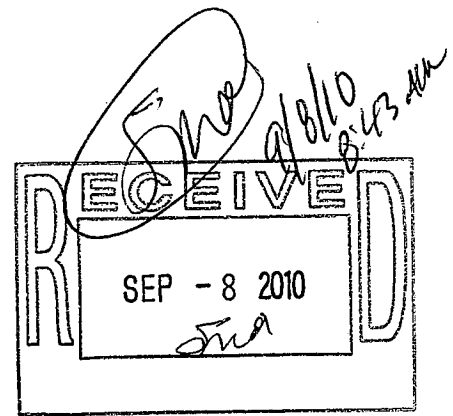


September 8, 2010

Susan Davis, Division Director, Office of Parent Outreach
Office of Special Education
Mississippi Department of Education
359 North West Street
Jackson, MS 39205



RE: Systemic State Administrative Complaint against the Jackson Public School System

Dear Ms Davis:

Attached is a systemic IDEA state administrative complaint against the Jackson Public School System. The systemic complaint is filed under IDEA's State Complaint Procedures which are set forth in the Act's accompanying regulations. 34 C.F.R. §300.151-153.

We have also forwarded a copy of the complaint to the Jackson Public School System's General Counsel.

Sincerely,

Carrie Cockrell, Esq.
Sheila Bedi, Esq.
Mississippi Youth Justice Project
A Project of the Southern Poverty Law Center
921 N. President Street, Suite B
Jackson, MS 39202
(Ph.) 601-948-8882
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Wendell Hutchinson, Esq.
Disability Rights Mississippi

Jim Comstock-Galagan, Esq.
Southern Disability Law Center

September 8, 2010

Hand Deliver

Mississippi Department of Education
Office of Special Education
359 North West Street
Jackson, MS 39205
ATTN: Susan Davis, Division Director, Office Of Parent Outreach

RE: Systemic State Administrative Complaint against the Jackson Public School System

I. INTRODUCTION

The Individuals with Disabilities Education Improvement Act of 2004 (hereinafter "IDEA"), 20 U.S.C. § 1400 et seq., promises all students with disabilities a free and appropriate public education (FAPE). But this is a hollow promise for many JPSS students. The School Districts' wholesale IDEA violations have forced many students with disabilities into an endless cycle of punitive and unlawful removals from the classroom environment. As a result of these removals, students lag far behind their peers academically and as a result grow increasingly frustrated with school and in some instances "dread" attending school. Instead of providing Petitioners with the behavioral support services (related services, appropriate Functional Behavioral Assessments (FBAs) and Behavior Intervention Plans (BIPs) they desperately need, the Jackson Public School System (JPSS) has consistently chosen to deny them such services and to *repeatedly punish them* for behaviors related to their disabilities. Even worse, JPSS targets students with disabilities for placement in Capital City Alternative School (CCAS), creating an unlawfully segregated environment in which students with disabilities are isolated and repeatedly punished for manifestations of their disability. JPSS further fails to provide these youth with the supports they need to achieve academic gains and to transition into adulthood.

These pervasive violations have cut short the life chances of countless JPSS students. This class complaint seeks wide spread systemic relief that will reform the manner in which JPSS administers special education services and discipline. The relief sought in this complaint will not only ensure that JPSS complies with federal law, but it will help ensure that the school district begins investing in its most valuable resources—its students.

II. CLAIMS

I. Systemic Administrative Complaint on Behalf of A.M., A.L., and a Class of All Similarly Situated and Treated Students with Emotional Disabilities as well as on behalf of E.H., T.A., P.A., C.O., and a Class of All Similarly Situated Special Education Students who manifest behavioral issues and are subject to three or more disciplinary removals (either In-School Suspensions, Out-of-School Suspensions and undocumented, illegal removals from school –

“cool off removals”) and/or placement in an alternative school setting in the Jackson Public School System (JPSS);

II. Systemic Administrative Complaint on Behalf of R.B., Rd.B., Ra.B. and a Class of All Similarly Situated Special Education Students who transfer into JPSS from an a out-of-state or in-state local school district;

III. Systemic Office of Civil Rights (OCR) Complaint on Behalf of all Special Education Students in JPSS for highly disproportionate and discriminatory placement rates in JPSS’ Alternative School (Capital City Alternative School [CCAS]).

III. PETITIONERS

I. A.M.

DOB: 12/12/1994

Grade: 8

School: Hardy Middle School

MSIS ID: 419261

Exceptionality: Emotional Disability (ED)

Date of Current Eligibility: 10/22/2007

II. E.H.

DOB: 11/22/1995

Grade: 8

School: Hardy Middle School

MSIS ID: 658777

Exceptionality: Specific Learning Disability (SLD), subcategories: Basic Reading and Reading Comprehension

Date of Current Eligibility: 10/25/2005

III. T.A.

DOB: 6/30/1995

Grade: 8

School: Hardy Middle School

MSIS ID: 419479

Exceptionality: Intellectual Disability with Educable Mental Retardation

Date of Current Eligibility: 4/13/2009

IV. P.A.

DOB: 11/12/1993

Grade: 9th

School: Forest Hill High School
MSIS ID: 171073
Exceptionality: Other Health Impairment (OHI)
Date of Current Eligibility: 5/2/2007

- V. **A.L.**
DOB: 10/21/1992
Grade: 12th
School: Jim Hill High School
MSIS ID: 171922
Exceptionality: Emotional Disability (ED)
Date of Current Eligibility: 5/23/2008
- VI. **C.O.**
DOB: 7/17/1994
Grade: 9th
School: Murrah High School
MSIS ID: 166736
Exceptionality: Other Health Impairment (OHI)
Date of Current Eligibility: 10/2/2007
- VII. **R.B.**
DOB: 6/27/1994
Grade: 9th
School: Wingfield High School
MSIS ID: 499787
Exceptionality: Emotional Disability
Date of Eligibility Determination by JPSS: February 3, 2004
Date of Current Eligibility: May 2010
- VIII. **Rd.B.**
DOB: 1/19/1996
Grade: 8
School: Whitten Middle School
MSIS ID: 596271
Exceptionality: Emotional Disability
Date of Eligibility Determination by JPSS: February 10, 2005
Date of Current Eligibility: May 2010
- IX. **Ra.B.**
DOB: 12/28/1992
Grade: 9th
School: Wingfield High School
MSIS ID: 170002

IV. FACT ALLEGATIONS

The undersigned counsels are filing a Systemic Administrative Complaint on Behalf of A.M., A.L. and a Class of All Similarly Situated and Treated Students with Emotional Disabilities as well as on behalf of E.H., T.A., P.A., C.O. and a Class of All Similarly Situated Special Education Students who manifest behavioral issues and are subject to three or more disciplinary removals¹; and a Systemic Administrative Complaint on Behalf of R.B., Rd.B., Ra.B. and a Class of All Similarly Situated Special Education Students who transfer into JPSS from either out-of-state or in-state local school districts. Both systemic complaints are being filed to redress systemic violations of the Individuals with Disabilities Education Improvement Act of 2004 (hereinafter "IDEA"), 20 U.S.C. § 1400 et seq. by the Jackson Public School System (JPSS).

Petitioner A.M. is a fifteen (15) year old eighth (8th) grade student currently attending Hardy Middle School. At all times relevant to this complaint and since October 2007, he has been determined eligible for special education services under IDEA.

Petitioner E.H. is a fourteen (14) year old eighth grade student at Hardy Middle School. He is classified as a SLD student. At all times relevant to this complaint and since October 2005, he has been determined eligible for special education services under IDEA.

Petitioner T.A. is a fifteen (15) year old eighth grade student at Hardy Middle School in JPSS. At all times relevant to this complaint and since 2002, he has been determined eligible for special education services under IDEA.

Petitioner P.A. is a sixteen (16) year old student at Forest Hill High School. At all times relevant to this complaint and since 2001, he has been determined eligible for special education services under IDEA.

Petitioner A.L. is a seventeen (17) year old student who is currently attending the Career Academic Placement Program (CAPP) in JPSS. At all times relevant to this complaint and since 2008, she has been determined eligible for special education services under IDEA.

Petitioner C.O. is a sixteen (16) year old student at Murrah High School. At all times relevant to this complaint and since 2007, he has been determined eligible for special education services under IDEA.

¹ Throughout this complaint the term "disciplinary removals" refers to either In-School Suspensions (ISS) or Out-of-School Suspensions (OSS) or 'cool-off' removals and/or placement in an alternative school setting in the JPSS.

Petitioner R.B. is a sixteen (16) year old student currently going into the 9th grade at Wingfield High School. R.B. re-entered JPSS at the beginning of the 2008-09 school-year as a 7th grade student at Brinkley Middle School. Immediately prior to attending Brinkley Middle School, R.B. attended school in the Cobb County School District of Marietta, Georgia from 2006 to 2008. Prior to moving to Georgia, R.B. was enrolled in JPSS, where she was initially evaluated and determined eligible for IDEA services as a student with a Specific Learning Disability (SLD) in 2004.

Petitioner Rd.B. is a fourteen (14) year old student currently in the 8th grade at Whitten Middle School. Rd.B. re-entered JPSS at the beginning of the 2008-09 school-year as a 6th grade student at Brinkley Middle School. Immediately prior to attending Brinkley Middle School, Rd.B. attended school in the Cobb County School District of Marietta, Georgia from 2006 to 2008. Prior to that, Rd.B. was a student in JPSS where he was initially evaluated and determined eligible for IDEA services as a student with a Specific Learning Disability (SLD) in February 2005.

Petitioner Ra.B. is a seventeen (17) year old student currently in the 9th grade at Wingfield High School. Ra.B. re-entered JPSS at the beginning of the 2008-09 school-year at Wingfield High School. Prior to attending Wingfield High School, Ra.B. was a student in the Cobb County District of Marietta, Georgia from 2006 to 2008. While in the Cobb County School District, Ra.B. was initially evaluated and determined eligible for IDEA services as a student with Emotional Disturbance.

I. Systemic Claims on Behalf of A.M., A.L. and a Class of All Similarly Situated and Treated Students with Emotional Disabilities as well as on behalf of E.H., T.A., P.A., C.O. and a Class of All Similarly Situated Special Education Students who manifest behavioral issues and are subject to three or more disciplinary removals

- A. Denial of Free Appropriate Public Education (FAPE): Failure to Provide Appropriate Levels of Related Services**
- B. Denial of FAPE: Failure to Comply with IDEA's Discipline Regulations**
- C. Denial of FAPE: Failure to Confer Meaningful Educational Benefit**
- D. Denial of FAPE: Failure to Comply with the Procedural and Substantive Requirements Governing the Development and Implementation of Individualized Education Programs (IEPs)**
- E. Denial of FAPE: Failure to Provide Educational Services in the Least Restrictive Environment**
- F. Denial of FAPE: Failure to Provide Necessary and Appropriate Transition Services**
- G. Denial of FAPE: Failure to Properly Identify and Provide Individualized Extended School-year (ESY) Services to Eligible Students**

JPSS has committed multiple systemic violations of their substantive and procedural rights under IDEA, and those of similarly situated students with Emotional Disabilities and all other special education students who manifest behavioral issues and are subject to three or more disciplinary removals.

Specifically, Petitioners contend that JPSS has committed the following systemic violations of IDEA:

- a. JPSS has systemically failed the past several years to provide sufficient and appropriate levels of related services to Petitioners resulting in a lack of behavioral progress, numerous discipline incidents that have resulted in Out-of-School (OSS) or In-School-Suspensions (ISS) and a consequent significant loss of instruction time. The significant loss of instruction time has caused Petitioners to fall farther and farther behind academically and this factor has contributed significantly to their placement in more restrictive educational environments. Additionally, many of these discipline incidents (not involving, weapons, drugs, serious bodily injury) have led to Petitioners being placed at JPSS' alternative school, CCAS, where Petitioners have made little if any academic progress as reflected by their CCAS grades and also little or no ongoing behavior progress as manifested by their repeated placements at CCAS. As a result of the lack of educational benefit Petitioners receive at CCAS, when they return to regular school settings, they are farther behind academically and their behavior challenges remain unaddressed. Both of these factors create a revolving door through which students' cycle between CCAS and their regular schools without receiving any real benefit at either placement.
- b. JPSS has systemically failed the past several years to conduct *appropriate* Functional Behavior Assessments (FBAs) and concomitantly to develop and implement *appropriate* Behavior Intervention Plans (BIPS) which have lead to and magnified the same adverse educational results discussed in *Paragraph a* above.
- c. JPSS has systemically failed the past several years to align Petitioners' IEP short term objectives and annual goals with Petitioners' actual present levels of academic performance (PLOP). This stunning failure has consistently resulted in Petitioners being taught at academic levels *far exceeding* their academic skills which have engendered an obvious dearth of academic progress, contributed to Petitioners' frustration with school and the consequent exacerbation of Petitioners' behavioral challenges (particularly escape behaviors related to skill deficits). Such multiple adverse consequences have also contributed to the inevitable placement of Petitioners in restrictive educational settings in violation of IDEA's Least Restrictive Environment (LRE) mandate.
- d. JPSS has systemically failed the past several years to consider and implement positive behavioral interventions and supports for Petitioners who all have *behavior* marked as a "special factor" on their IEP.² This failure has perpetuated Petitioners' lack of behavioral progress which in turn has adversely affected their academic progress.

² This systemic pattern is true at JPSS' middle schools despite the fact that JPSS received grant funding to implement positive behavioral interventions and supports (PBIS) at all of the district's middle schools.

- e. JPSS has systemically failed the past several years to meet and revise Petitioners' Individualized Education Programs (IEPs) during the course of the school-year to address any significant and ongoing lack of academic and/or behavioral progress including their lack of progress in the general curriculum and lack of expected progress toward their annual goals. This failure has guaranteed a number of negative consequences including failing grades, grade retentions, and continuing behavioral and discipline incidents. These inexorable results in turn have contributed to the placement of Petitioners in restrictive educational settings.
- f. JPSS has systemically failed the past several years to provide Petitioners with an education that confers meaningful educational benefit (i.e. meaningful academic and behavioral progress) as required by IDEA. This failure creates the following pervasive reality: by the time they reach middle school, the Petitioners are typically performing years behind their chronological grade level. JPSS relies on this fact and the ongoing behavior issues Petitioners exhibit after experiencing years of little or no academic progress to justify Petitioner's placement in more restrictive educational settings in violation of IDEA's LRE mandate.
- g. JPSS has systemically failed the past several years to provide Petitioners with educational services in the LRE as required by IDEA. JPSS has repeatedly failed to pursue any strategies that would have enabled Petitioners to continue accessing general education classes such as: a) the use of paraprofessional aides (i.e. behavioral aides) and/or the use of special education teachers in general education settings; b) the practice of increasing related services in response to a student's challenging behavior and/or discipline incidents; c) the implementation of individual and classroom based positive behavioral support plans; d) modifications of the regular education curriculum; e) the use of peer supports/coaches and/or peer tutoring; f) the use of additional supplemental aides and services including providing behavioral intervention training to regular education teachers.
- h. JPSS has systemically failed the past several years to provide Petitioners with appropriate transition plans that contain appropriate measurable postsecondary goals which are informed by age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and an array of transition services including instruction, related services, community experience, etc. needed to assist the Petitioners in reaching these goals.
- i. JPSS has systemically failed the past several years to provide Petitioners with Extended School-Year (hereinafter "ESY") services that were needed by Petitioners in order to prevent significant regression regarding academic and/or behavioral skills and/or to maintain a critical point of instruction or to address extenuating circumstances.

A. JPSS Has Failed to Provide Sufficient and Appropriate Levels of Related Services

JPSS has denied Petitioners A.M., E.H., T.A., C.O., A.L., and all other similarly situated students with academic and behavior problems FAPE by its failure to provide sufficient and

appropriate levels of related services that address the inherent behavioral characteristics and issues associated with the classification of EmD and other students with disabilities who have behavior problems which adversely affect such students' educational performance. See 20 U.S.C. § 1401 (a) (26), § 1412 (a) (1), § 1414 (d); 34 C.F.R. § 300.34, § 300.101, § 300.320-328.

JPSS has consistently failed to provide Petitioners and all other similarly situated students with appropriate behavioral programming which includes both specialized instruction and sufficient and necessary related services such as social work, counseling and school psychology services tailored to address identified behavioral issues that adversely affect their education. Specifically, JPSS has furnished the named complainants and all other similarly situated students with woefully inadequate levels of social work, counseling, and psychological services, *if any services at all*. Moreover, the provision of related services appears unrelated to the students' individual needs. Instead, when JPSS metes out related services, it is based on a boiler-plate template or on the limited availability of JPSS personnel at any given school. Indeed, the amount of related services provided has no discernable relation to any of the Petitioners' behaviors or restrictive placements. When behavior issues arise and result in ongoing disciplinary referrals and/or suspensions (OSS and/or ISS) for Petitioners and those similarly situated, JPSS fails to either add related services to their IEPs or fails to increase the level of related services. JPSS further fails to convene IEP meetings as mandated by IDEA to address such behavioral issues and the often accompanying lack of academic and/or behavioral progress. Instead JPSS regularly subjects such students to increasing punishment beginning with ISS and OSS and often ending with referrals to its alternative school, CCAS—or worse to the Youth Court where these students face confinement in a maximum security facility. This is a pervasive JPSS failure that is true for all similarly situated students.

Violations suffered by individual Petitioners

1. Petitioner A.M.

Petitioner A.M. was initially evaluated and classified as a student with an Emotional Disability in 2007. His 2007 evaluation stated that he had serious conduct problems at school, argued with teachers and other students and started fights with other students.³ On the Acters Rating Scale (ACR)—Home Version and School Version, A.M.'s scores indicated *significant problems* with attention, social skills and oppositional behavior. A.M.'s score on the Differential Score of Conduct and Emotional Problems reflected the presence of a serious conduct problem. When the Children's Depression Inventory was administered, A.M. indicated that "he has some friends but would like to have more, he is sure someone loves him, and he admitted getting into fights many times." The Devereux Scale of Mental Disorders which was completed by his mother and one of his school administrators reflected that A.M. has significant problems related to conduct, depression, and his psychological well being. The scale also manifested a highly elevated score

³ In fact, when the JPSS Chairperson for A.M.'s evaluation arrived at his school to commence the evaluation, he was in the office due to being in a "scuffle" with another student. See Page 3 of the Psychometrist Assessment Report dated October 17, 2007.

related to the "Externalizing Composite" which indicated A.M. may be aggressive, disobedient, annoying to others, disruptive, under-controlled, restless, and inattentive.⁴ Despite these extensive and serious behavioral findings JPSS failed to provide A.M. with any related services (social work, counseling, psychological services) during the 2007-08 school-year and the past two school-years as well (2008-09 and 2009-10).

During the 2007-08 school-year, A.M. had significant ongoing behavior issues that resulted in 10 days of OSS and 2 days of ISS. A.M. received no related services during this period. During the 2008-09 school-year, A.M.'s behavior issues increased and he was subject to 18 days of OSS and 2 days of ISS. A.M. once again received no related services during this period.

During the 2009-10 school-year, A.M. was subject to 10 days of OSS, 2 days of ISS and was placed in JPSS' alternative school (CCAS) on three different occasions for 45 days each.⁵ A.M. did not receive any related services during this period. Remarkably, even in light of A.M.'s significant behavioral and discipline history over the past three years, his IEP for the upcoming 2010-11 school-year (completed April 30, 2010) also fails to include any related services.

2. **Petitioner E.H.**

E.H. demonstrated a significant need for related services over the past several years. During the 2008-09 school-year E.H. exhibited significant behavioral issues that resulted in 8 days of OSS and 9 days of ISS. During the year, E.H.'s mother was also called "many times for conferences related to his academic and behavioral problems."⁶ E.H. received no related services the entire school-year.

E.H.'s 2009-10 IEP states in the Present Levels of Performance (PLOP) that he exhibits "major behavior problems in the classroom." His LRE Document Form for 2009-10 states that E.H.'s

⁴ A.M.'s numerous behavior incidents and extensive discipline record over the past three years have proven the accuracy of his evaluation's significant behavioral findings.

⁵ A.M. was disciplined *the first week of the 2009-10 school-year* and was sent to JPSS restrictive alternative school on August 12, 2009. After serving 45 days at this facility, he was returned to Hardy Middle School and placed in a restrictive self-contained setting on October 8, 2009. Three weeks later, A.M. was disciplined again for not following instructions, walking around a classroom, profanity, and a group fight and was returned to JPSS' alternative school for another 45 days. Although his IEP Committee met in August, October, and early November 2009 in order to transfer A.M. twice to a restrictive alternative setting and to also change his placement at Hardy Middle School to a more restrictive self-contained placement, the Committee *never discussed nor provided any related services to A.M.* A.M. was returned to CCAS for a third time in April 2010 due to another discipline incident.

A.M. has desperately needed related services for years (since the fall of 2007) and this provision may well have prevented the need to change his placement to a restrictive self-contained classroom at Hardy Middle School; and may have prevented the discipline incidents mentioned above and JPSS' action in transferring him on three occasions this year alone to CCAS. JPSS' stunning failure to provide A.M. with related services (and an appropriate BIP- see Section IB) has engendered highly restrictive alternative school placements and a restrictive self-contained classroom placement on his regular school campus. The bottom-line is that A.M. has born all the punitive consequences for JPSS' multi-year failure to provide him with related services.

⁶ E.H.'s annual IEP for the 2008-09 school-year was completed on May 12, 2008. It includes no related services.

behavior results in consistent disruption of the learning environment. Despite these findings, JPSS failed to offer E.H. any related services in 2009-10. Moreover, the behavioral information on E.H.'s LRE Document Form was used in part to change a number of E.H.'s previous regular education classes to special education classes and thus change E.H.'s placement from regular education to resource. JPSS thus chosen to place E.H. in a more restrictive environment without ever providing him any related services.

Even a cursory review of E.H.'s behavior logs and discipline incidents during the 2009-10 school-year manifests his need for significant related services. Behavior logs from both the fall of 2009 and spring of 2010 reveal numerous instances where E.H. was "not focused, talking, playful in class." On October 9, 2009, E.H. was referred to the school counselor for refusing to follow classroom rules. On October 30, 2009, a parent conference was held to address E.H.'s ongoing inappropriate classroom behavior. Within two weeks, on November 12, 2009, another parent conference was held to address several behavioral issues including "excessive distraction to other students, excessive talking and repeated classroom disturbance." On November 19, 2009, E.H. was again referred to the Counselor for refusing to follow the rules and arguing with adults. In January 2010, E.H. received a two day ISS for hitting another student in the gym. In February 2010, E.H. was issued a one day ISS for hazing and making fun of another student.

Despite all of the above behavior issues, JPSS failed to provide E.H. with any related services during the 2009-10 school-year and this constituted a clear denial of FAPE. E.H.'s May 20, 2010 annual IEP also contains no related services. He is thus destined to face the same FAPE denial also during the 2010-2011 school-year.

3. Petitioner T.A.

Petitioner T.A. was classified in April 2002 as a student with mental retardation and has exhibited significant behavioral issues for several years. His behavioral issues and challenges manifested a clear need for the provision of related services. Unfortunately, he never received related services since being ruled eligible for IDEA services in 2002 through the end of the 2009-10 school-year.

T.A.'s 2007-08 IEP states that he was receiving mental health day treatment services from Hinds Behavioral Health Center and that he can exhibit aggressive behavior at times, become highly impulsive and display a lack of respect for authority. Within two weeks of the start of school, T.A. was sent to JPSS' alternative school for 45 days for a discipline incident.

T.A.'s 2008-09 IEP states that T.A. exhibits "*oppositional and aggressive behavior. When he makes up his mind to do something he does it and is not always conscious of the consequences. He is highly aggressive, acts impulsively and shows a blatant disregard for authority. In many cases he lacks self-control and must be removed and placed in an alternative school setting (outside the classroom in the auditorium, front office, sent home with supervision).*" T.A. had numerous behavioral issues throughout the school-year resulting in 6 days of OSS and 2 days of ISS as well several undocumented instances where T.A. was simply sent home for the day.

T.A.'s 2009-10 IEP again states that T.A. *"is highly aggressive, acts impulsively and shows a blatant disregard for authority. In many cases he lacks self-control and must be removed and placed in an alternative setting."* The 2009-10 IEP then adds *"T.A. has great emotional and behavioral difficulties."* Remarkably, no related services were listed on his IEP. As the IEP predicted, T.A. had numerous behavioral incidents (as reported on behavior logs of Ms. Newsome and Ms. Porter) during the weeks of 8/17-21/09, 8/24-28/09, and 9/8-11/09⁷ and several discipline incidents during the same first month of 2009-10 school-year (discipline incidents occurred 8/27/09, 8/28/09, 9/3/09, 9/9/09, 9/10/09). As a result of T.A.'s extensive behavioral difficulties during the first month of school, his IEP Committee met on September 21, 2009, and recommended he be transferred to JPSS' alternative school for 45 days. It once again failed to recommend the provision of related services. T.A. did not return from alternative school to his regular school (Hardy Middle School) until January 4, 2010, and he returned without any related services. Once he returned to regular school, he received an additional 4 days of OSS and 2 days of ISS.

T.A. could not benefit from his education without receiving the related services that were essential to helping manage his behavior. JPSS' several year failure (including during the 2009-10 school-year) to provide him with appropriate levels of related services resulted in a lack of behavioral progress, several alternative school placements and an unequivocal denial of FAPE.⁸

4. Petitioner C.O.

Petitioner C.O. has also not been provided any related services to address his long history of behavioral issues and disciplinary referrals. C.O.'s September 19, 2007 re-evaluation found that C.O. sometimes exhibits serious conduct problems at school, sometimes is disobedient, out of control, sometimes is disruptive and defies authority, sometimes starts fights with others without being provoked, sometimes is withdrawn and unresponsive, sometimes argues with teachers and other students. On the Acters Rating Scale - School Version, C.O.'s teacher scores reflected that he has significant problems with attention, hyperactivity, and oppositional behavior. The Differential Test of Conduct and Emotional Problems revealed that C.O. has significant conduct problems. These problems were listed as C.O. *"cannot control temper; 'blows up' over the least thing, uses poor judgment, will do or say anything on impulse, is disruptive, tendency to be disobedient and defiant of authority, gets very upset when criticized or makes mistakes."* The Devereux Scale of Mental Disorders reflected that C.O. has significant problems with conduct, anxiety, and internalization. Despite these extensive and significant behavioral findings in C.O.'s

⁷ T.A.'s behavior logs for these weeks reveal that he received unsatisfactory ratings *daily* for essentially all of his behavior objectives due to the following types of persistent, *ongoing behavior* – sleeping in class; refusing to complete work; rude and agitated when redirected; late for class regularly (tardy); excessive talking; argumentative; disrespectful towards students and teachers.

⁸ JPSS' recent decision in May 2010 to finally provide T.A. a nominal 20minutes per week of social work services also constitutes a denial of FAPE. T.A.'s new 2010-11 IEP continues to state that he has "great emotional and behavioral difficulties" and 20 minutes per week of Social Work services (8 years after becoming eligible for IDEA services) is woefully inadequate to address the depth, breadth and scope of what's become his *"great emotional and behavioral difficulties."*

re-evaluation, JPSS failed to provide him with any related services during the 2007-08 school-year.⁹ JPSS also maintained this failure during the 2008-09 and 2009-10 school-years.

During the 2008-09 school-year C.O. had several behavior and discipline incidents and in December 2008 was transferred to JPSS' alternative school as a consequence for a school fight. JPSS was more than willing to transfer him to an alternative school setting for behavior clearly related to his disability but remained steadfast in its ongoing refusal to provide C.O. with related services to help address these same behaviors. JPSS chose to punish C.O.'s behavior rather than provide him with the services necessary to help him manage and improve his behavior.

JPSS' same punitive approach was on full display during the 2009-10 school-year. C.O. received ten (10) days of OSS and thirteen (13) days of ISS (23 days total) while attending Murrah High School. As a result of C.O.'s behavioral issues, he was referred to Capital City Alternative School on two (2) different occasions for 45 days each during the school-year. C.O. received an additional eight (8) days of OSS and two (2) days of ISS during his two placements at Capital City Alternative School. Cumulatively, C.O. received 18 days of OSS and 15 days of ISS resulting in a loss of 33 days of instruction. Unbelievably, JPSS failed to provide any related services to C.O. to address his behavioral difficulties during the 2009-10 school-year. Instead of providing C.O. with desperately needed related services, JPSS again chose to repeatedly punish him via OSS, ISS and placement in its alternative school. JPSS' essentially indifferent and punishing behavior towards C.O. reflects a clear denial of FAPE.

C.O.'s latest re-evaluation which was conducted in April 2010 reaffirms that C.O. has persistent and significant behavioral issues. Some of the findings include C.O. almost always defies authority; almost always is impulsive (acts or talks without thinking); has *significant problems* with attention, social skills and oppositional behavior; uses poor judgment; cannot control temper-blows up over the least thing; swears and uses obscene language and is repeatedly in trouble.

Despite C.O.'s lengthy discipline history in 2009-10 and the numerous above findings in his recent re-evaluation, his IEP for 2010-11 (completed on May 24, 2010) fails to include any related services. This failure constitutes another denial of FAPE.

5. Petitioner A.L.

Petitioner A.L. is the only Petitioner who has been provided related services by JPSS during the 2009-2010 school-year. Unfortunately, the level of related services provided A.L. has been woefully inadequate in light of her extensive and significant behavioral challenges.

A.L. was originally evaluated and found eligible for IDEA services as a student with an Emotional Disability in late May 2008. As her evaluation noted:

⁹ Not surprisingly C.O. had numerous behavior and discipline problems in 2007-08 which necessitated two Manifestation Determination Reviews (MDRs) for serious discipline infractions.

When we got to the question about feeling sad, I (evaluator) asked her what made her sad. She began to tell me about her best friend who died in a house fire at Christmas when they were both five years old. Even though she is currently 15 and this has been 10 years ago, she wept as if this had happened yesterday....After further questions and discussion she told me she was also sad because students call her names about being overweight. She also stated she was sad because she acts without thinking and fights with other people. She said she really doesn't want to fight, but she ends up in a fight before she really has time to think about the consequence. She told me that she does 'stuff that I know is not right' but can't seem to do better.¹⁰

After meeting with A.L., the evaluator concluded by stating:

*"This child is precious! She cried the entire time I spent with her which was close to one hour. Even though the actual results [on the Reynolds Adolescent Depression Scale, 2d Edition] do not indicate significant scores in depression, the conversation I had with her did."*¹¹

Other important findings in A.L.'s evaluation that obviously flow from the above types of feelings are as follows:

A.L. almost always cries with minimal provocation or cause. She always exhibits moods of unhappiness or depression and is a loner and becomes angry when her reclusiveness [sic] is interrupted. *The Actors Rating Scale - Home Version* revealed that A.L. almost always defies authority; almost always is impulsive, acts and talks without thinking; almost never skillful at making new friends. *The Actors Rating Scale - School Version* found that A.L. also defies authority; sometime picks on others; does not follow group and social rules; is not skillful at making new friends. *The Differential test of Conduct and Emotional Problems* found serious emotional problems including A.L. feels inferior, says she is not as good as others; chronic moods of unhappiness and depression; disruptive, tendency to be disobedient and defiant of authority. *The Devereux Scales of Mental Disorders-Adolescent Form* found that A.L. has several significant behavioral issues related to; conduct, anxiety, depression, externalizing and internalizing composites (related to her state of psychological well being).

Finally, A.L.'s Behavior Logs that were kept for a number of weeks in the spring of 2008 preceding her evaluation reflected numerous serious behavior issues and problems at school including: mood swings; became tearful and sat at table alone; sat in a daze with hand on her head; refused to respond to teacher requests and directions; sat with a group but covered her face; fell asleep in class; appeared withdrawn unless arguing with others; did not complete assignments; *appears she has been suspended 25 to 30 days this school-year.*

Despite the significant nature of the behavioral findings noted in her evaluation, JPSS' IEP Committee recommended the related service of social work consultation¹² but only for a

¹⁰ See Page 9 of A.L.'s Psychometrist Report dated May 20, 2008.

¹¹ *Id.* at Page 9.

¹² It's not clear if social work consultation resulted in the provision of direct social work services to A.L. or simply involved the Social Worker checking with A.L. and her teachers re her behavioral progress every two weeks. Regardless, the level of social work related service was severely deficient.

nominal amount - twice a month for 30 minutes each session for a total of 1 hour per month.¹³ This level of related services proved to be woefully inadequate as A.L. was repeatedly disciplined during the first six weeks of the 2008-09 school-year receiving 10 days of OSS by September 25, 2008. Shortly thereafter, A.L. was removed from Jim Hill High School and transferred to JPSS' alternative school, CCAS. By November 2008, A.L.'s behavioral issues were so significant that she was placed in CARES Day Treatment where she remained for the rest of the 2008-09 school-year.

Although JPSS increased the amount of related services provided to A.L. for the 2009-10 school-year, such services were not provided regularly and were still obviously insufficient in light of her numerous, ongoing behavioral issues/problems. Indeed, at the start of the 2009-10 school-year, A.L. was placed again at CCAS, where she remained until September 29, 2009, when she returned to Wingfield High School. A.L. continued to have numerous behavioral issues/problems at school¹⁴ and on January 19, 2010, she was involved in another discipline incident that resulted in her being transferred back to CCAS. In late March, she entered the Career Academic Placement Program where JPSS failed to provide A.L. with any related services. A little more than a month later, in May 2010, she was involved in another discipline incident that resulted in her being transferred to JPSS' alternative school, CCAS, for a *third time during the 2009-10 school-year*. A.L.'s 2009-10 discipline history clearly reflects that she was not provided with sufficient levels of related services for her behavior only deteriorated throughout the course of the year. As a result, JPSS clearly denied A.L. FAPE.¹⁵

B. JPSS Has Violated IDEA's Discipline Provisions

1. JPSS' Practices re Conducting FBAs and Developing BIPs are Fundamentally Flawed

JPSS' professional practices regarding conducting FBAs and developing BIPs are *fundamentally flawed* in several respects and this has resulted in *systemic deficiencies* in the FBAs and BIPs provided the Petitioners and the previously defined class. The evidence of these systemic flaws is found in the attached report from Dr. Brad Dufrene of the University of Southern Mississippi. Recently, Petitioners' counsel asked Dr. Dufrene to review two of the Petitioners (C.O. and P.A.'s) FBAs and multiple BIPs from the past three years. An examination of all six Petitioners' FBAs and BIPs reflects that they are all quite similar in format *and substance* and thus C.O.'s and P.A.'s FBAs and BIPs were provided to Dr. Dufrene as a representative sample.

¹³ It also represents an average of only 15 minute per week.

¹⁴ See intermittent behavior logs maintained for A.L. during the 209-10 school-year.

¹⁵ Petitioner P.A. has also not been provided any related services to address his long history of behavioral concerns which have necessitated six different hospitalizations over the past three years - Brentwood Behavioral Healthcare: December 26, 2006 through January 6, 2007; Brentwood Behavioral Healthcare; January 27, 2008 through February 6, 2008; Alliance Health Center: May 30, 2008 through June 20, 2008; Alliance Health Center: January 5, 2009 through February 6, 2009; Brentwood Behavioral Healthcare: November 5, 2009 through November 20, 2009; Alliance Health Center: March 2, 2010 through April 1, 2010.

Dr. Dufrene's review of the above FBA's and BIPs resulted in a number of highly disturbing and systemic findings/deficiencies regarding both the FBAs and BIPs.¹⁶ Some of Dr. Dufrene's major findings are as follows:

1. A total of six FBAs were reviewed and some specific problems were identified as well as *general problems across all FBAs*. The following concerns were noted:
 - a. All six FBAs include a checklist for indicating which FBA methods (e.g., interview, records review) were used during the assessment process. Every FBA indicates that all methods were used for each assessment. However, there is no supporting documentation that demonstrates any of those methods were used. For example, the FBAs do not include observation results or identification of specific individuals reporting functionally related information during a functional assessment interview. Therefore, the extent to which all FBA methods were used across all assessments is questionable. A professionally appropriate FBA must include multiple measures including, but not limited to, interviews, **direct observations**, and review of relevant records. Unfortunately, the JPSS FBAs fail to convincingly demonstrate that multiple measures were indeed collected.
 - b. The functional hypotheses provided in the FBA include functional hypotheses that are not supported by the empirical FBA literature. For example, the FBAs include non-empirically supported functions such as peer acceptance, affiliation, approval, justice, revenge, and control. Moreover, both students' FBAs identify "expression of self-sensory stimulation" as a function of off-task behavior. This is noteworthy in that sensory-based reinforcement categories are rare for typically developing students engaging in high incidence problem behaviors (e.g., off-task behavior). Given the lack of evidence for a variety of empirically supported FBA procedures by the assessment documents, the validity of sensory-based reinforcement categories is quite doubtful.
 - c. Across all six of the FBAs that were reviewed, **no baseline data are presented for any of the targeted behaviors for reduction of desired replacement behaviors**. Baseline data are essential for initial intervention planning and evaluating students' response to a BIP. For example, baseline data may be used to select initial behavioral criterion for reinforcement. When baseline data are not available, initial behavioral criterion may be arbitrary and the quality of behavioral programming is greatly diminished. In the FBAs and BIPs reviewed, goals for each student include expecting 15 minutes of on-task behavior. However, it is unclear if the goal is appropriate, because no data are provided regarding students' baseline performance for on-task or off-task behavior.

¹⁶ Dr. Dufrene's Report is attached as Exhibit B.

- d. C.O. and P.A. experienced three FBAs each over a nearly three year period. It is alarming to note that each FBA is nearly identical to the previous one. Given the natural variability in student behavior, especially across long time periods and multiple settings, one would expect that behaviors, triggers, and re-enforcers would vary. However, the summary statements in the students' FBAs are nearly identical despite being conducted over nearly three years and across multiple settings and persons.¹⁷ As a result, the reliability and validity of these FBAs is questionable.
2. The BIPs provided by JPSS include some substantial concerns worth noting. **In particular, (a) the BIPs are not directly linked to the FBAs, (b) do not provide sufficient detail for implementation, (c) include recommendations that are contraindicated given content of the FBAs, (d) fail to include data demonstrating intervention implementation, (e) lack data demonstrating that IEP team members objectively evaluated C.O. and P.A.'s response to intervention procedures and (f) were not meaningfully revised despite C.O. and P.A.'s non-response to intervention.** These issues are expanded on below.
- a. As noted previously, most of the BIPs are not directly linked to the FBAs. For example, the BIPs indicate escape and avoidance functions for some targeted problem behaviors. However, the BIPs do not include specific plans for eliminating escape and avoidance for problem behavior while providing escape and avoidance for appropriate replacement behaviors. As a result, there is no link between the FBAs and BIPs, and the BIPs are likely not being effective as a result.
- b. The BIPs offered by JPSS do not include the details necessary for accurate implementation. Professionally appropriate BIPs include enough detail that an individual unfamiliar with the student could read the plan and then implement the plan with integrity. The BIPs reviewed here do not include the detail necessary for a teacher, support person, or paraprofessional to accurately implement the plan. As a result, it is doubtful that this plan could be implemented with much consistency across multiple staff members.
- c. The current BIP does not include details related to the person or persons responsible for implementation of the plan. Failure to designate persons responsible for implementation typically results in diffusion of responsibility.

¹⁷ Petitioners would also note that P.A.'s original 10/30/07 FBA/BIP and C.O.'s original 9/21/07 FBA/BIP contain the **same** three *replacement behavior objectives* and more than two-thirds of the **same** *preventive/teaching strategies*. These **same** *replacement strategies* and *preventive/teaching strategies* were maintained for both P.A. and C.O. in each of their next two FBAs/BIPs (P.A. – 10/23/08 and 5/14/10; C.O.- 1/27/09 and 11/20/09) confirming Dr. Dufrene's finding that each of their FBAs/BIPs is nearly identical to previous versions and (Petitioners would add) nearly identical amongst these two completely different students.

- d. Some of the intervention recommendations in each of the BIPs are contraindicated given information included in the FBAs. All FBAs for C.O. and P.A. identify escape and avoidance functions for some problem behaviors. However, BIPs call for suspending students for violating school rules. Such a recommendation is contraindicated because suspending the students would allow for escape and avoidance of the school environment, which would reinforce and strengthen those behaviors.
- e. Some specific intervention procedures for C.O. are worth detailing. First, C.O.'s BIP from 9/21/07 included the following intervention component: "work detail-under adult supervision student is required to do a specific work or cleaning task appropriate to the offense, school administration and parent consent is strongly suggested." Such an intervention procedure is alarming given that C.O. would be required to engage in manual labor at school that would result in loss of access to the benefits of his IEP. Second, C.O.'s BIP dated 11/20/2009 includes using access to reading instruction as an incentive for C.O. to engage in appropriate behavior. C.O. is a student with a Specific Learning Disability in the areas of Basic Reading and Reading comprehension, and it appears that school personnel are suggesting that access to reading instruction be made contingent upon appropriate behavior. This is obviously inappropriate and should not have been included in the BIP.
- f. Across the BIPs there is a lack of documentation demonstrating intervention implementation. In fact, no permanent products were provided demonstrating implementation of P.A.'s BIPs. As a result there is little confidence that BIPs were implemented as planned.
- g. The records provided by JPSS do not demonstrate that the IEP teams objectively monitored C.O.'s and P.A.'s response to intervention. Specifically, no graphs were provided that included daily behavior rating sheet scores or data from direct observations. Therefore, it is doubtful that the students' response to their BIPs was objectively evaluated.
- h. C.O. and P.A. failed to respond to intervention as evidenced by placement in restrictive educational settings. However, over a three year period, their BIPs were not revised in any meaningful way such that it could be reasonably expected that their behavior would improve substantially. Failure to meaningfully revise their BIPs and lack of data demonstrating plan implementation likely explain a great deal of their continued behavioral difficulties.

Dr. Dufrene's above findings manifest that JPSS has provided the Petitioners and the previously defined class of similarly situated students with inappropriate and ineffective FBAs and BIPs and this has resulted in additional systemic denials of FAPE. 34 C.F.R. 300.17, 530.

2. JPSS Has Systemically Failed to Appropriately and Meaningfully Update and Revise Petitioners BIPs in Contravention of IDEA's Mandates

IDEA's regulations state that whenever an IEP team conducts a Manifestation Determination Review (MDR) and determines that a student's conduct is a manifestation of his/her disability, the team must review any previously drafted BIP and modify it as necessary to address the behavior in question. 34 C.F.R. 300.530(f) (1) (ii). As specifically delineated in Dr. Dufrene's Report, JPSS fails to revise students' BIPs "in any meaningful way such that it could be reasonably expected that their behavior would improve substantially. Failure to meaningfully revise their BIPs and lack of data demonstrating plan implementation likely explain a great deal of their continued behavioral difficulties." Although Dr. Dufrene's comments were directed to C.O. and P.A., they are also clearly applicable to each of the other Petitioners as evidenced by their numerous behavior incidents, suspensions and MDRs for essentially similar behaviors. JPSS' systemic, ongoing failure to modify Petitioners BIPs to address presenting discipline behaviors is a violation of 34 C.F.R. 300.530(f) (1) (ii).

3. JPSS Has Systemically Failed to Conduct Manifestation Determination Reviews in Conformance with IDEA's Mandates

There are specific requirements that govern Manifestation Determination Reviews (MDR) under IDEA's Discipline Procedures. The IDEA MDR regulation states:

(e) Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent/guardian, and relevant members of the child's IEP Team (as determined by the parent/guardian and the LEA) must review *all relevant information in the student's file*, including the child's IEP, any teacher observations, and any relevant information provided by the parent/guardians to determine--

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e) (1) (ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies. 34 C.F.R. 300.530(e)

A review of the multiple MDRs conducted for the Petitioners reveals that JPSS has not ensured that IEP teams review "all relevant information in a student's file" and this includes the Present Levels of (behavior) Performance found on the first page of the IEP as well as any annual social goals; a student's original evaluation which sets forth the *defining behaviors and characteristics of the student's disability*; any re-evaluations that contains updated behavioral information; any FBAs or BIPs for a student; any anecdotal information provided by a parent/guardian as well as any written information from community mental health providers and in-patient mental health facilities. Too often, it appears that MDR decisions are based on the opinions of the present IEP team members. Although opinions are valuable and need to be considered they are not a substitute for a review of *all* relevant information in a student's file. This is particularly true considering that some of the IEP teams' members voicing opinions are the very individuals who want a student disciplined and removed from the school environment in the first place (e.g. a referring teacher) and thus have an innate conflict of interest. This has resulted in erroneous rulings that a Petitioner's behavior was *not a manifestation* of his/her disability when his/her school record clearly reflected it was a manifestation.

Two examples of such erroneous manifestation rulings are as follows: On January 19, 2010, A.L. was disciplined for the following behaviors- *creating a disturbance in the classroom/on campus; refusing to surrender a cell phone; insubordination; intimidation/bullying; verbal communication involving threatening a student*. A.L. was recommended for expulsion and thus an IEP meeting was scheduled for January 29, 2010 to conduct an MDR. A.L.'s parent received written notice of the Manifestation Review and the JPSS *form notice* contained a section that listed numerous student records that could be reviewed and had checks by those that would be reviewed. Remarkably, the student records section of the form does *not* include records involving a student's initial evaluation, re-evaluations, or BIPs. Moreover, in this particular instance, the box on the form for "Personality Assessment" was *not* checked despite the fact that A.L.'s disability classification is Emotional Disability.

Five JPSS employees attended the Manifestation Review including both of her teachers, a learning specialist, a social worker, and a school administrator. A.L.'s mother also attended the meeting. Significantly, at the outset, both of A.L.'s teachers reported that her attendance was *not sufficient for them to discuss her behavior*.¹⁸ The MDR Form from the meeting also notes that A.L. has a history of explosive incidents. The minutes from the meeting also include a statement from a committee member that A.L. "was explosive and profane as she ran from the building and off campus."¹⁹ Even in light of the above information, the Committee inexplicably decided over the mother's objection that A.L.'s behavior was not a manifestation of her disability stating "student's actions during this incident were different than in other *explosive situations* due to extended time and sequence of actions."

The above information was more than sufficient to find that A.L.'s behavior during the incident was a manifestation of her disability. However, if the Committee had actually reviewed *all*

¹⁸ See MDR Review Form dated 1/29/10

¹⁹ See IEP Documentation Form dated 1/29/10

relevant information in A.L.'s file (including her initial evaluation and BIP) they would have immediately found evidence of a clear relationship between her behavior and her disability. As previously detailed in Section IA above, A.L.'s initial evaluation contains the following behavioral information:

A.L. almost always defies authority; almost always is impulsive, acts and talks without thinking; almost never skillful at making new friends. A.L. also defies authority, picks on others; does not follow group and social rules; is not skillful at making new friends. A.L. has serious emotional problems including A.L. feels inferior, says not as good as others; chronic moods of unhappiness and depression; disruptive, tendency to be disobedient and defiant of authority.

A.L.'s BIP dated August 29, 2009 states on the first page that her target behaviors are: inappropriate expressions of anger and frustration (loud outburst and cries with minimal provocation); defies authority; inappropriate peer interaction. The BIP also states that A.L. has poor impulse control, and when situations do not meet her expectations, she perceives that others have mistreated or wronged her and that when A.L. perceives that she has been treated unfairly or disrespected she *will lash out verbally* in an attempt to gain respect and seek her own form of justice to rectify the situation. Finally, it also states that when having to interact with peers she may respond inappropriately in order to gain control.

The above extensive and severe behavioral findings *relate directly* to the discipline incident in question and the five code of conduct offenses that A.L. allegedly committed. An *objective review* of this documented behavioral information can lead to only one conclusion - **A.L.'s behavior was a clear manifestation of her disability.**

The second erroneous Manifestation Review involves C.O. and an incident that occurred on October 14, 2009, wherein he allegedly verbally assaulted a teacher in the cafeteria and then cursed at a security guard and an administrator when they approached. At the Manifestation Determination Review the Committee again failed to review C.O.'s initial evaluation. It also failed to critically review his current FBA and BIP. Instead, it simply held, over his mother's objections plus that of C.O.'s advocate, and JPSS' own employee, Dr. Loretta Smith, that his behavior "*was not caused by the disability of SLD.*"²⁰ Significantly, the minutes from the meeting state that "*Dr. Loretta Smith suggested that C.O. does have a history of ADHD and that she had problems stating that C.O.'s behavior was not directly and substantially related to C.O.'s disability.*"²¹

The above circumstances reflect that a *portion* of the Committee illegally made its decision based upon the generic definition of SLD rather than the specific and individualized behaviors of

²⁰ Approximately half of the Manifestation Determination Review Committee believed that C.O.'s behavior was related to his disability yet the Committee still held it *was not* related. Petitioners wonder if this issue was decided by an illegal vote of the Committee. JPSS cannot assert that the Committee agreed that C.O.'s behavior was "not related" because there was NO agreement. See MDR Form dated 10/21/09 and IEP Meeting Documentation Form also dated 10/21/09.

²¹ See IEP Documentation Form dated 10/21/09

C.O. that had been documented in his records as functions of his disability. C.O.'s 2007 re-evaluation emphasized that C.O. *"cannot control temper; 'blows up' over the least thing; uses poor judgment, will do or say anything on impulse; is disruptive; tendency to be disobedient and defiant of authority, gets very upset when criticized or makes mistakes.* The Committee conveniently, yet inexcusably, failed to review this longstanding, documented information—information that irrefutably reflects that C.O.'s behavior was a manifestation of his disability.²² JPSS' actions were thus in clear violation of IDEA's regulatory requirements. 34 C.F.R. 300.530 (e)

In light of the two above examples of erroneous and illegal MDR rulings JPSS must establish a written process that articulates the types of student records that are always relevant to an MDR (e.g. a student's initial evaluation; any re-evaluations that include updated behavioral information; current IEP; any current FBA and BIP; behavior logs and discipline referrals from the current year; anecdotal parent information; written information from community mental health providers and in-patient mental health facilities provided by parent/guardian or previously furnished at the district's request) and must be reviewed at every MDR. JPSS also must establish written procedures to address and resolve disagreements amongst MDR Committee members and to prohibit a simple majority from making such decisions.

Finally, Petitioners also believe that JPSS never examines the second required component of a MDR involving whether the conduct in question was a direct result of the LEA's failure to implement the IEP and in particular the *LEA's failure to implement any BIP with integrity and fidelity.* See 34 C.F.R. 300.530(e) (1) (ii). Although a BIP is a component of a student's IEP, a review of countless JPSS MDR rulings involving Petitioners reflect that JPSS personnel only examine whether the student *has* a BIP and rarely if ever examine whether the BIP has been implemented with integrity and fidelity. This systemic failure constitutes another major violation of IDEA's regulatory requirements. 34 C.F.R. 300.530(e) (1) (ii).²³

²² Importantly, this was not the first erroneous MDR ruling involving C.O. In April of 2008 and December of 2008, (approximately 8 and 15 months after C.O.'s 2007 Re-evaluation) MDR Committees made egregious and patently erroneous decisions. In the first instance, the Committee's appalling ruling was based C.O.'s failure to take his medication. In the second instance, the committee's ruling stemmed from C.O.'s involvement in a fight with another student wherein the Committee ignored the following statement in C.O.'s 2007 re-evaluation- **"C.O. sometimes starts fights with others without being provoked."** See Page 2 of 2007 Re-evaluation. In both of these instances C.O. was punished for behavior clearly related to his disability and was transferred to JPSS' alternative school. Once again, a Petitioner bore all the weight of JPSS' illegal behavior.

²³ JPSS has repeatedly failed to obtain informed consent from Petitioners' parent/guardian when transferring a Petitioner to an alternative school setting for behavior that does not involve Weapons/Drugs/Serious Bodily Injury and which has been determined to be a Manifestation of a Petitioner's Disability. The Manifestation Determination Review provisions under IDEA's Discipline Procedures also include the following requirements;

(f) Determination that behavior was a manifestation. If the LEA, the parent/guardian, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--

(1) Either--

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

C. JPSS Has Failed to Confer Meaningful Educational Benefit

JPSS has denied Petitioners A.M., E.H., T.A., A.L., C.O., P.A., and the previously defined class of all other similarly situated students FAPE by providing Petitioners and all other similarly situated students with an education that has failed to confer meaningful educational benefit as required by IDEA. The pervasive reality for a significant portion of Emotionally Disturbed students and the other members of the defined class is that even though they are of average intelligence, by the time they reach middle school, they are typically performing years behind their chronological grade level and that of their peers. One result is that Emotionally Disturbed students and other students with significant behavioral issues are typically placed in restrictive self-contained settings and this leads to an almost non-existent High School Diploma rate for such students, which is the ultimate evidence of lack of meaningful educational benefit. This reality reflects the systemic practice of providing inappropriate special education and related services to Emotionally Disturbed students and the other members of the defined class.

1. Petitioner A.M.

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, **return the child to the placement from which the child was removed, unless the parent/guardian and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.**

Petitioners contend that JPSS' consistently tells parent/guardians in the above situations that the IEP team is recommending placement at the alternative school and requests their consent. JPSS however never informs parent/guardians that in light of the MDR decision their son/daughter has a right to return to his/her home school. JPSS thus fails to *fully inform* parent/guardians of *all the information* related to its request for consent to transferring a student to an alternative school by invariably obtaining parental consent in such a surreptitious manner, JPSS has systemically denied parent/guardians their right to give informed consent in clear violation of IDEA's procedural safeguards.

The consent required by parent/guardians in the context of a change in educational placement is one that is informed. 20U.S.C. §1415(d)(2) of IDEA and the corresponding regulations (34 C.F.R. § 300.500) stipulate that state educational agencies must fully explain the procedural safeguards as it relates to, among other areas, "parental consent". The Mississippi Department of Education states that consent means "(1) you [the parent] have been *fully informed* ...of *all the information* about the action for which you are giving consent; (2) you understand and agree in writing to that action...and (3) you understand that the consent is voluntary and you may withdraw your consent at any time."²³ Additionally, courts have stated that in the context of 34 C.F.R. § 300.500(b), "the definition of consent requires that, in relation to the activity for which consent is sought, the parent be *fully informed*, agree in writing, and understand that consent is voluntary and may be revoked." *Stanley C. v. M.S.D. of Southwest Allen County Schools*, 628 F. Supp. 2d 902, 949 (N.D. Ind. 2008). JPSS has thus systemically failed to obtain such informed consent in the above defined circumstances involving the Petitioners and the previously defined class of similarly situated students.

Petitioner A.M. has not been able to make any meaningful academic or non-academic (behavioral) progress the past three years since being found eligible for IDEA services in October 2007. Academically, Petitioner A.M. is performing several years behind his peers. During the 2007-08 school-year, A.M. received all Ds in his five course subjects.²⁴ During the 2008-09 school-year A.M. received one C and four Ds in his five course subjects.²⁵ During the 2009 -10 school-year, A.M. received one C, two Ds and one F in his four course subjects.²⁶

A.M.'s annual IEP updates from the past three years also manifest the following lack of academic progress:

a. his present levels of performance (PLOP) at the start of the 2008-09 school-year for reading and math were exactly the same as his PLOPs in these two areas on his fall 2007 initial IEP. A.M. thus made no progress in these two core subject areas and this is confirmed by his above grades.

b. his PLOP in reading at the start of the 2009-2010 school-year is exactly the same as his PLOP in reading at the start of the upcoming 2010-11 school-year.²⁷ Once again this reflects that A.M. made no progress in this critical core subject during the 2009-10 school year and this is confirmed by the above grades.

The bottom-line is that A.M. has made little or no academic progress the past three years and is consequently 2-3 years behind his chronological grade level and peers.

Additionally, as was discussed in detail in Sections IA and IC, A.M. has made little or no behavioral progress the past three years and this is particularly true in the past year (2009-10) when A.M. was placed in JPSS' alternative school (CCAS) on three different occasions²⁸ - two of which were within the first three months of school for discipline infractions.

During the past three years, JPSS has failed to provide A.M. with appropriate special education and related services to address his academic deficits and behavioral challenges. Instead, JPSS has engaged in the discriminatory practice of repeatedly suspending A.M. which has engendered a substantial loss of instruction time. As a result of JPSS' failures, Petitioner A.M. has not been able to make any meaningful academic and non-academic (behavioral) progress for the past several years. This has engendered a clear denial of FAPE. See *Board of Education of Hendrick Central School Dist. v. Rowley*, 458 U.S. 176, 200-201 (1982); *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245, 253-254 (5th Cir. 1997).

2. Petitioner E. H.

²⁴ A.M. received Ds for reading, language arts, math, science, and social studies.

²⁵ A.M. received a C in reading and Ds in language arts, math, science, and social studies

²⁶ A.M. received a C in science, Ds in math, and social studies and an F in language arts. Petitioners also believe that his language arts course subject now includes reading. Throughout the past three years while A.M. received special education services he received two Ds and an F in language arts; 3 Ds in math and social studies; Ds in science for two of the three years and one C, a D, and an F in reading.

²⁷ See A.M.'s annual IEP update for the 2010-2011 school-year.

²⁸ Each placement in CCAS was for 45 days.

Petitioner E.H. has made no meaningful academic progress the past several years. His initial evaluation completed in October 2005 states that his reading skills were at a 1.3 grade level and his math skills were between a 2.8-3.5 grade level. A full three years later, his annual IEP for the 2008-09 school-year (completed May 12, 2008) reflects that his reading skills were at a 2.3 grade level and his math skills were at a 2.6 grade level. During this three year period, E.H. increased his reading skills by only 1 grade level and his math skills actually decreased (regressed) from 2.8-3.5 grade level to a 2.6 grade level.²⁹ Presently, after five full years of IDEA services, E.H. is reading at approximately a 4th grade level which is five years behind his chronological grade level. The same is true for his math skills. Indeed E.H.'s final grades for the past school-year (2009-10) reflect that he made no academic progress. E.H. received 1 D and 5 Fs in his core subjects.³⁰

Furthermore, as previously discussed in Section IB, E.H. during the 2009-2010 school-year was often removed from his regular education classes at Hardy Middle School and illegally placed in a self-contained setting for much of the school day³¹ because the teacher does not want students with disabilities in his classroom "slowing everyone down." As a result, he is consistently losing access to instruction in the general education curriculum and falling further and further behind academically.

3. Petitioner T.A.

Petitioner T.A. also has made no meaningful academic or behavior progress the past several years. T.A. was initially evaluated and found eligible for IDEA services in April 2002. He has consequently been receiving special education services for eight years. The past five years T.A.'s final grades clearly reflect a stunning lack of academic progress: His grades are as follows:

- a. 2005-06 :1D and 6 Fs in his 7 courses
- b. 2006-07: 1C and 4Ds in his 5 courses
- c. 2007-08 :1C and 4 Ds in his 5 courses
- d. 2008-09 : 4 Fs in all 4 of his courses
- e. 2009-10: 2 Ds and 3 Fs in his 5 courses

Sadly, T.A.'s final grades the past five years reflect that he has earned 2Cs, 11Ds and 13Fs. His lack of academic progress is beyond pronounced. Moreover, T.A.'s reading skills have actually

²⁹ One of the reasons E.H. made so little academic progress is that JPSS consistently failed to align his academic goals and objectives with his actual present levels of performance –e.g. during the 2008-09 school -year, his IEP academic goals involve E.H. learning the 6th grade Mississippi curriculum framework competencies even though his reading and math skills are only at a 2.3 and 2.6 grade level. E.H. was thus subject to course work that was way beyond his current skill levels. Such inappropriate action (bordering on educational abuse) was unfortunately not limited to the 2008-09 school-year but has persisted for several years. See Section IE for a thorough discussion of JPSS' systemic failure to align Petitioners academic goals with their actual present levels of academic performance.

³⁰ E.H. received a D in eastern hemisphere geography and Fs in math, language arts, cpns math, career discovery and science.

³¹ These illegal removals are not documented by E.H.'s teacher or the administration at Hardy Middle School and such removals are not countenanced by E.H.'s IEP.

regressed during this same five year period. T.A.'s May 12, 2005 annual IEP lists his PLOP in reading at a 1.5 grade level. T.A.'s May 24, 2010 annual IEP states that he reads at a 1.3 grade level. Remarkably after 5 years of special education services his May 2010 IEP states that T.A. "is borderline between a *nonreader and a struggling reader.*" T.A. has also made little or no progress in his other academic subjects as confirmed by his above grades.

Even a cursory review of T.A.'s annual IEPs Summaries of Present Levels of Performance reflects that T.A. has significant behavior issues that have continued for years. His May 16, 2008 annual IEP states in the Summary of PLOP that "he is highly aggressive, acts impulsively, and shows a blatant disrespect for authority. In many cases, he lacks self control and must be removed and placed in an alternative setting." T.A.'s May 14, 2009 annual IEP Summary of PLOP contains the *exact same behavior language* and then adds "T.A. has great emotional and behavioral difficulties." His May 24, 2010 annual IEP Summary of PLOP entails essentially the same behavior language re: impulsivity, oppositional, and defiant behavior and also contains the exact same behavior language re: T.A. having "great emotional... and behavioral difficulties."

The above discussion combined with the detailed discussion of T.A.'s discipline history in Section IC reflects that T.A. has made little or no behavioral progress the past several years. This was particularly true during the 2009-10 school-year when T.A. had *numerous* behavior incidents and discipline infractions the first six weeks of school which culminated in T.A. being placed in an alternative school setting (CCAS) on October 2, 2009.

4. Petitioner P.A.

P.A.'s lack of academic progress is well documented. During the 2006-2007 school-year, he did not master any of his IEP objectives through the first three terms. P.A.'s 2008-2009 IEP reflected he was performing on a 6th grade level in math and a 6th grade level in language—a full three years behind his chronological grade level and peers.

This past school-year (2009-2010), P.A. failed all of his subjects through the first three terms and failed all but one of his subjects in the fourth term and thus ended up failing 9th grade. His IEP for the 2010-2011 school-year states he is being retained in 9th grade and reflects that he is performing four years behind his chronological grade level and that of his peers.

P.A.'s lack of behavioral progress is thoroughly documented in his discipline history in Section IC and is clearly attributable to JPSS' abject failure to provide P.A.'s with related services and an appropriate FBA and BIP. These failures also contributed significantly to P.A.'s lack of academic progress which has left him several years behind his chronological grade level and that of his peers.

5. Petitioner A.L.

A.L.'s lack of academic progress is well documented. A.L. has failed the vast majority of her classes since 2008 and is currently several years behind her chronological grade level and peers.

Based on her age, she should be a 12th grader in the 2010-11 school-year. A.L.'s current academic performance levels however are 6-7 years behind her chronological grade level as evidenced by the following: Reading-4.9, Math Computation-4.8, Applied Math-5.0, and Language-5.6.

A.L.'s lack of behavioral progress is extensively documented. During the 2008-2009 school-year, A.L. received thirty one (31) days of OSS. A.L. was also placed in Capital City Alternative School October 30, 2008 through November 14, 2008 for discipline issues. At the start of the 2009-2010 school-year, A.L. was again placed in Capital City Alternative School for 45 days (August 17, 2009-September 28, 2009) for discipline issues. A.L. was placed a second time at CCAS from February 22, 2010 through March 30, 2010. A.L. was arrested May 12, 2010 for an alleged school disciplinary violation and was recommended for a *third* 45 day placement at CCAS.

6. Petitioner C.O.

C.O.'s lack of academic progress is likewise well documented. He is currently seven grade levels behind in reading and six grade levels behind in math. C.O.'s August 2007 re-evaluation reflected the following results; reading-2.0 grade level; math-3.5 grade level; language arts 3.0 grade level. Three years later his March 2010 re-evaluation reflects that C.O. has made no academic progress and in fact has regressed in two core subject areas (reading and language arts). The re-evaluation results are as follows; reading -1.5 grade level; math 3.0-3.8 grade level; language arts- 2.0 grade level.³²

C.O.'s lack of behavioral progress is extensively documented. During the 2009-2010 school-year, while attending Murrah High School, C.O. received ten (10) days of OSS. C.O. also received thirteen (13) days of ISS. Additionally, while attending Murrah High School C.O.'s mother was called to pick C.O. up from school on a number of other occasions for behavioral incidents. C.O. was also referred to Capital City Alternative School twice during 2009-10 school-year for discipline issues. The first referral was from October 14, 2009 through November 20, 2009. The second referral was from February 25, 2010 through the end of the 2009-10 school year. While attending Capital City Alternative School during the 2009-2010 school-year, C.O. received eight (8) days of OSS and two (2) days of ISS. In total, C.O. received twenty-one (21) days of OSS and fifteen (15) days of ISS and more than four months of placement in an alternative school setting during the 2009-10 school-year.

In conclusion, all of the Petitioners have made little or no academic and behavioral progress the past several years and have unquestionably been denied an education that has conferred

³² Like E.H. one of the primary reasons C.O. made so little academic progress the past three years is that JPSS consistently failed to align his academic goals and objectives with his actual present levels of performance -e.g. C.O.'s 2009-2010 IEP goals state C.O. is to master 9th grade reading objectives with 70% accuracy. This is a completely inappropriate reading goal since his March 2010 re-evaluation clearly states that he is currently reading on a 1.5 grade level.

meaningful educational benefit (FAPE) as required under IDEA. *See Board of Education of Hendrick Central School Dist. v. Rowley*, 458 U.S. 176, 200-201 (1982); *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245, 253-254 (5th Cir. 1997); 34 C.F.R. § 300.39 (b)(3)(ii). Moreover, this denial of FAPE is attributable to JPSS' perennial failure to provide appropriate special educational services, related services, FBAs, and BIPs to the Petitioners and the previously defined class of similarly situated students.

D. JPSS has Failed to Comply with IDEA's Procedural and Substantive Requirements Governing the Development and Implementation of Individualized Education Programs (IEPs)

1. JPSS has systemically failed to properly align Petitioners' academic goals and objectives with their actual present levels of performance

JPSS has denied Petitioners FAPE by its systemic failure to align IEP short term objectives and annual goals with the present levels of academic performance (PLOP) articulated on the cover page of IEPs.

Mississippi State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004, State Board Policy 7219, (Effective July 20, 2009) provides in §300.320(a) that a child's individualized education program (IEP) must include "(1) A statement of the child's present levels of academic achievement and functional performance, including—(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children)." IDEA includes the same provision at 34 C.F.R. §300.320(a) (1).

State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004, State Board Policy 7219, (Effective July 20, 2009) provides in §300.320(a) that a child's IEP must include "(2) (i) A statement of measurable annual goals, including academic and functional goals designed to—(A) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (B) Meet each of the child's other educational needs that result from the child's disability." IDEA includes the same provision at 34 C.F.R. §300.320(a) (2).

The aforementioned State Policies require the present levels of academic achievement and functional performance section of a child's IEP to reflect the unique academic needs of the child *and* require the development of annual goals and short-term objectives in the IEP based upon these unique needs of the child. Moreover, in order to meet a student's academic needs, a student's present levels of academic performance must serve as the basis/foundation for any annual academic goals.

Remarkably, JPSS has repeatedly and systemically ignored this fundamental educational precept and legal mandate. Over the past *several years* JPSS has failed to align several of the

Petitioners' annual goals with their actual levels of performance and instead has consistently developed and implemented annual academic goals that are two-five years above and beyond their present levels of academic performance. The obvious result previously detailed in Section IC (Educational Benefit) has been that Petitioners have made little or no academic progress for years and their obvious academic frustrations have contributed to and engendered ongoing behavioral issues.

Two examples reflect the breadth of JPSS' systemic, fundamental failures in misaligning Petitioners annual academic goals with their actual present level of academic performance.

E.H.'s academic history manifests JPSS' failures in this area. During the 2008-09 school-year, his annual IEP academic goals state that E.H. will learn the 6th grade Mississippi curriculum framework competencies even though his reading and math skills were listed on the PLOP section of his IEP at only a 2.3 and 2.6 grade level respectively. His 2009-10 annual IEP academic goals state that E.H. will learn the 7th grade Mississippi curriculum framework competencies even though his reading skills were again listed on the PLOP section of his IEP at only a 3.2 grade level and after he had earned Fs in *all of his course subjects in 2008-09 school-year*. His 2010-11 annual IEP academic goals state that E.H. will learn the 8th grade Mississippi curriculum framework competencies even though his reading skills listed on the PLOP section of his IEP at approximately a 4th grade level and after he had earned 2 Ds and 3 Fs in his five course subjects in 2009-10 school-year.³³

E.H. was thus subject to course work that was way beyond his current skill levels. Such shockingly inappropriate educational practice (reflective of educational malpractice) ensured that he would:

- a. fail the vast majority of his course subjects for years;
- b. experience *years of daily academic frustration*
- c. manifest ongoing and consequent behavioral issues.

T.A.'s academic history contains the same glaring misalignments of annual academic goals and present levels of academic performance. During the 2008-09 school-year, T.A.'s annual IEP academic goals state that he will learn the 6th grade Mississippi curriculum framework competencies even though his reading skills were listed on the PLOP section of his IEP at below a 2.0 grade level and his math skills at only a 3.0 grade level. Not surprisingly he failed to learn these 6th grade curriculum competencies. His 2009-10 annual IEP academic goals state that T.A. will again learn the same 6th grade Mississippi curriculum framework competencies even though his reading skills were listed on the PLOP section of his IEP at only a 2.3 grade level and despite the following statement in the same PLOP section: T.A. "is borderline between a *nonreader* and

³³ E.H.'s 2006-07 annual IEP academic goals reflect the same misalignment stating he will learn the 4th grade Mississippi curriculum framework competencies even though his reading skills were only at a 1.9 grade level and after he had earned 1D and 5 Fs in *his* course subjects in 2005-06 school-year. Not surprisingly, E.H. was retained in the 4th grade during the 2007-08 school-year.

a struggling reader."³⁴ T.A.'s grades in 2009-10 reflect the stunning inappropriateness of these annual academic goals:

- a. Reading – F
- b. Language Arts – F
- c. Math – F
- d. Science – D
- f. Social Studies – D

Thirty-six years after the passage of IDEA, it is difficult to imagine, much less comprehend, such *systemic and longstanding misaligning* of students with disabilities present levels of performance with their annual academic goals. It's beyond poor educational practice and a clear denial of FAPE—this practice effectively sentences students to *years of daily educational frustration and years of educational failure. It also effectively seizes and condemns the dreams of these same students.*

2. JPSS has systemically failed to consider positive behavioral interventions and supports for Petitioners and the previously defined class of students who have behavior marked as a 'special factor' on their IEP

IDEA requires that:

- (1) In developing each child's IEP, the IEP Team must consider--
 - (i) The strengths of the child
 - (ii) The concerns of the parents for enhancing the education of their child
 - (iii) The results of the initial or most recent evaluation of the child
 - (iv) The academic, developmental, and functional needs of the child.
- (2) *Consideration of special factors. The IEP Team must--*
 - (i) *In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.* 34 C.F.R. 300.324(a) (1), (2).

IDEA also requires that *in conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a) (2) of this section.* (34 C.F.R. §300.324(a) (2))

Each of the Petitioners has *behavior* checked as a *Special Factor* on their IEP. Despite this reality, a review of the IEP minutes from Petitioners multiple IEP meeting in both 2008-09 and 2009-10 (including annual reviews) reflect that there is not a single instance wherein a Petitioner's *IEP Committee* considered or discussed the use of positive behavioral interventions and support (PBIS) much less added any specific positive behavior intervention and supports to

³⁴ Similar to E.H. and T.A., C.O. also made little academic progress the past three years and one of the primary reasons is that JPSS consistently failed to align his academic goals and objectives with his actual present levels of academic performance —e.g. C.O.'s 2009-2010 IEP goals state C.O. is to master 9th grade reading objectives with 70% accuracy. This is a completely inappropriate reading goal since his March 2010 re-evaluation clearly states that he is reading on a 1.5 grade level.

an IEP. Although JPSS convened multiple IEP Committee Meetings during both of the above school-years in response to discipline infractions committed by Petitioners and for the sole purpose of changing a Petitioner's placement to an alternative school setting, these *same IEP committees* never once discussed implementing specific positive behavioral interventions and supports to address present behaviors much less implementing PBIS in a Petitioner's current regular school setting, thus enabling him/her to avoid an alternative school placement.

JPSS' above systemic disregard for the IDEA's mandated consideration of PBIS at each and every IEP meeting involving the Petitioners and all other similarly situated students who have *behavior* checked as a *Special Factor* on their IEP constitutes a clear and systemic denial of FAPE. 34 C.F.R. § 300.324(a) (2), (b) (1) (2).

3. JPSS has systemically failed to meet and revise Petitioners and the previously defined class of students IEPs to address a lack of academic and/or behavioral progress

IDEA also requires that:

- (1) Each public agency must ensure that... the IEP Team-
 - (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
 - (ii) Revises the IEP, as appropriate, to address-
 - (A) *Any lack of expected progress toward the annual goals...and in the general education curriculum, if appropriate;*
- (2) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section 34C.F.R. § 300.324(b)(1).

As noted in the previous subsection, JPSS convened multiple IEP Committee meetings during the 2008-09 and 2009-10 school-years in response to discipline infractions committed by Petitioners and for the sole purpose of changing a Petitioner's placement to an alternative school setting. A review of the IEP committee minutes from these numerous meetings reflects that these *same committees* never once addressed a single Petitioner's glaring lack of academic progress, consequent lack of progress in the general curriculum and lack of expected progress toward his/her annual goals. As a consequence, none of the Petitioners often inappropriate annual goals were revised and no additional academic supports were provided. Instead of addressing these significant academic progress issues during the course of the school-year when there was still time to redress and reverse such circumstances and in conjunction with IEP Committee meetings scheduled to address discipline issues³⁵ JPSS repeatedly chose to ignore Petitioners lack of academic progress in clear violation of IDEA's mandates and these omissions engendered a denial of FAPE. 34 C.F.R. § 300.324(b) (1).

³⁵ It's also quite evident based upon Petitioners ongoing grades and misalignment of their annual IEP academic goals with their present levels of academic performance that they were experiencing academic frustrations that likely contributed to their behavioral infractions. Due to this inter-relationship it was imperative that JPSS address both academic issues (lack of progress) and behavioral issues.

E. JPSS Has Failed to Provide Educational Services in the Least Restrictive Environment

As highlighted in the Introduction Section of this systemic IDEA complaint, there is a distinct interrelationship between several of the substantive requirements underlying the provision of FAPE. When systemic violations occur with multiple substantive requirements of FAPE these violations often trigger a systemic violation of IDEA's LRE mandate. In the present instance, JPSS' multiple systemic violations detailed at length in Section IA, IB, IC, and ID have cumulatively engendered systemic violations of IDEA's LRE mandate for Petitioners A.M., P.A., C.O., A.L. and the previously defined class of similarly situated students.

The following JPSS' systemic violations of FAPE have produced the following systemic violation of IDEA's LRE mandate for Petitioners and the *previously defined class*:

1. JPSS' uniform failure the past several years to provide sufficient and appropriate levels of related services has resulted in Petitioners' detailed lack of behavioral progress which in turn has engendered numerous behavioral incidents that adversely affect their tenure in regular classroom and is often cited as a reason on JPSS' LRE Documentation Form for removing them from regular education.³⁶ The failure has also led to numerous discipline incidents that have resulted in OSS or ISS and consequently a significant loss of instruction time for Petitioners. Such significant loss of instruction time over several years has caused Petitioners to fall farther and farther behind academically and this factor has also contributed significantly to their placement in more restrictive educational environments. Additionally, many of these discipline incidents (not involving, weapons, drugs, serious bodily injury) have led to Petitioners being placed at JPSS' alternative school (CCAS) where Petitioners have made little if any academic progress as reflected by their CCAS grades and also little or no ongoing behavior progress as manifested by their repeated placements annually at CCAS. The distinct lack of academic and behavioral progress at CCAS leaves Petitioners farther behind academically when they return to regular school settings and with the same ongoing behavioral issues. Both of these factors make more restrictive placement essentially inevitable.
2. JPSS' uniform failure the past several years to conduct appropriate Functional Behavior Assessments (FBAs) and its concomitant failure to develop and implement appropriate Behavior Intervention Plans (BIPS) lead to and reinforce the same LRE negating results discussed in *Paragraph 1* above.³⁷
3. JPSS' uniform failure the past several years to align Petitioners' IEP short term objectives and annual goals with Petitioners' actual present levels of academic performance (PLOP) has consistently resulted in Petitioners being taught at academic levels *far exceeding* their academic skills has created an obvious dearth of academic progress, obvious and ongoing school frustration issues³⁸ and consequent exacerbation

³⁶ See Section IA herein. For example, see the LRE Documentation Forms for A.M.

³⁷ See discussion in Section IB herein.

³⁸ See discussion in Section ID herein.

of behavioral issues (particularly escape behaviors related to skill deficits). Such multiple adverse results have also contributed to the inevitable placement of Petitioners in restrictive educational settings.

4. JPSS' uniform failure the past several years to consider and implement positive behavioral interventions and supports for Petitioners who all have *behavior* marked as a "special factor" on their IEP perpetuated the same LRE negating outcomes discussed in *Paragraphs a, b* above.³⁹
5. JPSS' uniform failure the past several years to meet and revise Petitioners during the course of the school-year to address their significant and ongoing lack of academic and/or behavioral progress including their lack of progress in the general curriculum and lack of expected progress toward their annual goals guaranteed failing grades, retentions and continuing behavioral and discipline incidents.⁴⁰ These inexorable results in turn contributed to the placement of Petitioners in restrictive educational settings.
6. JPSS' uniform failure the past several years to provide Petitioners with an education that conferred meaningful educational benefit as required by IDEA has engendered the following sad and pervasive reality; the Petitioners are typically performing years behind their chronological grade level and that of their peers.⁴¹ This fact and the ongoing behavior issues that accompany years of little or no academic progress have ironically and continually been used by JPSS to place Petitioners in more restrictive educational settings.

JPSS' numerous systemic violations of FAPE above have been used illegally by the district to justify several removals of the Petitioners from regular education settings and their placement in highly restrictive and segregated special education settings.⁴² JPSS' numerous systemic violations of FAPE, however, cannot be used for this purpose and instead have produced a systemic failure to provide Petitioners and the previously defined class of similarly situated students' educational services in the Least Restrictive Environment (LRE) as required by IDEA. See 20 U.S.C. § 1412 (a) (5); 34 C.F.R. § 300.114-117.

JPSS has also engaged in additional practices that have denied Petitioners and the previously defined class of similarly situated students their right to receive educational services in the Least Restrictive Environment. JPSS has repeatedly failed to document that it has pursued any of the following strategies that would have allowed Petitioners to continue accessing general education classes;

- a. The use of paraprofessional aides (i.e. behavioral aides) and/or the use of Special Education Teachers in general education settings;
- b. The practice of increasing related services in response to a student's increasing behavior and/or discipline incidents;

³⁹ See discussion in Section ID herein.

⁴⁰ See discussion in Section ID herein.

⁴¹ See discussion in Section IC

⁴² Petitioners A.M., T.A., C.O., and A.L. were all placed in highly restrictive educational placements during the 2009-10 school-year and are all slated to return to restrictive placements for the 2010-11 school-year.

- c. Implementation of individual and classroom based positive behavioral intervention and support plans;
- d. Modifications of the regular education curriculum;
- e. The use of peer supports/coaches and/or peer tutoring; and
- f. The use of additional supplemental aides and services including providing behavioral intervention training to regular education teachers.

Instead of providing and implementing any of the above supplemental aids, services, supports prior to removing Petitioners from regular education, JPSS has continuously chosen instead to segregate them in highly restrictive self-contained settings. JPSS' placement decisions with respect to the Petitioners and all those similarly situated violate IDEA's mandate that, to the maximum extent possible, students with disabilities be educated in the least restrictive environment. *See* 20 U.S.C. § 1412(a) (5); 34 C.F.R. §300.114-117. There is simply no evidence in any of the Petitioners' records that JPSS ever attempted to increase the amount of counseling, social work, or psychological services or implement any of the above described supplemental aids and services in order to enable Petitioners to access and/or remain (and succeed) in less restrictive general education settings. This pervasive reality reflects JPSS' *systemic* failure to provide the appropriate supplemental aids and services, accommodations, and modifications necessary to enable the Petitioners and similarly situated students to participate in general education. Such failures constitute clear violations of IDEA's LRE mandate. 20 U.S.C. §1412 (a) (5); 34 C.F.R. §300.114-117. This illegal pattern and practice has continued up until the present and is in clear violation of IDEA's LRE mandate.⁴³

F. JPSS Has Failed to Provide Appropriate Transition Plans for its Students with Disabilities.

JPSS has denied Petitioners A.M., T.A., P.A., A.L., C.O., and all other similarly situated students FAPE by its failure to provide appropriate transition plans. State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004, State Board Policy 7219, Effective July 20, 2009 states in §300.320(b) "Beginning not later than the first IEP to be in effect when the child turns fourteen (14), or younger if determined appropriate by the IEP committee, and updated annually, thereafter, the IEP must include—(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments

⁴³ JPSS' decision to place Petitioner A.M. in a self-contained setting immediately upon classifying him as ED is clear evidence that no attempt was made to provide the types of supplementary aides and services and/or curriculum modifications described above in regular education settings so that he could remain in most of his core academic classes. Instead of implementing any of these supplemental aids/services/supports prior to or any time after removing Petitioner A.M. from regular education, JPSS continuously chose to segregate A.M. in a highly restrictive segregated setting. This illegal pattern and practice has continued up until the present as Petitioner A.M.'s recent IEP indicates he will receive direct instruction in a segregated special education classroom. Petitioners T.A. and C.O. also received their instructional services in segregated special education classes throughout 2009-10 and are scheduled to return to the same self-contained settings for 2010-11. Petitioner A.L. was also placed in highly restrictive settings during 2009-10 due to her repeated placement in JPSS' alternative school.

related to training, education, employment, and, where appropriate, independent living skills; and (2) The transition services (including courses of study) needed to assist the child in reaching those goals.” See also the IDEA Regulations, 34 C.F.R. §300.320(b)

State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004, State Board Policy 7219, Effective July 20, 2009 states in §300.43 (a) “Transition services means a coordinated set of activities for a child with a disability that—(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the individual child’s needs, taking into account the child’s strengths, preferences and interests; and includes—(i) Instruction; (ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.” See also the IDEA Regulations, 34 C.F.R. 300.43

JPSS has failed to provide appropriate transition plans for A.M., T.A., P.A., A.L., and C.O. based on their IEPs for the 2009-2010 school-year. P.A.’s entire transition plan involves one sentence (7 words) stating “P.A. would like to become a rapper.” However, there is no documentation suggesting the necessary steps to appropriately provide P.A. with his career choice, such as being enrolled in a music class or creative writing class. Additionally, the transition services statement merely states instruction will be provided yet there are no transition instruction goals on the IEP. Moreover, the plan remarkably states that no other transition services such as related services, training, community services, and employment skills are needed for P.A. to pursue and achieve this goal.⁴⁴ The reality is that throughout the past year P.A. needed related services to address his behavioral challenges, training (e.g. music or creative writing class), community services/placement (e.g. radio station, community music programs that involve rap music, etc.) and employment skills in order to pursue his above post-school outcome. JPSS’ failure to provide these critical transition services denied P.A. FAPE during the 2009-10 school-year.⁴⁵

The exact same circumstances and transition services deficiencies cited above also apply to A.L.’s transition plan for the 2009-10 school-year.⁴⁶

⁴⁴ OSEP has stated that if an IEP team determines an individual student does not need transition services in one or more of these areas the IEP must contain a statement to that effect and the basis upon which the determination is made (*OSEP Letter to Cernosia* 19 IDELR 933). There are no such statements or bases provided on P.A.’s IEP for the absence of related services, training, community experience, adult living/employment skills.

⁴⁵ Although P.A.’s transition plan was expanded recently at his annual IEP update/review to include more detailed post-school outcomes, the plan once again only involves instruction and excludes the same critically necessary transition services involving related services, training, community experience and adult living /employment skills.

⁴⁶ A.L.’s transition plan for 2010-11 also entails the same glaring transition services deficiencies as her 2009-10 plan.

JPSS failed to provide T.A., and C.O. with transition plans on their IEPs for the 2009-10 school-year despite the legal mandate cited above. A.M., and C.O. were 14 years of age when their annual IEP reviews/updates were held in the spring of 2009. Moreover, IEP committee meetings were held for each of them after August 1, 2009 and in every instance, the IEP committee failed to address the transition plan mandate.⁴⁷ Petitioner T.A. turned 14 years of age on June 30, 2009. Similar to the other Petitioners named herein, his IEP committee met a number of times after August 1, 2009 and failed each time to develop the legally mandated transition plan. Considering the fact that the Petitioners are all performing several years behind their chronological grade levels and peers, they desperately needed transition plans and services during the 2009-10 school-year. JPSS' failure to provide transition plans and services to Petitioners and other similarly situated students is a clear violation of the law as cited above.

G. JPSS Has Failed to Appropriately Identify and Provide Individualized Extended School Year Services to Eligible Students.

On information and belief, JPSS illegally denied Petitioners A.M., E.H., A.L., and P.A., and all other similarly situated students in the class Extended School-year (hereinafter "ESY") services during the summer of 2009. Such services were needed by Petitioners in order to prevent significant regression regarding academic and/or behavioral skills; and/or to maintain a critical point of instruction; or due to extenuating circumstances.⁴⁸

ESY eligibility determinations under Mississippi's State Policies and accompanying ESY Handbook⁴⁹ are to be primarily *data based decisions* involving an examination of detailed *student performance data* before and after two instructional breaks of at least five days (Regression-Recoupment Standard); a review of critical academic and/or behavioral IEP objectives and accompanying instructional and/or behavioral data that reflects whether a student is at a critical point of learning regarding one of the objectives (Critical Point of Instruction Standard).

The pattern and practice in JPSS is that ESY eligibility decisions are not based upon a review of the above pertinent types of data but rather are purely subjective decisions made by JPSS staff. JPSS has simply never implemented a system whereby pertinent ESY academic *and behavioral* data is routinely collected by teachers nor to Petitioners knowledge has it required such data collection.⁵⁰ The consequence is that Petitioners and the class of similarly situated students'

⁴⁷ For example, C.O.'s records reflect that his IEP committee met on more than five different occasions after August 1, 2009 and failed each time to develop a transition plan for him.

⁴⁸ See State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004, State Board Policy 7219, Effective July 20, 2009 §300.106. Mississippi uses three separate ESY eligibility criteria - Regression-Recoupment; Critical Point of Instruction 1 and 2; Extenuating Circumstances. See ESY Handbook Pages 10-12.

⁴⁹ See State Board of Education Policy 7212 (available on the MDE website at http://www.mde.k12.ms.us/special_education/pdfs/ESY_Handbook_2003.pdf).

⁵⁰ Parents/guardians are often unaware of the option of ESY services and thus do not actively participate in the decision making process. The reasons are that the elements of the four ESY criteria are rarely if ever discussed with

access to ESY services is left to the caprices of JPSS staff rather than based on objective data and thus true need.⁵¹ The arbitrary and subjective nature of ESY eligibility determinations in JPSS has resulted in a denial of FAPE for Petitioners A.M., E.H., A.L., P.A., and all other similarly situated students in the class for the summer of 2009⁵² and continue to produce ongoing denials of needed ESY services for the summer of 2010 the following Petitioners.⁵³ See State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004, State Board Policy 7219, Effective July 20, 2009 states in §300.106; 34 C.F.R. §300.106.

Petitioners also contend that in violation of the IDEA and its implementing regulations, JPSS has illegally and unilaterally limited the duration of the ESY services it provides over the summer months in both 2009 and 2010 to a pre-determined, fixed-length program that runs the same number of hours per day, days per week and the same number of weeks. In 2010, JPSS' ESY program for elementary students was a fixed-length, uniform program that ran from 7:45-1:00pm, Monday-Friday and from June 4th until June 30th (19 days). In 2010, JPSS' ESY program for middle school students is also a fixed-length, uniform program for all middle school students that runs from 8:00-11:00am, Monday-Friday and from June 9th until July 27th. Finally, JPSS' ESY program for high school students in 2010 is also a fixed-length, uniform program for all high school students that runs from 7:45-1:00pm, Monday-Friday and from June 9th until July 27th.⁵⁴ In each instance elementary, middle, and high school students with disabilities are limited to a fixed number of hours per days and number of weeks. This is the maximum period of time Petitioners or any other eligible student may receive ESY services during the summer, regardless of whether Petitioners or other similarly situated students require services over a longer period of time in order to avoid regression, address a critical point of instruction or address extenuating circumstances. This is a *per se* violation of the IDEA regulations, as well as Mississippi's State Policies implementing IDEA. See 34 C.F.R. §300.106(a)(3)(ii) & Mississippi State Policies Regarding Children with Disabilities under

parents/guardians; critical eligibility data is not shared or reviewed with parents/guardians; and often, ESY is not even discussed at annual IEP meetings.

⁵¹ A number of the Petitioners also have legitimate regression-recoupment issues regarding their behavior as evidenced by the multiple behavior and discipline incidents they have for 4-6 weeks at the start of each new school-year. See Section IA and IB for discussions of behavior and discipline incidents involving A.M., T.A., C.O. and A.L. that occurred at the start of several school-years. JPSS thus needs to be collecting written *behavior performance data* for Petitioners and the previously defined class of similarly situated students in order to routinely and objectively apply the Regression-Recoupment standard in determining their eligibility for ESY services.

⁵² See a34 C.F.R. 300.106

⁵³ The following Petitioners also did not qualify for ESY services in 2010; A.M., A.L., and P.A. Those Petitioners that did qualify for ESY services this summer (T.A., E.H., and C.O.) qualified not based upon a review of pertinent ESY data but because of the direct intervention of advocates who argued that ESY services could not be denied when JPSS failed to collect the necessary ESY eligibility data.

⁵⁴ A review of JPSS' website reflects that JPSS has limited ESY services to conform to the district's summer school schedule for students generally. Although Petitioners believe that the length, duration and scope of the JPSS' ESY program will meet the needs of many students with disabilities it still cannot serve as an arbitrary ceiling or limit on the provision of *individualized* ESY services. There are likely to be some students with disabilities (e.g. a student with autism) who may need 10-12 weeks of ESY services.

the Individuals with Disabilities Education Act Amendments of 2004, State Board Policy 7219, Effective July 20, 2009 states in § 300.106 (a)(3).⁵⁵

Finally, in May 2009, JPSS engaged in highly illegal conduct by *conditioning* A.L.'s receipt of ESY services in the following manner: JPSS would provide ESY services with the condition that if she missed five or more days of school during the summer ESY program she would be placed at Capital City Alternative School for 45 days at the commencement of the full 2009-10 school term. This condition is not part of JPSS' student code of conduct, nor is it a written district policy regarding the receipt of ESY services.⁵⁶ Instead it is a punitive condition that was established for A.L.⁵⁷ Although students with disabilities are subject to a district's student code of conduct, they cannot have their right to FAPE which included ESY services for A.L. conditioned on a non-district wide, individual punitive condition that is clearly intended to illegally limit and/or deprive a student's entitlement to FAPE.

VIII. Systemic Remedies Necessary to Settle This Class Complaint

Mississippi Department of Education will need to ensure the following action is taken to redress JPSS' numerous systemic IDEA violations delineated in this class complaint:

1. Compel JPSS to hire a recognized expert in Positive Behavioral Interventions and Supports (PBIS) to work with their current PBIS coordinator to develop and implement district-wide PBIS over the next three years starting with the training and implementation of Tier I and Tier III in all JPSS schools by the end of the 2010-11 school-year.⁵⁸ The PBIS Expert shall be mutually selected by JPSS and Petitioners.⁵⁹
2. Compel JPSS to develop and implement with the above-referenced recognized PBIS Expert a systemic district-wide PBIS training program/protocol that shall include, but not be limited to, strategies, objectives, and timelines for students with disabilities related to

⁵⁵ By arbitrarily limiting the length, duration, and content of ESY services, and failing to individualize its ESY services to address the unique needs of each eligible student, JPSS is violating the clear mandate of the IDEA and its accompanying regulations, and is failing to provide FAPE. See 34 C.F.R. §300.106 (a)(1).

⁵⁶ It is not a district-wide policy re: students with disabilities receipt of ESY services simply because it would be patently illegal.

⁵⁷ Although JPSS did not hesitate to impose this arbitrary and illegal condition, it did so while once again refusing to provide A.L. with critically needed related services during her ESY program and without revising her BIP to include positive behavioral interventions and supports.

⁵⁸ Appropriate PBIS implementation must initially focus on both Tier I (*universal* - for all students) and Tier III (*tertiary*- FBAs and BIPs for students with disabilities) because many students with disabilities are *presently entitled* to FBAs and BIPs. Their rights simply cannot wait for Tier I and then Tier II to be implemented before Tier III. Students with disabilities ongoing right to Tier III FBAs and BIPs requires Tier III to be implemented simultaneously with Tier I.

⁵⁹ Although JPSS has a multi-year grant to implement a number of safe school initiatives including PBIS, JPSS has chosen to limit PBIS implementation to only its middle schools. No district-wide PBIS implementation is planned. Moreover, the serial suspensions and multiple placements of Petitioners and the previously defined class of similarly situated students in JPSS' alternative school (CCAS) clearly manifest that PBIS is not being implemented with integrity or fidelity in JPSS' middle schools.

the development of functional behavioral assessments (FBAs), the development and implementations of behavior intervention plans, and conducting manifestation determination reviews (MDRs). The PBIS training and implementation protocol shall include all principals, assistant principals, teachers (general and special education), pupil appraisal staff, paraprofessionals, disciplinarians, other school administrators, and other educational service providers working at all schools in the district and shall also include bus drivers and cafeteria workers and a small select group of parents/guardians with children in the school. The training protocol shall also include the active use of pupil appraisal staff for ongoing follow-up with staff.

3. Compel JPSS, in agreement with the nationally recognized PBIS Expert specified in Paragraph #1, to develop and implement a reliable and PBIS congruent central administrative electronic tracking system for recording the number of disciplinary referrals and removals from school (In-school Suspensions, Out-of-school Suspensions, Expulsions, disciplinary transfers to CCAS) for all students in JPSS;
4. Compel JPSS to hire the above PBIS Expert to conduct a review/audit of its Special Education programs for students with Emotional Disturbance and all other students with disabilities (whether identified or not yet identified) who manifest behavioral issues and are subject to repeated disciplinary removals and/or placement in alternative school settings in JPSS including its alternative school (Capital City Alternative School) and to issue a report with specific recommendations for systemically addressing these students behavioral programming needs; for eliminating JPSS' discriminatory placement rates of students with disabilities in alternative school settings; for significantly decreasing if not eliminating JPSS' placement of non-disabled students in alternative school settings for non-weapon/drug/serious bodily injury discipline infractions. The Expert shall be required to develop a plan (hereinafter "Plan") to address all of the systemic violations detailed in this complaint and all of the systemic and individual remedies described herein.
5. Compel JPSS to collaborate and reach agreement with the PBIS Expert on the revision of the district's code of conduct prior to the end of 2010 and subject to the School Board's review and approval process. The district's code of conduct shall be revised to make it congruent with JPSS' implementation of district and school-wide PBIS.
6. Compel JPSS to develop specific school system policies that are disseminated by the Superintendent to all school building administrators including principals, vice-principals, and disciplinarians outlining and mandating strict compliance with IDEA's discipline requirements including the requirements of Manifestation Determination Reviews; providing IEP services upon reaching the 11th cumulative day of Out-of-School suspensions, In-School suspensions or a combination thereof; development of appropriate FBAs; development of BIPs involving positive behavioral interventions and supports, strategies, and services; review and modification of BIPs after every 10 days of suspensions; develop specific strategies with the undersigned interested parties for

reducing the number of suspensions, expulsions, referrals to youth court, and more restrictive placements.

7. Compel JPSS to develop and implement in agreement with the nationally recognized PBIS Expert specified in Paragraph #1 above specific annual strategies and objectives for significantly reducing the number of suspensions (OSS and ISS) of students with disabilities;
8. Compel JPSS to develop and implement in agreement with the nationally recognized PBIS Expert specified in Paragraph #1 above specific annual strategies and objectives for significantly reducing the number of students with disabilities spending time in self-contained classroom settings and concomitantly significantly increasing students' with disabilities access to the general education curriculum/classrooms over the next three years. Compel JPSS to train all staff and regular education teachers regarding the importance of aligning students IEP goals and objectives with their actual present levels of academic performance.
9. Compel JPSS to place certified special education teachers in its self-contained classrooms and its alternatives schools to allow properly developed IEPs to confer meaningful education benefit;
10. Compel JPSS to develop and implement in agreement with the nationally recognized PBIS Expert specified in Paragraph #1 above specific annual strategies and objectives for significantly increasing the frequency and duration of social work, counseling, and psychological related services provided to students with disabilities and all other students who are subject to repeated disciplinary removals and/or placement in alternative school settings in JPSS and to also ensure decisions involving such related services are based upon individual need and not staff availability;
11. Compel JPSS to develop and implement in agreement with the nationally recognized PBIS Expert specified in Paragraph #1 above specific annual strategies and objectives for implementing intensive reading/math remediation programs at all elementary schools serving class members to ensure that they are reading at or within one year of their chronological grade level by the time they move to middle school; and specific annual strategies and objectives for implementing intensive reading/math remediation programs for all class members who are determined to be two or more years behind their chronological grade level in middle school or high school based on either standardized test scores and/or curriculum based assessments.
12. Compel JPSS to develop and implement in agreement with the nationally recognized PBIS Expert specified in Paragraph #1 specific strategies, objectives and training initiatives for ensuring that transition plans are individualized; based on concrete outcomes; inclusive of several of the legally prescribed transition services (related

services, training, community support services etc.) for students age fourteen (14) in conformance with Mississippi state guidelines;

13. Compel JPSS to develop and implement in agreement with the nationally recognized PBIS Expert specified in Paragraph #1 above specific annual strategies, objectives and protocols for ensuring that children with disabilities who are transitioning from alternative school, youth court or other out-of-school placements are given adequate supports and services to transition back to their home school successfully.
14. Compel JPSS to develop and implement in agreement with an expert in ESY services specific annual strategies, objectives and protocols for implementing the Mississippi ESY eligibility criteria including - routinizing the collection of regression-recoupment data, critical point of instruction data and extenuating circumstances data by teachers; providing individualized ESY services to all eligible students with disabilities; ensuring a full discussion of ESY services including a lay-person friendly explanation of ESY eligibility criteria at every student in special education's spring IEP meeting.
15. Compel JPSS to provide increased parent/guardian participation opportunities, including but not limited to classroom observation and invitations to pre-evaluation (TST/RTI) meetings and to also create a mechanism for communicating with the parents/guardians of students with disabilities on a regular basis about important IDEA issues (e.g. transition services, ESY services, etc) via a periodic newsletter, electronic communications.
16. Compel JPSS to create an advisory panel with the undersigned parties to advise the JPSS School Board regarding proactive strategies to decrease the number of students with disabilities being referred to the alternative school and to the juvenile delinquency system. Ensure that JPSS sends quarterly reports of the progress regarding the district's compliance with any and all CAP activities to the advisory panel referenced in this paragraph.
17. Compel JPSS to contract with entities such as non-profits or universities to hold focus groups with JPSS parents/guardians and students on a quarterly basis. These focus groups will be aimed at gathering information that will help inform the work of the nationally recognized expert. The Focus Groups will provide students with a safe space during which they can report on school climate and disciplinary procedures. Parent/guardians will also benefit from these focus groups and report on their interactions with school officials. Findings and recommendations issued by the focus group will be incorporated into the experts monitoring reports.

Individual Remedies Necessary to Settle This Class Complaint

JPSS must take the following action to address each Petitioner's individual claims in order to settle this administrative complaint:

1. Provide compensatory education for excessive suspensions and denial of FAPE. JPSS must provide each Petitioner with compensatory services for the next three years per a weekly schedule that's agreeable to Petitioners parents/guardians so that each Petitioner has an opportunity to earn credit for classes failed and education fundamentals that have been missed. (Extended School-year Services will not satisfy this demand);
2. Immediately increase the level of related services (social work/psychological counseling) offered to each Petitioner to at least one hour per week;
3. Conduct a new functional behavioral assessment and develop a new behavioral intervention plan for each Petitioner using a licensed school psychologist who is capable of redressing the concerns detailed in Dr. Brad Dufrene's expert report which is attached as Exhibit B.
4. Develop a plan with concrete strategies, including the assignment of a child-specific aide if necessary, and specific timelines and goals for placing each Petitioner in at least some core academic regular education classes at the start of the 2010-11 school-year;
5. Provide for each Petitioner who is two years or more behind his chronological grade level in reading or math intensive compensatory educational services based upon a menu of intervention strategies that include after school one-to-one tutoring three times per week for one hour each session by a certified teacher until each Petitioner is working on grade level. Transportation shall be provided as a related service for all tutoring services;
6. Immediately develop and implement a meaningful, results-oriented transition plan for each Petitioner that includes an array of transition services including but not limited to vocational training through the district or private entities;
7. Immediately evaluate/test petitioner C.O. for dyslexia, and as indicated by the test results, provide appropriate reading intervention strategies with a reading specialist until such time as the specialist documents that he has made four years of progress.

II. Systemic Administrative Complaint on Behalf of R.B., Rd.B., Ra. B. and a Class of All Similarly Situated Students in Special Education who transfer into JPSS from an out-of-state or in-state local school district;

- A. JPSS Has Systemically Failed to Provide Students who transfer into JPSS with IEPs Currently in Effect from Out-of-state School Districts or In-state School Districts with IDEA Services Comparable to Those Entailed in the IEP from the Transferring Out-of-state or In-state School District**

Petitioner R.B. is a fifteen (15) year old student currently in the 9th grade at Wingfield High School who finished the 2009-10 school-year at Capital City Alternative School (CCAS). R.B. entered JPSS at the beginning of the 2008-09 school-year as a 7th grade student at Brinkley Middle School. Immediately prior to attending Brinkley Middle School, R.B. attended school in the Cobb County School District of Marietta, Georgia from 2006 to 2008. Prior to moving to Georgia, R.B. was enrolled in JPSS, where manifestations of her disability were apparent at a young age, as evidenced by an evaluation conducted in 2004 that resulted in her being identified as a student with Specific Learning Disabilities (SLD).

At the beginning of the 2009-10 school-year, R.B. transferred to Peebles Middle School and in November 2009, she was placed at CCAS.

As a student in Cobb County School District, R.B. was evaluated for special education services and identified as a student with a Learning Disability in February 2006. R.B.'s need for specialized instruction was evidenced by her marginal grades and underperformance on state-wide assessments, which led her to be retained in the 6th grade at the end of the 2006-07 school-year. There is also evidence that R.B. was diagnosed with Schizophrenia as was stated in a letter from Cobb County Outpatient Services. While attending school in Marietta, a total of four IEPs were implemented to address R.B.'s learning needs.

R.B.'s mother reported this information to JPSS when R.B. re-enrolled in August 2008. However, for the past two years, no action was taken by JPSS to obtain R.B.'s out-of-state records and to provide special education services until a new evaluation could be conducted. For the past two school-years, JPSS has failed to provide R.B. with an IEP comparable to those she was receiving in Georgia and has failed to conduct its own evaluation and develop a new IEP.

Without the resources and accommodations typically available to students with special learning needs, R.B.'s academic and emotional development endured numerous setbacks. During the 2008-09 school-year, R.B. received low-minimal to minimal scores on the Mississippi Curriculum Test and received mostly "C" grades at Brinkley. R.B.'s academic struggles continued into the 2009-10 school-year when she entered Peebles Middle School. There, she either failed or received "D" grades in all core curriculum subjects. R.B. has expressed a fear of attending school due to being behind two grade levels both to her mother and to Petitioner's counsel, and consequently, was absent forty-eight times during the 2009-10 school-year. R.B. was suspended four times during the 2009-10 school-year, one of which led to her expulsion from Peebles and transfer to CCAS after she was accused of possessing a weapon.

At CCAS, R.B. was suspended for five days at the end of the school-year. This suspension was sustained by JPSS even after her Education Advocate informed district officials that R.B. was being evaluated for special education services and urged JPSS to conduct a Manifestation Determination Review so that her removal from CCAS could be reconsidered.

In March 2010, JPSS finally initiated a formal evaluation of R.B. nearly two years after her mother informed the district that R.B. had been receiving IDEA services while they resided in Cobb County.

Petitioner Rd.B. is a fourteen (14) year old student currently in the 8th grade at Whitten Middle School after finishing the 2009-10 school-year at CCAS. Rd.B. entered JPSS at the beginning of the 2008-09 school-year as a 6th grade student at Brinkley Middle School. At the beginning of the 2009-10 school-year, Rd.B. transferred to Peeples Middle School and was subsequently placed at CCAS. Immediately prior to attending Brinkley Middle School, Rd.B. attended school in the Cobb County School District of Marietta, Georgia from 2006 to 2008. Prior to that, Rd.B. was a student in JPSS. Rd.B. was initially evaluated by JPSS in November 2004 and classified as SLD in February 2005. As a student in JPSS, Rd.B. had an IEP for the 2004-05 school-year, which stipulated that he receive special education services to address his needs in Reading and Language Arts. This IEP also noted that Rd.B. had been diagnosed with Attention Deficit Hyperactivity Disorder and Bipolar Disorder, and that he engaged in bullying behaviors towards peers.

As with R.B., Rd.B. was also determined eligible for special education services in Cobb County. After being suspended 4 times in 2006, Rd.B. was evaluated and later identified as a student with Other Health Impairment (OHI) in March 2007. IEPs were implemented in 2007 and 2008 to address behaviors exhibited by Rd.B. that impeded his learning. When Rd.B. re-enrolled in JPSS in August 2008, his mother informed Brinkley school officials of his classification and need for special education services. JPSS took no action to obtain Rd.B.'s records and IEPs, until December 2008, well after Rd.B. had been disciplined numerous times for displaying inappropriate behaviors, including verbally threatening a teacher, an incident which drew a principal's recommendation for a 45-day suspension.

Although it remains unclear whether JPSS ever received Rd.B.'s educational records from Cobb County, the district certainly has not provided Rd.B. with any special education services at any time since his re-enrollment in 2008. As a result, Rd.B. made little progress academically. In fact, while he received mostly scores in the mid 70s at Brinkley, Rd.B.'s grades at Peeples showed even less educational growth as most of his grades dropped into the mid 60s. Even more troubling is that one of the lowest scores Rd.B. received while at Peeples was a 65.5 in Language Arts, a subject originally identified by JPSS in 2004 as one in which Rd.B. required additional supports. As a result of being denied special education services for two school-years, Rd.B. has also developed significant behavior issues. He was suspended thirteen times while at Peeples, and received a three-day suspension shortly after being placed at CCAS. Additionally, Rd.B. has continually missed school as a result of absences. In the 2009-10 school-year, he was absent sixty times.

JPSS conducted a formal evaluation of Rd.B. in May 2010, nearly two years after he re-entered the district, and concluded that he met the eligibility requirements for Emotional Disability. A formal IEP meeting was finally held in June to determine the services R.B. would receive to address his academic and emotional needs.

Petitioner **Ra.B.** is a seventeen (17) year old student currently in the 9th grade for the third straight year at Wingfield High School after finishing the 2009-10 school-year at CCAS. Ra.B. entered Wingfield High School at the beginning of the 2008-09 school-year and was placed at CCAS in April 2010. Before attending Wingfield High School, Ra.B. was a student in the Cobb County District of Marietta, Georgia from 2006 to 2008. Prior to that, Ra.B., like her sister, R.B., and brother, Rd.B., was a student in JPSS. In Cobb County, Ra.B. was evaluated in 2007 and classified as a student with EBD. Ra.B.'s IEP from Cobb County included an FBA and BIP to address her significant social and emotional problems, which included a diagnosis for Schizophrenia. The social/behavioral section of Ra.B.'s IEP indicated that she had difficulty with impulse control and frustration tolerance, and that she required a large amount of individual attention from her teachers. Because of her unique emotional needs, Ra.B.'s IEP required, in addition to receiving special education services in all subject areas, that she also receive social work as a related service throughout the school-year. The IEP team also concluded that the severity of Ra.B.'s disability warranted a therapeutic, structured approach to learning. As a result, the team determined that her needs would be best served at Haven Academy, a day treatment facility in Cobb County. Ra.B. received IDEA services at Haven for over a year.

When she re-enrolled in JPSS in August 2008, Ra.B.'s mother communicated to school officials at Wingfield that her daughter received special education services while in Cobb County. As with R.B., for almost two school-years, no steps were taken to retrieve Ra.B.'s records, including IEPs, from the Georgia school district. Consequently, Ra.B. failed all of her courses after her first semester of the 9th grade at Wingfield. She is currently three levels behind her peers and is not showing any signs of progress for promotion to the next grade level. Ra.B.'s emotional stability has also deteriorated. She was suspended five times during 2009-10 school-year, one of which resulted in her referral to CCAS in March 2010. As of April 2010, Ra.B. missed thirty-two days of school due to her emotional issues and JPSS' failure to accommodate her special needs for the past two school-years.

In May 2010, JPSS finally initiated a formal evaluation of Ra.B., nearly two years after her mother informed the district that Ra.B. had been receiving IDEA services while they resided in Cobb County.

Systemic Claims on Behalf of R.B. Rd.B. and Ra.B.

The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs..."⁶⁰ When a child transfers school districts across state lines within the same academic year and "had an IEP in effect in another state [IDEA requires that] the new [local educational agency] provide such child with a free appropriate education, including services comparable to those described in the previously held IEP..."⁶¹ JPSS is in

⁶⁰ 20 U.S.C. § 1400(d), 34 C.F.R. § 300.1(a)

⁶¹ 20 U.S.C. § 1414(d)(2)(C)(i)(II), 34 C.F.R. § 300.323(f)

violation of IDEA by failing to provide any measure of a free and appropriate public education to Petitioner R.B. after she transferred from Cobb County School District to JPSS in August 2008.

When R.B.'s mother informed the district at the beginning of the 2008-09 school-year that R.B. received special education services in Georgia, JPSS became obligated to obtain R.B.'s records from Cobb County so that it could begin to provide her with services comparable to those in her previous IEP. IDEA requires the new school in which the child enrolls to "take reasonable steps to promptly obtain the child's records, including IEP and supporting documents, and any other records relating to the provision of special education or related services...from the previous school in which the child was enrolled."⁶² Furthermore, in its commentary to the regulations defining district responsibilities to transferring students, the Office of Special Education Programs (OSEP) stated that when a child moves into a State during the summer, the new educational agency must "have a means for determining whether [the child has a disability] and for ensuring that an IEP is in effect at the beginning of the school-year."⁶³ Thus, Petitioner's mother's assertion that R.B. was a student in special education should have immediately alerted JPSS to R.B.'s needs and prompted the district to take "reasonable steps" to obtain her records from Cobb County.⁶⁴ Instead, for two school-years, JPSS made no attempt to access R.B.'s educational records. As a result, R.B. made little, if any, academic progress, and was subject to several disciplinary removals, which only exacerbated her behavioral issues.

As a student with special needs, R.B.'s disciplinary infractions should not have been punishable by suspension unless school officials determined through an MDR that her conduct was not related to her disability. However, because JPSS failed to obtain her records from Cobb County, R.B. received instruction in general education classrooms. Given the academic deficiencies identified in her previous IEP, progress in such a setting became virtually impossible for R.B. Her frustration with being asked to complete work that was not tailored to her academic needs manifested itself in the form of negative displays of behavior. Had JPSS requested her records from Cobb County, the district would have determined that R.B. would benefit from a Functional Behavior Assessment (FBA), Behavior Intervention Plan (BIP), and appropriate related services to address her disability. In fact, while R.B. was classified as SLD both in Cobb County and JPSS in 2004, the lack of special education instruction over the past two years has caused her to be reclassified as a student with an Emotional Disability. This reclassification reflects the egregious nature of JPSS' actions in violating R.B.'s rights under IDEA.

Even without access to R.B.'s educational records from Cobb County, JPSS had in its possession the results of the evaluation and special education determination that took place in 2004, only four years prior to R.B.'s re-entry into the district. Had JPSS attempted to review R.B.'s

⁶² 20 U.S.C. § 1414(d)(2)(C)(ii)(II), 34 C.F.R. § 300.323(g)

⁶³ IEPs for Children Who Transfer From Another State, 71 Fed. Reg. 46,681, 46,682 (August 14, 2006).

⁶⁴ R.B.'s Education Advocate obtained R.B.'s records, including her IEPs, within twenty four (24) hours of placing a request with Cobb County School District for their transmittal. Also, the Texas Education Agency provides that, in accordance with Texas Administrative Code § 89.1050(f)(3), when a student transfers from another state and the parents/guardians verify that the student was receiving special education services in the previous school district, the school district must complete the requirements of § 300.323(f) within thirty (30) school days from the date the student is verified as being a student eligible for special education services.

educational history upon her arrival in August 2008, the district would have been immediately made aware of R.B.'s disability classification and might have used the results of the evaluation to inform its choice of services for R.B. until another evaluation could be performed to assess her current academic and emotional needs.

The same above arguments also support the conclusion that JPSS violated IDEA mandates. JPSS had sufficient notice of Rd.B.'s need for special education services when his mother informed the district of his eligibility at the beginning of the 2008-2009 school-year. Not only was JPSS obligated to provide Rd.B. with FAPE, the district was also required, pursuant to relevant statutory provisions, to take "reasonable steps to promptly obtain [his] records, including IEP and supporting documents and any other records relating to the provision of special education or related services from [Cobb County]."⁶⁵ Furthermore, in its commentary to the federal regulations, the OSEP states that when a child moves into a State during the summer, the new educational agency must "have a means for determining whether [the child has a disability] and for ensuring that an IEP is in effect at the beginning of the school-year."⁶⁶ JPSS' violation of IDEA requirements resulted in a substantial loss of instruction time for Rd.B. as he has been disciplined numerous times for issues related to his behavior. Although he is considered an average student, Rd.B. has not been able to make any meaningful academic progress over the past two school-years. While he was identified as a student with OHI in Cobb County, JPSS evaluations conducted in May 2010 concluded that Rd.B. is eligible for an ED classification. Rd.B.'s reclassification may have been unnecessary if JPSS took reasonable steps to obtain his records from the former school district or, if it had simply canvassed its own files. A quick investigation would have revealed that Rd.B. had been previously classified by JPSS and received special education services in the district for more than a year. Instead, JPSS suspended Rd.B. on at least four occasions before finally inquiring with Cobb County about his educational history. There is no evidence that JPSS ever followed up with the Georgia school district and Rd.B. continued to be subject to unjust disciplinary action throughout the 2009-2010 school-year.

Petitioner Ra.B.'s claims against JPSS are the same as those advanced by R.B. and Rd.B. JPSS had notice of Ra.B.'s disability. Based upon the information provided to JPSS by Ra.B.'s mother JPSS had reason to suspect that Ra.B. was a student eligible of IDEA services and JPSS was under statutory obligation to retrieve her records from Cobb County School District. Under IDEA, when a child transfers school districts, "to facilitate [their] transition, the new school in which the child enrolls must take reasonable steps to promptly obtain the child's records, including IEP and supporting documents and any other records relating to the provision of special education or related services...from the previous school in which the child was enrolled...."⁶⁷ Furthermore, since Ra.B.'s re-enrollment took place over the summer, with her mother informing the district at the beginning of the school-year, OSEP's commentary on the regulations governing out-of-state school transfers is directly applicable and required JPSS to have "a means for determining whether [the child has a disability and] for ensuring that an IEP is

⁶⁵ § 1414(d)(2)(C)(ii)(II)

⁶⁶ IEPs for Children Who Transfer From Another State, 71 Fed. Reg. at 46,682.

⁶⁷ § 1414(d)(2)(C)(ii)(II)

in effect at the beginning of the school-year.”⁶⁸ JPSS failed to take any steps to retrieve Ra.B.’s records from Cobb County until May 2010, almost two years after she re-entered the school district. The length of time that passed before JPSS decided to take action cannot be considered “reasonable” by any means. JPSS’ inaction, with regards to Ra.B., represents a wholesale violation of Ra.B.’s rights under IDEA. The district has not provided Ra.B. with any accommodations that would address her unique social and emotional needs. Without related services like social work to support her education, Ra.B. has regressed both academically and emotionally. This is evidenced by her failing grades at the conclusion of both school-years, and expulsion from Wingfield.

The stress and frustration of being in a learning environment that is not tailored to her academic and social needs has led Ra.B. to conclude that she no longer belongs in school. Ra.B. is considering dropping out of school and obtaining a General Education Development (GED) certificate due to JPSS’ failure to provide appropriate services or to accommodate her disability.

She will turn eighteen in December and has been retained in the 9th grade for the third straight year. As an element of FAPE Ra.B. should have participated in an annual Transition Plan meeting to address goals for further education, employment and independent living after high school. By failing to take any steps to obtain her records, JPSS denied Ra.B. her right to prepare for a future education and career.

Class Remedies for R.B. Rd. B. and Ra. B. Necessary to Settle This Complaint

Mississippi Department of Education will need to ensure the following action is taken to redress JPSS’ numerous systemic IDEA violations delineated in this class complaint:

1. Compel JPSS to provide equitable relief in the form of extensive compensatory services for R.B., Rd.B., and Ra.B. for the missed/lost instructional time that resulted from not being provided with services comparable to their previous and then effective out-of-state IEPs (Cobb County School District) in the 2008-09 and 2009-10 school-years. In view of the total absence of IEP services for R.B., Rd.B., and Ra.B. for two school-years, compensatory education is certainly an appropriate remedy for redressing the JPSS’ violations of their rights under IDEA.⁶⁹

⁶⁸ IEPs for Children Who Transfer From Another State, 71 Fed. Reg. at 46,682.

⁶⁹ “Compensatory education is a legal term used to describe future educational services which courts award to a disabled student under the IDEA for the school district’s failure to provide a FAPE in the past.” It “involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency’s failure over a given period of time to provide FAPE to a student.” In *M.C. v. Central Regional School District*, the Court sets forth its standard for determining when compensatory services are an appropriate remedy and for calculating the amount of services to be offered. *M.C. v. Central Regional School District*, 81 F.3d 389, 395 (3d Cir. 1996).

2. Compel JPSS to provide equitable relief in the form of compensatory services to any IDEA eligible student who transferred into JPSS in the past school-year (2009-10) from an out-of-state or in-state school district with a currently effective IEP and who was not provided the same or comparable IDEA services within fourteen days and for the period starting on day fifteen and running until such IDEA services were provided.
3. Compel JPSS to develop and implement specific written policies and procedures whereby the district will contact and request either electronically or in writing within three days of the enrollment of student from either an out-of-state or different in-state school district all IDEA related records including any evaluations, IEPs, FBAs/BIPs, and discipline referrals/infractions and obtaining such IDEA records within fourteen (14) days.
4. Compel JPSS to develop and implement specific written policies and procedures for providing FAPE to any IDEA eligible student who transfers either from an out-of-state or in-state school district including providing the same previously held IEP services or providing services comparable to those in the previously held IEP until an evaluation can be conducted and a new IEP drafted.

Sincerely,



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“...a school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a *de minimis* educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem. We believe that this formula harmonizes the interests of the child, who is entitled to a free appropriate education under IDEA, with those of the school district, to whom special education and compensatory education is quite costly.” *Id.* at 397.

The Office of Special Education Programs (OSEP) in the U.S. Department of Education has also recognized compensatory education as a permissible means of providing FAPE to a child with disability who had a past deficient program. *See* Letter from Office of Special Education Programs to Margaret A. Kohn, 17 EHLR 522 (July 10, 1990). “...OSEP’s position, which is supported by several court decisions is that compensatory education is an appropriate means for providing FAPE to a child with disabilities who had previously been denied FAPE.”

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