

October 1, 2008

Ms. Bambi J. Lockman, Chief
Bureau of Exceptional Education and Student Services
Florida Department of Education
325 West Gaines Street, Suite 614
Tallahassee, Florida 32399-0400

RE: Class Administrative Complaint Regarding Systemic Allegations of Violations of the Individuals with Disabilities Education Improvement Act in Hillsborough County Public School (hereinafter “HCPS”) on Behalf of J.M., K.H., M.S., R.J., J.C., A.L. and a Class of All Similarly Situated and Treated Students with Disabilities (identified and not yet identified)

Dear Ms. Lockman,

This complaint is being filed, pursuant to 20 U.S.C. §1415(a)-(b) and 34 C.F.R. §§ 300.151-153, by the Florida Advocacy Center for Persons with Disabilities and the Southern Poverty Law Center’s School-to-Prison Reform Project on behalf of J.M., K.H., M.S., R.J., J.C., A.L. and a class of all students similarly situated in schools operated by Hillsborough County Public Schools and by the Florida State Conference of the NAACP, as an organizational complainant. The class consists of all students of the Hillsborough County public school system with emotional/behavioral disabilities, or who manifest behavioral issues, and who have been, or are being, subjected to repeated disciplinary removals totaling more than ten school days (including in-school suspensions, court referrals, out-of-school suspensions, and undocumented, illegal removals from school, *e.g.*, “cool-off removals”).

In 2006, the NAACP and the Advancement Project completed a study of zero tolerance policies in Florida schools.¹ The report found that such policies had a disparate impact on

¹ *Arresting Development: Addressing the School Discipline Crisis in Florida* (hereinafter, “Arresting Development”), A Report Prepared by the Florida State Conference NAACP, the Advancement Project, and NAACP Legal Defense and Educational Fund, Inc. (Spring 2006).

minorities and students with disabilities.² In reaching its conclusions, the report noted as follows:

- Statewide there were 26,990 school-related referrals to the Florida Department of Juvenile Justice during the 2004-05 school year. Over three-quarters of school-based referrals (76 percent) were for misdemeanor offenses such as disorderly conduct, trespassing, or assault and/or battery, which is usually nothing more than a schoolyard fight.
- In addition to turning to police as disciplinarians, Florida schools increasingly utilize internal discipline methods that focus on isolation and removal instead of addressing the underlying behavioral problem. In fact, the growth in the number of out-of-school suspensions has outpaced the growth of the student population by almost two-to-one. Out-of-school suspensions rose from 385,365 during the 1999-00 school year to 441,694 in 2004-05, a 14 percent increase, even though the student population increased by only 8.4 percent.³

During fiscal year 2006-2007, Hillsborough County recorded the highest actual number of school related referrals (1,881) which represented a 20% reduction from figures previously reported during the 2004-2005 fiscal year.⁴ The overall percentage of delinquency referrals from Hillsborough County that were school-related was consistent with the statewide average (16%).⁵ Although HCPS does not routinely disaggregate school-related referral data by students' disability status according to the Hillsborough County Public Defender's Office, the school district's exceptional centers for students with disabilities tend to arrest a large number of students. During the 2004-2005 school year seven exceptional centers were the source of 47 school arrests.

II. COMPLAINANTS

The Florida State Conference of the NAACP

The Florida State Conference of the NAACP joins this State Complaint as an organizational complainant on behalf of all students with disabilities similarly situated to the

² See *Arresting Development: Addressing the School Discipline Crisis in Florida* at 10.

³ *Id.* at 15.

⁴ Greenwald, Mark A. & Cooper, Ann E., Florida Department of Juvenile Justice, Office of Program Accountability, Research and Planning, *Delinquency in Florida Schools: A Three Year Analysis* (January 2008).

⁵ See *Arresting Development: Addressing the School Discipline Crisis in Florida* at 26.

individual complainants named herein. See §§ 34 C.F.R. 300.151(a)(1) and 300.153(a) (state complaints may be filed by an organization). One of the principal objectives of the Florida State Conference of the NAACP is to ensure educational equality for minority students and to eliminate barriers that lead to inequity. The continued punitive discipline of students with disabilities, rather than the provision of positive behavioral services and other related services, appears to occur more frequently with students of color and contributes to the statistically significant racial disparity in the Hillsborough County Public Schools for out-of-school suspensions.⁶

Administrative Complainants ⁷

- I. Name: J.M.
DOB: 11-22-1992
Grade: 10th
School: Simmons ESE Center
Exceptionality: Educable Mentally Handicapped and Emotional Behavioral Disability

- II. Name: K.H.
DOB: 10-18-1990
Grade: 12th
School: Caminiti ESE Center
Exceptionality: Trainable Mentally Handicapped

- III. Name: M.S.
DOB: 07-26-1996
Grade: 6th
School: PEHMS CAPP
Exceptionality: Emotional Behavioral Disability/Severe Emotional Disturbance

- IV. Name: R.J.
DOB: 05-03-1993
Grade: 8th
School: Tampa Bay Academy
Exceptionality: Emotional Behavioral Disability

- V. Name: J.C.
DOB: 06-21-1991
Grade: 12th

⁶ See *Arresting Development: Addressing the School Discipline Crisis in Florida* at 27.

⁷ Refer to Appendix A for the full names and addresses of the individual student complainants

School: Wharton High School
Exceptionality: Educable Mentally Handicapped

VI. Name: A.L.
DOB: 01-03-1989
Grade: 12th
School: Simmons ESE Center
Exceptionality: Autism Spectrum Disorder & Speech/Language Disorder

Complainant J.M. is a 10th grade student at Simmons ESE Center. At all times relevant to this complaint and since 1998 she has been determined eligible for special education services under IDEA.

Complainant K.H. is a 12th grade student at Caminiti ESE Center. At all times relevant to this complaint he has been determined eligible for special education services under IDEA.

Complainant M.S. is a 6th grade student currently at PEHMS CAPP. At all times relevant to this complaint and since 2001 she has been determined eligible for special education services under IDEA. She was enrolled at the Mendez ESE Center through April 17, 2008.

Complainant R.J. is an 8th grade student at Tampa Bay Academy Charter School. At all times relevant to this complaint he has been determined eligible for special education services under IDEA.

Complainant J.C. is a 12th grade student at Wharton High School. At all times relevant to this complaint he has been determined eligible for special education services under IDEA.

Complainant A.L. is a 12th grade student at Simmons ESE Center. At all times relevant to this complaint he has been determined eligible for special education services under IDEA.

COMPLAINANTS J.M., M.S., R.J., K.H., J.C., AND A.L. FILE THIS ACTION ON BEHALF OF THEMSELVES AND ALL SIMILARLY SITUATED SPECIAL EDUCATION STUDENTS IN THE HCPS, INCLUDING STUDENTS WITH EMOTIONAL DISABILITIES, 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 WHOSE RIGHTS TO A FREE APPROPRIATE PUBLIC EDUCATION ARE BEING DENIED BY THE FOLLOWING PRACTICES :

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

III. HCPS Has Failed to Provide Sufficient Related Services⁸

HCPS has failed to provide complainants J.M., M.S., R.J. and all other similarly situated students with Emotional/Behavioral Disabilities (E/BD) FAPE by failing to provide specialized instruction and related services that address the typical behavioral characteristics and issues associated with E/BD and which adversely affect Complainant’s 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. Specifically, HCPS has provided complainants and all other similarly situated students with inappropriate or woefully inadequate related services such as psychological services, social work and counseling services *if any services at all*. Additionally, HCPS’ failure to provide adequate levels of related services appears to be unrelated to the actual individual needs of the complainants or similarly situated students. The amount of counseling, social work or psychological services provided are cookie-cutter in nature and are based upon the limited availability of the HCPS personnel at any given school.⁹

⁸ 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 speech-language pathology, ...psychological services, ...counseling services, ...social work services...and parent counseling and training.

⁹ As per the 2005 Florida Department of Education Focused Monitoring Report for Hillsborough County, a noted concern was the lack of availability of counseling services for ESE students other than those eligible for SED services. The report indicated that counseling for these students was available on a limited basis and receipt of services was affected by the students’ current school placement rather than the student’s individual needs. Additionally during the review process 12 IEPs of students eligible for EH/SED classes contained no evidence that the student’s social or emotional needs were being addressed and 12 IEPs of SED students contained no evidence that they were receiving counseling as a related service.

As a result of inappropriate behaviors while attending preschool in the Early Educational Learning Program (EELP), Complainant J.M. was placed in a developmental Educable Mentally Handicapped (EMH) special class in 1998. During her kindergarten year she received special education services outside of a regular class for more than 60% of the time with additional resource services (5–10 hours) from the E/BD program. Despite the EMH/E/BD classification, a highly restrictive placement in a special day school, and ongoing significant behavioral difficulties HCPS *never* included the provision of any social work, psychological or counseling related services on Complainant’s IEP goals and objectives until the April 19, 2006 IEP. The 2006 IEP identified anger management counseling as a related service which was to be provided on a weekly basis, as needed, for success in school. During the period from April of 2006 to June of 2008 J.M. was subject to numerous Out of School (OSS) suspensions and suspensions from the school bus. She was also placed on home instruction and was even arrested and charged with a battery on a school employee on four separate occasions. Despite all of these numerous suspensions, behavioral incidents and arrests over a two year period HCPS *never* increased the amount of anger management counseling that was to be made available to Complainant, nor offered her any other related services such as social work or psychological services. HCPS also failed to consider or implement positive behavioral interventions and supports (PBIS) during this period of serial suspensions and arrests. The woefully inadequate levels of related services provided JM as well as the absence of PBIS reflect a clear denial of FAPE that has effectively deprived her an opportunity to avoid repeated disciplinary removals from school and the school bus and has also deprived her the opportunity to return to a less restrictive setting.

Complainant M.S. was placed in a highly restrictive self-contained setting upon being classified as a student with Emotional/Behavioral Disabilities (E/BD). M.S. was offered services through the Severely and Emotionally Disturbed (SED) program at the Mendez ESE Center from December of 2002 until April of 2008. Despite the placement in a highly restrictive SED setting the only related services that were identified for M.S. were special transportation and individual counseling. The individual counseling was provided to M.S. on a weekly basis to address anger management, communication skills or peer/adult relationships. Despite numerous ongoing suspensions and behavioral incidents throughout her enrollment at the Mendez ESE Center HCPS *never* increased the amount of anger management counseling that was to be made available to Complainant, never provided her other forms of related services (individual social

work or psychological services), nor did it ever consider providing Complainant with PBIS. HCPS failure to provide M.S. with appropriate levels and types of related services manifests a clear denial of FAPE and one that has effectively denied her an opportunity to avoid repeated disciplinary removals from school and the opportunity to work towards placement in a less restrictive setting.

Complainant R.J. was placed in a highly restrictive self-contained setting upon being classified as a student eligible for both the Educable Mentally Handicapped (EMH) and Emotional/Behavioral Disabilities (E/BD) program in October of 2000. R.J.'s behavioral difficulties were apparent in Kindergarten¹⁰ and soon thereafter, during the 2002-2003 school year, HCPS began regularly suspending R.J. for disruptive behavior. During the 2005–2006 and 2006–2007 school years R.J. was subject to multiple suspensions and removals. Despite these circumstances, HCPS failed to provide R.J. *with any related services until* December 17, 2007 **(over two years later)** when he was placed at the Charter School of Tampa Bay Academy, as part of his residential treatment facility placement. Furthermore, HCPS continuously failed to consider or implement PBIS throughout Complainant's enrollment in HCPS system. The lack of related services offered to Complainant, R.J., was a clear denial of FAPE and one that has denied him an opportunity to avoid repeated disciplinary removals from school and the opportunity to work towards placement in a less restrictive setting.

HCPS has also denied FAPE to complainants K.H., J.C. 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 (either In School Suspension (ISS) or OSS) or placement in home instruction due to behavioral issues by also failing to provide specialized instruction and appropriate levels of related services (such as social work, counseling and school psychology services) necessary to address this class of students' behavioral challenges and issues.

Complainant K.H. was placed in a restrictive self-contained setting upon being classified as a student eligible for services under the Trainable Mentally Handicapped (TMH) program. K.H. was subject to 11 days of Out-of-School suspensions between August 23, 2007 and September 26, 2007. Subsequent to these suspensions K.H. was ultimately placed on home

¹⁰ According to an HCPS psychological evaluation conducted on 09/05/2000 it was noted that R.J. "lacks effective coping skills and often feels like a "bad boy" who is "dumb." Furthermore, his behavior problems were noted to "stem partly in response to his intellectual inability and failure to complete tasks at his expectation level."

instruction in December of 2007 through April of 2007 as per the IEP dated April of 2008. Despite these circumstances, Complainant K.H. received *no related services* during the 2007-2008 school year. Consequently, HCPS utterly failed to appropriately address his behavioral challenges, denying him the opportunity to avoid repeated disciplinary removals from school and placement on home instruction.

Complainant J.C. was placed in a restrictive self-contained setting upon being classified as a student eligible for services under the Educable Mentally Handicapped (EMH) program. J.C. was subject to repeated disciplinary removals during his school career. Despite these circumstances, annual IEPs consistently indicated that he presented with frustration, stress and decreased self-esteem and worth.¹¹ The 2007–2008 IEP identified weekly counseling for appropriate decision-making but then stated it would only be made available on an “as needed basis” as a related service targeting success in the school environment. Despite ongoing behavioral issues and disciplinary removals in 2007-2008 HCPS failed to revise J.C.’s IEP to increase the frequency and duration of related services or to provide other forms of related services (such as individual social work or psychological services). As with previous complainants, HCPS has denied J.C. FAPE by failing to appropriately address J.C.’s behavioral challenges thereby denying him the opportunity to avoid numerous disciplinary removals from school.

HCPS failure to provide sufficient related services or in a number of instances *no related services* in light of numerous disciplinary referrals and behavioral issues that led to complainants repeated suspensions or illegal removals from school (cool-off removals) or assignment to home instruction clearly manifests that the provision of related services in HCPS bears no relationship to the actual individual needs of complainants or students similarly situated. HCPS’ failure is compounded by the fact that disciplinary actions against the complainants were taken without the development of a functional behavioral assessment or development of behavior management plans. The delivery of related services is cookie-cutter in nature and is based upon the limited availability of school personnel. Despite the circumstances of each individual Complainant, the amount of related services provided was not in any way related to any of the Complainant’s

¹¹ In an HCPS Social History report dated 03/04/1998 the Social Worker indicated that J.C. was repeating kindergarten and was experiencing behavioral concerns which could have been due to his frustration. Furthermore, the Social Worker recommended parent training, a related service under IDEA, to enable the parent to assist her child at home in the areas of learning and social skills.

behaviors or restricted placements. As a result, HCPS has repeatedly failed to either provide any related services or to increase the amount of counseling or other therapy during the above noted relevant periods of time for each Complainant. This pervasive and systemic pattern of inadequate delivery of related services has resulted in the denial of FAPE for the complainants and for all those similarly situated. *See* 20 U.S.C. § 1401 (26)(a), § 1412 (D); 34 C.F.R. § 300.34, § 300.101, § 300.320-328.

IV. HCPS Has Failed to Provide Educational Services in the Least Restrictive Environment

HCPS has denied FAPE to complainants J.M., K.H., R.J. and all other similarly situated students with disabilities 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.

Complainant J.M. is a student that has had minimal access to the general education setting for any academic subject since being evaluated and classified as a student eligible for services under the categories of Emotional/Behavioral Disabilities (E/BD) and Educable Mentally Handicapped (EMH). During the 1998–1999 school year (kindergarten) J.M. was placed in a self-contained, developmental EMH special class with additional resource services (5-10 hrs) from the Emotionally Handicapped (EH) program. In October of 1998 her placement was changed to an SED setting due to her disruptive behaviors having a negative impact on her learning.¹² On October 19, 1998 the IEP team reconvened and recommended that J.M receive services through the TMH and EH programs.¹³ During the 2000-2001 school year HCPS mainstreamed Complainant into a regular first grade math classroom for thirty minutes a day while maintaining her in a TMH setting. Since to the 2000-2001 school year, Complainant has

¹² In reviewing the conference summary dated 10/08/1998 it was noted that J.M. had been receiving services through the developmental EMH program with EH (Emotionally Handicapped) services but as a result of her destructive and aggressive behaviors the IEP team recommended placement in an SED (Severely Emotionally Disturbed) setting.

¹³ In reviewing the conference summary dated 10/19/1998 it was noted that J.M. had been receiving services through the SED program even though she was eligible for the EH (Emotionally Handicapped) program. Due to **toileting problems** it was determined that the placement was unsuccessful. As a result, the IEP team recommended that services be provided in the TMH and EH settings at LaVoy Exceptional Student Education (a separate day school) and a more restrictive setting on the placement curriculum.

continued to receive services through a TMH/EH setting and be denied access to the general education curriculum. Complainant is currently attending a special day school where she *does not* participate with nondisabled peers and has no access to the general education curriculum.¹⁴

HCPS decision to maintain J.M. in a self-contained Trainable Mentally Handicapped setting as a result of her behaviors and to discontinue her access to the general education curriculum is clear evidence that no attempts were made to pursue any number of related services or strategies that would have allowed her continued access to a mainstream setting.¹⁵ Strategies that would have included: paraprofessional aides 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; and school-wide and classroom based positive behavioral support plans. Instead of implementing any of these strategies prior to removing Complainant J.M. from the general education curriculum, HCPS has instead continued to segregate Complainant J.M. for years in a highly restrictive self-contained setting for even ancillary subjects such as Physical Education and other non-academic electives.¹⁶

Complainant K.H. was placed in a restrictive self-contained setting upon being classified as a student eligible for services under the Trainable Mentally Handicapped (TMH) program. From the onset of prekindergarten K.H. has accessed the learning environment within a separate self-contained class setting wherein special education services are provided outside of a regular classroom more than 60% of the time. K.H. has *never* accessed the general education setting through either ancillary subjects or other non-academic subjects. Furthermore, in November of 2007 his placement was changed from a separate self-contained class setting to “instruction in the hospital or in the home,”¹⁷ *the most restrictive setting on the placement continuum*, due to

¹⁴ The IEP dated April 3, 2008 indicates that the student **will not** participate with nondisabled peers as a result of being assigned to a special day school.

¹⁵ According to an HCPS Psychological Evaluation dated 10/16/2000 J.M. would have benefited from more exposure to an academic curriculum such as functional or basic reading and math as a result of her higher IQ (EMH rather than TMH).

¹⁶ According to the FDOE’s Hillsborough County 2005 Monitoring Report IEP teams do not always consider the supports and services needed to maintain a student in the general education setting prior to placement in an ESE class.

¹⁷ The Notice of Intent to Change Placement provided on 11/16/2007 indicates that Complainant’s placement was changed to “*instruction in the hospital or in the home.*” This change in placement was implemented in clear

inappropriate behaviors, disciplinary referrals and HCPS' need to address K.H.'s safety and the safety of others.¹⁸ As with Complainant J.M., HCPS' decision to place him on "instruction in the hospital or in the home," is clear evidence that no attempt was made to provide sufficient related services, supplementary aids and services or curriculum modifications to enable him to remain in his current setting let alone to access the general curriculum.¹⁹ HCPS also failed to pursue any number of strategies that would have allowed Complainant K.H. to remain in school, including: the use of paraprofessional aides; and, school-wide and classroom based positive behavioral support plans. Instead of implementing any of these strategies prior to removal from his special class setting, HCPS chose to segregate him completely by placing him on "instruction in the hospital or in the home" and removing him outright from school grounds.

Complainant R.J. was placed in a highly restrictive self-contained setting upon being classified as a student eligible for both the Educable Mentally Handicapped (EMH) and Emotional/Behavioral Disabilities (E/BD) program in 2000. From the onset of kindergarten R.J. has accessed the learning environment within a separate class setting wherein special education services are provided *outside* of a regular classroom for more than 60% of the time. He has only accessed the general education setting for Physical Education, an ancillary subject. At no point has HCPS provided any justification or reasoning for its determination that Complainant can function in an ancillary subject but not in any core academic subjects. HCPS has failed to provide appropriate supplementary aids and services or curriculum modifications in the regular education setting so that Complainant and those similarly situated may return to a less restrictive environment.

violation of Rule 6A-6.03020, FAC and in violation of the Fla. Department of Education, Serving Students with Disabilities through Modified Schedule and/or Home Instruction, TAP 312815, Paper No.: FY 2007-03.

¹⁸ In reviewing the student disciplinary history report for the 2007-2008 school year the student's incidents encompassed use of profanity, insubordination, pushing a school computer over on two separate occasions and pushing a student.

¹⁹ In reviewing planning notes provided by the class room teachers for the **April 2007** IEP meeting, the teachers were concerned with K.H. exhibiting some mental health problems which had never previously manifested themselves in the classroom. One teacher expressed a desire to get to the bottom of the problem and to have the "old Keith back."

V. HCPS Has Failed to Comply with IDEA's Discipline Regulations

HCPS has further denied complainants and all other similarly situated students with disabilities 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 year. These provisions require HCPS 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 teams 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. At all times relevant to this administrative complaint, HCPS has failed to comply with all of these IDEA requirements.

Complainant J.M.'s case reflects many of the illegal disciplinary practices committed by HCPS. Since 2006 complainant J.M. has been subjected to numerous out of school suspensions, placement in time out rooms, suspensions from the school bus, illegal guardian "pick ups", placement on modified day schedule and arrests and charges for Battery on School Employee as a result of her aggressive behaviors.²⁰ Despite the numerous disciplinary actions and her lack of behavioral and academic progress HCPS has never revised complainant's IEP to include any additional counseling nor have revisions been made to her behavioral goals. Complainant's educational setting has also never been changed²¹ and revisions have not been made to the April

²⁰ Complainant J.M.'s records indicate that during the 2005–2006 school year she received 5 days OSS; During December of 2005 J.M. was placed in the time out room once for 24 min. January of 2006 she had 3 time outs with times ranging from 10 minutes to 35 consecutive minutes and in February of 2006 she was placed in the time out room on five different occasions with times ranging from 9mins to 76 mins. During the 2006-2007 school year J.M. received 7 OSS and was arrested on three separate occasions and charged each time with Battery on School Employee. During the 2007–2008 school year J.M. received 3 OSS and was suspended from the bus for 3.5 days. On March 24, 2008 J.M. was arrested and charged with her fourth Battery on School Employee. All charges are still pending due to the fact that Complainant has been found incompetent to proceed.

²¹ According to the April 3, 2006 Psychological Evaluation/Functional Behavioral Assessment Report J.M. required a setting that was more behavioral in focus. The recommendations were to place her in a small group setting that could address her behavior problems, as well as, social and emotional difficulties. The goal was to have her respond to a behavior system that would allow her to use a "level" system to earn privileges and activities.

2006 Functional Behavior Assessment and Behavior Intervention Plan which was created at a different school. In addition, HCPS has failed to consider and provide any PBIS strategies.

Complainant A.L.'s case also reflects many of the illegal disciplinary practices committed by HCPS. A.L. has been subject to repeated disciplinary removals totaling more than ten school days (either ISS or OSS), placement on modified days or home instruction, illegal guardian "pick ups," time-outs, suspended bus privileges, and an arrest and charge for Battery on School Employee.²² Despite the numerous disciplinary actions HCPS never revised complainant's IEP to include any counseling, psychological or social services nor were revisions made to his behavioral goals. Complainant's educational setting was also never changed,²³ HCPS never revised the October 2, 2003 Functional Behavior Assessment and Behavior Intervention Plan which was performed at a different school when Complainant A.L. was in the 8th grade,²⁴ nor did they consider or provide PBIS to Complainant. In addition, HCPS did not conduct a manifestation determination review (MDR) within ten (10) days of complainant's Out-Of-School (OSS) suspensions. Instead, HCPS waited until the thirteenth (13) day of OSS to conduct the MDR meeting. As a result of the MDR, HCPS's Behavior Analyst/School Psychologist determined that complainant's pending change in placement to home-based services could only be determined by the fact that he demonstrated a danger to himself or others and not as a function of the manifestation determination that was held on September 28, 2006.

HCPS has failed to comply with IDEA discipline requirements as evidenced by the fact that HCPS has had some of the highest discipline rates for students with disabilities in the State versus nondisabled students. During the 2006–2007 school year HCPS' rate for suspension/expulsions greater than 10 days was 3% for students with disabilities and <1% for nondisabled students. Furthermore, the discipline risk ratio for students with disabilities to be

²² During the 2005-2006 school year A.L. received 8 OSS and from 08/31/2006 – 09/25/2006 A.L. received 13 days of OSS, he was Baker Acted and ultimately arrested and charged with a Battery on a School Employee.

²³ According to the September 28, 2006 Discipline Conference Summary, Dr. Linda Richey opined to the Staffing Coordinator "that due to the fact that there were no incidents in the prior school year or during ESY, Dr. Richey felt that a change of classroom and teacher could be warranted." The IEP team determined that her recommendations should be revisited.

²⁴ According to the September 28, 2006 Discipline Conference Summary, Dr. Jonathan Worcester, Ph.D. , BCBA, provided his professional written opinion that the school-based team did not have a current functional behavior assessment and corresponding behavior intervention plan (including data to determine both intervention efficacy and treatment integrity).

suspended or expelled in Hillsborough County was 2.5%.²⁵ These rates reflect the fact that HCPS' systemic solution for addressing the behavioral and emotional needs of students with disabilities is to subject them to out of school suspensions or expulsions rather than providing them with appropriate levels or types of related services, updating their FBA's and revising their ineffective and inappropriate BIPs (including incorporating and implementing PBIS as a part of their BIPs), and adjusting and improving their behavioral programming.

VI. HCPS Has Failed to Confer Meaningful Educational Benefit

HCPS has denied complainant J.M, J.C and all other similarly situated students FAPE by failing to confer meaningful educational benefit as required by IDEA. Complainant J.M. has not been able to make any meaningful academic and in many cases non-academic (behavioral) progress for the past several years due to the denial of FAPE. J.M. is a 10th grader eligible for services under the Educable Mentally Handicapped (EMH) and Emotionally Handicapped (EH) programs. She is functioning between at a first grade level in math and reading according to the most recent IEP dated April 3, 2008, which suggests that she has not made any academic progress in ten years. Moreover, HCPS decision to deliver services to complainant solely within a TMH setting has significantly played a role in hindering her progress. J.M.'s placement in a TMH setting was due to her behavioral problems and not to her academic skills. According to a psychological evaluation dated April 3, 2006, J.M. was the highest functioning student in her TMH class. The HCPS Psychologist recommended placement in a setting with more academic focus rather than self-help skills in order to have her benefit from being exposed to peers who functioned at her level or higher. On October 3, 2006, HCPS failed to heed the psychologist's recommendations and instead placed J.M. on modified day, the most restrictive of educational settings. She remained on modified day until the summer of 2007. The reduction in instructional contact hours and course content, coupled with the inappropriate ESE program placement, jeopardized the provision of FAPE to J.M. and significantly contributed to her lack of academic progress.

Complainant J.C. has not been able to make any meaningful academic progress for the past several years due to HCPS' failure to provide appropriate special education and related

²⁵ FDOE 2008 LEA Profile, Hillsborough County Public School District, Discipline Rates and Risk Ratios

services. Complainant has been eligible for services under the EMH program since May 11, 1998. He has accessed these services in a separate class for more than 60% of the time while accessing the general education setting for ancillary subjects, such as Physical Education. At no point has HCPS provided any justification or reasoning for its determination that complainant can function in an ancillary subject but not in any core academic subjects. In reviewing J.C.'s school records there were only two school psychological evaluations which were dated December 9, 1997 and June 25, 2007. According to the 2007 HCPS Psycho-Educational Evaluation some of complainant's deficits could be "attributable to skill deficits and his involvement in the EMH program."²⁶ The psychologist also indicated "that with specific interventions substantial improvements would be evident within a short amount of time as he continued to receive and learn different methods of learning."²⁷ Despite the recommendations issued by the School Psychologist HCPS has failed to implement any changes to complainant's placement. Complainant continues to receive services within the EMH program and HCPS has not attempted to provide counseling nor have they considered a "social emotional class" for complainant.²⁸ Complainant is clearly several years behind in his chronological grade level and peers and he has not received an education that has conferred meaningful educational benefit as required under IDEA. HCPS' failure to re-evaluate complainant during a ten year period, coupled with placement in an inappropriate ESE program, has clearly jeopardized the provision of FAPE to J.M..

VII. HCPS Has Failed to Provide Necessary and Appropriate Transition Services

HCPS has denied K.H. and all other similarly situated students 16 years of age and older FAPE by failing to provide the necessary and appropriate transition services that prepare these students for employment, post-secondary education, vocational training, or independent living as required by IDEA. Specifically, HCPS has failed to provide timely transition services that account for and consider the particular student's unique strengths, preferences and interests. The IEP objectives for complainant K.H. and all other similarly situated students are not derived from, directly related to, nor indicative of the outcome or action steps listed on the Transition

²⁶ HCPS PsychoEducational Evaluation Dated 06/25/2007, Page 7

²⁷ Id.

²⁸ HCPS PsychoEducational Evaluation Dated 06/25/2007, Page 7.

Services Form of the IEP. *See* 34 C.F.R. § 300.423. Transition services violations were reported during the Florida Department of Education Hillsborough County On-Site Focused Monitoring visit on March 28–April 1, 2005. A review of student records at selected high schools revealed that agency participation in transition planning was not evident in the IEPs of some trainable mentally handicapped students (TMH) who were in their last school year of eligibility under IDEA. It was also noted that the roles and responsibilities of staff was not clear to all IEP team members involved with ensuring agency participation in transition planning.

Although complainant K.H., a TMH student, has been eligible for transition services since the 2006-2007 school year, Complainant K.H. has not been provided any sort of transition service plan from HCPS. Complainant’s preferences, interest, or plans following the completion of high school have not been incorporated into his IEP. HCPS has also failed to collaborate with the Department of Children & Families to provide assistance in assessing relevant independent living skills for complainant. Furthermore, there is no nexus between complainant K.H.’s IEP goals and objectives and his transition plan. Accordingly, HCPS’s failure to provide complainant K.H. 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.

VIII. Systemic Remedies Necessary to Settle This Class Complaint

The Florida State Conference of the NAACP and the student complainants are requesting District-wide prospective relief as a remedy for any violations of IDEA found. *See id.* at 300.151(b)(2) (remedy for denial of appropriate services includes the “[a]ppropriate future provision of services for all children with disabilities”). The Parties request that the FDOE appoint an independent team of experts to investigate and make findings regarding PBCS’ compliance with the requirements of the IDEA within the statutory timeline for the investigation of State Complaints, *i.e.*, sixty (60) days. Should any violations of IDEA be found, the Complainants request that FDOE issue a corrective action plan requiring PBCS to remedy the systemic IDEA violations and each and every individual violation with all deliberate speed. Complainants request that the corrective plan include, at a minimum, the following:

1. Compel HCPS to hire a nationally recognized expert in PBIS to develop and implement with HCPS a systemic training program that shall include but not be limited to strategies, objectives and timelines for students with disabilities related to: implementation of school-wide PBIS, the development of functional behavioral assessments (FBAs), the development and implementation of behavior intervention plans, and conducting manifestation determination reviews. The PBIS training program shall include all student support services staff, teachers, paraprofessionals, school counselors, school based student nutrition employees, school administrators, and other educational services 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 student support services staff for ongoing follow-up with staff in the designated schools. The PBIS training protocol shall be made available to parents and the community, including juvenile court personnel.
2. Compel HCPS to hire the above PBIS expert to conduct an audit of its Special Education programs for students with Emotional/Behavioral Disturbances and all other students with disabilities who manifest behavioral issues and are subject to repeated disciplinary removals or placement in home instruction. The PBIS expert shall review or audit 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 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.
3. Compel HCPS to develop specific school system policies that are disseminated by the Superintendent to all school building administrators including principals, assistant-principals and school counselors 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; 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.

4. Compel HCPS to create and implement a reliable central administrative electronic tracking system for recording the number of disciplinary referrals and removals from school for special education students in HCPS.
5. Compel HCPS to develop and implement specific strategies and objectives for significantly reducing the number of suspensions of students with disabilities.
6. Compel HCPS to develop and implement in agreement with the nationally recognized PBIS expert specified in Paragraph #1 above specific annual strategies and objectives for significantly reducing the number of students with Emotional/Behavioral Disabilities and special education students who manifest behavioral issues who are placed in self-contained classroom setting and concurrently significantly increasing these students' access to the general education curriculum/classrooms over the next three to four years.
7. Compel HCPS to develop and implement specific strategies and objectives to significantly increase the frequency and durations of social work, counseling, psychological services and other necessary related services provided to students Emotional/Behavioral Disabilities and all other students who are subject to repeated disciplinary removals or placement in alternative school

settings in HCPS and also ensure decisions involving such related services are based upon individual need and not staff availability.

8. Compel HCPS to develop with the undersigned “interested parties” specific strategies and objectives for implementing intensive reading and math remediation programs for students with disabilities 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.
9. Ensure that HCPS develops and implements a district-wide training initiative involving all junior high school and high school counselors, Exceptional Student Education (ESE) specialists and department chairperson or “lead” special education and regular education teacher at each of the schools regarding post-secondary education preparation, as well as, vocational courses and 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.
10. Compel HCPS to develop strategies to place certified exceptional student education teachers in regular education classrooms in order to accommodate the ability of disabled students to succeed in the regular education settings.
11. Compel HCPS to develop with the undersigned “interested parties” specific strategies and objectives for ensuring individual families, Department of Children and Families Case Managers and surrogate parents are provided access to special education and related services trainings and the financial resources to effectively participate in such trainings.

12. Compel HCPS to develop with the undersigned “interested parties” a “Hillsborough 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 HCPS on its Exceptional Student Education Programs.

Sincerely,

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