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VIA FACSIMILE

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ATTN: Legal Division
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Re: Request for an Administrative Due Process Hearing Involving James T., Glenn D., Keneisha S. and a Class of All Similarly Situated and Treated Students with Emotional Disturbance in the Jefferson Parish Public School System.

I. Glenn D.

II. Keneisha S

III. James T.

Dear Ms. Beridon,

On behalf of Glenn D., Keneisha S. and James T.(hereinafter, Petitioners), and a class of similarly situated and treated students with emotional disturbance in Jefferson

Parish School System (hereinafter JPSS), the undersigned counsel are filing this Class Due Process Complaint versus the Louisiana Department of Education and the Louisiana Board of Elementary and Secondary Education. Petitioner Glenn D. is a student who attends ----- --. At all times relevant to this complaint he has been determined eligible for special education services under the Individuals with Disabilities Education Act (hereinafter IDEA), 20 U.S.C. § 1401 *et seq.* Petitioner Keneisha S. is a student who attends----- . At all times relevant to this complaint she has been determined eligible for special education services under IDEA. Petitioner James T. is a student who attends----- . At all times relevant to this complaint he has been determined eligible for special education services under IDEA.

Petitioners contend that the Louisiana Department of Education (hereinafter LDE) has failed to comply with its general supervisory responsibilities under IDEA by failing to identify and to ensure Jefferson Parish School System (hereinafter JPSS) eliminates numerous systemic and pervasive violations of IDEA involving students with emotional disturbance. As detailed below, Petitioners contend that JPSS has engaged in an ongoing and systemic pattern of violating theirs as well as similarly situated Emotionally Disturbed (hereinafter ED) students substantive rights under IDEA resulting in a denial of a Free Appropriate Public Education (hereinafter FAPE), and the denial of placement in the Least Restrictive Environment and that LDE has violated Petitioners and all other similarly situated ED students rights under IDEA by failing to ensure that JPSS eliminates these violations and complies with IDEA. LDE's failure to comply with its general supervisory responsibilities under IDEA has denied petitioners and all similarly situated Emotionally Disturbed students in JPSS FAPE and also their right to placement in the Least Restrictive Environment.

Petitioners specifically contend that LDE has failed to fulfill its general supervisory responsibilities under IDEA by failing to appropriately monitor, identify and/or compel JPSS to eliminate numerous systemic violations of IDEA involving Emotionally Disturbed students. More than thirty years after the enactment of IDEA, LDE bears joint and ultimate responsibility for JPSS' pervasive noncompliance with IDEA. See 42 U.S.C. § 1412(a) (11); 34 C.F.R. §300.600. JPSS's systemic violations of IDEA include, but are not limited to the following:

1. JPSS has denied Petitioners and all other similarly situated and classified Emotionally Disturbed students FAPE by its failure to provide specially designed instruction and related services that address the inherent behavioral characteristics and issues associated with the classification of Emotionally Disturbed and which adversely affect such students' educational performance.
JPSS has consistently failed to provide Petitioners and all other similarly situated ED students with appropriate behavior management plans which include both specialized instruction and sufficient and necessary related services such as social work, counseling, and school psychology services tailored to address identified behavioral issues that adversely affect their education. Indeed JPSS has furnished Petitioners and all other similarly situated Emotionally Disturbed students with woefully inadequate levels of

social work\counseling\psychology services....levels that are unrelated to their individual needs but instead are cookie-cutter in nature and based upon the limited availability of such personnel at any given school.

JPSS has also denied Petitioners and other similarly situated ED students FAPE by its consistent failure to provide specially designed instruction and related services that are related to and address present levels of performance. JPSS has regularly drafted IEPs that are unrelated to and often ignore present levels of performance for Petitioners and other similarly situated ED students. This has often resulted in Petitioners and other similarly situated ED students being taught at inappropriate frustration levels, which in turn has engendered behavioral manifestations that lead to disciplinary action.

See 42 U.S.C. § 1401 (8), §1412 (a) (1), § 1414(d); 34 C.F.R. §300.13, §300.121, §300.340-350; Bulletin 1706, Subpart A § 101, §440-446.¹

2. JPSS has further denied Petitioners and all other similarly situated ED students FAPE by providing Petitioners and these students with an education that has failed to confer meaningful educational benefit as required by IDEA. Petitioners have not been able to make any meaningful academic and in many cases non-academic (behavioral) progress for the past several years due the denial of FAPE outlined in Paragraph #1 above. The pervasive reality for ED students across JPSS is that even though they are of average intelligence, by the time they reach Junior High or High School age, they are typically performing years behind their chronological grade level and their peers. One result is that ED students are typically placed in restrictive self-contained settings (See Paragraph #4) and this leads to an almost non-existent High School Diploma rate for such students, which is the ultimate evidence of lack of meaningful educational benefit. This reality reflects an obvious and systemic practice of providing inappropriate special education and related services to ED students. *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)

3. JPSS has further denied Petitioners, Glenn D, James T. and all other similarly situated ED students FAPE by its violations of 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 JPSS to conduct Manifest Determination Reviews; to furnish on-going educational services that enable students with disabilities to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the students IEPs; to have IEP

¹ LDE's IDEA violations as discussed *infra* involve 42 U.S.C. §1412 (a)(11); 34 C.F.R. § 300.128, §300.600; Bulletin 1706, Subpart A, § 301,302,340.

committees conduct appropriate functional behavioral assessments; and to draft, review, modify as necessary and implement behavior intervention plans that also include positive behavioral interventions, strategies and supports. *See* 20 U.S.C. § 1415 (k); 34 C.F.R. § 300.121(d) ; 34 C.F.R. § 519-526; *See also* 34 C.F.R. § 300.346 (a)(2), (d); Bulletin 1706 Subpart A § 519. At all times relevant, JPSS has failed to comply with these IDEA requirements.

Moreover, it bears emphasis that JPSS has consistently had the highest LEA out-of school suspension rate for students with disabilities in Louisiana. In 2001-2002, 29.30 % of students receiving special education services were subject to at least one out-of school suspension versus a statewide LEA average for special education students of 16.29%. JPSS rate was 180% of the state average and was also 2.96 times greater than the suspension rate for students without disabilities in the district. During the 2002-2003 school year JPSS out-of school suspension rate was 31.04% versus a state average of 16.44%. JPSS rate was 188% of the state average and was also 3.04 times greater than the suspension rate for students without disabilities in the district. During 2003-2004, JPSS out of school suspension rate was 29.26% versus a state average of 16.92%. JPSS rate was 173% of the state average and was 2.76 times greater than the rate for students without disabilities in the district. JPSS remarkably high and significantly disproportionate out-of school suspension rates the past several years reflect pervasive noncompliance with IDEA's disciplinary provisions and also raise the specter of pervasive discriminatory practices towards students with disabilities versus students without disabilities.²

4. JPSS has also violated IDEA by consistently failing to provide special education and related services to Petitioners and all other similarly situated ED students in the Least Restrictive Environment. Petitioners Glenn D. and Keneisha S. (and numerous other ED students) have spent several years in the most restrictive placement possible, John Martyn self-contained classes at ----. In these John Martyn classes, Petitioners have been deprived of any contact with their non-disabled peers. All of their courses are in these isolated, highly restrictive placements and they are also required to take lunch and recess in the same self-contained setting³. The multi-step or tri-level behavior management program implemented in JPSS' John Martyn classes violates IDEA's fundamental requirement of individualized educational programming for students with disabilities and further requires students to "earn the right" to

² Despite JPSS' stunning out-of school suspension rates for students with disabilities, LDE has neither monitored JPSS on this systemic issue nor has it compelled JPSS to revise its policies and procedures relating to the development and implementation of IEPs , the use of behavioral interventions and procedural safeguards to ensure the district complies with IDEA and the Children with Exceptionalities Act. LDE's violations as discussed *infra* involve 42 U.S.C. § 1412(a)(11), § 1412 (a)(22) ; 34 C.F.R. § 300.146 (a), (b), § 300.600; Bulletin 1706, Subpart A §301, 302, 340, 375.

³ The John Martyn class at ----is in a portable trailer that is separated from and sits behind the interconnected high school buildings. This class houses only ED students. The John Martyn class at ----- is a segregated locked classroom.

be in less restrictive settings. It goes without saying that students are entitled to placement in the least restrictive environment regardless of their performance in such multi-level programs. Petitioners placement in these highly restrictive John Martyn settings (known as the Most Restrictive Environment [MRE classrooms]) is a direct result of JPSS systemic failure to provide them and all other similarly situated ED students with FAPE as outlined in Paragraphs #1-3 above and it's failure to comply with IDEA requirements governing placement in the LRE.

Petitioner James T. has spent several years in JPSS in self-contained classroom settings. Petitioners T.'s repeated placement in highly restrictive self-contained settings is a direct result of JPSS's failure to provide him and other similarly situated ED students with FAPE as outlined in Paragraphs #1-3 above and its failure to comply with IDEA's requirements governing placement in the least restrictive environment. *See* 42 U.S.C. § 1412 (a)(5); 34 C.F.R. § 300.550-556; Bulletin 1706, Subpart A § 446,448.⁴

JPSS placed Petitioner KS in a more restrictive setting during the 2003-2004 school-year without first conducting a re-evaluation, or holding an IEP meeting with the required participants. Recently after returning from one semester in the St Tammany School District, JPSS also unilaterally placed Petitioner Thomas in a more restrictive setting without first conducting a re-evaluation, much less notifying Petitioner's T's mother and conducting a new IEP meeting. Petitioners assert that JPSS systemically violates the right of ED students by moving them to more restrictive environments without conducting re-evaluations or holding appropriately constituted IEP meetings.⁵ *See* 42 U.S.C. § 1414(f), § 1415(b),(c); 34 C.F.R. § 300.503 ; Bulletin 1706, Subpart A § 417A, § 431B3, § 504.

The above circumstances clearly reflect the following:

(a) There is little evidence much less any meaningful documentation that appropriate supplemental aids and services or accommodations are being furnished to ED students including Petitioners to enable them to participate in general education.

(b) Regular\General Education in JPSS simply does not welcome much less include ED students generally and there has been inadequate staff training regarding the types of supplemental aids, services, accommodations, supports, modifications and other teaching practices that would provide ED students with opportunities to participate and progress in the general curriculum. There

⁴ LDE's IDEA violations as discussed *infra* involve 42 U.S.C. § 1412 (a) (5), § 1412 (a) (11); 34 C.F.R. § 300.555, § 300.556, § 300.600; Bulletin 1706, Subpart A, § 301, § 302E.

⁵ Petitioners assert on information and belief that JPSS routinely moves students returning from the Department of Corrections juvenile justice training institutes to more restrictive settings without conducting re-evaluations or holding properly constituted IEP Team meetings.

has also been a woefully inadequate provision and use of Paraprofessional Aides, much less Special Education teachers with ED students in general education settings. Team or Co-teaching arrangements and coordination amongst General Education and Special Education teachers is essentially nonexistent in JPSS and this reality effectively denies students with disabilities and in particular, ED students, with opportunities to participate and progress in the general curriculum. General Education is not a place Special Education teachers work.

(c) Students with disabilities including ED students are moved to more restrictive environments in violation of the IDEA's requirements that supplemental aids, services, accommodations, and modifications are considered prior to any removal; that re-evaluations are conducted and IEP meetings are held prior to any removal.

(d) Petitioners and other similarly situated ED students often do not address general curriculum requirements in JPSS' self-contained classroom settings and thus they are provided with no meaningful opportunity to return to general education in the future. Consequently, their opportunity for obtaining a high school diploma has also been obviated.

(e) Special Education is still seen as a place rather than an array of services and supports for students with disabilities. This district philosophy has produced a self-contained class\setting placement rate for students with disabilities that currently is the highest in the state for any LEA. The self-contained rate in Jefferson Parish has been more than twice the state average for several years and is currently at 43% versus a state average of 22.3%. JPSS continues to place nearly one out of every two students with disabilities in self-contained settings and this number is much higher for ED students. This reality exists for students with disabilities in JPSS despite the fact that there are over 30 LEAs in Louisiana that have self-contained class placement rates of 15% or less and 24 of these districts have rates of 10% or less. This is not a question of coincidence or wherewithal, but rather JPSS' systemic, longstanding, and illegal segregationist practices involving students with disabilities. JPSS general education administration, including principals with site based administrative authority, does not believe students with disabilities belong in general education and this is proven by the district's self-contained placement rates and its systemic failure to provide appropriate supplemental aids and services, accommodations, supports and modifications necessary to enable students with \disabilities including ED students to participate in general education.⁶ See 42 U.S.C. § 1412 (a)(5); 34 C.F.R. §300.550-556; Bulletin 1706, Subpart A § 446,448.

⁶ LDE has long known of the JPSS' pervasive LRE violations and indeed has repeatedly cited the district in its compliance monitoring reports for systemic LRE violations. In fact LDE has itself identified all of the above factors as undermining students with disabilities fundamental rights to the provision of FAPE in the Least Restrictive Environment. Four years after LDE's last compliance monitoring of JPSS and well over a

5. JPSS has further denied Petitioners and other similarly situated ED students 14 years of age and older in Junior High School and High School FAPE by failing to provide necessary and appropriate transition services that will prepare them for employment and independent living as required by IDEA. Petitioners' and other similarly situated ED 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. Indeed, little or no nexus exists between students' transition plan and their IEP goals and objectives. Moreover, there is an utter absence of coordination between special education teachers, school administrators and personnel at JPSS' vocational training schools (eg. Cuiller Vocational School). Often the vocational schools do not have copies of students IEPs nor do they consider themselves bound to provide IEP services within the vocational programs offered. *See 34 C.F.R. § 300.29 ; 34 C.F.R. § 300.340-348 ; 34 C.F.R. § 300.347(b); Bulletin 1706, Subpart A § 444(m).*⁷
6. JPSS has denied Petitioners and other similarly situated ED students FAPE by systemically failing to comply with the procedural and substantive requirements governing the development and implementation of IEPs, specifically 34 CFR § 300.343, 344, 345 and 347 (a) (1), (2), (3), (7) (i) (ii).⁸
- 7.

Louisiana Department of Education's General Supervisory Responsibilities Under IDEA

LDE is jointly responsible for JPSS systemic violations of IDEA listed above. LDE bears ultimate responsibility for ensuring JPSS fully complies with IDEA, and in doing so, provides FAPE to all students with disabilities. LDE's responsibilities are clearly defined in IDEAs statutory and regulatory provisions as well as under Louisiana state law. These provisions are detailed below.

Congress enacted the IDEA to assure that all children with disabilities have available to them a Free Appropriate Public Education (FAPE). *See 20 U.S.C. § 1412.* Congress also placed the ultimate responsibility for compliance with IDEA on the State Educational Agency (SEA) , in this case the Louisiana Department of Education (LDE) declaring that for a state to receive federal IDEA funding, the SEA shall be responsible for ensuring (a) the requirements of the Act are met (b)that all educational programs for

decade since first identifying systemic LRE violations in JPPS, the systemic LRE violations outlined in Section #4 above have avoided correction and still persist. This reality reflects that LDE is in violation of 42 U.S.C. § 1412 (a)(5), § 1412 (a)(11); 34 C.F.R. § 300.555-556, § 300.600; Bulletin 1706, Subpart A, § 301, 302E. *See also, Corey H. v. Illinois Board of Education*, 995 F.Supp. 900, 904 (N.D.Ill. 1998).

⁷ LDE's IDEA violations as discussed infra involve 42 U.S.C. § 1412(A)(11); 34 C.F.R. § 300.128, § 300.600; Bulletin 1706, Subpart A § 301, § 302.

⁸ LDE's IDEA violations as discussed infra involve 42 U.S.C. § 1412 (a)(11); 34 C.F.R. § 300.128, § 300.600; Bulletin 1706 Subpart A § 301, 302.

students with disabilities are under the general supervision of individuals in the state who are responsible for the educational programs for children with disabilities (c)that these programs meet LDE’s educational standards. 20 U.S.C. §1412 (a)(11); 34 C.F.R. § 300.600. See also, *Corey H. Illinois State Board of Education*, 995 F. Supp. 900,904 (N. D. Ill.1998)⁹ As the SEA in Louisiana, LDE is the “central point of accountability” for ensuring compliance with IDEA by local educational agencies (LEAs). *Kruelle v. New Castle School District*, 642 F.2d 687696, 697 (3rd. Cir. 1981) citing S. Rep. No. 168, 94th Cong., 1st Sess.24, reprinted in 1975 U.S.Code Cong. & Admin.News 1425,1448.

LDE is required to implement policies and procedures to ensure that FAPE is available to students with disabilities between the ages of three and twenty-one, including students who have been suspended or expelled form school. 20 U.S.C.§ 1412 (a)(1)(A). FAPE is defined as special education and related services that;

- are provided at public expense, under public supervision, and without charge
- meet the standards of the SEA
- include an appropriate preschool, elementary or secondary school education
- are provided in conformity with the Individualized Education Program (IEP)

20 U. S.C. § 1401(8)

The IEP is a written document that is developed to meet the unique need of students with disabilities. The IEP is the primary means by which FAPE is provided to students with disabilities. 20 U.S.C. § 1401(8)(D), 20 U.S.C. § 1412 (a)(4). Due to the critical importance of the delivery of FAPE to students with disabilities, LDE is required to create standards and policies that regulate the development, implementation, review and revision of IEPs. LDE is also required to establish and notify the U. S. Department of Education of its procedures for monitoring and evaluating the IEPs of students with disabilities.34 C. F.R. §300.128 (b).

LDE must also ensure that “to the maximum extent appropriate, children with disabilities ...are educated with children who are not disabled, and special classes, separate schooling, or other removal of children from the regular educational environment occurs only when the nature and severity of the child’s disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. § 1412 (a)(5)(A). This IDEA mandate is known as the Least Restrictive Environment (LRE). In order to ensure that students with disabilities receive special education and related services in the Least Restrictive Environment, regulations promulgated pursuant to IDEA specifically require LDE to carry out activities including monitoring activities that ensure the LRE mandate is implemented by all LEAs.34 C.F.R.§ 300.556. LDE is also responsible for carrying out additional activities to ensure that teachers and administrators in all LEAs are fully informed about their responsibilities for implementing the LRE mandate and are provided with technical

⁹ In *Cordero v. Pennsylvania Department of Education*, 795 F.Supp.1352,1359-1360 (M.D.Penn. 1992), the Court held “the IDEA imposes an overarching responsibility to ensure the rights created by statute are protected, regardless of the actions of local school districts.....a state must moreover ensure through oversight that state and local agencies, including school districts fulfill the dictates of the Act.”

assistance and training necessary to assist them in this effort. *See* 34 C.F.R. § 300.555. In the event that LEAs violate the LRE mandate and rights of students with disabilities, LDE must assist them in planning and implementing necessary corrective action. 34 C.F.R. § 300.556 (b).

Pursuant to LDE's general supervisory responsibilities outlined above, LDE must implement an effective monitoring and enforcement system to ensure that all of the requirements of IDEA are implemented by LEAs across Louisiana. 34 C.F.R. § 300.600. As stated by Office of Special Education Programs (OSEP) in the U.S. Department of Education when releasing the IDEA regulations in 1999, " a strong SEA monitoring process to ensure effective implementation of the Act is crucial to improving educational results for children with disabilities. A basic component of [state's] eligibility has long been that the SEA exercises general supervisory responsibility over all educational programs for children with disabilities in the State. This responsibility includes not just monitoring and enforcement when noncompliance is not corrected, but also effective technical assistance... We know from long experience ... that if SEA monitoring is lax, noncompliant practices emerge at the local level and indicators of performance for children with disabilities decline." Federal Register, Vol. 64, March 12, 1999.

IDEA also requires LDE to examine data to determine if significant discrepancies are occurring in the rate of long term suspensions and expulsions of children with disabilities (1) among LEAs in the State; or (2) compared to the rates for non-disabled children within the LEAs. If discrepancies are occurring, LDE must review and if appropriate, revise (or require the affected LEA to revise) its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. 20 U.S.C. § 1412 (a)(22) ; 34 C.F.R. § 300.146.

LDE's General Supervisory responsibilities detailed above are also imposed under state law. See Regulations for Implementation of the Children with Exceptionalities Act, R.S. 17:1941, Bulletin 1706 Subpart A, §301,302, 375.

Systemic Remedies Necessary to Settle This Class Due Process Complaint

LDE will need to take the following action to address the systemic IDEA violations delineated in Section:

- (1) Compel JPSS to significantly increase the frequency and duration of social work\counseling\ psychological services provided to ED students and ensure decisions involving such related services are based upon individual need and not staff availability;
- (2) Compel JPSS to develop a systemic training protocol that includes the provision of training by a national recognized expert in development of Functional Behavioral Assessments (FBAs), Behavior Intervention Plans (BIPs) emphasizing the use of

Positive Behavioral Interventions and Supports (PBIS) and positive behavioral supports for all pupil appraisal staff in the school system and *all* teachers, paraprofessionals, disciplinarians, and administrators working at schools which have ED students. The training protocol shall also include the active use of pupil appraisal staff for ongoing follow-up with staff in the designated schools above;

- (3) Compel JPSS to develop specific school system policies that are disseminated by the Superintendent to all school building administrators including principals\vice-principals\disciplinarians outlining and mandating strict compliance with IDEA's discipline requirements including 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 interventions and supports; review and modification of BIPS after every 10 days of suspensions;
- (4) Compel JPSS to develop with LDE, SPLC and SDLC, as well as the nationally recognized expert specified in paragraph #2 above specific annual strategies and objectives for significantly reducing the number of suspensions of ED students;
- (5) Compel JPSS to develop with LDE, SPLC and SDLC as well as a nationally recognized expert in LRE and specifically, inclusive educational settings for SED students specific annual strategies and objectives for significantly reducing the number of ED students in self-contained classroom settings and concomitantly significantly increasing ED students access to the general education curriculum\classrooms over the next three to four years. This must necessarily involve the closing of all John Martyn MRE classrooms across the district;
- (6) Compel JPSS to develop with LDE, SPLC and SDLC specific strategies and objectives for implementing intensive reading remediation programs at all elementary schools serving ED 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;
- (7) Compel JPSS to develop with LDE, SPLC and SDLC specific strategies and objectives for significantly increasing the graduation rate of ED students as well as ED students' participation in and successful completion of Vocational Training courses over the next 3-5 years. Additionally, compel JPSS to develop and implement specific policies mandating the district's Vocational Training Schools to fully implement IEP services of enrolled students with disabilities. Finally, compel JPSS to train all junior high and high school counselors, special education coordinators and a "lead" special education and regular education teacher at each of these school re the vocational courses\programs available at the district's vocational

training schools, the admission criteria for these programs and their availability to students with disabilities.

(8) Payment of attorneys' fees and costs.

Sincerely,

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