturbed students to ensure that they are reading at or within one year of chronological grade level by the time they move onto junior high school; and ensure the Special Master develops and implements reading/math remediation strategies for Emotionally Disturbed students who are determined to be three years or more behind their chronological grade level in junior high school or high school based on either standardized test scores and/or curriculum based assessments.
11. Ensure the Special Master develops and implements a district-wide training initiative involving all junior high school and high school counselors, special education coordinators, and a “lead” special education and regular education teacher at each of these schools regarding post-secondary education preparation as well as vocational courses/programs available in the district, and addressing the admission criteria for these

programs, their availability to students with disabilities, and the responsibility of these programs to provide IEP services including implementation of student BIPs.

## **II. CLASS CLAIM ON BEHALF OF ALL SPECIAL EDUCATION STUDENTS IN THE CALCASIEU PARISH PUBLIC SCHOOL SYSTEM:**

- **Denial of FAPE: Uniformly Shortened School Day**

### **A. CPPSS Has Failed to Provide a Commensurate School Day**

Petitioners contend that CPPSS has engaged in an ongoing and systemic violation of the Individuals with Disabilities Education Improvement Act (IDEA) by failing to ensure a commensurate school day for all special education students in the Calcasieu Parish Public School System. CPPSS provides a school day for students with disabilities *across the district* that is *arbitrarily reduced* or shortened in comparison to the length of the school day for regular education students. IDEA was designed “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services.” 20 U.S.C. § 1400 (d) (1). IDEA goes on to define a free appropriate public education, in part, as “special education and related services that ... meet the standards of the State educational agency.” 20 U.S.C. § 1401 (9) (B). The length of the regular school day to which all students are presumptively entitled under state and federal law is established by statutory minimums which apply to both disabled and non-disabled students. The standards for Louisiana public schools are established in the Louisiana Revised Statutes and in the Louisiana Handbook for School Administrators, Bulletin 741. The Louisiana Revised Statutes specify that the length of a school day shall not be less than 360 minutes of instructional time, exclusive of recess, lunch, and teacher planning periods. La. Rev. Stat. 17:154.1 (A) (1). *See also* Bulletin 741, § 117 (A); § 705 (B). Federal regulations state that the term “school day” has the same meaning for all children in school, including children with and without disabilities. 34 C.F.R. § 11 (c) (2). CPPSS’s educational services fail to comply with the state and federal standards because CPPSS arbitrarily limits its school day for students with disabilities regardless of an individual student’s academic needs. Consequently, CPPSS’s policy and/or custom of arbitrarily reducing hours of school attendance for students with disabilities not only violates the statutory requirements of IDEA and applicable regulations, but also fails to provide equal treatment for all students.

CPPSS engages in a pervasive and systemic practice of providing shortened school days *to most if not all* students with disabilities in the district by transporting special education students home via school buses *at least 15-60 minutes prior* to the completion of the school day. Petitioners have gathered evidence from five schools in CPPSS documenting the early departure for special education students. At Henry Heights Elementary School, the special education buses departed from the campus at 1:59 PM despite the school’s scheduled dismissal at 2:50 PM (see attached Exhibit A). The special education students were loaded onto the buses approximately 10 to 15 minutes prior to this departure time. At Brentwood Elementary School, the special education students were loaded onto the buses at 2:36 PM despite the school’s scheduled dismissal at 2:50

PM (see attached Exhibit B). At F.K. White Middle School, the special education bus was photographed departing the campus at 2:37 PM despite the school's scheduled dismissal at 3:01 PM (see attached Exhibit C). The students were loaded onto the bus approximately 10 to 15 minutes prior to the 2:37PM departure time. At College Oaks Elementary School, the special education students were photographed being loaded onto the bus at 2:42 PM despite the school's scheduled dismissal at 3:00 PM (see attached Exhibit D). At Pearl Watson Elementary School, the special education students were loaded onto the bus at 2:30 PM despite the school's scheduled dismissal at 2:45 PM (see attached Exhibit E). Similar violations were found during the Louisiana Department of Education's On-Site Compliance Visit in November 2004. Six of nine schools visited by the monitoring team members revealed that school buses were picking up students with disabilities 45-60 minutes earlier than non-disabled students. Thus, the report confirmed that the total instructional day for students with disabilities was considerably shorter than that of regular education students. Although the subsequent Corrective Action Plan was developed to rectify the violation and compensate the affected students by September 2005, CPPSS continues to engage in discriminatory and pervasive violations of IDEA by arbitrarily shortening the school day for students with disabilities.

The determination of whether a student's school day is shortened or reduced and whether it is appropriate to do so, must depend on a fact-specific inquiry for each student with a disability and must involve the decision-making process of the IEP team as reflected in the IEPs. CPPSS has no legal justification for shortening or reducing the school days for special education students, and the decision to shorten or reduce school days is being made outside of the IEP process and is illegally rooted instead to an administrative policy or practice of general applicability. Specifically, CPPSS has denied all special education students appropriately individualized IEP services because its policies arbitrarily predetermine the duration of services during the school day. In the absence of any legal justification for such a blanket policy or practice, or express language in the relevant IEPs to explain and document the need for a reduced or shortened school day, CPPSS actions represent a structural or systemic failure to provide students with disabilities the individualized consideration and parental participation required under IDEA.

**B. Systemic Remedies Necessary to Settle This Class Complaint**

1. Compel CPPSS to immediately halt the practice and/or policy of providing shortened school days to all students with disabilities based upon considerations outside of the IEP process;
2. Compel CPPSS to provide equitable relief in the form of compensatory education for every special education student in the district for the missed/lost instructional time that resulted from being routinely subjected to shortened school days in the 2006-07 and 2007-08 school years.

**III. INDIVIDUAL CLAIM ON BEHALF OF J. D.:**

- **Denial of FAPE**

**A. CPPSS Has Failed to Provide FAPE to Petitioner J. D.**

The purpose of IDEA is “[t]o ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs...” 34 C.F.R. § 300.1 (a). CPPSS is in violation of IDEA by failing to provide any measure of a free and appropriate public education to Petitioner D.. In addition to the myriad systemic violations specified above, CPPSS is not providing Petitioner D. with even the most basic and fundamental tools necessary for him to receive FAPE.

Specifically, Petitioner D.’s self-contained ED classroom is located in the library of Brentwood Elementary School. Petitioner’s grandmother has been told by the school administration that there is no classroom available for these students. Thus, Petitioner D. and his nine classmates are forced to sit in the library all day with none of the resources and accommodations typically available in a traditional classroom setting. As a result, Petitioner D.’s placement in the library is in direct violation of his IEP, which states that petitioner’s environment should include minimal distractions and a predictable routine. Moreover, Petitioner D.’s self-contained ED class has no certified special education teacher. Two teaching aides uncertified and untrained in special education are currently providing the meager educational instruction. Not only are these teaching aides unable to adequately provide educational instruction, they are not capable of implementing Petitioner D.’s IEP. In addition to lacking classroom space and a special education teacher, Petitioner D.’s class lacks textbooks and other printed materials necessary for the students to participate in the curriculum. Any assigned work being provided by the teaching aides is done so via handwritten worksheets. The inadequacy of Petitioner D.’s placement and services continues to exacerbate his academic and behavioral deficiencies. Accordingly, CPPSS has denied Petitioner D. any opportunity to receive special education and related services designed to meet his unique needs. The district’s callous disregard for the most fundamental mandate of IDEA, that all children with disabilities be afforded a free appropriate public education, is evidenced by their failure to provide even the most essential and basic resources (classrooms, teachers, and textbooks) for educational instruction.

**B. Individual Remedies for J. D. Necessary to Settle This Complaint**

CPPSS will need to take the following actions to address J. D.’s individual claims in order to settle this administrative complaint:

1. Ensure that Petitioner D. and similarly situated students in the self-contained ED class at Brentwood Elementary School are placed in a designated classroom for educational instruction and that they are provided with the textbooks and printed materials necessary to participate in the curriculum;
2. Ensure that Petitioner D. and similarly situated students in the self-contained ED class at Brentwood Elementary School are afforded academic instruction by a certified special education

teacher who is capable of implementing the petitioner's IEP and those of the other special education students in the classroom;

3. Provide after school one-to-one tutoring to Petitioner D. for a period of two months to compensate him for the denial of FAPE during the 2007-2008 school year.

#### **IV. SECTION 504 COMPLAINT ON BEHALF OF J. D.:**

- **Discrimination on the Basis of Disability: Failure to Provide Comparable Facilities**

##### **A. CPPSS Has Failed to Provide Comparable Facilities in the Educational Setting**

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability in programs or activities that receive federal financial assistance from the U.S. Department of Education. CPPSS has engaged in an ongoing violation of Section 504 by discriminating against students with disabilities in failing to provide them with facilities comparable to those students without disabilities. 29 U.S.C. § 794, Sec. 504. Specifically, Section 504 states that “[i]f a recipient [CPPSS] ... operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.” 34 C.F.R. § 104.34 (c).

CPPSS has discriminated against Petitioner D. and those students in the self-contained ED class at Brentwood Elementary School on the basis of their disability by providing them with facilities, services, and activities that are not comparable with those of regular education students. As described in detail above, Petitioner D.'s self-contained ED classroom is located in the library of Brentwood Elementary School because there is no classroom available for the students. Petitioner D. and his nine classmates are forced to sit in the library all day with none of the resources and accommodations available to non-disabled students in traditional classroom settings at Brentwood Elementary. Moreover, Petitioner D.'s self-contained ED class has no certified special education teacher. Two teaching aides uncertified and untrained in special education are currently providing the meager educational instruction. In addition to lacking classroom space and a special education teacher, Petitioner D.'s class lacks textbooks and other printed materials necessary for the students to participate in the curriculum. Any assigned work being provided by the teaching aides is done so via handwritten worksheets. They are the only classroom of students at Brentwood Elementary School subject to these conditions. Consequently, the facilities, services, and activities provided to this classroom of students with disabilities is not comparable in any way to those of non-disabled students at the school. This patent discrimination against students with disabilities by CPPSS is in direct violation of Section 504 of the Rehabilitation Act.

##### **B. Remedies Necessary to Settle This Complaint**



CPPSS will need to take the following actions to remedy the discrimination against Petitioner J. D. alleged in the Section 504 Complaint:

1. Ensure that Petitioner D. and similarly situated students in the self-contained ED class at Brentwood Elementary School are placed in a designated classroom for educational instruction and that they are provided with the textbooks and printed materials necessary to participate in the curriculum;
2. Ensure that Petitioner D. and similarly situated students in the self-contained ED class at Brentwood Elementary School are afforded academic instruction by a certified special education teacher who is capable of implementing the petitioner's IEP and those of the other special education students in the classroom;
3. Provide after school one-to-one tutoring to Petitioner D. for a period of two months to compensate him for the denial of FAPE during the 2007-2008 school year.

Sincerely,

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