BEFORE THE LEGAL DIVISION OF THE LOUISIANA DEPARTMENT OF EDUCATION

E. A., *et al.*, on behalf of themselves and all similarly situated students ,	)
Petitioners,	)
v.	)
Louisiana Department of Education, Louisiana Board of Elementary and Secondary Education,	)
Respondents.	)

DUE PROCESS COMPLAINT

This is a class due process complaint to vindicate the rights of all New Orleans public school students with disabilities pursuant to the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"), 20 U.S.C. § 1400 *et seq.*, and its implementing regulations, 34 C.F.R. § 300.1 *et seq.* Pursuant to federal law, the Louisiana Department of Education ("LDE") has the ultimate responsibility to ensure that all public schools—including those which are privately operated—provide students with disabilities a free and appropriate public education. By failing to comply with this mandate, LDE has denied New Orleans public school students their educational rights and placed an untenable burden on the operators of New Orleans' public schools.

In the aftermath of Hurricane Katrina, the state of Louisiana rebuilt New Orleans public schools, promising educational excellence for all students. But this promise remains unfulfilled for New Orleans' students with disabilities. The most innovative educational reformers of a generation have expended significant resources to reform New Orleans' public school system, creating what some have called the national laboratory of the charter school movement.

Tragically, reformers have left behind those students who would most benefit from innovative educational practices. New Orleans' students with disabilities have waited almost five-years to reap the benefits of educational reform—languishing in schools that have consistently failed to meet their needs. Federal law demands an end to this wait. The Louisiana Department of Education must ensure that New Orleans' students with disabilities are provided with immediate access to the quality education readily available to their non-disabled peers.

The Petitioners are 13 students who represent a class of approximately 4,500 New Orleans public school students with disabilities, including a thirteen-year-old honors student and talented musician who became severely depressed and began to inflict harm on herself. Her school responded by expelling her, claiming that her depression was "disruptive" to school operations. As a result, she became more depressed and attempted to commit suicide. The class also includes a 9-year-old Dr. Seuss fan who has autism and is blind. His school has repeatedly failed to accommodate his disabilities, requiring his mother to attend school with him each day to help him navigate the school's stairs and assist him with his class work. He sought admission to a number of New Orleans charter schools, but he was turned away as a result of his disabilities. Another student is a 9-year-old with a sunny disposition and a love of history. He has an emotional disability and his school has repeatedly punished him for manifestations of his disability by forcing him into a small room and physically restraining him until he urinated on himself.

These are not isolated incidents. Instead, the experiences of these individuals reflect LDE's systemic failure to secure the rights of New Orleans public school students with disabilities. Throughout the state of Louisiana, 19.4 percent of children with disabilities graduate with a high school diploma. In the Recovery School District, only 6.4 percent of children with

disabilities graduate.[1] A recent survey found that 37 percent of special education students who attend charter schools in New Orleans perform well below grade level and 47 percent perform below grade level.[2] The Recovery School District punishes students with disabilities at a rate that is 63 percent higher than the state average. Some charter schools punish students with disabilities at rates that are more than 100 times higher than the state average.[3] This means that New Orleans students with disabilities are removed from the classroom and denied educational opportunities because of their disabilities.

On behalf of themselves, the individual student-Petitioners seek compensatory education and related services to remedy the violations of their rights under the IDEA. On behalf of all similarly situated New Orleans students with disabilities, the Petitioners seek the appointment of a Special Master who will ensure that LDE complies with federal law and ensures the provision of appropriate educational services to all New Orleans public school students with disabilities.

I. PARTIES

A. Petitioners

1. Student's Name: E[redacted] A[redacted]
   D.O.B.: [redacted]
   Grade: 12th Grade
   School: [redacted] – [redacted] High School
   Exceptionality: Autism
   Parent/Guardian: [redacted]
   Telephone: [redacted]
   Address: [redacted]
   New Orleans, LA [redacted]

2. Student's Name: S[redacted]
   D.O.B.: [redacted]

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[1] LOUISIANA DEPARTMENT OF EDUCATION, SPECIAL EDUCATION PERFORMANCE PROFILE (2008-09), *available at* http://www.doe.state.la.us/lde/eia/2115.html.
[2] EDUCATIONAL SUPPORT SYSTEMS, INC., THE SPECIAL EDUCATION PROJECT: A STUDY OF 23 CHARTER SCHOOLS IN THE RECOVERY SCHOOL DISTRICT (2008). *See* Appx. pgs. 950-104.
[3] LOUISIANA DEPARTMENT OF EDUCATION, SPECIAL EDUCATION PERFORMANCE PROFILE (2008-09), *available at* http://www.doe.state.la.us/lde/eia/2115.html.

Grade: 7th Grade
School: [redacted] Charter School
Exceptionality: Not Identified
Parent/Guardian: [redacted]
Telephone: [redacted]
Address: [redacted]
New Orleans, [redacted]

3. Student's Name: D[redacted] B[redacted]
D.O.B.: [redacted]
Grade: 3rd Grade
School: [redacted] Charter School
Exceptionality: Emotional Disability
Parent/Guardian: [redacted]
Telephone: [redacted]
Address: [redacted]
New Orleans, LA [redacted]

4. Student's Name: J[redacted] D[redacted]
D.O.B.: [redacted]
Grade: 3rd Grade
School: [redacted]
Exceptionality: Not Identified
Parent/Guardian: [redacted]
Telephone: [redacted]
Address: [redacted]
New Orleans, LA [redacted]

5. Student's Name: N[redacted] F[redacted]
D.O.B.: [redacted]
Grade: 3rd Grade
School: [redacted] Elementary School
Exceptionality: Multiple Disabilities: Autism, Visual Impairment
Parent/Guardian: [redacted]
Telephone: [redacted]
Address: [redacted]
New Orleans, LA [redacted]

6. Student's Name: A[redacted] J[redacted]
D.O.B.: [redacted]
Grade: 4th Grade
School: [redacted] Elementary School
Exceptionality: Not Identified
Parent/Guardian: [redacted]
Telephone: [redacted]
Address: [redacted]

New Orleans, LA [redacted]

7. Student's Name: K[redacted] J[redacted]
D.O.B.: [redacted]
Grade: 7th Grade
School: [redacted] Charter School
Exceptionality: Not Identified
Parent/Guardian: [redacted]
Telephone: [redacted]
Address: [redacted]
New Orleans, LA [redacted]

8. Student's Name: R[redacted] L[redacted]
D.O.B.: [redacted]
Grade: 3rd Grade
School: [redacted] Charter School
Exceptionality: Other Health Impairment (OHI)
Parent/Guardian: [redacted]
Telephone: [redacted]
Address: [redacted]
New Orleans, LA [redacted]

9. Student's Name: M[redacted] M[redacted]
D.O.B.: [redacted]
Grade: 1st Grade
School: [redacted] Elementary School
Exceptionality: Multiple Disabilities
Parent/Guardian: [redacted]
Telephone: [redacted]
Address: [redacted]
New Orleans, LA [redacted]

10. Student's Name: L[redacted] M[redacted]
D.O.B.: [redacted]
Grade: 8th Grade
School: [redacted]
Exceptionality: Emotional Disability
Parent/Guardian: [redacted]
Telephone: [redacted]
Address: [redacted]
New Orleans, LA 70126

11. Student's Name: M[redacted]
D.O.B.: [redacted]
Grade: 6th Grade
School: [redacted]

	Exceptionality:	Not Identified
	Parent/Guardian:	[redacted]
	Telephone:	[redacted]
	Address:	[redacted]
		New Orleans, LA [redacted]
12.	Student's Name:	L[redacted] W[redacted]
	D.O.B.:	[redacted]
	Grade:	8th Grade
	School:	[redacted]
	Exceptionality:	Other Health Impairment (OHI)
	Parent/Guardian:	[redacted]
	Telephone:	[redacted]
	Address:	[redacted]
		New Orleans, LA [redacted]
13.	Student's Name:	Q[redacted] W[redacted]
	D.O.B.:	[redacted]
	Grade:	1st Grade
	School:	[redacted] Elementary School
	Exceptionality:	Not Identified
	Parent/Guardian:	[redacted]
	Telephone:	[redacted]
	Address:	[redacted]
		New Orleans, LA [redacted]

B. <u>Respondents</u>

Louisiana Department of Education

LDE, as the state educational agency ("SEA"), has ultimate responsibility for ensuring that all public schools in the state of Louisiana comply with the IDEA. *See* 20 U.S.C. 1412(a)(11)(A). Accordingly, LDE is responsible for implementing polices and procedures to make certain that the local education agencies ("LEAs") have complied with the IDEA. *See Corey H. v. Bd. of Educ.*, 995 F. Supp. 900, 905 (N.D. Ill. 1998).

LDE must oversee the coordination and provision of special education services in New Orleans. This obligation applies to students who attend all public schools that operate in the city of New Orleans, including the 47 charter schools that function as 47 independent school districts,

the 23 schools operated by the state under the Recovery School District ("RSD")[4] and the 12 charter schools and 4 publically run schools operated by the Orleans Parish School Board.[5] LDE is liable for failing to ensure that each New Orleans public school student with a disability is provided a free and appropriate public education. "[The state educational agency] may be held responsible if it fails to comply with its duty to assure that IDEA's substantive requirements are implemented." *See St. Tammany Parish Schl. Bd. v. Louisiana*, 142 F.3d 776, 784 (5th Cir. 1998).[6]

Louisiana Board of Elementary and Secondary Education

The Louisiana Board of Elementary and Secondary Education ("BESE") is responsible for the oversight of the Louisiana Department of Education and the Louisiana Recovery School District. BESE oversight responsibilities include the approval and adoption of rules, by-laws, and regulations for the discipline of students and for the government of the public elementary and secondary schools and other public schools and programs under its jurisdiction, which shall not be inconsistent with law, pursuant to La. R.S. § 17:7. Pursuant to La. R.S. § 17:10.5, BESE functions as the local school board for the RSD, promulgating and enforcing local policy and supervising the Superintendent. Pursuant to La. R.S. § 17.6, BESE has the authority to sue and be sued.

II. CLASS ACTION ALLEGATIONS

[4] As the administrator of the Recovery School District ("RSD"), LDE functions as both the state educational agency and the local educational agency for the 23 RSD-run traditional public schools operating in New Orleans.

[5] Unless otherwise specified, the term "New Orleans Public Schools" refers collectively to schools operated by charter organizations, schools operated by the Recovery School District and schools operated by the Orleans Parish School Board.

[6] In discussing generally the allocation of liability between an LEA and the SEA, the Fifth Circuit held that "both the language and the structure of IDEA suggest that either or both entities may be held liable for the failure to provide a free appropriate public education." *St. Tammany Parish Schl. Bd. v. Louisiana*, 143 F.3d at 784. The court concluded that the language of IDEA suggests that it is ultimately the SEA's responsibility to ensure that each child within its jurisdiction is provided a free appropriate public education. *Id. See also Corey H.*, 995 F. Supp. at 902 ("While the local schools and the children's parents are the 'front line' providers of educational services for children with disabilities, the IDEA squarely places the ultimate responsibility for ensuring compliance with its mandates on the state educational agencies.").

Class actions were established to resolve the exact sort of persistent and pervasive systemic violations that are alleged in this due process complaint. As a result of the actions and inactions of the Louisiana Department of Education, the Petitioners and the class they represent are denied a free and appropriate public education. A class action will ensure that the relief ordered will not be duplicative and it will conserve the resources of the administrative process. The federal courts have frequently found that class actions are an appropriate—if not the sole—mechanism for remedying systemic IDEA violations.[7] Hearing officers are empowered to grant the same relief Petitioners could receive in federal court, and class certification is standard relief granted in systemic IDEA litigation.[8]

The proposed class meets all the requirements for a class action pursuant to Fed. R. Civ. P. 23(a), which are as follows:

(1) The class is so numerous that joinder of all members is impracticable;

(2) There are questions of law or fact common to the class;

(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and

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[7] *L.M.P. ex. rel. EP v. Sch. Bd.*, 516 F. Supp. 2d 1294, 1304 (S.D. Fla. 2007)("There [is] little dispute that claims of generalized violations of the IDEA lend themselves well to class action treatment."); *Upper Valley Ass'n for Handicapped Citizens v. Mills*, 1996 U.S. Dist. LEXIS 10974 at **4 (D. Vt. 1996)(Generally, courts have looked favorably upon requests for class certification in cases which allege systematic violations of the IDEA.); *J.G. v. Board of Education*, 830 F.2d 444, 447 (2d Cir. 1987)("There can be little dispute that claims of generalized violations such as these [referring to allegations that the Board of Education violated IDEA regulations] lend themselves well to class action treatment.").

[8] *M.A. ex. rel. E.S. v. Newark Pub. Sch.*, 2009 U.S. Dist. LEXIS 114660 (D.N.J. 2009)(class certification granted for parents of children alleging that their rights under IDEA were violated); *C.G. v. Commonwealth Dep't of Educ.*, 2009 U.S. Dist. LEXIS 90028 (M.D. Pa. 2009)(plaintiffs' motion for class certification granted; parents claimed that funding formula under state statute denied children FAPE); *J.S. v. Attica Cent. Schs.*, 2006 U.S. Dist. LEXIS 12827 (W.D.N.Y. 2006)(class certification granted to plaintiffs, parents alleged that the school district failed to provide access to school facilities for students with physical disabilities and to evaluate and appropriately place children with disabilities in the least restrictive environment.);*Gaskin v. Pennsylvania*, 1995 U.S. Dist. LEXIS 8136 (E.D. Pa. 1995)(plaintiffs' motion for class certification granted in their action under IDEA).

(4) The representative parties will fairly and adequately protect the interests of the class.

1. The proposed class is so numerous that joinder is impracticable.

The class is defined as all students with disabilities, who now attend or who will in the future attend public school in New Orleans, Louisiana, including those identified as students with exceptionalities and those unidentified as students with exceptionalities. This includes the approximately 4,500 New Orleans students with disabilities (both identified and unidentified) who are currently enrolled in public school and the countless students with disabilities who will enroll in the future. Given the number of youth who are members of the proposed class, joinder is not just impracticable—it is impossible.

2. There are questions of law or fact common to the class.

There are questions of law and fact common to the class. These common questions include the Louisiana Department of Education's failure to ensure that students with disabilities are identified in accordance with IDEA's "child find" requirement, are provided with Individualized Education Plans ("IEPs") that are reasonably calculated to confer educational benefit, are provided with the appropriate types and levels of related services, are disciplined in accordance with IDEA's procedural safeguards, are provided with appropriate transition plans, and are granted access to the variety of educational programs and services available to nondisabled students.

3. The claims of the Petitioners are typical of the claims of the proposed class.

This broadly defined element tends to merge with the concept of commonality. *See* 7A CHARLES A. WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 1764, at 247 (2000). Both criteria seek to assure that the action can be practically and efficiently maintained and that the

interests of the absentees will be fairly and adequately represented. *See General Tel. Co. of Southwest v. Falcon,* 457 U.S. 147, 157 n. 13 (1982). Claims may be found typical even though factual variations exist among individual class members. In short, as long as the legal theories of the named Petitioners do not potentially conflict with the potential class, typicality is found.

LDE's unlawful conduct adversely affects the putative class and the named Petitioners in exactly the same way. The named Petitioners and the class of New Orleans students with disabilities are being subjected to the same systemic violations of IDEA, and they are each denied a free and appropriate public education. The interests and incentives of the Petitioners are precisely aligned with that of the larger class of students. The named Petitioners' claims all arise from LDE's failure to comply with federal law.

4. The Petitioners will fairly and adequately represent the interests of the class.

The Petitioners will fairly and adequately represent the interests of the class. The Petitioners possess a strong personal interest in the subject matter of the lawsuit, and are represented by experienced counsel with expertise in due process proceedings, class action and civil rights litigation.

5. Respondents have acted and refused to act on grounds generally applicable to the class.

LDE and BESE have failed to comply with the general supervisory responsibilities under IDEA by failing to appropriately monitor, identify, and compel the New Orleans Public Schools to eliminate the numerous systemic violations of IDEA. As detailed below, LDE has engaged in an ongoing and systemic pattern of violating class members' procedural and substantive rights under IDEA by failing to abide by IDEA's "child find" requirements, and by failing to provide a Free Appropriate Public Education ("FAPE").

III. STATEMENT OF FACTS

A. IDEA Violations Suffered by Individual Class Representatives

The Louisiana Department of Education has failed to comply with its general supervisory responsibilities under the IDEA. As a result, students with disabilities who attend New Orleans Public Schools are denied their right to a free and appropriate education. LDE's failures have created educational barriers that prevent New Orleans' students with disabilities from accessing a public education. These systemic barriers take multiple forms. The IDEA violations suffered by the individual Petitioners include child find violations, a failure to confer educational benefit, a failure to provide related and transitional services and a failure to comply with IDEA's disciplinary procedural safeguards. These violations illustrate LDE's systemic failure to comply with federal law.

1. S[redacted] B[redacted]:
Violation of Child Find Mandate

S[redacted] B[redacted] is a 13-year-old seventh grade student who attended [redacted] Charter School during the 2009-10 school year. She lives with her mother, [redacted]. She is a very talented musician and plays the piano, violin, saxophone and guitar. She wants to study music at Julliard and hopes to compose music for movies. When S[redacted] became severely depressed and began harming herself, her school failed to identify her as a child with a disability in violation of the IDEA's child find mandate.

In August 2009, S[redacted] began cutting herself and manifesting symptoms of extreme depression—this radical change in her behavior likely reflected the onset of an emotional disability. *See* Appx. pg. 105.[9] The staff and faculty at [redacted] Charter School were aware of

[9] Attached to this complaint is a 638 page appendix that includes the Petitioners' relevant, confidential educational records and other material that supports the allegations contained throughout this complaint.

S[redacted]'s condition and its adverse affects on her educational performance. But instead of evaluating S[redacted], the school punished her for harming herself. *See* Appx. pg. 105.

IDEA and the accompanying federal regulations place an affirmative duty on all schools to locate, identify, and provide services to children who may be disabled and may need special education and related services. *See* 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a). When school employees know or have reason to suspect that a child has a disability, these school employees have an affirmative duty to act on the child's behalf. *See W.B. v. Matula*, 67 F.3d 484, 493 (3d Cir. 1995), *rev'd on other grounds by A.W. v. Jersey City Public Schools*, 486 F.3d 791 (3d Cir. 2007). The school's failure to comply with these requirements created a devastating cycle for S[redacted].

When S[redacted] returned to school after a brief hospitalization, she reported to the Dean of Students that, while hospitalized, she was on suicide watch. *See* Appx. pg. 106. The administration responded by issuing a two-day suspension for "not being truthful to the Dean of Students." *See* Appx. pg. 106. The suspension traumatized S[redacted] so deeply that she inflicted serious harm on herself and was hospitalized again.

S[redacted] began to fall further behind in school as a result of her hospitalization. Prior to the onset of her disability, S[redacted] was on the honor role. But after she began experiencing symptoms of depression, she started failing multiple subjects. *See* Appx. pg. 104. Still, the staff at [redacted] Charter School refused to evaluate S[redacted].

On February 19, 2010, the school building level committee (SBLC) met to determine if S[redacted] should be evaluated for special education services. *See* Appx. pg. 100. The SBLC declined to refer S[redacted] for an evaluation, and instead recommended her for expulsion because of manifestations of her disability. *See* Appx. pg. 100. The Exceptional Children's Services/SBLC

referral form states, "At this point due to S's self-injurious behaviors and her disruption of the learning environment, it is recommended that she be expelled." *See* Appx. pg. 100. After the SBLC issued its expulsion recommendation, the principal telephoned S's mother and told her that if she would withdraw S immediately from , the school would not proceed with the expulsion. In an attempt to spare her daughter further trauma, completed the withdrawal paperwork. S was so distraught as a result of the expulsion/withdrawal that she again resorted to self harm—cutting herself so seriously that she required hospitalization at Oschner Hospital.

As a result of LDE's failure to ensure appropriate child find procedures, S was forced out of her school because of her disability and her depression was exacerbated by the school's callous indifference to her significant needs.

2. Q W:
Violation of Child Find Mandate

Q W is a six-year-old first grade student at Elementary School, who loves to roller skate and cheer for the New Orleans Saints football team. She lives with her father, , and her mother, . Q has not been identified and evaluated for special education and related services in violation of IDEA's "child find" requirements. Her treating physician diagnosed with Attention Deficient and Hyperactivity Disorder (ADHD) and an emotional disability.

When Q is upset, her disability manifests in behaviors like yelling and urinating on herself. Despite these diagnoses and the manifestation of challenging behaviors consistent with those diagnoses in the classroom, has failed to evaluate Q to determine if she is eligible for special education and related services under IDEA.

In November 2009, Q[redacted]'s parents submitted a written request for an evaluation to school personnel. Although federal law requires the school to initiate an evaluation upon parental request, the school never responded and failed to conduct an evaluation. *See* 20 U.S.C. § 1414(a)(1). Meanwhile, Q[redacted]'s disability has made it difficult for her to control her behavior and the school continues to punish her for manifestations of her disability. Despite Q[redacted]'s clear need for an evaluation and her parents' written request, she remains unevaluated, unidentified, and still in need of special education and related services in violation of federal law.

3. K[redacted] J[redacted]:
Violation of Child Find Mandate

K[redacted] J[redacted] is a 14-year-old seventh grade student at [redacted] Charter School. He lives with his mother, [redacted]. K[redacted] loves sports, playing video games and spending time with his family. K[redacted] was identified as a student with a specific learning disability and ADHD under Section 504 of the Rehabilitation Act of 1973 ("Section 504").[10] *See* Appx. pg. 450. K[redacted] has been denied special education and related services in violation of IDEA's child find mandate.

Because K[redacted] has been denied the IDEA services and protections to which he is entitled, he experiences academic and behavioral difficulties. On nine separate occasions during the 2009-10 school year, K[redacted] received out-of-school suspensions for behaviors that are manifestations of his disability, such as willful disobedience and treating authority with disrespect. *See* Appx. pg. 452. He received five suspensions because he had accumulated 15 or more behavior "marks" or referrals in the course of one week for minor school violations. *See*

[10] While Section 504 and IDEA are very different statutes, they have complementary objectives. Section 504 was intended to eliminate barriers that exclude persons with disabilities from the opportunity to participate in or benefit from federally funded programs, services or other benefits, while IDEA is a remedial law that requires the provision of unique programs and services for students with disabilities so that they may be able to benefit from their education. *Compare* § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq. with* Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 U.S.C. § 1400 *et seq.*

Appx. pg. 460-463. On a number of occasions, school officials simply demanded that K leave the school campus after his disability manifested in behaviors that violated minor school rules. He was not provided any paperwork or a formal explanation for these removals—but he was denied the opportunity to be educated on those days.

The school has had reason to suspect that K is a student with a disability who also needs special education and related services under IDEA, but they have failed to exercise their affirmative duty to evaluate K and provide him with the necessary special education services in accordance with federal law. *See* 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a). The school's failure to appropriately identify and evaluate K for a disability under IDEA has also adversely affected his academic progress. He was held back in the sixth grade and seventh grade, scoring an unsatisfactory on his Louisiana Educational Assessment Program (LEAP) test in both English Language Arts (ELA) and Mathematics. *See* Appx. pg. 455-456. K's school offers an academic enrichment program to assist students with their schoolwork—but the school has threatened to bar him from the program because of behavioral manifestations of his disability.

Despite clear evidence that K's disability prevents him from achieving academic gains, his school has failed to appropriately identify him and has left him without the protections that would help him achieve academic success.

4. J D:
Violation of Child Find Mandate

J D is an 11-year-old third grade student who wants to be a police officer or a firefighter. He lives with his parents, and . has a diagnosis of ADHD and is identified as a student with a disability pursuant to Section 504. *See* Appx. pgs. 300-303. Despite clear evidence that disability has significantly

impaired his ability to obtain an education, [redacted] School never evaluated [redacted] for eligibility under IDEA.

When [redacted] Elementary determined J[redacted]'s eligibility under Section 504, he had already been retained twice, in the first grade and again in the second grade. Without appropriate special education and related services, J[redacted] continued to struggle academically at [redacted] Elementary School and was retained yet again for the third grade. *See* Appx. pg. 304, 309. Consequently, J[redacted] began the 2009-10 school year at [redacted] Elementary School as a third grade student, three years behind his chronological grade level. *See* Appx. pg. 308.

On numerous occasions, J[redacted]'s parents implored the school – in writing – to evaluate J[redacted] for IDEA services. Nevertheless, the school claimed it could not evaluate him, and instead offered to place him on an indefinite waiting list for an evaluation, in clear violation of federal law. *See* 20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c). J[redacted] was ultimately expelled from [redacted] and forced to attend [redacted], the RSD alternative school, without the protections, supports and services he was entitled to under IDEA. *See* Appx. pgs. 305, 306.[11]

The failure to appropriately identify J[redacted] has harmed him in multiple ways. He has been denied the supports and services that are necessary to ensure that he receives the appropriate education to which he is entitled. His LEAP scores and grades have suffered, resulting in him falling even further behind in school; and he has been unlawfully removed from the classroom environment for manifestations of his disability. *See* Appx. pg. 304. Despite

[11] IDEA extends its disciplinary protections for students who have not been determined to be eligible for special education if the public agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. Moreover, a public agency must be deemed to have knowledge that a child is a child with a disability if the parent of the child requested an evaluation in writing. *See* 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.534.

J[redacted]'s demonstrated inability to make adequate academic progress, he still has not been evaluated to determine his eligibility for IDEA services and supports.

5. M[redacted] T[redacted]
Violation of Child Find Mandate

M[redacted] T[redacted] is a 13-year-old sixth grade student attending [redacted], an RSD alternative school. He lives with his mother, [redacted], and loves sports and music. M[redacted] manifests behaviors typical of a child with ADHD. He has difficulty sitting still and displays impulsive and sometimes disruptive behavior. *See* Appx. pgs. 700-702. Despite these symptoms and severe academic deficits, he has never been evaluated to determine if he is a student with a disability under IDEA.

M[redacted] has been retained in both the first grade and the fourth grade. For three consecutive years, M[redacted] scored an unsatisfactory on the LEAP and iLEAP tests in both English Language Arts (ELA) and Mathematics. *See* Appx. pgs. 729, 730, 734, 739. He received failing grades in most of his core academic classes during the 2008-09 school year and the first semester of the 2009-10 school year. *See* Appx. pgs. 728, 741. M[redacted] began the 2009-10 school year attending [redacted] Charter School, but by December 2009, M[redacted] had received five out-of-school suspensions for a cumulative total of 10 days, in addition to at least 25 behavior referrals. *See* Appx. pgs. 700-702, 725. His suspensions were for behaviors characteristic of ADHD, such as disrupting class with noises and talking, refusing to do work in class, causing disruptions, getting out of his assigned seat, talking back, and breaking crayons and throwing them. *See* Appx. pgs. 704, 707, 708, 710-711, 714, 716, 720-721, 723, 726. The notes from his parent-teacher conferences at [redacted] indicate that [redacted] was performing well below grade level and that his impulsive and distractible behavior was significantly affecting his academic performance. *See* Appx. pgs. 709, 717, 727.

[redacted] recognized that M[redacted]'s well-documented academic and behavioral struggles required extraordinary measures. Unfortunately, the interventions used by the school only served to exacerbate M[redacted]'s disability. On October 12, 2009 school officials resorted to isolating M[redacted] in a room dubbed "The Think Tank." Students placed in The Think Tank are removed from their peers, prohibited from participating in school-related activities, and required to "earn their way back to the regular classroom and reintegration with the school community." *See* Appx. pg. 719. Unsurprisingly, this intervention entirely failed to address M[redacted]'s complex needs. As a result, his disability continued to manifest in behaviors the school deemed disruptive. By December 2009, the school recommended M[redacted] for expulsion and placement in [redacted]. *See* Appx. pg. 725. M[redacted] has continued to struggle behaviorally and academically at [redacted], receiving frequent disciplinary referrals for behavior and below-average grades, yet he has still not been evaluated for special education services in violation of IDEA's child find mandate. *See* 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).

6. A[redacted] J[redacted]:
Violation of Child Find Mandate

A[redacted] J[redacted] is a 10-year-old fourth grade student at [redacted] Elementary School. He lives with his mother, [redacted], and likes to swim, listen to music play video games and take care of his baby brother. A[redacted] has a diagnosis of ADHD, and was identified as a student with a disability under Section 504 of the Rehabilitation Act during the 2008-09 school year. *See* Appx. pg. 400. He was denied the extensive related services and procedural protections to which he is entitled to under IDEA.

As a result of his disability, A[redacted] is easily distracted, has difficulty following directions, and becomes agitated when forced to sit still for extended periods of time. During the 2009-10 school year, A[redacted] was suspended more than 10 times for a total of more than 40

school days. *See* Appx. pgs. 405, 411, 416, 419, 421, 422. All of his suspensions were for behaviors related to his disability, such as running in the halls, refusing to sit down, disrespect for authority, leaving the classroom without permission, and causing a classroom disturbance. *See* Appx. pgs. 411, 416-422.

After observing her son's struggles in school, A's mother requested that the school evaluate him for special education services, and A's psychiatrist echoed this request. In December 2009, signed a consent form authorizing an evaluation for special education services. IDEA requires that the initial evaluation be conducted within 60 days of receiving parental consent. *See* 20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c). It has been over six months and the evaluation still has not occurred. A continues to struggle academically and behaviorally, *see* Appx. pgs. 404, 407-410, but cannot receive necessary special education and related services until this evaluation is completed.

7. **N F:**
Failure to provide appropriate types and levels of related services

N F is a nine-year-old third grade student at Elementary School. *See* Appx. pg. 352. He has been identified as a student with multiple disabilities: autism and total visual impairment/blindness. *See* Appx. pg. 352. N loves Dr. Seuss books and he likes to sing and to swim. N lives with his parents, . N has not received the related services to which he is entitled pursuant to the IDEA.

Prior to the 2009-10 school year, N attended school in Indiana. *See* Appx. pg. 375. His IEP there complied with the IDEA and stated N would receive the assistance of a child-

specific paraprofessional to provide him with individualized support in the classroom. The paraprofessional was also assigned to help N navigate his physical environment.[12]

Under IDEA, if a child with a disability transfers from another state, the new school must provide services comparable to those described in the child's IEP from the previous school, until a new IEP is developed and implemented. *See* 34 C.F.R. § 300.323(f). When N began school at Elementary School in New Orleans, his mother met with his IEP team, advised it of N's disabilities and requested a child-specific paraprofessional. *See* Appx. pg. 375. The school claimed that it was too short-staffed and denied this request. As a result, N's mother was forced to attend school with him every day all day for nearly two months to help him navigate the stairs at the school, and to provide one-on-one instruction assistance and support in the classroom.

Frustrated with the lack of services N was receiving, his mother sought a new placement. She ultimately settled on Elementary School, which had previous experience serving students with visual impairments. The IEP team there did in fact recognize the extent of N's needs. His January 13, 2010 IEP explains that N requires full support throughout the day and it states that he needs a child-specific paraprofessional. *See* Appx. pgs. 363-364. Despite the mandate of his IEP and his mother's numerous attempts to secure this service from the RSD, N remains without the individualized support he needs to make academic gains and to successfully navigate his physical environment at school. *See* Appx. pg. 375.

N's December 3, 2009 evaluation states that he needs related services to help him develop necessary social skills. *See* Appx. pgs. 352, 356. But N is not provided any social work or counseling related services—making his academic and behavioral goals and objectives

[12] N's IEP indicates that without supervision, he is at risk of injury from stumbling over changes in surface levels and bumping into obstacles and hazards. *See* Appx. pg. 362

impossible to reach. *See* Appx. pg. 365. Similarly, N's total visual impairment reflects a need for orientation and mobility services, but his IEP includes no such services. *See* Appx. pg. 365.

The United States Department of Education emphasizes the critical need for orientation and mobility services for each blind and visually impaired child so that the child is capable of safely moving throughout his school, home, and community environments. *See* Educating Blind and Visually Impaired Students: Policy Guidance from the Office of Special Education and Rehabilitative Services OSERS, 65 FR 36586 (June 8, 2000). The IDEA requires the provision of related services, including orientation and mobility services, to students with disabilities. 34 C.F.R. § 300.34. The failure to provide N related services has prevented him from benefitting from special education in clear violation of IDEA.

8. N F and M M:
Failure to ensure access to the variety of educational opportunities available to nondisabled children

As described above, N has autism and total visual impairment. M, a seven-year-old first grade student, also lives with multiple disabilities, including acute cognitive delays and severe seizure disorder. M lives with his parents . Because of his disabilities, M is non-communicative and has limited mobility. He is just learning to walk and enjoys accompanying his mother to their local fish market. He currently attends Elementary School. Both N and M have been denied access to educational programming because of their disabilities.

In mid-March 2010, N's mother and M's mother together visited public schools throughout New Orleans to determine which schools could accommodate their children. The IDEA requires states to provide full educational opportunities to all children with

disabilities. 34 C.F.R. § 300.109. "The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children." 34 C.F.R. §300.110. Mrs. [redacted] and Mrs. [redacted] quickly discovered that their sons did not have access to the variety of educational opportunities available to nondisabled students in New Orleans as required by federal law. *See* Appx. pg. 376.

First, Mrs. [redacted] and Mrs. [redacted] visited [redacted] Charter School where they were informed that the school staff lacks the training necessary to serve children with severe disabilities and that school staff could not accommodate [redacted] or [redacted]. A school staffer encouraged the mothers to present their sons' IEPS to the school's Board of Directors so the Board could consider N[redacted]'s and M[redacted]'s special needs and make an ultimate admissions decision. Both parents completed an application and attached their sons' IEPs. Neither parent ever received a response from the school.

Next, Mrs. [redacted] and Mrs. [redacted] visited [redacted] Charter School [redacted] They were informed that neither [redacted] could accommodate children with severe disabilities. Feeling overwhelmed and discouraged by their meeting with school personnel, Mrs. [redacted] and Mrs. [redacted] chose not to submit an application to [redacted] or [redacted] Charter Schools.

Finally, Mrs. [redacted] and Mrs. [redacted] visited [redacted] Charter School. They were told by school personnel that they would need to meet with the school's special education coordinator to determine whether the school could accommodate N[redacted]'s or M[redacted]'s special

needs. The special education coordinator was unavailable, but the mothers left detailed messages informing her about their sons' needs. The school failed to respond to either parent.

Mrs. [redacted] attempted to contact several other schools to discuss the educational programs and services that could be provided to M[redacted]. She telephoned [redacted] Charter School twice and asked to speak with the special education coordinator or the faculty member in charge of coordinating special education programs. She was told that there was no such faculty member at [redacted] Charter School.

Mrs. [redacted] then visited [redacted] Charter School. There, she was welcomed by the school personnel who appeared committed to serving children with disabilities. But the school is not wheelchair accessible—so [redacted] was again barred from an educational opportunity.

9. D[redacted] B[redacted]:
Failure to develop IEPs reasonably calculated to confer educational benefit
Failure to provide appropriate types and levels of related services
Failure to abide by IDEA's procedural safeguards for discipline

Petitioner D[redacted] B[redacted] is a nine-year-old third grade student at [redacted] Charter School. D[redacted] lives with his mother, Ms. [redacted]. He likes to draw, dance and he is very interested in history. He has an emotional disability and has been identified as eligible for special education and related services since the 2007-08 school year. *See* Appx. pg. 170. D[redacted] has not received the individualized education plan or related services that are necessary to ensure that he receives educational benefit. He also has been unlawfully removed from the classroom for manifestations of his disabilities.

According to his annual IEP dated September 23, 2009, D[redacted] is functioning well below grade level in all academic subjects. *See* Appx. pg. 170. He functions on a first grade level in English language arts (ELA), mathematics, and science, and he is on a kindergarten level in

social studies. *See* Appx. pg. 170. D[redacted] has clearly made little academic progress since he was identified as a student with a disability. This is due in part to the inadequacies of his IEPs, which fail to comply with the mandates of federal law. His September 23, 2008 IEP contains no description of D[redacted]'s strengths, no discussion of parental concerns, no description of D[redacted]'s academic, developmental, and functional needs, and no real description of his current level of academic achievement and functional performance. *See* Appx. pgs. 151-152. His 2008 and 2009 IEPs list goals that are immeasurable, generic, and that entirely ignore D[redacted]'s strengths and weaknesses. *See* Appx. pgs. 153-154. The 2009 IEP also lacks goal-related objectives, without which it is impossible to measure D[redacted]'s progress. *See* Appx. pgs. 172-179. Given the extent of these IDEA violations, it is no wonder that D[redacted] has failed to make any real academic progress since entering school.

D[redacted]'s behavioral needs have been similarly neglected. D[redacted]'s disability manifested in emotional "meltdowns" that occurred at school three to four times per week, increasing in frequency throughout the course of the 2009-10 school year. *See* Appx. pg. 226. Despite D[redacted]'s increased need for interventions, his IEP has not changed during this time period. The IEP committee entirely failed to address the possible causes of his emotional responses and failed to make necessary adjustments to his behavior support plan.

As a result of the deficiencies in D[redacted]'s IEP, his behavior has regressed and his academic progress has suffered. D[redacted] has not been provided with an appropriate education as defined by the IDEA, largely because his IEPs are not reasonably calculated to confer meaningful educational benefit. *See Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982); *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245, 253-254 (5th Cir. 1997).

D's evaluation clearly describes his critical need for related services—specifically social skills assistance and counseling. *See* Appx. pgs. 210-222. Unfortunately, he has never received adequate related services. During the 2008-09 school year, D received no related services at all, and during the 2009-10 school year, D received a mere 30 minutes once a week of counseling.[13] *See* Appx. pgs. 161,182. As behavioral manifestations of his disability increased during the 2009-10 school year, D's related service levels remained unchanged. The lack of related services has effectively denied him an opportunity to avoid repeated disciplinary removals from school and cut short his chances of making any real educational gains. *See* 20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34.

Several times a week, D's disability would manifest in severe agitation. As a consequence of his condition, D was subject to approximately 15 days of out-of-school removals during the 2009-10 school year. *See* Appx. pg. 256. Some of these suspensions were undocumented removals during which the school would call D's mother and ask her to pick D up from school for the day. Although D was removed from school for well over 10 cumulative school days, there is no record that the school ever conducted a manifestation determination review, nor did it provide him with any educational services during these unlawful removals, in violation of the IDEA. *See* 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530-36.

D was also brutally restrained and held against his will in an isolation room approximately 10 times throughout the course of the school year as a consequence for manifestations of his disability. Each incident caused D to decompensate. On April 8, 2010, D was distressed—crying and mumbling unintelligibly—when the behavior interventionist at approached him. *See* Appx. pgs. 249-253. D initially

[13] also receives 30 minutes twice per week of speech and language therapy, which his parent agrees is adequate to address his speech and language needs at this time.

calmed down, but when the behavior interventionist began escorting him to the in-school-suspension (ISS) room, D began to panic. When D fell to the floor sobbing, the behavior interventionist grabbed him by his arms and dragged him six feet into the ISS room. *See* Appx. pg. 249. This was done with such force that D's face and mouth slammed into the ground, chipping his tooth. *See* Appx. pgs. 251-253. After sustaining this injury, D panicked further and the behavior interventionist physically restrained him for fifteen minutes before carrying him to a small, soundproof closet, where he was held for another 30 minutes. *See* Appx. pgs. 250-251. Similarly, on May 12, 2010, D allegedly refused to follow directions. *See* Appx. pg. 246. In response, the Dean of Students and a paraprofessional physically carried him to the isolation room. D panicked upon entering the isolation room and the paraprofessional physically restrained him. The paraprofessional told D that if he was unable to calm down, he would be handcuffed and tasered. The paraprofessional then sat on top of D – constricting his breathing and eventually causing him to urinate on himself. *See* Appx. pgs. 245-246.

These harmful restraint and seclusion techniques have caused D's behavior to regress, have exacerbated D's disability and have caused him to fear school. The school's abusive restraint and seclusion techniques violate the explicit provisions of IDEA that require the use of positive behavioral intervention and support strategies to address student behavior. *See* 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).

10. L W

Failure to develop IEPs reasonably calculated to confer educational benefit
Failure to provide appropriate types and levels of related services
Failure to provide necessary and appropriate transition services

L W is a 15-year-old eighth grade student currently enrolled at . He lives with his grandmother, . L is a

helpful young man who is good with his hands and likes to fix broken household items. He is diagnosed with ADHD and is identified as eligible for special education services. *See* Appx. pg. 802. L[redacted] has not been provided with IEPs reasonably calculated to confer educational benefit, nor has he been provided appropriate related or transitional services. Before L[redacted] enrolled in the [redacted] in March 2010, he attended [redacted] for four years. *See* Appx. pg. 802.

L[redacted]'s most recent educational evaluation was conducted on October 26, 2006 – almost four years ago. *See* Appx. pgs. 802, 839-842. IDEA and the accompanying federal regulations mandate that reevaluations "must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary." *See* 20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303(b)(2). Although [redacted] received parental consent for a full evaluation in all areas of suspected disability on August 28, 2009, the evaluation had not been completed when L[redacted] withdrew from [redacted] in January 2010. *See* Appx. pg. 836. In fact, L[redacted]'s educational records indicate that [redacted] was unable to secure the necessary personnel to conduct L[redacted]s evaluation.[14] *See* Appx. pgs. 843-845.

After L[redacted] left [redacted] and enrolled in the RSD on March 5, 2010, his grandmother and guardian gave written consent for a full evaluation. To this day, an updated educational evaluation has still not been conducted. The failure of both [redacted] and the RSD to conduct a current educational evaluation for L[redacted] and to develop an IEP based on the results of that evaluation has resulted in a denial of a free and appropriate public education.

During the years L[redacted] was enrolled in [redacted], he was provided with incomplete IEPs. L[redacted]'s most recent IEP from [redacted] is a handwritten, illegible

[14] The personnel at [redacted] offered to conduct L[redacted]'s evaluation after his withdrawal from school in January 2010. But [redacted] felt that it was best for him to be evaluated in his new academic setting at [redacted].

document that fails to meet IDEA criteria. *See* Appx. pgs. 813-817. *See also* 34 C.F.R. § 300.323. Specifically, the IEP does not include a statement of measurable annual goals and objectives, a list of any necessary accommodations, or a description of the special education, related services, and supplementary aids and services to be provided. *See* Appx. pgs. 813-17. His previous IEPs from [redacted] contain generic goals that are not tailored to L[redacted]'s present level of performance or his unique needs. *See* Appx. pgs. 818-835. No accompanying objectives are listed for any of L[redacted]'s goals. *See* Appx. pg. 820. He has no Functional Behavior Assessment (FBA) or Behavior Intervention Plan (BIP) despite the fact that behavior has routinely interfered with his academic progress and is characteristic of his disability. Further, L[redacted]'s annual IEP expired on January 7, 2010, yet [redacted] never reconvened the IEP team to develop L[redacted]'s annual IEP.

L[redacted]'s educational program at [redacted] failed to confer meaningful educational benefit as required by IDEA. According to his results on the Stanford Achievement Tests, since 2006, L[redacted] made no progress in reading—he reads at the second grade level. He has made only moderate progress in mathematics.[15] *See* Appx. pgs. 849-850. [redacted] scored unsatisfactory on his LEAP exams, he received failing grades in almost all of his courses, and his teachers at [redacted] reported that he was making unsatisfactory progress in all areas. *See* Appx. pgs. 802, 818, 827.

Despite suffering from the symptoms associated with ADHD, including extreme impulsivity, distractibility, low frustration tolerance, and frequent off-task behavior, L[redacted] was not provided with any related services at [redacted]. *See* Appx. pgs. 825, 834, 841. School officials frequently disciplined L[redacted] and told him that the behavioral manifestations

[15] According to his performance on the Stanford Achievement Tests, when [redacted] entered [redacted] in 2006, he was performing at a 2.3 grade level in reading and a 2.9 grade level in math. While he has progressed some in math, to a 5.6 grade level, he has maintained a second grade level in reading.

of his disability were major contributors to his academic challenges. *See* Appx. pg. 818, 827, 846. Nevertheless, L[redacted]'s IEP at [redacted] never included related services such as social work, counseling, or psychological services that would help L[redacted] obtain some educational benefit. As a result, L[redacted] has continued to struggle academically, and he has continued to experience problem behaviors that have prevented him from achieving educational goals.

Finally, L[redacted] has been denied the necessary and appropriate transition services that will prepare him for employment, post-secondary education, vocational training, and independent living. *See* Appx. pg. 800. IDEA mandates that transition plans be developed no later than the year in which the student turns 16 years of age. L[redacted] turns 16 in October 2010, and while his annual IEP has been developed and will be in effect upon L[redacted]'s 16th birthday, the IEP does not contain a transition plan or a description of transition services.

11. L[redacted] M[redacted]

Failure to develop IEPs reasonably calculated to confer educational benefit
Failure to provide appropriate types and levels of related services
Failure to abide by IDEA's procedural safeguards for discipline
Failure to provide necessary and appropriate transition services

L[redacted] M[redacted] is a 15-year-old eighth grade student assigned to the RSD alternative school, [redacted]. *See* Appx. pgs. 552, 553. He lives with his great uncle, [redacted]. L[redacted] is helpful at home and shows a lot of compassion for others. He likes to play basketball and spend time on the computer. L[redacted] hopes to enter the military eventually. He is identified as a student with an emotional disability and he is eligible for special education services under IDEA. *See* Appx. pgs. 552, 553. L[redacted] has failed to receive IEPs reasonably calculated to confer educational benefit, and he has not been provided with the types and levels of related services or the necessary and appropriate transition services to allow him to benefit

from special education. In addition, L[redacted] has been subject to repeated illegal disciplinary removals without the procedural safeguards guaranteed by federal law.

Following his evacuation from New Orleans after Hurricane Katrina, L[redacted] enrolled in an Augusta, Georgia school. There he was identified as a student with a Specific Learning Disability (SLD). *See* Appx. pg. 568. His IEP specified that he was to receive individualized instruction, a variety of academic and behavioral modifications, and pullout reading services. *See* Appx. pgs. 568-579. The Georgia IEP team also developed a behavior intervention plan (BIP) that provided detailed reinforcers and consequences. *See* Appx. pgs. 576-578.

When L[redacted] returned to New Orleans for the 2008-09 school year, he enrolled in [redacted] Elementary School. [redacted] provided the staff at [redacted] Elementary with a copy of the Georgia IEP and requested that a new IEP team at [redacted] Elementary be convened. The staff failed to comply with these requests, and L[redacted]'s services and supports were interrupted. This interruption occurred in violation of the IDEA which requires the new public agency to provide comparable IEP services to those received from the out-of-state public agency until a new IEP can be developed, if necessary. *See* 34 C.F.R. § 300.323(f).[16]

As a result of the lack of services he received at [redacted] Elementary, L[redacted] began to experience substantial academic and behavioral difficulties. *See* Appx. pgs. 637-664. During the fall 2008 semester, L[redacted] failed all of his classes, he was recommended for expulsion twice, and he received over 40 days of out-of-school suspensions for behaviors that were a manifestation of his disability. *See* Appx. pgs. 640-664. *See also* 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530-36.

[16] The federal regulations stipulate that if a child with a disability who had an IEP that was in effect in a previous public agency in another state transfers to a public agency in a new state, the new public agency must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous public agency, until the new public agency conducts an evaluation, if necessary, and develops, adopts, and implements a new IEP, if appropriate. 34 C.F.R. § 300.323(f).

On December 17, 2008, L was again recommended for expulsion for an alleged altercation with a teacher. *See* Appx. pgs. 654-660. The student hearing officer expelled L, even though the school failed to complete a legally required manifestation determination review to determine if the behavior was a manifestation of his disability. L e was assigned to attend Alternative School for the spring 2009 semester. *See* Appx. pgs. 654-660. L never attended , but instead returned to Georgia in January 2009 to live with his grandmother until her death in April 2009.[17]

After his grandmother's death, L returned to New Orleans to live with . Shortly following his return in August 2009, L suffered a gunshot wound while playing outside with his friends. As a result, L was hospitalized at Children's Hospital for approximately 30 days. *See* Appx. pgs. 585-592. Children's Hospital staff conducted a detailed neuropsychological evaluation and determined that L was in need of comprehensive special education and related services. *See* Appx. pgs. 585-595. In September 2009, Children's Hospital provided a detailed report to the RSD and L s school with extensive recommendations for accommodations and behavior modification strategies to assist L in school. *See* Appx. pgs. 580-584. The staff at Children's Hospital even scheduled a meeting with school personnel at to review the results of the evaluation and report. Despite the hospital's efforts, the school did not develop an updated IEP, and utterly failed to provide him with special education and related services. As a result of these failures, L continued to suffer academic and behavioral setbacks. In fact, L was bounced around to four different RSD schools during the 2009-10 school year before ending up at the RSD alternative school. He received over 30 days of out-of-school suspension, a

[17] Interestingly, although never attended School, he was issued a full report card from with varying grades in June 2009. *See* Appx. pg. 665.

recommendation for expulsion, and multiple school-initiated arrests, yet he was never provided with the behavior supports and services needed for him to receive educational benefit. *See* Appx. pgs. 637, 638. His records indicate that he has been functioning on the second grade level in reading and the third grade level in math for several years. *See* Appx. pg. 553. He has failed to make any academic progress while enrolled in school in New Orleans.

It was not until May 21, 2010 that L[redacted] received a new evaluation and IEP. While the updated IEP does include some provision of related services, consisting of 30 minutes once per week of counseling and social work and 30 minutes once per week of speech and language therapy, these levels are inadequate considering the nature of L[redacted]'s disability and the extent of his academic deficits and behavioral functioning. *See* Appx. pgs. 550-567. In addition, the updated IEP fails to include a functional behavioral assessment or a behavior intervention plan to help L[redacted] address his behavioral needs. *See* Appx. pgs. 550-567.

While L[redacted] was provided with a transition plan as part of his May 21, 2010 IEP, the plan fails to address L[redacted]'s transition needs. The services described on L[redacted]'s transition plan are not specific to L[redacted]'s post-secondary school interest, nor are they specific to L[redacted]'s unique strengths and abilities. *See* Appx. pg. 550. Instead, the transition plan is generic and fails to specify any concrete services to allow L[redacted] to succeed in a post-secondary setting. Consequently, L[redacted] has been denied appropriate educational services as a result of the school's failure to provide the necessary and appropriate transition services.

12. R[redacted] L[redacted]
Failure to develop IEPs reasonably calculated to confer educational benefit

R[redacted] L[redacted] is a nine-year-old third grade student at [redacted] Charter School. She loves to sing and play in her school's band—she spends her free time listening to the radio. She lives with her mother, [redacted]. R[redacted] has a speech and language

disability and ADHD. *See* Appx. pg. 474. She has been identified as a student eligible for services under the IDEA. R[redacted] has not received IEPs reasonably calculated to confer educational benefit in violation of the IDEA.

After R[redacted] failed the first grade, her mother requested that R[redacted] be evaluated for special education services to determine if R[redacted] has a specific learning disability or ADHD. Instead of evaluating R[redacted] in all areas related to the suspected disability as required by 34 C.F.R. § 300.304 (c)(4), R[redacted] was provided with a "speech only" evaluation by the school which resulted in her identification as a student with a speech/language impairment exceptionality in January 2008. *See* Appx. pgs. 493-502. As a result of the school's failure to fully evaluate R[redacted], her IEP contained no accommodations and no goals or objectives related to academic functioning. R[redacted] fell behind academically and grew increasingly more discouraged with school.

Frustrated with R[redacted]'s persistent academic deficiencies, in February 2010, her mother requested that [redacted] Charter School again re-evaluate R[redacted] in all other areas of suspected disability. R[redacted]'s new evaluation was completed on April 16, 2010 and she was diagnosed with ADHD and found eligible for additional special education services under IDEA. *See* Appx. pgs 503-515. The new evaluation documents the lack of educational benefit R[redacted] has received over the past several years. R[redacted] is functioning well below grade level in all academic areas and she has made no academic progress since she was first identified as a student with a disability in 2008. *See* Appx. pgs. 506, 509. Although she was recently promoted to fourth grade, she is functioning two-to-three years behind her chronological grade level, which is further evidence of the school's failure to confer meaningful educational benefit. *See* Appx. pgs. 474-476.

R[redacted] April 2010 evaluation identifies her numerous educational needs. But her May 18, 2010 IEP fails to address any of these needs. *See* Appx. pgs. 506, 508. For example, the evaluation recommends that R[redacted] receive intensive remediation strategies in math, yet her May 18, 2010 IEP fails to include a mathematics goal and corresponding objectives. *See* Appx. pgs. 474-481. The IEP also does not address intensive reading remediation strategies despite the evaluation's recommendation. *See* Appx. pg. 476. R[redacted] has been denied a free and appropriate public education as a result of an initial evaluation and subsequent IEPs that fail to confer meaningful educational benefit as required by IDEA.

13. E[redacted] A[redacted]:
Failure to develop IEPs reasonably calculated to confer educational benefit
Failure to abide by IDEA's procedural safeguards for discipline
Failure to provide necessary and appropriate transition services

E[redacted] A[redacted] is an 18-year-old twelfth grade student at [redacted] High School in New Orleans. *See* Appx. pg. 2. E[redacted] enjoys going out to dinner with his family and he wants to study to be a pastry chef after he graduates from high school. He lives with his parents [redacted]. E[redacted] is diagnosed with autism and is eligible for special education services under the IDEA. *See* Appx. pgs. 86, 87.

E[redacted] has been denied a free appropriate public education because he has not been provided with IEPs that are reasonably calculated to confer meaningful educational benefit. *See Rowley*, 458 U.S. at 188-89. When E[redacted] entered [redacted] during the 2005-06 school year, he was performing on the sixth grade level in English Language Arts (ELA) and mathematics. *See* Appx. pg. 16. Since then he has not made any meaningful academic or behavioral progress. In fact, he has significantly regressed. *Compare* Appx. pgs. 1-15, to Appx. pgs. 16-58. By the time the 2007-08 school year started, E[redacted] was performing on the fifth grade level in ELA and the third grade level in mathematics. *See* Appx. pgs. 30, 31. His current IEP

describes E as functioning on approximately the fourth grade level in English Language Arts (ELA) and the second grade level in mathematics based on the results of the Wide Range Achievement Test (WRAT). *See* Appx. pgs. 5, 6.

E has also been subject to excessive out-of-school removals and unlawful restraints and seizures in violation of the IDEA. *See* Appx. pgs. 59-76. E received at least 21 days of out-of-school disciplinary removals during the 2009-10 school year as punishment for manifestations of his disability. These removals occurred without the procedural protections to which E is entitled—like a manifestation determination review. *See* Appx. pgs. 59-87. E received no educational services during these unlawful removals. *See* 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530-36.

In mid-January 2010, E's disability began to present a number of behavioral challenges at school. School personnel responded by instructing to keep E at home, or E would be expelled. Fearing expulsion, complied with the school's orders and kept E home from January 13, 2010 until February 2, 2010. *See* Appx. pgs. 59-60, 67. In violation of IDEA, E did not receive any procedural protections prior to his removal from school, and he sat at home for over thirteen days without any educational or related services. allowed E to return to school only after E's parents made numerous requests. *See* Appx. pg. 67.

When E returned to school, did not reconvene E's IEP team to review his behavior plan and related services and facilitate his transition back to school.[18] Without the appropriate supports in place, E experienced a difficult transition back to . On the day of his return, E allegedly disrupted class by using profanity.

[18] E's IEP team did not reconvene to address E's increasing behavioral needs until March 2010, and only after the parents involved counsel.

See Appx. pgs. 68-71. Instead of following an intervention protocol developed as part of E's behavior plan, the special education teacher and the school security officer entered E's classroom, confronted E in front of the other students, and demanded that he leave with the security officer. *See* Appx. pgs. 68-71. Despite a recent IEP meeting during which school staff acknowledged understanding that E is triggered when someone touches his backpack, the special education teacher picked up the backpack to persuade him to leave the classroom. *See* Appx. pgs. 68-71. This predictably triggered a negative response from E, and he swung his arms in an attempt to move the teacher away from his backpack. The security guard responded by violently restraining E, throwing him on the floor and pinning him to the ground with his knee slammed into E's chest. *See* Appx. pgs. 68-71. As a result, E suffered physical and emotional trauma.

On March 11, 2010, E was again subject to unlawful restraint after he allegedly slapped a cell phone away from a paraprofessional who threatened to call his mother. *See* Appx. pgs. 73-76. Instead of following E's behavior or crisis intervention plan, which includes measures designed to assist E in de-escalation, school staff overreacted and contacted the New Orleans Police Department. *See* Appx. pgs. 73-76. By the time NOPD arrived, E was calm and had returned to class. Nevertheless, school staff directed the police to immediately remove him from the premises. *See* Appx. pgs. 73-76. NOPD placed E in leather wrist restraints, led him through the hallways of the school, and transported him to Tulane University Hospital's Psychiatric Clinic where he was released that evening. *See* Appx. pgs. 73-76. As a result of these incidents, E suffers from post-traumatic stress and his behavior has regressed, further preventing him from achieving his IEP goals and objectives.

E[redacted] has also been denied appropriate transition services. IDEA and its accompanying regulations require that students with disabilities 16 years of age or older be given transition services necessary to prepare them for employment, post-secondary education, vocational training, and/or independent living. *See* 20 U.S.C. § 1401(34); 34 C.F.R. § 300.43(a). [redacted] transition goal states that E[redacted] will attend Delgado Community College after high school to study culinary arts and pursue employment as a pastry chef. *See* Appx. pg. 42. Yet, [redacted] is on a non-diploma track at [redacted], *see* Appx. pg. 43, and will be unable to attend any type of culinary arts program at Delgado without first obtaining a high school diploma or its equivalent. The school has not modified E[redacted]'s transition goals and objectives to reflect this fact and to provide him with the support he will need to fulfill his dream of becoming a pastry chef. *See* Appx. pg. 2. Furthermore, the transition services listed on E[redacted]'s plan are generic and not specific to E[redacted]'s unique strengths, abilities, and interests. *See* Appx. pgs. 1, 28, 42. Finally, E[redacted] has not been provided with adequate transition services related to daily living skills. He continues to have difficulty understanding personal space, the difference between private and public, and successfully communicating his needs with others. E[redacted] will need assistance with these daily living skills to successfully transition into post-high school employment.

B. <u>Systemic IDEA Violations</u>

The Louisiana Department of Education's wholesale failure to ensure IDEA compliance in New Orleans Public Schools denies New Orleans' students with disabilities a free and appropriate public education. State generated data, monitoring reports and a comprehensive survey of special education services underscore this fact. LDE was well aware that New Orleans struggled to meet the needs of students with disabilities. Despite this fact, in the past 5 years, the state has only conducted two cursory monitoring visits. Even though these visits had a relatively

limited scope, the resulting reports documented wide-spread violations. LDE has failed to effectively remedy the violations it has identified. The monitoring reports and other data sources tell the untold story of approximately 4,500 New Orleans public school students who are languishing in schools that are ill-equipped to meet their needs and whose federal rights are violated on a daily basis.

1. Child Find

IDEA and its accompanying federal regulations require the state education agency to "have in effect policies and procedures to ensure that – all children with disabilities residing in the state . . . and who are in need of special education and related services, are identified, located, and evaluated." 34 C.F.R. § 300.111. *See also* 20 U.S.C. § 1412(a)(3). LDE has systematically failed to comply with IDEA's child find mandates. In an average Louisiana school district, 12.2 percent[19] of all students are identified as having disabilities. Only 8 percent[20] of public school students in New Orleans are identified as eligible for special education services. Similar school districts across the country have identified almost twice the number of students with disabilities.[21] This data proves that LDE leaves thousands of New Orleans children unidentified as eligible for special education services and denies them access to the protections and services to which they are entitled under federal law.

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[19] LOUISIANA DEPARTMENT OF EDUCATION, SPECIAL EDUCATION PERFORMANCE PROFILE (2008-09), *available at* http://www.doe.state.la.us/lde/eia/2115.html.

[20] This percentage was derived from determining the mean percentage of students with disabilities, based on the child count data as of October 2009, for all schools in New Orleans, including RSD-run traditional schools, RSD/Type 5 Charter Schools, BESE/Type 2 Charter Schools, Orleans Parish School Board traditional schools, and Orleans Parish School Board Charter Schools.

[21] As an example, the percentage of students with disabilities attending Baltimore Public Schools for the 2008-09 school year was 15.3 percent. *See* http://reason.org/files/wsf/baltimore.pdf. The percentage of students with disabilities attending St. Louis Public Schools for the 2008-09 school year was 17.4 percent. *See* http://dese.mo.gov/planning/profile/speced/115115.pdf. The percentage of students with disabilities attending Pittsburgh Public Schools for the 2008-09 school year was 18.2 percent. *See* www.cgcs.org/publications/Pittsburgh_SpecEd.pdf.

A survey conducted by Educational Support Systems, Inc. ("ESS Survey") further documents systemic child find violations in New Orleans public schools.[22] The survey evaluated the special education programs and services of 23 charter schools in New Orleans and issued findings on areas of noncompliance. According to the survey results, many schools prefer to declare children eligible for services under Section 504 of the Rehabilitation Act when many of the same children are eligible for special education and related services under IDEA.[23] *See* Appx. pg. 982. The survey finds that "an astonishing number of 504 plans" have been developed in New Orleans in comparison to other urban jurisdictions, and special education coordinators at several schools "estimated that at least 30% of students with 504 plans would qualify for special education eligibility."[24] *See* Appx. pg. 982. LDE has violated IDEA by failing to discharge its oversight and supervisory obligations to ensure that the New Orleans schools are in compliance with the child find mandates of IDEA. *See* 20 U.S.C. § 1412 (a)(3)(A).

2. Educational Benefit

In order for a child with a disability to receive a free appropriate public education, the child must receive special education and related services that enable the child to "benefit" from the instruction. *See Rowley*, 458 U.S. at 188-89. LDE has completely failed to ensure that New

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[22] EDUCATIONAL SUPPORT SYSTEMS, INC., THE SPECIAL EDUCATION PROJECT: A STUDY OF 23 CHARTER SCHOOLS IN THE RECOVERY SCHOOL DISTRICT (2008). *See* Appx. pgs. 950-1004.

[23] The survey results also indicate that significant problems exist for several of the sampled charter schools that have contracted with the RSD to perform evaluations for students suspected of having a disability. These schools complained that evaluations were not conducted in a timely manner and that they received "push back" from RSD staff when requesting evaluations. One school reported that they have repeatedly requested evaluations from RSD and have been told that there is not RSD staff available to conduct evaluations. Additionally, the survey found that 9 of 23 schools surveyed failed to provide information about the number of initial student referrals for special education evaluations. The report noted that four of the schools surveyed with less than seven percent total populations identified as special education were among the 9 schools that did not provide information about initial referrals, "raising additional concerns about possible non-compliance with special education mandates." *See* Appx. Pg. 982.

[24] Several of the special education coordinators surveyed acknowledge that a number of 504 plans have been developed as interventions to avoid the referral of students for special education evaluations. The report concludes that "the unusual application of 504 plans suggests a possible misinterpretation and use of Section 504 of the Rehabilitation Act and could make charter schools liable for failure to conduct Child Find and provide a Free Appropriate Public Education (FAPE) under IDEA as defined by special education regulations."

Orleans students are receiving educational benefit. The alarmingly low high school graduation rate for students with disabilities in the RSD proves this fact. Across the state, an average of 19.4 percent of all students with disabilities graduate with a diploma. But the RSD has a rate less than half the state average— only 6.8 percent of RSD students with disabilities graduate with a high school diploma. Almost 50 percent of RSD students with disabilities fail to complete school—a number much higher than the state average of 31.4 percent.[25]

The ESS Survey documented numerous IDEA violations related to educational benefit. *See* Appx. pgs. 950-1004. Out of 60 relevant files, 37 percent indicated that the students were functioning "well below grade level." *See* Appx. pg. 968. An additional 49 percent of the files indicated student functioning in the "below grade level" range—clear evidence that many students eligible for special education are not making academic progress. *See* Appx. pg. 968. Despite low academic achievement, at least 60 percent of students with disabilities surveyed have the cognitive potential to achieve at grade level.[26] *See* Appx. pg. 968. These survey results demonstrate the systemic nature of the denial of educational benefit in the schools of New Orleans.

The results of the eighth grade LEAP test also demonstrate LDE's failure to ensure that New Orleans public school students with disabilities are provided with educational benefit. In 2007-08, 94.6 percent of all RSD eighth grade students with disabilities failed the LEAP assessment.[27] *See* Appx. pg. 902. During the same year, 78.37 percent of all eighth grade

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[25] LOUISIANA DEPARTMENT OF EDUCATION, SPECIAL EDUCATION PERFORMANCE PROFILE (2008-09), *available at* http://www.doe.state.la.us/lde/eia/2115.html.

[26] The survey also determined that 22 of the 23 schools had no academic tracking system in place to incorporate standardized test scores, curriculum-based assessment results, and present level of performance measures by student. This has resulted in the development of IEP goals that are often immeasurable and unspecific to the strengths and weaknesses of a particular student.

[27] By the 2008-09 school year, of those 80 students who failed the eighth grade LEAP, approximately 26 exited the system, 44 were moved to a high school campus but remain enrolled in the eighth grade, and 8 were unaccounted for.

charter school students with disabilities failed the test. *See* Appx. pg. 907. LDE has documented that most of the students who failed the eighth grade LEAP were functioning anywhere from two to seven grade levels below the eighth grade in reading and in math. *See* Appx. pgs. 902-907.

LDE monitored the New Orleans Public Schools for IDEA compliance and discovered wide-spread, systemic inadequacies in IEP development. These inadequacies led to students with disabilities regularly failing classes and otherwise struggling academically. *See* Appx. pgs. 904, 908. Despite this fact, LDE has taken no action to ensure that IEPs developed by New Orleans Public Schools are reasonably calculated to ensure educational benefit.

3. Related Services

LDE has failed to exercise its general supervisory responsibility to ensure that the students with disabilities in New Orleans are receiving the appropriate types and levels of related services. The federal regulations implementing IDEA require that related services be provided to students with disabilities in order to "assist" them "to benefit from their special education services." 34 C.F.R. § 300.34. Nevertheless, New Orleans public schools provide related services not based on the actual needs of students with disabilities but on staff availability and school resources.

The ESS Survey found that many schools failed to provide the appropriate related services to students with disabilities, specifically students with emotional disabilities. *See* Appx. pgs. 975-979. Each of the schools surveyed described the overwhelming need for mental health support for its students. *See* Appx. pg. 968. Still, only 15 of the 23 schools provided social work or counseling as a related service, and one school reported providing no related services at all. *See* Appx. pgs. 975-976. Six schools surveyed rely on the RSD for the provision of related services. All six reported infrequent communication and collaboration with RSD clinicians,

sporadic attendance at IEP meetings, and no communication with the teachers to ensure that service delivery relates back to the classroom and learning. *See* Appx. pg. 975. The survey further concluded that the number of special education students receiving counseling as a related service was substantially low, especially considering that many New Orleans students live with trauma caused or exacerbated by Hurricane Katrina. *See* Appx. pgs. 976-977.

4. Unlawful disciplinary procedures

New Orleans public school students with disabilities are punished and excluded from the classroom at rates that are among the highest in the state. LDE's failure to ensure that New Orleans Public Schools comply with the IDEA's procedural protections has created this phenomenon.

For the 2008-09 school year, the RSD suspended 26.8 percent of all students with disabilities—a rate 63 percent higher than the statewide average.[28] Sadly, many of the New Orleans charter schools posted some of the highest discipline rates for students with disabilities in the state. Sojourner Truth Academy suspended 53.8 percent of all students with disabilities—a staggering 228 percent higher than the statewide average; New Orleans College Prep Charter School suspended 52.2 percent of all students with disabilities—218 percent higher than the statewide average; and FirstLine Schools, which operates Samuel J. Green Charter School and Arthur Ashe Charter School suspended 41.5 percent of all students with disabilities—153 percent higher than the state average.[29]

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[28] LOUISIANA DEPARTMENT OF EDUCATION, SPECIAL EDUCATION PERFORMANCE PROFILE (2008-09), *available at* http://www.doe.state.la.us/lde/eia/2115.html.

[29] Some of the other New Orleans charter schools suspending disproportionately high numbers of students with disabilities include the following: McDonogh 42 Elementary Charter School with an out-of-school suspension rate for students with disabilities of 38.5 percent, 135 percent higher than the state average; James M. Singleton Charter School with an out-of-school suspension rate for students with disabilities of 25 percent, 52 percent higher than the statewide average; and Lafayette Academy Charter School with an out-of-school suspension rate for students with disabilities of 22.7 percent, 38 percent higher than the state average. Some schools' numbers are even more alarming when they are compared with the out-of-school suspension rates for general education students. For

The ESS Survey demonstrates LDE's failure to protect New Orleans students with disabilities from unlawful classroom exclusions. *See* Appx. pgs. 977-978. The survey revealed that when students exhibited behavioral manifestations of their disabilities, schools frequently failed to intervene with behavior intervention plans. *See* Appx. pg. 977. It is no wonder that New Orleans public school students with disabilities are disciplined at such extraordinarily high rates.

LDE monitored New Orleans public schools in March 2010 and discovered multiple violations and areas of noncompliance. *See* Appx. pgs. 919-930. The monitoring team reviewed the records of 22 students with more than 10 days of out-of-school suspensions (OSS) and determined that all 22 students were not provided with continued educational and related services after the 10th day of suspension in violation of IDEA. *See* Appx. pg. 921. Of the 22 students reviewed, 17 of those students did not have an appropriate behavior intervention plan, and the monitoring team observed that schools were not implementing positive behavioral supports. *See* Appx. pg. 921.

5. Transition Services

The IDEA requires that students 16 years of age and older be provided with the necessary and appropriate transition services that will prepare students with disabilities for employment, post-secondary education, vocational training, and/or independent living. *See* 20 U.S.C. § 1401(34); 34 C.F.R. § 300.43. LDE has failed to ensure that the New Orleans schools provide students with disabilities the necessary and appropriate transition services.

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example, Langston Hughes Academy Charter School's out-of-school suspension rate for students with disabilities is 30.8 percent, 87 percent higher than the state average. Yet, their out-of-school suspension rate for general education students is 12.3 percent. The remarkably high and significantly disproportionate out-of-school suspension rates for New Orleans students with disabilities reflect pervasive noncompliance with IDEA's disciplinary provisions.

The systemic nature of this failure by LDE is documented in the ESS Survey which found that students with disabilities in New Orleans received very limited transition services as part of their IEPs. *See* Appx. pgs. 986-987. The report cites the overwhelming lack of vocational programs, internships, and resources available in New Orleans to support special education students in need of transition services. *See* Appx. pg. 986.

When LDE conducted focused monitoring of the RSD and charter schools in February 2009, they reported similar findings. *See* Appx. Pgs. 900-904. The monitoring team reviewed 27 records of RSD students ages 16 years and older and discovered that only nine of the 27 were found to have coordinated, measurable, annual IEP goals and transition services that would reasonably enable the students to meet postsecondary goals. *See* Appx. pg. 902. For the charter schools, nine records of students were reviewed and only two of the nine students had coordinated, measurable, annual IEP goals and transition services that would reasonably enable the students to meet postsecondary goals. *See* Appx. pg. 907. When the monitoring team conducted their follow-up visit in March 2010, evidence of continuing noncompliance was again documented. *See* Appx. pgs. 909-918. LDE has failed to take action to ensure that New Orleans students with disabilities receive the necessary and appropriate transition services mandated by the IDEA.

6. Unlawful barriers to educational services

IDEA requires the state education agency to make certain that each local public agency takes steps to ensure that its children with disabilities have access to the variety of educational programs and services available to nondisabled children. *See* 34 C.F.R. § 300.110. LDE has overwhelmingly failed in this responsibility. School enrollment data proves that students with disabilities are denied access to the same educational programs and services available to

nondisabled students. Children with disabilities are significantly underrepresented in many public schools in New Orleans, particularly charter schools. The average percentage of students with disabilities in the publically operated RSD schools is 12.6 percent. Charter schools enroll significantly fewer students with disabilities—on average 7.8 percent of charter school students have disabilities.[30] According to recent LDE data, 27 public charter schools enrolled students with disabilities at extremely low rates—in these schools students with disabilities comprise less than 10 percent of the total enrollment.[31] Eleven schools reported that five percent or less of their student population lives with a disability.

Some schools enroll extraordinarily low numbers of students eligible for special education—suggesting the existence of admissions processes that create barriers for students with disabilities. For example, the International School of Louisiana reported zero students with disabilities. Other schools reported the following low levels of students with disabilities:

School	Percentage of Students with Disabilities
Crocker Arts and Technology	2.86%
Abramson Science and Technology Charter School	3.46%
Pierre A. Capdau Charter School	3.52%
McDonogh 28 City Park Academy	3.79%
McDonogh 42 Elementary Charter School	4.00%
Dr. Martin Luther King, Jr. Charter School for Science and Technology	4.60%

[30] These percentages were acquired from the October 1, 2009 student count data.
[31] These percentages were acquired from the BESE Recovery School District Committee Report prepared for the June 30, 2010 meeting. The data was provided from the "Special Education Reporting System" (SER) database and is current as of June 17, 2010.

The Board of Elementary and Secondary Education (BESE) continues to allow charter schools that fail to enroll children with disabilities to operate without increased oversight relating to the disparate enrollment of students with special needs. LDE recently overlooked Pierre A. Capdau's s low enrollment rate for students with disabilities and recommended that Capdau be given a three-year charter extension because it met academic performance standards. The report flagged Capdau's low enrollment rate for students with disabilities, but concluded "the school provided assurance that all applicable laws, regulations and contract provisions were adhered to."[32] The failure of LDE and BESE to ensure that students with disabilities have access to the same variety of educational programs and services provided to nondisabled students is a violation of IDEA.

IV. CLAIMS

1. As a result of LDE's actions and inactions, J[redacted] D[redacted], M[redacted] T[redacted], A[redacted] Je[redacted], K[redacted] J[redacted], S[redacted] B[redacted], Q[redacted] W[redacted] and all similarly situated students have not been appropriately identified as children with disabilities in violation of IDEA's "child find" requirements. *See* 20 U.S.C. § 1412(a)(3).

2. LDE has failed to ensure that New Orleans schools provide E[redacted] A[redacted], L[redacted] W[redacted], L[redacted] M[redacted], R[redacted] L[redacted], D[redacted] B[redacted] and all similarly situated students with a free and appropriate public education. Because of LDE's failures, New Orleans schools do not develop IEPs that confer meaningful educational benefit as required by IDEA. Petitioners have not been able to make any meaningful academic and, in many cases, non-academic

[32] LDE also recommended that BESE grant a one-year extension to McDonogh 42 Elementary Charter School, which has an enrollment rate of 4.00 percent for students with disabilities, because, McDonogh 42 provided assurances that it followed applicable laws, regulations, and contract provisions. LDE recommended charter extensions even where applicable laws, regulations, and contract provisions were not followed. For example, LDE found that Abramson Science and Technology Charter School violated the IDEA. Nevertheless, LDE recommended that BESE also provide Abramson with a one-year extension.

(behavioral) progress because of LDE's failures. *See* 20 U.S.C. § 1412(a)(11)(A); *Rowley*, 458 U.S. at 188-89.

3. LDE has failed to ensure that L[redacted] W[redacted], L[redacted] M[redacted], N[redacted] F[redacted], D[redacted] B[redacted] and a class of all similarly situated students receive the appropriate types and levels of related services. The federal regulations guiding the implementation of IDEA require that related services be provided to students with disabilities in order to "assist" them "to benefit from their special education services." *See* 34 C.F.R. § 300.34.

4. Because of LDE's actions and inactions, E[redacted] A[redacted], L[redacted] M[redacted], D[redacted] B[redacted], A[redacted] J[redacted] and the class they represent have been denied the procedural safeguards to which they are entitled before they are subject to disciplinary removals. LDE has sanctioned an ongoing and systemic pattern of subjecting students with disabilities to repeated out-of-school disciplinary removals, unnecessary and inappropriate referrals to law enforcement, and illegal placement in the alternative schools, without the benefit of manifestation determination reviews (MDRs), behavior intervention plans (BIPs), or parental notification of the removals, in violation of the IDEA. *See* 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530-36.

5. LDE's actions and inactions have denied E[redacted] A[redacted], L[redacted] W[redacted], L[redacted] M[redacted], and all other similarly situated students 16 years of age and older FAPE by failing to provide the necessary and appropriate transition services that will prepare these students for employment, post-secondary education, vocational training, and/or independent living as required by IDEA. *See* 20 U.S.C. § 1401(34); 34 C.F.R. § 300.43(a).

6. N[redacted] F[redacted], M[redacted] M[redacted], and a class of all similarly situated students with disabilities have been denied access to the educational programs and services available to

nondisabled children in violation of Section 504 of the Rehabilitation Act of 1973 and the IDEA. 34 C.F.R. § 300.109; 34 C.F.R. § 300.110.

V. REMEDIES REQUESTED TO SETTLE THIS CLASS COMPLAINT

The Petitioners respectfully request an order granting such relief as is just and equitable to redress the numerous systemic and individual violations of IDEA set forth in this complaint, and that such order include, at a minimum, the following remedies:

1) Compel BESE and LDE to perform a comprehensive assessment, including an on-site monitoring, for every public school operating in the city of New Orleans to determine compliance with IDEA. In conducting this school-by-school assessment, LDE and BESE shall contract with an independent expert or team of experts who specialize in the provision of special education and related services, who is mutually agreeable to the parties, and who shall supervise and oversee the conduct of the on-site monitoring visits and the reports issued as a result.

2) Appoint a "Special Master" at the expense of BESE and LDE. The Special Master shall develop, implement, evaluate, and monitor a Corrective Action Plan (CAP) that redresses issues of unequal access to educational programs and services for students with disabilities as well as the provision of special education and related services for students with disabilities in all public schools of New Orleans. The CAP shall also include a model for ensuring that all IDEA mandated services are provided in all New Orleans Public Schools.

3) Compel the Special Master to develop and implement a systemic training program that shall include, at a minimum, the following: training and implementation of district and school-wide Positive Behavioral Interventions and Supports at all public schools in the city of New Orleans, the development of functional behavioral assessments, the development and implementation of behavior intervention plans, and conducting manifestation determination reviews.

4) Compel the Special Master to develop a program to ensure compliance with IDEA's "child find" mandates across all public schools in New Orleans. The program shall include, at a minimum, training on identifying students who are suspected of having a disability, the development of a system that ensures students suspected of having a disability receive a comprehensive evaluation and compliance with federally mandated timelines and protocols for conducting evaluations.

5) To address the failure of schools to identify children with emotional/behavioral disabilities and the failure to comply with IDEA's discipline regulations, compel the Special Master to track and report the overall number of disciplinary removals (in-school suspensions, out-of-school suspensions, and placements in the alternative

schools) and arrests of students across all public schools in New Orleans. The Special Master shall develop and implement solutions to eliminate unlawful school removals and arrests and reduce school removals overall.

6) Compel the Special Master to develop specific strategies and objectives for implementing intensive reading/math remediation programs at all elementary schools in New Orleans serving students with disabilities to ensure that they are reading at or within one year of their chronological grade level by the time they move onto middle school or junior high school. Also, compel the Special Master to develop and implement reading/math remediation strategies for all students with disabilities who are determined to be three years or more behind their chronological grade level in junior high or high school based on either standardized test scores and/or curriculum based assessments.

7) Compel the Special Master to develop and implement a training initiative regarding the provision of transition services for students with disabilities age 16 or older for all junior high and high school counselors, guidance counselors, special education coordinators, vocational specialists, and a designated special education and regular education teacher at each of the schools.

8) Compel LDE to implement a city-wide electronic data tracking mechanism, compatible with the state student information systems, to ensure that schools are capable of tracking academic, disciplinary, and compliance information on individual students, and to ensure that such information may be easily accessible to another public school in the city of New Orleans should the child move from school to school. The system should also be capable of compiling school-based special education student population profiles for use in determining compliance and technical assistance needs.

9) Compel LDE and BESE, in consultation with the Special Master, to develop a comprehensive model compliance plan for the provision of special education services in charter schools in New Orleans. Further, compel LDE and BESE to require each existing charter school and charter school applicant to submit a plan for providing special education services in accordance with the model compliance plan.

10) Compel LDE and BESE, in consultation with the Special Master, to develop a training module and technical assistance program for all charter school applicants and all existing charter school operators. LDE and BESE shall then require all schools to undergo intensive training and technical assistance in, at a minimum, the following areas: obtaining compliance with special education law; providing access to students with special needs; child find, including pre-referral and referral strategies; special education programming; disciplinary protections and procedures for students with disabilities; and the general roles and responsibilities of and the relationship between the charter operators, the RSD, and LDE.

11) Compel LDE, in conjunction with the Special Master and the interested parties, to develop a "New Orleans Special Education Advisory Panel" to review and have input concerning proposed special education policies, to review quarterly progress reports, and to make recommendations to the Special Master and to LDE concerning the provision of special education services to students with disabilities in New Orleans. The Advisory Panel shall be comprised of parents, members of the community, and advocacy groups or organizations representing students with disabilities in New Orleans.

12) Compel LDE to contract with entities such as non-profits or universities to hold focus groups with New Orleans parents and students on a quarterly basis. These focus groups will be aimed at gathering information that will help inform the work of the Special Master. The Focus Groups will provide students with a safe space during which they can report on school climate, disciplinary procedures, educational benefit and barriers to academic success. Parents will be invited to participate in separate focus groups to ensure that the work of the Special Master is also informed by their perspective.

13) Compel LDE to provide equitable relief in the form of compensatory education for all named Petitioners, and any and all other remedies necessary to address the violations set forth in this complaint.

14) Payment of attorneys' fees and costs.

Respectfully submitted, this 28th day of July, 2010,

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