

October 1, 2008

BY FAX AND U.S. MAIL

Bambi Lockman, Bureau Chief
Bureau of Exceptional Education
and Student Services
614 Turlington Building
325 W. Gaines Street
Tallahassee, FL 32399-0400

Re: Formal State Complaint on behalf of P.R., N.S., B.J.S.F., K.R. and
all students similarly situated in schools operated by the
School Board of Palm Beach County

Dear Ms. Lockman:

I. INTRODUCTION

This complaint is being filed, pursuant to 20 U.S.C. §1415(a)-(b) and 34 C.F.R. §§ 300.151-153, by the Legal Aid Society of Palm Beach County, Southern Legal Counsel and the Southern Poverty Law Center's School-to-Prison Reform Project on behalf of P.R., N.S., B.J.S.F., K.R. and a class of all students similarly situated in schools operated by the School Board of Palm Beach County and by the Florida State Conference of the NAACP, as an organizational complainant. The class consists of all students of the Palm Beach 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").

Complainants contend that the School Board of Palm Beach County (PBCS) has systematically and pervasively denied the class their rights under the IDEA by failing:

- **to provide students with disabilities with sufficient related services, such as counseling services, social work services, psychological services and parent counseling and training, and assistive technology that would enable such students to benefit from their special education program;**
- **to provide educational services in the least restrictive environment;**

- **to comply with IDEA’s discipline requirements, including the development and implementation of positive behavioral intervention plans targeting positive behavioral change;**
- **to provide special education and related services in such a way as to confer on the class meaningful educational benefit; and**
- **to provide necessary and appropriate transition services.**

The complainants request that the Florida Department of Education (FDOE) investigate the School Board of Palm Beach County’s (PBCS) provision of special education and related services to students with emotional and learning disabilities and behavioral difficulties for violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 – 1482, and order the PBCS to institute a remedial plan designed to correct, as set forth in this Complaint, each and every violation found.

II. SCHOOL BOARD OF PALM BEACH COUNTY

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 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

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)

² *Id.* at 10.

³ *Id.* at 15.

In Palm Beach County in fiscal year 2006-2007, 10 percent of all juvenile court referrals were school-based.⁴ While this represents an overall two-percent decline from 2004-05,⁵ similar to the statewide trend in gradually declining school-related referrals, it is not clear whether or not it represents a decline in the school-related referrals of students with disabilities.

PBCS does not routinely disaggregate school-related referral data by students' disability status. PBCS was required, however, to provide such statistics in the context of discovery in a case filed in 1997.⁶ The data, now over ten years old, showed that students with disabilities received school-related referrals to the juvenile justice system at more than five times the rate of students without disabilities. At that time, more than 80 percent of the students with disabilities referred to the juvenile justice system were black males.

PBCS also has a documented history of systemic IDEA violations in the placement of special education students in alternative education. The IDEA violations included changes in placement without any IEP meetings or parental participation; changes in IEPs to "fit" what is provided or absent in the alternative education site, by removing or reducing the frequency and intensity of related services and program accommodations and modification; and systemic violations of IDEA's disciplinary scheme requiring manifestation determinations and the development of positive behavior intervention plans.⁷ As a result, PBCS had on-site monitoring by FDOE staff for a period of approximately two years.

As demonstrated by the cases of the individual student complainants, the PBCS engages in a number of policies, practices and procedures which violate the IDEA and contribute significantly to these high rates of suspension, expulsion and juvenile court referrals.

PBCS systematically and pervasively fails to provide specialized instruction and related services that address the inherent behavioral characteristics and issues associated with the classification of Emotional Disturbance⁸ 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, and § 300.320-328. Specifically, it has furnished complainants and all other similarly

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 Florida Department of Juvenile Justice, Office of Research and Planning, Research and Evaluation Unit, *Analysis of FY 2005-06 School-Related Referrals* (April 2006).

⁶ *Shoemaker v. School Board of Palm Beach County*, Case No. 9:97-cv-08036-FAM (S.D. Fla. filed Jan. 17, 1997).

⁷ See Commissioner's Order, DOE Case No. 99-440-FOF.

⁸ IDEA includes children and youth with "emotional disturbance" in the definition of "child with a disability." 20 U.S.C. § 1402(3)(A)(i). In Florida, the current eligibility category for Emotional Disturbance is emotional/behavioral disabilities (E/BD). Prior to July 1, 2007, the eligibility categories were Emotionally handicapped (EH) and severely emotionally disturbed (SED). Compare Rule 6A-6.03016, effective date 7/1/07, Fla. Admin. Code with Rule 6A-6.03016, effective date 3/10/85, Fla. Admin. Code.

situated students with either no services at all, or with woefully inadequate levels of social work, counseling, psychological services, and parent counseling and training. Moreover, the provision of related services appears unrelated to the students' individual needs and are instead either non-existent or a connect-the-dots related service between an eligibility category and related service, *i.e.*, all students eligible for E/BD and attending school in a cluster site automatically get group counseling once a week without regard to whether the student needs a different type of therapy, different setting or different frequency.

PBCS systematically and pervasively fails to provide students with E/BD and all other similarly situated special education students who manifest behavioral issues a free appropriate public education (FAPE) in the least restrictive environment (LRE) as required by IDEA. It also fails to provide students placed in restrictive alternative programs with sufficient education and related services to enable them to progress into less restrictive programs. The IDEA requires that, to the maximum extent possible, students with disabilities be educated in the least restrictive environment. *See* 20 U.S.C. § 1412 (a) (5); and 34 C.F.R. § 300.114-117. There is no evidence in any of the student complainants' records that PBCS ever attempted to increase the amount of counseling, social work, parent education and training, or psychological services or to implement any of the previously described supplemental aids and services in order to enable the students to access and succeed in a less restrictive general education setting. This demonstrates PBCS' *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.

PBCS systematically and pervasively violates IDEA's discipline provisions for students with disabilities who have been removed from their educational placement for more than 10 school days in a school year. These provisions require PBCS staff to conduct manifestation determinations within 10 days of the change of placement to determine whether the student's behavior that has led to a recommendation of suspension is related to his or her disability or a result of the school's failure to provide sufficient services to the student; 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 so that the behavior at issue does not recur. *See* 20 U.S.C. § 1415 (k) (1) (A)-(H); 34 C.F.R. § 300.121; 34 C.F.R. § 530-536.

PBCS systematically and pervasively denies the complainants and all other similarly situated students FAPE by failing to confer meaningful educational benefit as required by IDEA. PBCS' failure to provide appropriate educational and related services for the complainants and other similarly situated students has resulted in the denial of an education that confers meaningful educational benefit as required under IDEA. The pervasive reality for a significant portion of E/BD students in the PBCS is that even though they are of average intelligence, by the time they reach middle school, they are typically performing years behind their chronological grade level and that of their same-age peers. One result is that E/BD students are typically placed in restrictive self-contained settings, which greatly reduces the proportion of these

students who ultimately receive a high school diploma.⁹ This reality reflects an obvious and systemic practice of providing inappropriate special education and related services to students with emotional or behavioral disabilities.

By its own account, verified by the FDOE, the PBCS systematically and pervasively violates IDEA by failing to provide the necessary transition services that will prepare these students for postsecondary education, vocational education, employment, independent living and community participation.¹⁰ Specifically, PBCS violates the transition services requirement of IDEA wholesale: it routinely fails to give the required notices to parents that the purpose of the IEP meeting is to discuss postsecondary goals and transition services; it also routinely fails to follow-up with outside agencies who may pay for some transition services; the IEPs also fail to have the requires measurable annual goals for education, training, employment, independent living and community participation.¹¹ The high drop-out rate for E/BD students and the dismal graduation rates would indicate that significant improvement in transition planning for these students is required.¹²

III. 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 individual students named below. *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 Palm Beach County Schools for out-of-school suspensions.¹³

⁹ The No Child Left Behind (NCLB) graduation rate, which calculates high school graduation with a standard diploma, is based on the number of first-time ninth graders enrolled four years prior to the projected graduation date, including incoming transfer students and subtracting students who leave to enroll in a private school, home school or adult education. For students with disabilities in 2006-07 in PBCS, the NCLB graduation rate was 33%. 2008 LEA Profile for Palm Beach County Schools at 2; online FDOE/BEES report at <http://www.fldoe.org/ese/datapage.asp>. This represents about half of the graduation rate for all students (67%), and has declined over the past three years. *Id.* Students with E/BD also had a 13 % dropout rate in the 2006-07 school year, which is more than four times the rate of all students, and 5% greater than the general group of students with disabilities. *Id.* at 3.

¹⁰ ESE Self Assessment 2007-08, Palm Beach District Summary Report: Findings of Noncompliance by Standard, Attachment 1 at 2-4.

¹¹ *Id.*, referencing 34 C.F.R. §§ 300.320(a)(2) and (b)(1)-(2), 300.321(b)(3), 300.322(b)(2), 300.324(c)(1) and Rule 6A-6.03028(3)(b), (7)(i) and (8)(d), Fla. Admin. Code.

¹² *See* footnote 9, *supra*.

¹³ *See Arresting Development: Addressing the School Discipline Crisis in Florida* at 39.

This Complaint is being filed by the following individual students on behalf of themselves and all other similarly situated students with disabilities:

Student A: P.R., DOB 1/15/96, 7th grade for 2008-09 SY at Crestwood Middle School¹⁴

P.R. is a twelve-year old African-American male. He is eligible for ESE services in the area of Gifted and E/BD.

As set forth in this complaint, PBCS has violated his IDEA rights by failing to provide him with any special education or related services whatsoever during the majority of the 2007-08 school year. The IEP that was written on November 2, 2007 at Jeaga Middle School lists only monthly consultation in all of his academic classes as the sum total of his special education and related services. *See* Attachment A-1 (hereinafter “Att. A-1”). He had a social/emotional goal on his IEP, but no means to achieve the goal, as he had no special education services, no program accommodations or modifications and no related services.

Jeaga Middle School did not implement the IEP from the sending elementary school dated May 17, 2007 – May 16, 2008. The May 17th IEP included program modifications and accommodations of crisis intervention support, de-escalation techniques, a behavior monitoring system and the related service of group counseling. *See* Att. A-2. The November 2, 2007 IEP developed at Jeaga Middle School was written to remove all special education and related services from the IEP. The meeting notes on the November 2nd IEP state “they [the sending elementary school] put crisis intervention support and group counseling, which Jeaga does not have.” So, instead of providing the needed related services, or considering a placement at a school that had the needed services, school personnel merely removed those services from P.R.’s IEP. From the beginning of the school year until November 2, 2007, Jeaga just ignored his IEP. After November 2nd, they rewrote it to reflect the total absence of special education and related services PBCS was providing to him.

Due to the lack of necessary accommodations and related services, P.R. was excluded from his regular classes for 33 school days during the 2007-08 school year. The frequent discipline referrals and an incident on a school bus resulted in P.R.’s mother coming to Legal Aid for assistance in getting the necessary special education and related services for her son. By the time of an interim IEP meeting, requested by Legal Aid on behalf of P.R.’s mother, on April 29, 2008, P.R. had received 10 days of out-of-school suspension and 18 days of in-school suspension. At no time prior to April 29th, did the IEP team meet to provide any special education or related services to P.R.; nor did school staff recommend a functional behavioral assessment or behavior intervention plan. Following the April 29th interim review, P.R. had received 5 additional days of in-school suspension. P.R. had yet to be provided with any positive behavioral intervention or special education and related services. P.R. did not receive a free appropriate public education during the 2007-08 school year.

Although PBCS is providing compensatory education to P.R. to remedy the lack of services provided to him for the 2007-08 school year, the policies, practices and procedures he

¹⁴ Refer to Appendix A for the full names and addresses of the individual student complainants.

was subjected to last year, and which resulted in an unlawful denial of a free appropriate public education to him, still exist this year. On information and belief, there are many other students, at Jeaga Middle School and other schools in the PBCS, who are identified as E/BD, who are being excluded from their assigned classrooms for disciplinary reasons, and who do not have meaningful behavior intervention plans or the necessary related services on their IEPs.

P.R. has yet to be provided a meaningful behavioral intervention plan. At the request of P.R.'s mother, following the interim review on April 29, 2008, two staff members at Jeaga completed a Functional Behavioral Assessment ("FBA"). There is no corresponding Behavior Improvement Plan (BIP), however, as a result of the FBA. PBCS personnel continue to aver that by merely completing a form entitled "Functional Behavior Assessment Report and Behavior Intervention Plan", that they have developed a meaningful behavior intervention plan. *See* Att. A-3. To be meaningful, however, behavioral intervention services "designed to address the behavior violation so that it does not recur" are to be provided. 34 C.F.R. § 300.530(d)(ii). There should be an actual plan developed for the teachers and staff working with P.R., or any similarly situated student, that can be disseminated.¹⁵

Student B: N.S., DOB 3/1/93, 9th grade for 2008-09 SY at Palm Beach Gardens High School

N.S. is a fifteen-year-old white male. In September 2003, N.S. was determined to be eligible for special education due to Specific Learning Disabilities (SLD) and Language Impaired (LI). He was dismissed from the language impaired program once he was placed in alternative education in April 2005. In spring 2008, he was also determined to be eligible for the E/BD program.

As set forth in this complaint, PBCS has violated the rights of N.S., as guaranteed by the IDEA, by failing to provide him with sufficient related services to enable him to benefit from his special education program, by failing to provide his program of special education and related services in the least restrictive environment, by failing to comply with IDEA's discipline requirements and by failing to provide special education and related services in such a way as to confer on him meaningful educational benefit.

N.S. has had a difficult time academically, socially and emotionally for his whole school career.¹⁶ He was retained in kindergarten. He began receiving special education in late September 2003, in fourth grade. His initial IEP indicates his decoding skills were a year below grade level. His reading comprehension was mildly delayed. He also began receiving 90 minutes per week of language therapy. He clearly had difficulty attending to task and getting

¹⁵ Complainants specifically request that the FDOE address their allegation that merely completing the form "Report" does not meet the federal statutory requirements of a behavioral intervention plan.

¹⁶ N.S.'s records are replete with references to behavioral problems with an emotional component. In his first year of kindergarten (1998-99) behavioral interventions were reportedly implemented to reduce the number of times he tried to hurt himself. A Social History, completed on February 15, 2005, notes that when frustrated, N.S. will "smack self in head, belittle self saying 'I'm so stupid.'" Also noted is his total lack of friends and his wish to be invisible.

along with peers and adults. He had no related services to address his behavioral difficulties. *See Att. B-1.*

N.S. continued to have difficulty completing his work and managing his behavior. He was placed at a different elementary school for fifth grade, but no related services were added to his IEP to help him with his behavioral problems. After less than a full school year at Palm Beach Gardens Elementary, he was sent to an elementary school alternative education class for those same behavioral problems. The alternative education program is a more restrictive program where N.S.'s access to the general curriculum is far more limited. This particular elementary alternative education "program" was actually one or two classrooms of students segregated from the rest of the elementary school.

Prior to being placed in the more restrictive alternative education program, he was dismissed from the language impaired program and his language therapy was discontinued. The language therapy was discontinued despite the fact that his IEP stated that N.S.'s written expression was "significantly below average." *See Att. B-2.* Furthermore, his performance on the Oral and Written Language Scales (OWLS) during the Speech and Language Re-evaluation, was actually slightly below his initial scores on the OWLS when he was placed in the language impaired program. *Compare Att. B-3 with Att. B-4.* The dismissal from language therapy had far more to do with the shortage of speech and language pathologists in alternative education than it did with N.S.'s individual needs. In addition, no related services were added to his IEP to help N.S. with his behavioral problems and would have allowed him to continue at Palm Beach Gardens Elementary School.

N.S. spent the next 2 ½ years in alternative education, although alternative education is designed to return students to a comprehensive school campus after one semester, or a school year at the most. He was frequently suspended from alternative school, without any meaningful positive behavioral interventions. The only FBA in his file was completed by the staff at Palm Beach Gardens Elementary School. There is no evidence in his file that an individualized behavioral intervention plan was developed, implemented or revised based on the FBA while he was in alternative education.

The more time N.S. spent in alternative education, the less special education and related services he received. He first went to an alternative education elementary class at Eisenhower Elementary. From there, he went to Gold Coast School, an alternative education school, for 6th grade. Within a month of arriving at Gold Coast, he had been removed from special education classes completely and was receiving regular education "pull-out" services "when needed". *See Att. B-5 at 3.*

By April 4, 2006, his individualized behavior plan was deleted from his IEP. *See Att. B-6 at 3.* He had no special education and no related services. His IEP was not reasonably calculated to provide N.S. with a FAPE or allow him to move from a more restrictive to a less restrictive program. His behavior had not improved, or he never would have been placed at the Excel alternative education site. His academic skills were regressing as evidenced by continually declining scores on the FCAT.

At Excel, N.S. was subjected to continuous discipline referrals and suspensions without any positive behavioral interventions. In fact, after he was transferred from one alternative education site (Excel West) to another (Excel Central)¹⁷ in early December 2007, he was suspended for four days on his first day of attendance. This suspension was at least his 11th day of out-of-school suspensions. No manifestation determination was held. No related services or special education was provided. His mother ultimately pulled him out of the PBCS to home-school him for the rest of the school year.

N.S. began the 2007-08 school year at Palm Beach Marine Institute (PBMI), which is an alternative education contract site. Some of the students who attend PBMI are court-ordered to that site, although the School Board also has a number of slots. N.S. attended PBMI through a School Board slot. His IEP, however, provided him with no special education or related services. *See* Att. B-7. Despite the mention in the notes that PBMI has a behavior management program and counseling, N.S. did not receive any positive behavioral interventions while at PBMI. He did not have counseling. No FBA was completed, nor BIP developed by either PBMI staff or PBCS staff. He had a very difficult time academically and behaviorally. He had Ds and Fs in all of his courses.

N.S. was not provided with a FAPE at PBMI. He was suspended out-of-school for at least seven recorded days, but that does not begin to capture his exclusion from school. He was frequently sent home early, or he became frustrated and walked off campus to go home. Of the 79 days he was registered at PBMI, he attended only 45. Many of the 33 days he missed were unrecorded out-of-school suspensions.

Due to the absolutely dismal experience at PBMI, an IEP meeting was held at the District office on November 29, 2007. His school placement was not immediately recommended at that meeting. It took a few weeks for the District to select his placement. He remained at home through the winter holidays, while the District determined his placement. Once he began Duncan Middle School on January 7, 2008, he was supposed to be in the E/BD cluster program. However, since the District neglected to forward his IEP, he was placed in the dropout prevention program, again without any FBA, behavior improvement plan or even special education or related services. He was suspended again for two days, and had a series of in-school suspensions.

N.S. was re-evaluated twice during the 2007-08 school year. In October 2007, his overall grade level in reading on the Woodcock-Johnson Test of Achievement was ending third grade (3.9). His broad math scores on the same instruments was 4.2 and his written expression score

¹⁷ Excel Alternative Schools (also known as Arbor Education & Training) is a private for-profit corporation that includes the provision of alternative education services to school districts. PBCS contracted with Excel (in a few different iterations and names) for at least three school years. PBCS ceased contracting with Excel for alternative education services in July 2007 for Excel's failure to adhere to the contract. Excel's record-keeping in basic attendance to out-of-school suspensions was non-existent. Rarely, if ever, did Excel personnel follow IDEA's statutory or regulatory scheme when it came to disciplinary matters. Excel personnel did not appear to have the knowledge, understanding or training to complete any FBAs or BIPs. PBCS entered into an Early Resolution Agreement for a State Complaint alleging widespread violations of IDEA, particularly the disciplinary requirements, on behalf of special education students enrolled in Excel school sites for the 2006-07 SY. *See* Case No. BEESS-2007-031-ER.

was 4.7. N.S. had basically not learned any measurable skills while in alternative education. He was evaluated again in January 2008. He was administered the Wechsler Individual Achievement Test-II. His reading comprehension scores were higher (6.9) than in October, but his reading decoding skills were lower (2.9). His Math reasoning scores were also higher than in October (5.2), but his computation skills were about the same. His spelling and written expression were measured at early third grade levels. The lack of special education and related services while in alternative education left N.S. far below grade level and more than likely contributed to his behavioral problems.

In March, the District agreed to a diagnostic placement of N.S. at a residential psychiatric hospital for children, SandyPines. At SandyPines, N.S. was appropriately identified as an E/BD student. He got the individualized therapeutic treatment that he needed to allow him to benefit from education. He and his mother also received family therapy, which benefitted the family and N.S. immediately in addressing family issues that had been impeding N.S.'s academic performance. The family therapy also assisted his mother in setting boundaries for N.S., which has assisted N.S. to follow adult directions and obey authority figures.

Following this extreme intervention after years of ongoing school failure with increasingly serious behavioral sequelae, N.S. was finally provided the services he needed to make educational, social and emotional progress. Following the successful completion of treatment at SandyPines, N.S. was able to enroll in his home high school. He is trying out for the football team and is a member of the ROTC program. His stated goal upon graduation is to join the military. He will need continued support to maintain this progress.

The policies, practices and procedures to which N.S. was subjected still exist and still continue to be implemented by the PBCS.

Student C: B.J.S.F., DOB 5/28/94, 7th grade for the 2008-09 SY at Bear Lakes Middle School

B.J.S.F. is a 14-year-old African-American/Haitian-American male who has been diagnosed with ADHD. He is eligible for special education in the following categories: E/BD, SLD, Other Health Impaired (OHI), Speech Impaired (SI) and Language Impaired (LI). He has been eligible for special education and related services since May 2001, the school year in which he repeated kindergarten while living in Georgia. He came to PBCS in the middle of first grade, and has been in PBCS ever since. He repeated third grade in PBCS. B.J. has a long history of behavioral and academic difficulties, and a relatively high level of absenteeism.

As set forth in this Complaint, the PBCS has violated, and continues to violate, the rights of B.J.S.F., as guaranteed by IDEA, by failing to provide him with sufficient related services to enable him to benefit from his special education program, by failing to provide his program of special education and related services in the least restrictive environment, by failing to comply with IDEA's discipline requirements, and by failing to provide special education and related services in such a way as to confer on him meaningful educational benefit.

There is very little in his ESE folder in the way of educational, behavioral or anecdotal documentation from B.J.'s fifth grade year at North Palm Beach Elementary School. His IEP

from that year indicates that he was supposed to have a daily behavior plan, but there is no plan attached to the IEP, or even one in his file. Indeed, there is not an FBA, or even parental consent for an FBA, until the middle of this past school year, during his 6th grade year. There is definitely not an individualized behavior improvement plan. He has the related service of group counseling, but no duration other than “weekly” is noted. He received language therapy for one hour per week, which represents a reduction of 30 minutes per week from his previous IEP. *See* Att. C-1 at 3-4 and Att. C-2 at 3. No improvement in skills was noted to support this reduction in services.

During school year 2006-07, B.J. was consigned to a self-contained emotionally handicapped (EH) class¹⁸ at North Palm Beach Elementary School. At no time during the 2006-07 school year did B.J. receive an appropriate educational program. The classroom teacher went on a maternity leave sometime during the school year. There was a series of substitute teachers in the class – some certified teachers, others uncertified. The classroom had obviously spiraled out of control by the second semester.

As the result of a lack of appropriate education and related services, including a complete absence of positive behavioral intervention and planning, B.J.’s behavior escalated. During the spring, the School Board Police Officer assigned to North Palm Beach Elementary School arrested him three times.

The first incident occurred on January 9, 2007. B.J. spent the morning being called the “N” word, and other racially derogatory slurs, by another student in the class. A teacher who had been in the class early that afternoon stated that the other student continued the verbal abuse and threw tape at B.J. The teacher left the classroom after also being verbally abused by the other student. It is unclear whether there were any adults in the room after she left. At around 1:00 pm, B.J. went over and slapped the other student. The School Board Police Officer filled out a probable cause affidavit charging B.J. with battery. When a redacted copy of the probable cause affidavit was shown to the Minnesota Department of Education’s Violence Prevention Specialist, she compared the school’s response to prosecuting the victim of a hate crime.

The second incident occurred on February 15, 2007. The substitute teacher for B.J.’s class was not a certified teacher. The Behavioral Intervention Assistant (BIA), who assists teachers and students with behavior management difficulties, was absent that day. There were about 6-8 elementary school students in B.J.’s class. The students were in control of the classroom, not the adults. There were no principles of positive behavior management in use by the adults. The Principal and Assistant Principal were manning the windows of a one-story building to try and keep the students from climbing out of the window. The substitute teacher was spread-eagled across the door at the Principal’s instruction, so that the substitute could keep the students from leaving the classroom through the door. B.J. is alleged to have kicked the substitute teacher in the groin when he was trying to leave the classroom.

The last incident occurred on April 27, 2007 with a different substitute teacher. The teacher was physically “escorting” B.J. to the BIA’s office and B.J. was reportedly trying to step on the teacher’s feet. When they got to the BIA’s office, B.J. is reported to have kicked the

¹⁸ *See* footnote 8, *supra*.

teacher. B.J. was arrested for this incident and taken to the Palm Beach County Juvenile Detention Center. He was at the Detention Center for three school days. He did not, however, return to North Palm Beach Elementary School for the rest of the school year. There is a total absence of documentation in his file regarding suspension, recommendation for expulsion, or a manifestation hearing following this incident. His mother states that she was told to keep him home. Without following any discipline requirements in IDEA, the North Palm Beach Elementary School excluded B.J. for 21 school days without any educational services at the end of the 2006-07 school year.

B.J. started 6th grade during the 2007-08 school year. He was unable to read material more difficult than that written at the first grade level, although his measured reading achievement level in 2001 was in the average range. His reading level significantly declined over the course of his elementary school career. His written language skills have been similarly affected. His math skills have never progressed beyond a third grade level, despite being measured as being on grade level in 2003. Despite this deficit in skills, no additional special education services or increased related services were provided to him. *See Att. C-3 at 3-4.*

By the end of the first semester in 6th grade, he had Ds and Fs in all of his classes and significantly challenging behavior. He had already been suspended for six days out-of-school. Despite the series of incidents that occurred in the prior school year, and the continuation of those behaviors into the 2007-08 school year, he still did not have an FBA or an individualized behavior plan.

At the interim IEP meeting held on February 25, 2008, B.J. was represented by an attorney for the first time. His regular education P.E. teacher discovered for the first time that B.J. was ADHD. The P.E. teacher and the IEP team brainstormed ways to deal with his ADHD to increase his positive participation in class, since he was already dressing out, participating in sports, liked by his peers and was not disrespectful to the teacher. His difficulties occurred during the first 5 minutes of class and involved difficulty staying in one place and sitting down. B.J. was also placed in a class where the Wilson reading program, which is based on the Orton-Gillingham program, is taught. By the end of the year, he told his speech language pathologist that he was finally learning to read. After the February meeting, an FBA and behavior management/prevention plan was developed. It appears that the plan has been initially successful. At the end of the school year, B.J.'s grades and behavior had improved, although his academic skills are still significantly below grade level. His high absenteeism rate has yet to be adequately addressed.

Lastly, B.J. had also joined the school band and remains motivated and enthusiastic about playing the drums. None of the positive outcomes that occurred, however, would have occurred without the presence of an educational advocate or attorney, even though the members of the IEP team knew what to do to provide B.J. with a FAPE.

The policies, practices and procedures to which B.J.S.F. was subjected still exist and still continue to be implemented by the PBCS.

Student D., K.R., DOB 6/30/95, 8th grade for the 2008-09 SY at Indian Ridge School

K.R. is a 13-year-old white male who has been diagnosed with bipolar disorder, ADHD and Oppositional Defiant Disorder. He is eligible for special education and related services through the E/BD program. He was determined to be eligible for the EH program in early 2002, when he was in the first grade. K.R. has a significant abuse and neglect history, both for physical and sexual abuse. He was removed from the custody of his biological parents in 2000 and adopted by his paternal grandmother in July 2002. He also has a history of challenging behaviors, inappropriate language and difficulties in getting along with peers and adults.

By the end of elementary school in 2005-06, K.R. was academically on, or above, grade level. He still had difficulty with peer interactions and with behavioral control during unstructured school time. The IEP team recommended that he begin middle school in regular education classes with one special education class (social/personal) and no related services. *See* Att. D-1 at 3.

After one month at Carver Middle School, K.R. had been suspended for a total of 5 days out-of-school. On October 6, 2006, he was again suspended for 10 days out-of-school for making a threat. A manifestation determination was completed by the school and the team determined that the behavior was not a manifestation.

Since the team conducting the manifestation determination had no current data at the time of the manifestation determination, K.R. was re-evaluated.¹⁹ The re-evaluation found that he was still functioning in the superior range of intelligence, and that his academic skills were strong in reading, math concepts and spelling. He had some weaknesses in math computation and in the mechanics of writing. *See* Att. D-2 at 3-4, 6-7. His teachers reported that he didn't exhibit many behavior problems in class, but had behavioral difficulty during unstructured times. *Id.* at 1. The evaluator found that he continued to have significant emotional concerns and recommended that K.R. be provided with counseling services, an affective curriculum and more structure. *Id.* at 9.

Instead of providing more intensive related services at Carver Middle School, K.R. was transferred to Boca Middle School to a self-contained EH class. He began attending Boca Middle School on January 9, 2007. By January 15, 2007, his file was being reviewed by PBCS alternative education personnel. Boca Middle School staff were successful in moving K.R. to an alternative education placement following a meeting that involved actually removing the related service of group counseling, removing the social/personal class and refusing to acknowledge his significant mental illness despite documentation provided at meetings by his targeted case manager and psychiatrist from South County Mental Health Center. *See* Att. D-3.

¹⁹ K.R. had not been re-evaluated since his initial evaluation was completed in December 2001. There is no documentation in the file that a re-evaluation had ever been considered and determined unnecessary. Prior to the re-authorization of IDEA in 2004, a re-evaluation every three years was mandatory. Subsequent to the 2004 Re-authorization, a re-evaluation must be completed every three years unless parents and school district agree it's unnecessary. 20 U.S.C. § 1414(a)(2) and 34 C.F.R. § 300.303. Here, K.R. should have been re-evaluated by December 2004, or there should have been a notation that such a re-evaluation was determined unnecessary by his mother and PBCS. In these circumstances, PBCS' failure to re-evaluate K.R. by December 2004 violates both versions of IDEA.

It appears that the Boca Middle School staff merely documented K.R.'s behavioral difficulties with the goal of an alternative education placement. Boca Middle staff did gather data, but no positive behavioral intervention plan was designed with the data. There is no evidence of implementing, reviewing and revising, in a meaningful and effective manner, any positive behavioral interventions specifically designed to intervene with K.R.'s continuing behavioral problems. It is highly likely that Boca Middle School staff were completely unprepared to successfully intervene with K.R. to positively change his behavior. There is no indication, however, that the staff tried to find an expert in positive behavioral intervention with whom to consult; not did they increase his related services. Instead, the staff randomly removed special education and related services and sent K.R. to alternative education.

Prior to sending him to alternative education, the Boca Middle IEP team did recommend, on March 2, 2007, that K.R. have a psychiatric evaluation. That recommendation, however, was not pursued while K.R. was in alternative education.

At the same time, K.R.'s mother and targeted case manager were requesting that K.R. be placed in a special school for students with severe mental illness, rather than alternative education, because they believed that he needed intensive therapeutic services in order to improve emotionally and behaviorally and to be able to function academically and socially.

K.R. was sent to an alternative education setting, Excel Alternatives, in April 2007 for the rest of the school year. The referring behaviors were the same behaviors he was exhibiting at Carver Middle School at the beginning of the school year, and to a lesser extent throughout his elementary school career.

There are no records available from Excel (*see* footnote 17 *supra*), but his family reports that he received very little academic instruction, had no homework, and was frequently sent home for disciplinary reasons that were never documented or recorded. K.R. failed the 6th grade.

K.R. began his second year in 6th grade at a different alternative school, South Area Intensive. He received no related services, not even the related service of transportation - although both group counseling and specialized transportation were on his IEP. Att. D-3 at 4. His uncle provided K.R. with transportation, both to and from school. The special education class K.R. was in was composed of both middle school and high school students. There was a very basic classroom management plan, but no individualized positive BIP. At this point, his mother sought legal representation.

At an interim IEP meeting held on October 22, 2007, PBCS finally agreed to consider intensive therapeutic services for K.R. PBCS, however, has developed a long, involved process for "referring" E/BD students to the special school, Indian Ridge. The referral involves an updated psycho-educational evaluation and a psychiatric evaluation with the PBCS' contracted psychiatrist. That process took four months for K.R.

While he was waiting for the Indian Ridge referral process to run its course, K.R. was placed at another comprehensive middle school, Lake Worth Middle School. At Lake Worth Middle School, K.R. did have individual and group counseling. He was supposed to have a

highly structured behavior management plan, but that plan was never developed. He was also receiving academic work at least three years below his measured ability level. He was suspended for five days out-of-school. He had numerous bus referrals and 21 days of bus suspensions. Despite being suspended from the bus for more than 35% of the time he attended Lake Worth Middle School, no FBA or BIP was developed for the bus, despite it being repeatedly requested.

He was finally placed at Indian Ridge, the special school, on February 20, 2008, about a year after his mother had requested such a placement. The intensity of special education and related services that K.R. receives at Indian Ridge has helped him make progress socially, emotionally and academically. He has been able to demonstrate mastery of 6th and 7th grade academic skills since he has been at Indian Ridge. His progress has been sufficient for him to be promoted to 8th grade with his age-level peers.

The policies, practices and procedures to which K.R. was subjected still exist and still continue to be implemented by the PBCS.

IV. SYSTEMIC RELIEF REQUESTED

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. Appoint a nationally-recognized expert in the education of emotionally and behaviorally disabled children and youth, with specialized expertise in positive behavioral interventions, to oversee the development and implementation of the corrective action plan.

2. Ensure that a nationally-recognized expert (either the same expert identified in #1 above, or a different expert with special expertise in positive behavioral interventions) develops and monitors the implementation of a systemic positive behavioral intervention services and modifications training program that includes, but is not limited to, strategies, objectives, and timelines for students for implementing positive behavior intervention services in a district-wide and school-wide program; the development of effective FBAs; and the development, implementation and necessary revisions of BIPs; and the mechanics of conducting manifestation determinations. The positive behavioral intervention training program shall include all pupil appraisal staff (*i.e.*, child study team members, including school psychologists and related services personnel), 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.

3. Ensure that the expert, within 60 days of his or her appointment, conducts a review and audit of the PBCS education programs for students with E/BD and all other students with disabilities who manifest behavioral issues and are subject to repeated disciplinary removals or placement in alternative school settings in the PBCS and issues a report with specific recommendations for systemically addressing these students' behavioral programming needs.

4. Ensure that the expert, in conjunction with the PBCS, 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 determinations; provision of 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 and provision of due process rights (including written notice of and justification for the removal) for parents and students upon suspension from school.

5. Ensure that the expert, in conjunction with the PBCS, creates and monitors the implementation of a reliable central administrative electronic tracking system for recording the number of disciplinary referrals and removals from school for special education students in the PBCS.

6. Ensure that the expert, in conjunction with the PBCS, develops and monitors the implementation of specific strategies and objectives for significantly reducing the number of suspensions of students with disabilities.

7. Ensure that the expert, in conjunction with the PBCS, develops and monitors the implementation of specific annual strategies and objectives for significantly reducing the number of E/BD students and other 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 and classrooms.

8. Compel the PBCS to place certified special education teachers in all of its self-contained classrooms and in its alternative schools, and compel the PBCS to provide all IEP-required special education and related services at its alternative schools;

9. Compel the PBCS to significantly increase the frequency and duration of the related services of social work services, counseling services, psychological services, recreation services, rehabilitation counseling and parent counseling and training, as well as other necessary related services provided to E/BD students and all other students who are subject to repeated disciplinary removals or placement in alternative school settings in PBCS and also ensure that decisions involving such related services are based upon individual need and not staff availability or other reason unrelated to individual student need;

10. Ensure that the expert, in conjunction with PBCS and other nationally-recognized experts in curriculum, develops specific strategies and objectives for implementing intensive reading and math remediation programs at all elementary schools serving E/BD students to ensure that they are reading at or within one year of chronological grade level by the time they move onto middle school; and ensure that the expert(s), in conjunction with PBCS, develops and implements reading and math remediation strategies for E/BD students who are determined to be three years or more behind their chronological grade level in middle school or high school based on either standardized test scores and/or curriculum based assessments;

11. Ensure that the expert, in conjunction with PBCS, develops and monitors the implementation of a district-wide training initiative involving all middle 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.

12. Require the PBCS to disaggregate arrest data by School Board Police by disability category.

V. INDIVIDUAL RELIEF REQUESTED

The complainants are requesting individual relief for B.J.S.F. for the lack of a free appropriate public education he endured for at least a full academic school year. The complainants are requesting: a.) individualized tutoring in reading, using the Wilson program, and in individualized tutoring in math; b.) individualized instruction in the use of assistive technology, both in text-to-speech technology and the use of word processing software with word prediction capabilities; c.) the addition of the related services of social work services to address the absenteeism, parent counseling and training to address the same issue; d.) monitoring, review and any necessary staff training regarding his individual behavior management plan by an expert identified by the FDOE who is not employed by the PBCS; and e.) any other relief that the FDOE finds just and proper in this situation.

Respectfully submitted by,

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