



## Mississippi Department of Education

Tom Burnham, Ed.D., State Superintendent of Education

Lynn J. House Ph.D., Deputy State Superintendent • Office of Instructional Enhancements and Internal Operations

### Office of Special Education

Ann Moore • Associate State Superintendent • 601-359-3498 • FAX: 601-359-2198

November 22, 2010

Ms. Corrie Cockrell, Esq.  
Mississippi Youth Justice Project  
Southern Poverty Law Center  
921 N. President Street, Suite B  
Jackson, MS 39202

Dr. Lonnie Edwards, Sr., Superintendent  
Jackson Public School District (2520)  
662 S. President Street  
Jackson, MS 39201

Re: Systemic State Administrative Complaint/Individuals with Disabilities Education Act 2004

Dear Ms. Cockrell and Dr. Edwards:

The Office of Special Education (OSE) conducted an on-site investigation on October 14, 15, 20, and 22, 2010, in order to assess the district's compliance on each allegation in the Systemic State Administrative Complaint.

The enclosed Findings and Decision issued by the Mississippi Department of Education (MDE), Office of Special Education (OSE) outlines the district's noncompliance and an indication of what changes are required in response to the Systemic State Administrative Complaint filed against the Jackson Public School District. Within thirty (30) days from receipt of this letter, the district must submit to the OSE an Improvement Plan outlining the actions that the district will implement in order to move the district toward compliance. These actions must be designed to ensure that the district corrects findings of noncompliance as detailed in the enclosed report.

As required by Federal regulations, failure to resolve all deficiencies on record as soon as possible, but no later than 12 months from initial notification, may adversely affect the accreditation status of the school district. Therefore, the district must correct all areas of noncompliance no later than November 22, 2011. A follow-up visit will be conducted within 3-6 months to verify correction of all previously identified areas of noncompliance.

*"Quality Education for Every Child"*

Central High School Building • 359 North West Street • P.O. Box 771 • Jackson, MS 39205-0771

Ms. Corrie Cockrell, Esq.  
Dr. Lonnie Edwards, Sr., Superintendent  
November 22, 2010

The Mississippi Department of Education/Office of Special Education, at its own expense, is appointing a Technical Advisor to assist the JPSS with implementation of the Corrective Actions and Compensatory Services required by the Decision. The Technical Advisor will report to the MDE/OSE on a regular basis regarding progress of JPSS towards compliance with IDEA and State Board Policies regarding students with disabilities and extended school year services.

Thank you for your assistance and cooperation provided by your staff during our review. If you have any questions concerning the enclosed report or would like to schedule a time for technical assistance, please contact us at 601-359-3498.

Sincerely,

  
Tanya Bradley, Bureau Director

Enclosures

C: Tom Burnham, Ed.D.  
Lynn J. House, Ph.D.  
Ann Moore  
Pamela Felder, Ed.D.  
Gwen Sanders, Ed.D.  
Armerita Tell, Ph.D.  
Susan Davis

**Mississippi Department of Education  
Office of Special Education**  
**Findings and Decision with Regards to the State Administrative Complaint  
Against the Jackson Public School System**  
**November 22, 2010**

**Sequence of Events**

**September 8, 2010:** State Administrative Complaint (Complaint) filed by the Mississippi Youth Justice Project (MYJP) against the Jackson Public School System (JPSS or District) under the Individuals with Disabilities Education Act of 2004 (IDEA)

**September 9, 2010:** MYJP filed required supplemental information to the Complaint

**October 4, 2010:** JPSS filed its Response to the Complaint

**October 19, 2010:** MYJP filed additional information about the allegations in the Complaint

**November 8, 2010:** The Mississippi Department of Education/Office of Special Education granted a 14-day extension to the 60-day timeline for its Decision due to extenuating circumstances and notified MYJP and JPSS of the extension

**November 22, 2010:** The Mississippi Department of Education/Office of Special Education issued its Findings and Decision

**Claims Included in the Complaint**

The following three claims of systemic IDEA violations were made in the Complaint filed by MYJP:

1. The first claim was filed on behalf of A.M., A.L., and a class of Similarly Situated and Treated Students with Emotional Disabilities, as well as on behalf of E.H., T.A., P.A., and 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 (i.e., In-School Suspensions, Out-of-School Suspensions, and/or undocumented Out-of-School/Cool Off Removals) and/or placement in an alternative school setting in the JPSS.
2. A second claim was filed on behalf of three petitioners (R.B., Rd.B., and Ra.B.) and a class of All Similarly Situated Special Education students who transferred into JPSS from in-state or out-of-state school districts.
3. Finally, a third claim was filed as a Systemic Office for Civil Rights (OCR) complaint on behalf of all Special Education Students in the JPSS for highly disproportionate and discriminatory placement rates in JPSS' Alternative School (Capital City Alternative School).

Specific to the claims made on behalf of A.M., A.L., E.H., T.A., P.A., and C.O. and a Similar Class of Students with disabilities who present with a pattern of three or more discipline removals, MYJP alleges that JPSS has:

- Denied a Free and Appropriate Public Education (FAPE) as evidenced of failure to provide appropriate levels of Related Services
- Denied FAPE by failing to comply with IDEA discipline regulations
- Denied FAPE by failing to confer meaningful educational benefit
- Denied FAPE by failing to comply with requirements for developing and implementing Individualized Educational Programs (IEPs)
- Denied FAPE by failing to provide services within the petitioners' Least Restrictive Environment (LRE)
- Denied FAPE by failing to provide appropriate transition services
- Denied FAPE by failing to identify and provide Extended School Year (ESY) services for eligible students

Specific to the complaint filed on behalf of R.B., Rd.B., Ra.B., and a class of students with disabilities who transferred into JPSS from in-state and/or out-of-state school districts, MYJP alleges that JPSS has failed to provide transfer students with current IEPs with services that are comparable to the IDEA services and supports previously received prior to transferring to JPSS.

The Office of Special Education declined to investigate the Systemic OCR Complaint and referred the MYJP to the Office for Civil Rights in Dallas, Texas for disposition of civil rights issues.

### **Investigation of State Administrative Complaint**

An onsite investigation was conducted by the Office of Special Education on October 14, 15, 20, and 22, 2010. This investigation involved a review of each Petitioner's records for the 2009-2010 and current school terms along with interviews with JPSS Exceptional Education Services (EES) staff. In addition, a sample of seventeen students was selected randomly from all students with disabilities enrolled in JPSS who received three or more discipline removals and/or who were placed in the District's alternative setting during the 2009-2010 school term. (See Attachment A.)

**Review of Systemic Complaint filed on behalf of A.M., A.L., E.H., T.A., P.A., and C.O. and a Class of all Similarly Situated and Treated Students having an Emotional Disability, as well as a Class of Similarly Situated Students with disabilities with behavioral concerns who were subjected to three or more discipline removals (i.e., In-School Suspensions, Out-of-School Suspensions, and/or undocumented Out-of-School "Cool Off" Removals) and/or placement in the district's alternative setting.**

- A. Allegation that JPSS denied a Free and Appropriate Public Education (FAPE) as evidenced by its failure to provide appropriate levels of Related Services (34 CFR 300.34, 300.101, and SBP 7219 §§ 300.34, and 300.101)**

**Findings:**

A review of all Petitioners' 2009-2010 school records revealed that each of these students presented with a previous history of behavioral concerns. However, given their ongoing behavior concerns, a remarkable number of case files revealed little or no evidence of direct Related Services to address the students' specific behavioral and/or emotional concerns. That is, of the six Petitioners' cases reviewed, 6/6 cases (100%) revealed no direct Related Services provisions during the 2009-2010 school term. It should be noted that in two cases (A.L. and P.A.) it was noted on the IEPs that these students received Social Worker Consultation as a Related Service. However, after conferring with the JPSS Supervisor of Social Workers, it was reported that this service involved social work consultation with teachers, crisis intervention, and supports on an as-needed basis as opposed to direct counseling and/or social skill remediation.

Similarly, 16/17 (94%) of the cases selected randomly revealed no indication on the students' IEPs for the provision of Related Services to address behavioral/emotional concerns. Furthermore, there was no evidence of any documentation that any measure of meaningful Related Services were provided in response to the students' behavior, with the exception of case notes from social workers who consulted with teachers and provided occasional brief counseling on an as-needed basis during crisis situations. It is also worthy to note that the sole case when Related Services were documented on the IEP, this student (J.C.) received 30 minutes of direct social skill services only twice monthly. It should be further noted that J.C. returned to JPSS after an in-patient stay in a private residential facility where she received group counseling daily and individual and family counseling weekly to address her emotional/behavioral concerns.

**Summary:**

Given the fact that each of the cases reviewed represented students with disabilities who had a documented pattern of behavior-related difficulties (i.e., received a minimum of three separate discipline removals and/or had been previously placed in the district's alternative school (Capital City Alternative School) (CCAS)) it is evident that JPSS has failed to address the ongoing pattern of behavioral and/or emotional concerns of the student cases reviewed by not providing these students with meaningful and direct Related Services. JPSS has denied a FAPE to the Petitioners as evidenced by their failure to provide appropriate levels of Related Services. Therefore, after carefully reviewing all available data, the MDE determines that JPSS is not compliant with 34 CFR 300.34, 300.101, and SBP 7219 §§ 300.34, and 300.101.

**Corrective Action:**

1. JPSS shall develop specific strategies and procedures for ensuring that all students with disabilities enrolled in JPSS who are currently classified as (a) having an Emotional Disability and (b) any student with a disability who has received more than ten days of school removals during the 2009-2010 school term are provided with appropriate Related

Services necessary for assisting in developing positive behavioral intervention strategies and adequately meeting each student's unique behavioral and/or emotional needs.

**Timeline:** No later than 30 days from receipt of this Decision.

**Corrective Action:**

2. JPSS shall develop a roster of students meeting the above-mentioned criteria for receiving Related Services.

**Timeline:** No later than 30 days from receipt of this Decision.

**Corrective Action:**

3. JPSS shall begin provision of Related Services for the students meeting the above-mentioned criteria.

**Timeline:** No later than 30 days from receipt of this Decision.

**Corrective Action:**

4. JPSS shall develop and implement consistent, district-wide behavioral procedures for gathering data necessary for accurately monitoring students' behavioral progress toward meeting IEP behavioral/emotional/social goals and objectives for making data-based decisions as to whether to increase or reduce the amount of Related Services needed throughout the school term (consistently completed Daily Student Behavior Rating Forms, etc).

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

5. JPSS shall assess at the end of each grading period, the status of behavioral support implementation and progress toward achieving IEP behavioral objectives for students deemed in need of specific Related Services.

**Timeline:** Beginning by the end of the first grading period after Related Services provisions have been implemented as described above.

**Corrective Action:**

6. JPSS shall provide all school administrators who deliver disciplinary dispositions with targeted training on current IDEA policies as related to discipline practices with students with disabilities.

**Timelines:**

- a. JPSS shall initially arrange for and/or provide IDEA discipline training for school administrators no later than 60 days from receipt of this Decision.
- b. JPSS shall arrange for and/or provide on an on-going basis, annual IDEA discipline training.
- c. JPSS shall arrange for and/or provide continuing IDEA discipline training on an annual basis for new administrators.

**Compensatory Services:**

1. JPSS will reconvene IEP Committees to arrange for the provision of compensatory Related Services for all identified Petitioners. The determination of appropriate, compensatory Related Services must include the consideration of Psychological Services to assist in developing positive behavioral intervention strategies.
2. JPSS will reconvene IEP Committees to consider the need for provision of compensatory Related Services for any student with a disability, currently classified as having an Emotional Disability who has received more than ten days of school removals during the 2009-2010 school term. The determination of appropriate, compensatory Related Services must include the consideration of Psychological Services to assist in developing positive behavioral intervention strategies.

**Timeline:** No later than 30 days from receipt of this Decision.

**Additional Comments and Recommendations:**

1. It is recommended that JPSS consider, at a minimum, providing 30-60 minutes weekly of direct and appropriate Related Services (i.e., planned, face-to-face individual and/or small group counseling and/or social skills instruction, etc.) for any student currently classified as (a) having an Emotional Disability, and (b) any student with a disability who has received more than ten days of school removals during the 2009-2010 school term, and/or (c) any student with a disability who has received greater than 5 days of removals during the current school term as the result of disciplinary infractions.

**Timeline:** JPSS should implement direct and appropriate Related Services provisions for the minimum amount of time recommended above, no later than 30 days from receipt of this Decision.

**Recommendation:**

2. It is recommended that JPSS develop a written protocol for monitoring the fidelity of Related Services implementation each grading period. This should include measuring the integrity

with which programs are implemented, as well as the compliance of implementation and student attendance.

**Timeline:** No later than 60 days from receipt of this Decision.

**B. Allegations that JPSS denied FAPE by failing to comply with IDEA Discipline Regulations: (34 CFR 300.101, 300.530, 300.536, and SBP 7219 §§ 300.101, 300.530, and 300.536)**

- **Flawed practices of conducting Functional Behavior Assessments (FBAs) and developing Behavior Support Plans (BSPs)**

**Findings:**

**1. Functional Behavior Assessments (FBAs)**

A review of the original, six Petitioners' case files revealed that five students had documented FBAs on file during the 2009-2010 school term. One petitioner, E.H., did not have a documented FBA and had received only three days of removals as the result of discipline during the 2009-2010 school term. Additionally, of the seventeen files selected randomly for review, a total of 16/17 (94%) had documented FBAs on file. Listed below are specific concerns related to JPSS' current practice of conducting FBAs.

- Baseline data: Of the original, six Petitioners, five had documented FBAs on file. It was noted that 5/5 (100%) cases where FBAs were documented on file, the district failed to provide meaningful and quantifiable data that would accurately describe the students' present levels of behavioral performance for identified target behaviors across settings that would allow for a benchmark rate of performance necessary for determining whether behavior improvements were realized after the implementation of a BSP. Similarly, of the seventeen files selected randomly for review, a total of 16/17 (94%) had documented FBAs on file. However, consistent with previously mentioned findings, 100% of cases reviewed had little or no evidence of meaningful baseline data.
- Direct Observations: Although there was evidence that survey checklists/forms were completed, in all cases reviewed, there was limited, or no evidence of how FBAs incorporated direct observation in the behavioral assessment process. While there is no clear IDEA mandate requiring direct observation, such observations are considered to be necessary for helping to confirm functional hypotheses generated from survey methods and clearly represent best FBA practices. Furthermore, direct observations are included and endorsed by MDE/OSE during all Technical Assistance Trainings (TTA) trainings involving conducting FBAs.



- c. Summary Statements not Empirically Validated and/or Linked to Interventions: Hypothesis statements derived from the majority of FBAs list many functions that have no empirical basis. While this is clearly a subject of professional opinion, many of the summary statements are nevertheless difficult to adequately link to behavioral interventions. For example, in many cases the presumed function of student behavior was to "gain control in social situations". This ambiguous presumed function makes it difficult to link to strategies designed to teach an adaptive replacement behavior. For example: "What socially acceptable replacement behaviors would allow the student to continue maintaining control in social situations?" The intent of identifying the possible function of student behavior (e.g., disruptive behavior in attempt to escape/avoidance of difficult academic task demands) is to develop strategies to modify the context of the problem, (e.g., modify the task to make the activity less difficult) provide direct academic remediation, and directly teach the student alternative behaviors that serve similar functions (e.g., calmly signal teacher that assistance is necessary). Although there was some measure of appropriate FBA/BSP linkage observed, there was a significant amount of disconnect between the FBA and the BSP noted in the majority of files reviewed.
- d. Antecedents: Many of the antecedent variables listed in student FBAs are also ambiguous and difficult to quantify. For example, one of the frequently mentioned antecedent or behavioral triggers was stated as "the student becomes aggressive when he/she perceives he/she has been wronged." Direct antecedent events and "behavioral triggers" are typically observable and measureable environmental events or circumstances that can be manipulated. A student's perception is, at best, an emotional response to an observable behavioral trigger such as a negative peer interaction (threatening/intimidating statement toward the student, teasing, and the like). The primary concern here is related to the overall difficulty with linking such ambiguous triggers to an effective teaching strategy for developing appropriate replacement behavior(s).
- e. Failure to conduct FBA prior to placement in alternative school setting: Many of the students whose files were reviewed were placed in CCAS after they had committed a serious conduct violation involving serious bodily injury and/or possession of drugs or a weapon. However, prior to such removals, the majority of these students had patterns of misconduct that would have warranted an FBA prior to the disciplinary infractions leading to placement in CCAS.

### **Summary:**

Under the 2006 IDEA regulations at 34 CFR 300.530(f)(1) and SBP 7219 300.530(f)(1), the IEP team has an obligation to conduct an FBA in circumstances where the manifestation determination concludes that the student's behavior was related to his or her disability in accordance with procedures addressed in 34 CFR 300.530(e). Also, in accordance with 34 CFR 300.530(d)(1)(ii), whenever a student is removed for more than 10 consecutive school days for conduct that is determined not to be a manifestation of his or her disability or the student is removed to an interim alternative educational setting for drugs, weapons, or infliction of serious bodily injury (regardless of whether the behavior is a manifestation of the disability), the student must receive, as appropriate, a functional behavioral assessment

and behavioral intervention services and modifications that are designed to address the behavior so that it does not recur.

After a review of selected FBAs across Petitioners' and randomly selected files, the MDE determines that JPSS denied FAPE by failing to comply with IDEA Discipline Regulations. Therefore, after carefully reviewing all available data, the MDE determines that JPSS is not compliant with 34 CFR 300.101, 300.530, 300.536, and SBP 7219 §§ 300.101, 300.530, and 300.536.

**Corrective Action:**

1. JPSS shall provide targeted training for conducting FBAs to ensure that IEP Committees address the various situational, environmental, and behavioral circumstances for individual students.

**Timeline:** No later than 60 days from receipt of this Decision.

**Findings:**

**2. Behavior Support Plans (BSPs)**

A review of Petitioners' case files, along with a group of seventeen cases selected randomly, revealed the following findings:

- a. Specific measureable goals and objectives for replacement behaviors were, for the vast majority of the files reviewed, limited to behavioral statements without any specific criteria (i.e., 80% of observations) from which to measure success.
- b. For the majority of files reviewed, the district failed to link Summary Statements from FBAs into BSPs. (See FBA section B.1.c. above.)
- c. Strategies listed in student BSPs are considered to be general, albeit effective, recommendations. However, there was no specific plan for how a teacher would effectively implement such strategies on a daily basis.
- d. All BSPs reviewed included general statements/recommendations that students should receive rewards/acknowledgment frequently. However, the concern here is related to the limited evidence in all reviewed BSPs of specific reinforcement strategies/contingencies that would directly pertain to the student's specific target behavior and clearly indicate to staff when reinforcement should be provided.
- e. In all BSPs reviewed, there was no evidence of how staff/administration planned to respond to continued serious behavioral violations in a fashion that provided consequences focused directly on the behavioral skill deficit rather than simply delivering another punishment-based consequence (i.e., OSS). Once a student has clearly demonstrated that he/she has not responded to strategies such as ISS/OSS

(thus prompting the need for an FBA/BSP), providing the behavior is not seriously threatening or criminal in nature, he/she should be provided with alternative strategies/consequences that directly focus on remediating the social skill deficit(s) in question (e.g., requiring a student to forfeit a free period to write a letter of apology to a peer whom he/she had offended and to complete a series of specific and planned social skill lessons related to respect and cooperation with peers during several in-school or after-school detention periods). In sum, in all cases reviewed, JPSS continued to deliver administrative consequences that resulted in removals from instruction and/or school.

- f. All BSPs reviewed revealed little or no evidence of a meaningful baseline rate of students' behavioral present levels of performance. Although there were some base rates such as number of suspensions and/or information from parents/teachers, these data would in no way describe the level, rate, and/or intensity of behavioral concerns from which ongoing comparisons could be made to evaluate student progress.
- g. In all BSPs reviewed, there was limited evidence or documentation on file of assessment data that would allow measuring students' behavioral progress during intervention. Although there was some evidence in a limited number of files, including Daily Behavior Rating Forms, such forms were inconsistently completed and were not useful for accurately measuring student progress. Furthermore, the BSPs reviewed containing behavioral progress data had no evidence demonstrating how data were summarized/graphed to allow staff to review and analyze student behavioral progress.
- h. Finally, all BSPs reviewed had no evidence to validate whether procedures and strategies written in student BSPs had, in fact, been implemented as planned (i.e., treatment integrity or fidelity).

### **Summary:**

Schools are expected to use functional behavioral assessments proactively and to intervene early to prevent serious behavior problems. IDEA requires that a BSP based on FBA should be considered when developing the IEP if a student's behavior interferes with his or her learning or the learning of classmates. Therefore, the MDE determines that JPSS has denied FAPE by failing to comply with IDEA Discipline Regulations.

Following a review of selected BSPs across Petitioners' and randomly selected files, the MDE determines that JPSS is not compliant with 34 CFR 300.101, 300.530, 300.536, and SBP 7219 §§ 300.101, 300.530, and 300.536.

### **Corrective Action:**

1. JPSS shall conduct targeted training for developing Behavior Support Plans that include: (a) specific and measurable goals/objectives for replacement behaviors that are linked to FBAs, (b) current baseline performance of measureable target and/or replacement behaviors, (c)

specific and detailed plan for how strategies and/or accommodations to increase/teach replacement behaviors will be delivered, (d) specific strategies for how, when, and what criteria are used for reinforcing the occurrence of desired replacement behaviors, (e) specific strategies for how problem behaviors will be managed using alternative behavior reduction strategies that are not consistent with strategies that have proven to be ineffective (i.e., school removals), and (f) a clear and specific plan of exactly how compliance/fidelity will be monitored and who will be responsible for doing so.

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

2. JPSS shall develop and implement strategies for consistently monitoring student behavioral progress daily while also maintaining a graphic display of data indicating progress or lack thereof. This will allow staff to make more accurate, data-based decisions based on objective and quantifiable data.

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

3. JPSS shall develop written strategies and protocols for monitoring and ensuring that all student BSPs are implemented with fidelity.

**Timeline:** No later than 90 days from receipt of this Decision.

**C. JPSS's alleged systematic failure to appropriately and meaningfully update and revise Petitioners' IEPs (34 CFR 300.324 and SBP 7219 § 300.324)**

**Findings:**

A review of all Petitioners' and randomly selected files revealed little or no evidence of how IEP Committee meetings were consistently and systematically convened and/or where behavioral support personnel routinely met to review progress monitoring data to consider revising BSPs when students continued to demonstrate a pattern of misconduct. The general concern here primarily relates to JPSS' failure to frequently gather, summarize, and review meaningful data necessary for effectively monitoring student behavioral progress during intervention (e.g., daily completion of Daily Student Behavior Ratings, implementation fidelity/compliance rates, etc.) prior to continued misconduct/discipline removals. Instead, file reviews revealed in the majority of cases, that IEP Committee meetings were not reconvened until such time a recommendation was made to consider placement in the District's alternative school (CCAS) as the result of a criminal act and/or habitual disruption. Furthermore, by failing to frequently monitor student progress and treatment fidelity/compliance rates of BSP implementation, there is no basis for determining whether

the students failed to respond to behavioral supports. Furthermore, such practices question the validity as to whether the students' IEPs had been effectively implemented, as there are no data to evaluate student progress and/or whether planned behavioral supports were, in fact, implemented as designed.

#### **Summary:**

After considering the lack of evidence of planned, data-based, decision-making related to updating and/or revising students' IEPs and BSPs to reflect meaningful and proactive changes in behavioral supports, the MDE determines that JPSS denied FAPE by failing to appropriately and meaningfully update and revise Petitioners' IEPs. Therefore, the MDE determines that JPSS is not compliant with 34 CFR 300.324 and SBP 7219 § 300.324.

#### **Corrective Action:**

1. JPSS shall develop and implement written procedures for frequently monitoring the progress of students with behavioral and/or emotional challenges with and/or without current BSPs to ensure that students failing to respond successfully to school-wide and/or function-based behavioral supports are identified quickly and IEP Committee meetings are promptly convened to consider developing and/or revising current BSPs accordingly. This strategy shall also include a monthly report from each building site to be forwarded to the Director of EES indicating all students with disabilities who have been subject to arrest and/or who have received In-School Suspensions, Out-of-School Suspensions, and/or other disciplinary dispositions, the date of the dispositions, and the duration of each disciplinary action.

**Timeline:** No later than 60 days from receipt of this Decision.

#### **D. Systematic failure to conduct Manifestation Determination Reviews (MDRs) in conformance with IDEA mandates (34 CFR 300.101, 300.530, and SBP 7219 §§ 300.101 and 300.530)**

#### **Findings:**

A review of Petitioners' and files of other Class members revealed the following:

- a. With the exception of one case where the committee agreed the student's BSP had not been implemented, there was no other evidence presented in MDR documentation where the committees considered whether the students' BSPs had been implemented with fidelity. Again, without such data, the committees would have no basis for determining whether the IEPs had, in fact, been implemented. Again, such data are necessary for accurately assessing whether a student's continued misconduct is a function of his/her failing to receive quality, planned behavioral supports with fidelity or whether the student may require a more restrictive placement (i.e., CCAS).

- b. In many cases where MDRs resulted in students being placed (regardless of manifestation decision) in CCAS, there was no evidence the students had a history of receiving meaningful Related Services, raising questions as to whether student conduct would have been in question if the students had previously received adequate and necessary Related Services supports. (Also see Findings in A above, on page 3.)

#### **Summary:**

Following numerous file reviews indicating the lack of evidence that MDR decisions were based on the students' previous history, psychological assessment data, provision of Related Services, and/or data necessary for determining whether the IEPs/BSPs had been implemented as planned, the MDE determines that JPSS denied Petitioners' FAPE by failing to conduct MDRs in conformance with IDEA mandates. Therefore, the MDE determines that JPSS is not compliant with 34 CFR 300.101, 300.530, and SBP 7219 §§ 300.101, and 300.530.

#### **Corrective Action:**

1. JPSS shall develop and implement strategies and procedures for ensuring that all appropriate district and building-level staff are trained on conducting Manifestation Determination Reviews and making appropriate decisions. Such training shall also include specific information related to utilizing multiple data sources for making MDR decisions. MDR trainings shall also specifically focus on utilizing data to substantiate fidelity for BSP implementation, provision of Related Services, fidelity of Related Services provision, data necessary for evaluating behavioral progress, and a review of previous psychological evaluations as related to student behavior. These procedures shall include a written protocol that includes all relevant sources of information reviewed to make a manifestation determination.

#### **Timelines:**

- a. No later than 60 days from receipt of this Decision.
- b. JPSS shall arrange for and/or conduct MDR training for district and building-level staff no later than 60 days from the receipt of this Decision.

#### **Additional Comments and Recommendations:**

1. While not required by IDEA, it is recommended that JPSS document MDR minutes, noting the data sources used to make the manifestation determination.
2. While not required by IDEA, it is also recommended that JPSS consider the participation of an individual who is qualified to interpret psychological assessments (i.e., psychologist and/or other qualified staff member) as a relevant member of the IEP Committee when making a manifestation determination, specifically for students who have an Emotional Disability.

3. It is recommended that JPSS develop and implement written policies and procedures to ensure all relevant IEP Committee members, including qualified individuals (i.e., psychologist and/or other staff specifically trained to interpret psychological evaluation data) be involved with all MDRs and participate in all MDR committee decisions.
4. JPSS should draft a written protocol that documents all relevant IEP Committee members present during MDRs and the specific roles and responsibilities of each member (i.e., social worker reviewed progress of behavior support plan, psychologist reviewed psychological evaluation, principal reviewed discipline records, and teacher discussed academic progress).

**Timeline:** No later than 60 days from receipt of this Decision.

**E. Systemic Failure to Confer Meaningful Educational Benefits (34 CFR 300.101, 300-320 through 300.324, and SBP 7219 §§ 300.101, 300.320 through 300.324)**

**Findings:**

A review of Petitioners' educational records and randomly selected students revealed the majority of files indicated present levels of performance on students' IEPs. However, the nature of the data presented in many cases reviewed would not allow for a meaningful comparison of educational and/or behavioral progress from year to year. That is, while most reviewed IEPs did reflect information derived from summative evaluations (i.e., STAR, Language Exclamation, MCT-2, etc.), many of these assessments were not consistent from year to year to allow for a reliable and/or valid comparison of global skill growth. Further, in 23/23 (100%) of cases reviewed, there was no evidence of sensitive academic skill measures (i.e., Curriculum-based Measures) administered to measure students' basic Reading, Math, and Writing Skills. Both JPSS and MYJP relied primarily on academic grades to assess and substantiate annual academic growth. The primary concern is that in many cases, classroom grades assigned by the teacher are simply not an accurate reflection of significant skill improvements and/or declines as they are often dependent on other factors such as grading accommodations, student behavior, motivation, teacher subjectivity, and environmental contingencies. Furthermore, given the fact that a student received a grade of 60 (D) in two consecutive years does little in the way of assessing academic skill growth. Even so, a review of case files revealed that 17/23 (74%) of students failed one or more academic subjects during the 2009-2010 school term. These data alone are highly suggestive that these students are not realizing a measure of meaningful educational (academic) benefits. Furthermore, when considering this pattern of continued failure among cases reviewed, coupled with the fact that many of these students have academic skills well below expected levels for their age and grade placement, such a combination is highly predictive that such students will likely continue to struggle and may be placed in more restrictive, self-contained settings and will ultimately likely fail to receive a meaningful educational outcome.

In addition, after reviewing case files of all Petitioners and a sample of similar Class members, it was found that 15/23 (65%) students had no documented evidence to indicate

they had received remedial/compensatory academic interventions. Also, no cases reviewed revealed evidence that students with academic skill deficits received direct, intensive academic skill remediation beyond the core curriculum during the 2009-2010 school term and/or who are currently receiving intensive academic interventions necessary for improving basic Reading, Mathematics, and/or Writing skills. Although all student files reviewed indicated some measure of significant academic concerns, the primary remedial support provided was listed as tutorial classes and/or classroom/inclusion accommodations and/or modification supports. Albeit these classroom-based strategies are certainly necessary for academic success, there was no evidence documented in student files to indicate these supports involved direct and intensive academic skill remediation to increase the likelihood of students realizing success in the assigned curriculum.

Similarly, in terms of behavioral progress, there was inconsistent evidence of data to allow for determining whether students had made appreciable improvements during the course of intervention. It should be noted that several case files reviewed did include Daily Behavior Rating Sheets/Social Behavior Ratings. However, as noted previously, in all cases these forms were inconsistently completed throughout the school year. In fact, the vast majority of files reviewed had no data available to allow for any meaningful evaluation of progress. Furthermore, there was no evidence that data had been summarized and/or graphically displayed. Again, given the fact that 74% of files reviewed indicated students failed one or more academic subjects during the 2009-2010 school term and numerous files revealed students have continued to demonstrate behavioral difficulties (i.e., continued disciplinary removals and/or placement in alternative school), it is apparent that meaningful educational benefits have not been realized for the vast majority of cases reviewed.

### **Summary:**

Following numerous file reviews, it was determined that JPSS has not ensured a FAPE to Petitioners that provides meaningful educational benefits. The IEPs reviewed were not individualized on the basis of each student's assessment and performance. Furthermore, positive academic and non-academic benefits were not demonstrated. Therefore, the MDE determines that JPSS is not compliant with 34 CFR 300.101, 300.320 through 300.324, and SBP 7219 §§ 300.101, 300.320 through 300.324.

### **Corrective Action:**

1. JPSS shall develop and implement procedures and strategies for consistently gathering sensitive data needed for measuring ongoing academic and behavioral growth. Such a plan shall include, in addition to any current measures (e.g., STAR), curriculum-based measures that are sensitive to small changes in academic growth and allow for repeated measurement. Similarly, as previously noted, such a plan shall include strategies to ensure that behavioral data (e.g., Daily Behavior Ratings/disciplinary removals) are consistently gathered, aggregated, and summarized graphically. These data must be used to periodically review and report student progress.

**Timeline:** No later than 60 days from receipt of this Decision.



**Corrective Action:**

2. JPSS shall develop and implement written strategies for identifying any student with a disability who failed one or more academic subjects during the 2009-2010 school term and/or any student with a disability who is failing one or more academic subject(s) during the current and future school terms and conduct subsequent curriculum-based assessments in Reading, Mathematics, and/or Writing to determine each student's current functioning levels as compared to local and/or national norms.

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

3. JPSS shall develop a roster of students with a disability meeting the above-mentioned criteria.

**Timeline:** No later than 15 days from receipt of this Decision.

**Corrective Action:**

4. JPSS shall implement ongoing curriculum-based assessments in Reading, Mathematics, and/or Writing to monitor progress (i.e., present and past levels of functioning) for each grading period for students who meet the above criteria. These data must be used to periodically review and report student progress.

**Timeline:** No later than 30 days from receipt of this Decision.

**Compensatory Services:**

1. JPSS shall provide all students with disabilities who are performing two or more years behind their expected grade placement with intensive academic remediation in Reading, Writing, and/or Mathematics. Such intensive skill remediation shall be provided a minimum of 30 minutes daily until such time progress monitoring data suggests the achievement gap has decreased and the student is performing successfully in all core academic subjects.

**Timeline:** No later than 30 days from receipt of this Decision.

**Additional Comments and Recommendations:**

1. JPSS should provide any student with a disability determined to be performing greater than 2 years behind his/her peers and/or functioning below the 15<sup>th</sup> percentile based on CBM normative data in any area of basic Reading, Mathematics, and/or Writing with supplemental and/or intensive skill remediation. As an integral component of this plan, JPSS should ensure that each student is assessed using benchmark CBM three times annually, as well as ensuring that each student's academic progress is monitored/graphically displayed frequently (i.e., a

minimum of once per week) using curriculum-based measures appropriate for each identified student's specific area(s) of skill deficiency with weekly evaluations of treatment integrity. As a final component of educational remediation, JPSS should ensure that benchmark assessment data are incorporated into each student's IEP to assess growth and help establish each student's present levels of performance.

**Timelines:**

- a. JPSS should develop procedures for the above mentioned (i.e., conducting assessment of academic skills, monitoring progress, analyzing results and communicating results to others) no later than 30 days from the receipt of this Decision.
- b. JPSS should provide students with a disability who are found to be performing greater than 2 years behind his/her peers and/or functioning below the 15<sup>th</sup> percentile based on CBM normative data in any area of basic Reading, Mathematics, and/or Writing with supplemental and/or intensive skill remediation no later than 60 days from the receipt of the results of the curriculum-based assessment.

**F. Denied FAPE by failing to comply with requirements for developing and implementing IEPs (34 CFR 300.101, 300.320 through 300.324, and SBP 7219 §§ 300.101, and 300.320 through 300.324)**

- 1. Allegation that JPSS has systematically failed to properly align student academic goals and objectives with their actual levels of performance**

**Findings:**

A review of case files revealed the following:

- a. In the majority of files reviewed, there was a significant gap between the students' current levels of reported academic functioning and the goals/objectives stated on the IEPs. Furthermore, all student files revealed documentation that accommodations/modifications and other inclusion-based supports were being provided to promote student attainment of grade-level academic objectives. However, the primary concern is related to the assertion that, despite such accommodations, a significant number of students continued to realize academic failure. Furthermore, although many students continued to experience academic failure, there was no evidence that JPSS increased academic supports necessary to increase the likelihood of academic success (i.e., direct, intensive skill remediation) and/or adjust the curriculum expectations to be consistent with the students' present functioning levels in Reading, Math, and/or Writing.
- b. A second concern regarding this complaint is related to the body of evidence in FBA literature that indicates when placed in academic environments which are excessively

challenging, many students will likely display some form of escape-maintained behaviors (i.e., conduct problems). With this in mind, in light of observed, continued student failure and/or continued behavioral misconduct likely due to attempts to escape academic frustration, it is imperative that staff successfully employ effective strategies for tiering assignments, differentiating instruction by product, content, and process so that curriculum objectives and tasks are meaningful, attainable, and most importantly, appropriate for each individual student, regardless of the student's relative skill deficits. Such assertions are clearly in line with the spirit of Response to Intervention initiatives outlined in SBP 4300, as well as, other MDE RtI initiatives and guidelines. As such, while grade-level content should be modified to allow for success, IEP objectives indicating success should be consistent with what would be expected given each student's current levels of functioning.

### **Summary:**

IEPs of students with disabilities are to be developed in accordance with 34 CFR 300.320 through 300.324 and SBP 7219 300.320 through 300.324, and must include required components. Specifically, each student's IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum in accordance with the child's present levels of academic achievement and functional performance.

The MDE determines that JPSS has denied FAPE by failing to comply with the requirements for developing and implementing IEPs, specifically by failing to properly align student academic goals and objectives with actual levels of student performance. Therefore, the MDE determines that JPSS is not compliant with 34 CFR 300.101, 300.320 through 300.324, and SBP 7219 §§ 300.101, and 300.320 through 300.324.

### **Corrective Actions:**

1. JPSS shall develop and implement strategies for adequately assessing the quality and fidelity of how planned accommodations/modifications and differentiation strategies are currently being implemented in classroom settings where students with disabilities receive instruction. Strategies shall include gathering pertinent data to validate that general education and EES staff collaborate consistently to ensure that curriculum content, academic goals, and assessments are aligned with students' current levels of academic functioning. This information will be utilized to determine focused training needs in these areas.
2. Findings of JPSS's assessments or determinations shall be documented and reported to the Director of EES.

**Timeline:** No later than 60 days from the receipt of this Decision.

## **2. Allegation that JPSS has systematically failed to consider positive behavior interventions and supports**

### **Findings:**

- a. JPSS is in the second year of district-wide implementation of a PBIS initiative over the course of the next two school years to incorporate both school-wide and supplemental (Tier 2) behavioral supports. Further, relative to behavioral supports, the majority of BSPs reviewed included many excellent positive and proactive behavioral strategies and recommendations. These plans also specify who is responsible for implementing the strategies and the frequency of implementation. However, as previously noted, it is questionable as to whether positive strategies in the BSPs reviewed are specific enough to ensure quality implementation. For example, one consistently mentioned strategy was “provide as many positive interactions as possible”, “provide positive feedback daily”, “praise student for using appropriate social skills”, etc., Again, while these are excellent strategies, implementation fidelity is likely compromised without specifying exactly when staff should provide praise (e.g., “Provide John with a positive praise statement after each observed occurrence of his use of appropriate social skills during lunch.” or “Provide John with positive feedback at the end of each instructional period when he has met 4 of 5 of his behavioral targets.” or “Each staff member will take a few moments to greet John when he enters the classroom and provide him with positive feedback regarding his behavioral progress at the end of the class period.”). Nevertheless, despite having many positive recommendations listed in all BSPs reviewed, there was either limited or no evidence available to consistently monitor student progress in response to intervention and/or no data or documentation evident to validate that such strategies were implemented as planned and with adequate levels of fidelity.

### **Summary:**

Schools are expected to use FBAs proactively and to intervene early to prevent serious behavior problems. IDEA requires that a BSP based on FBA should be considered when developing the IEP if a student’s behavior interferes with his or her learning or the learning of classmates. The MDE determines that JPSS has denied FAPE by failing to comply with the requirements for developing and implementing IEPs, specifically by failing to consider positive behavior interventions and supports. Therefore, the MDE determines that JPSS is not compliant with 34 CFR 300.101, 300.320 through 300.324, and SBP 7219 §§ 300.101, and 300.320 through 300.324.

### **Corrective Action:**

1. JPSS shall provide targeted training for developing Behavior Support Plans that include: (a) specific and measurable goals/objectives for replacement behaviors that are linked to FBA, (b) current baseline performance of measureable target and/or replacement behaviors, (c) specific and detailed plan for how strategies/accommodations to increase/teach replacement behaviors will be delivered, (d) specific strategies for how, when, and what criteria are used

for reinforcing the occurrence of desired replacement behaviors, (e) specific strategies for how problem behaviors will be managed using alternative behavior reduction strategies that are not consistent with strategies that have proven to be ineffective (i.e., school removals), and (f) a clear and specific plan of exactly how compliance/fidelity will be monitored and who will be responsible for doing so.

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

2. JPSS must consider the provision of Psychological Services as Related Services provision to assist in developing positive behavioral intervention strategies.

**Timeline:** No later than 30 days from receipt of this Decision.

**3. JPSS' alleged systemic failure to meet and revise Petitioners' and other defined Class members' IEPs to address lack of academic/behavioral progress**

**Findings:**

The primary concern is related to the lack of evidence observed during file reviews of the use of meaningful data necessary for deciding whether meaningful behavioral and/or educational progress has occurred (i.e., both summative and formative evaluations). Without monitoring such data frequently, staff have no meaningful indication, other than observations of continued academic and/or behavioral failures, to even consider revising educational/behavioral programming. Such an approach is reactive, ineffective and, at least in part, substantiated by data to suggest that the majority of the students reviewed continue to have consistent patterns of academic and/or behavioral concerns over time. (Also see Findings for C above, on pages 10-11.)

**Summary:**

The MDE determines that JPSS has denied FAPE by failing to comply with the requirements for developing and implementing IEPs, specifically by failing to convene IEP Committee meetings and revise Petitioners' and other defined Class members' IEPs to address a lack of academic/behavioral progress. Therefore, the MDE determines that JPSS is not compliant with 34 CFR 300.101, 300.320 through 300.324, and SBP 7219 §§ 300.101, and 300.320 through 300.324.

**Corrective Action:**

1. JPSS shall develop and implement policies and procedures to ensure that EES staff, along with general education (inclusion) staff, review data each grading period to document whether students are on target for meeting their measurable annual goals (behavioral and/or

academic). Such a review shall take into account data related to progress monitoring, curriculum assessments, formative/summative evaluations, and implementation fidelity data. Such procedures shall provide for ongoing documentation of such reviews, and be maintained in student IEP files. Finally, JPSS will develop strategies to ensure that staff document the strategies and accommodations and/or methods of differentiation afforded the student during any grading period where academic failure occurs.

**Timeline:** No later than 60 days from receipt of this Decision.

**G. JPSS Has Failed to Provide Educational Services in the Least Restrictive Environment (34 CFR 300.101, 300.114, and SBP 7219 §§ 300.101, and 300.114)**

**Findings:**

Based on the student discipline records for the Petitioners and Similarly Situated Students that were provided by JPSS' Director of EES, it is important to note that 178/663 (27%) of all students placed in CCAS were students with disabilities. Further, of the total number of students with disabilities placed in CCAS, 52/178 (29%) were students identified as having an Emotional Disability. In addition, it is also important to note that of the total number of students in the district classified as having an Emotional Disability, 52/169 (31%) were placed in CCAS during the 2009-2010 school term. When considering that only 1.6% (485 of approximately 30,000) of students in general education were placed in the district's alternative setting, these data indicate that disparity exists in identified Class members being disproportionately placed in more restrictive settings.

Also, of the six Petitioners' cases reviewed, 3/6 (50%) cases were placed at CCAS during the 2009-2010 school term. Of the three Petitioners that were placed at CCAS, two were identified as having an Emotional Disability and one was classified as Other Health Impaired, with a specific diagnosis of Attention-Deficit/Hyperactivity Disorder. Due to the nature of emotional and behavioral disabilities, the need for Related Services, behavioral supports and supplemental and/or intensive academic remediation are vital components of individualized educational programming for students with disabilities to minimize the need for restrictive placements. Therefore, as previously mentioned in several sections, JPSS has failed to address the ongoing pattern of behavioral and/or emotional concerns of the student cases reviewed through meaningful and direct Related Services provisions, implementing FBA/BSP procedures with fidelity, and/or providing direct and intensive academic skill remediation to increase the likelihood of students realizing success in the least restrictive environment. (Also see Findings for A., B., C., D. and E. above, on pages 3 and 6-14.)

**Summary:**

After carefully reviewing all available data, the MDE determines that JPSS denied a FAPE to the Petitioners as evidenced by their failure to provide appropriate levels of supports

necessary for ensuring services in the students' LRE. Therefore, the MDE determines that JPSS is not compliant with 34 CFR 300.101, 300.114, and SBP 7219 §§ 300.101, and 300.114.

**Corrective Action:**

1. JPSS shall develop and implement policies and procedures for ensuring that all students with disabilities enrolled in JPSS who are currently classified as (a) having an Emotional Disability and (b) any student with a disability who has received more than ten days of school removals during the 2009-2010 school term are provided with appropriate Related Services necessary for adequately meeting their unique behavioral and/or emotional needs.

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

2. JPSS shall develop a roster of students meeting the above-mentioned criteria for receiving Related Services

**Timeline:** No later than 15 days from receipt of this Decision.

**Corrective Action:**

3. JPSS shall begin implementation of Related Services provisions for students meeting the above-mentioned criteria.

**Timeline:** No later than 30 days from the receipt of this Decision.

**Corrective Action:**

4. JPSS shall develop and implement procedures for gathering data necessary for accurately monitoring a student's behavioral progress toward meeting annual IEP goals (behavioral/emotional/social goals) and/or objectives for making data-based decisions as to whether to increase or reduce the amount of Related Services needed throughout the school term (consistently completed Daily Student Behavior Rating Forms, etc).

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

5. JPSS shall implement consistent, district-wide behavioral monitoring procedures.

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

6. JPSS shall assess at the end of each grading period, the status of behavioral support implementation and progress toward achieving annual IEP goals (behavioral) for students deemed in need of specific Related Services.

**Timeline:** At the end of the first grading period after Related Services provisions have been implemented as described above.

**Corrective Action:**

7. JPSS shall provide all school administrators who deliver disciplinary dispositions with targeted training on current IDEA policies and procedures as related to discipline practices used with students with disabilities.

**Timelines:**

- a. JPSS shall initially arrange for and/or provide IDEA discipline training for school administrators no later than 60 days from the receipt of this Decision.
- b. JPSS shall arrange for and/or provide on an on-going basis, annual IDEA discipline training.
- c. JPSS shall arrange for and/or provide continuing IDEA discipline training on an annual basis for new administrators.

**Corrective Action:**

8. JPSS shall provide targeted training for conducting FBAs to ensure that IEP Committees address the various situational, environmental, and behavioral circumstances for individual students.

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

9. JPSS shall provide targeted training for developing Behavior Support Plans that include: (a) specific and measurable goals for replacement behaviors that are linked to FBAs, (b) current baseline performance of measureable target and/or replacement behaviors, (c) specific and detailed plan for how strategies/accommodations to increase/teach replacement behaviors will be delivered, (d) specific strategies for how, when, and what criteria are used for reinforcing the occurrence of desired replacement behaviors, (e) specific strategies for how problem behaviors will be managed using alternative behavior reduction strategies that are not consistent with strategies that have proven to be ineffective (i.e., school removals), and



(f) a clear and specific plan of exactly how compliance/fidelity will be monitored and who will be responsible for doing so.

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

10. JPSS shall develop and implement strategies for consistently monitoring student behavioral progress daily while also maintaining a graphic display of data indicating progress or lack thereof. This will allow staff to make more accurate data-based decisions based on objective and quantifiable data.

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

11. JPSS shall develop and implement written strategies and protocols for monitoring and ensuring that all student BSPs are implemented with fidelity.

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

12. JPSS shall develop and implement procedures and strategies for consistently gathering sensitive data needed for measuring ongoing academic and behavioral growth. Such a plan shall include, in addition to any current measures (e.g., STAR), curriculum-based measures that are sensitive to small changes in academic growth and allow for repeated measurement. Similarly, as previously noted, such a plan shall include strategies to ensure that behavioral data (e.g., Daily Behavior Ratings/disciplinary removals) are consistently gathered, aggregated, and summarized graphically.

**Timeline:** No later than 60 days from receipt of this Decision.

**Corrective Action:**

13. JPSS shall develop and implement written strategies for identifying any student with a disability who failed one or more academic subjects during the 2009-2010 school term and/or any student with a disability who is failing one or more academic subject(s) during the current and future school terms and conduct subsequent curriculum-based assessments in Reading, Mathematics, and/or Writing to determine each student's current functioning levels as compared to local, state, and/or national norms.

**Timelines:**

- a. JPSS shall develop a roster of students with a disability meeting the above-mentioned criteria no later than 15 days from the receipt of this Decision.

- b. JPSS shall implement ongoing curriculum-based assessments in Reading, Mathematics, and/or Writing to monitor progress (i.e., present and past levels of functioning) for each grading period for students who meet the above criteria.

**H. JPSS Has Failed to Provide Appropriate Transition Plans for Students with Disabilities (34 CFR 300.101, 300.320 through 300.324 and SBP 7219 §§ 300.101, 300.320 through 300.324)**

**Findings:**

A review of the Petitioners' case files revealed that in 100% of cases, there were insufficient and/or non-meaningful transition plans evident in student IEPs that would predict a clear course of action necessary for successful school to work/community transitions. Although transition statements/plans were indicated, these strategies generally consisted of a few short statements related to what the student "wished to do" when exiting high school with little or no details specifically describing how such outcomes would be actively pursued and listing the specific steps and supports that would be required. Similarly, in a review of similarly situated Class members, only 2/17 (12%) students had documented transition plans that were detailed enough to lead to meaningful post-school outcomes.

JPSS, in its response dated October 4, 2010, acknowledged the need to provide more professional development in the area of transition and has agreed to provide professional development to relevant personnel in this area.

**Summary:**

After carefully reviewing case files, the MDE determines that JPSS failed to provide a FAPE to Petitioners as evidenced by their failure to provide for adequate and meaningful transition planning and supports. Therefore, the MDE determines that JPSS is not compliant with 34 CFR 300.101, 300.320 through 300.324, and SBP 7219 §§ 300.101, 300.320 through 300.324.

**Corrective Actions:**

1. JPSS shall develop and implement specific strategies and procedures for ensuring that all students with disabilities enrolled in JPSS have written transition plans beginning no later than the first IEP to be in effect when the child turns fourteen (14), or younger, if determined appropriate by the IEP Committee.
2. JPSS shall ensure that all transition plans are written to include appropriate, measurable, post-secondary goals based upon age appropriate transition assessments related to training, education, and employment, and where appropriate, independent living skills. Transition plans must also include the transition services (courses of study) needed to assist the student in reaching these goals.

**Timelines:**

- a. JPSS will develop systematic procedures for developing transition plans and services no later than 30 days from the receipt of this Decision.
- b. JPSS shall arrange for and/or provide training on the development of transition plans as outlined by MDE/OSE policies for all members of the EES staff, no later than 60 days from the receipt of this Decision.
- c. JPSS shall develop appropriate transition plans for all eligible students no later than 90 days from the receipt of this Decision.

**I. JPSS Has Failed to Appropriately Identify and Provide Individualized Extended School Year Services to Eligible Students (34 CFR 300.101, 300.106, SBP 7219 §§ 300.101, and 300.106, and SBP 7212)****Findings:**

According to MDE/OSE policies regarding eligibility for ESY, a student receiving IDEA services must be evaluated on each of the following criteria to determine eligibility for ESY: Regression-Recoupment; Critical Point of Instruction and Extenuating Circumstances. In order to make ESY eligibility determinations as outlined by SBP 7212 and the MDE ESY Handbook, all decisions should be based on all relevant data. As mentioned earlier, JPSS has failed to consistently provide data that allows for the monitoring of students' progress toward behavioral and academic goals for the Petitioners and Similarity Situated Students. Therefore, due to a lack of consistent practices of gathering pertinent and meaningful data necessary for monitoring the academic and behavior progress of the students, JPSS has not appropriately evaluated the need for ESY which may lead to a lack of services provided by JPSS.

It was also noted that for the 2009-2010 school term, twenty-two students who had an Emotional Disability received ESY services. Eleven of the twenty-two (50%) students who received ESY services, received these services in a private, residential, psychiatric facility.

**Summary:**

After carefully reviewing all available data, the MDE determines that JPSS denied a FAPE to the Petitioners as evidenced by their failure to consistently gather pertinent data necessary for accurately determining the need for ESY and/or failure to provide ESY services. This is particularly the case when considering the overall lack of documented intensive behavioral and/or academic supports afforded. Therefore, the MDE determines that JPSS is not compliant with 34 CFR 300.101, 300.106, SBP 7219 §§ 300.101, and 300.106, and SBP 7212.

**Corrective Actions:**

1. JPSS shall develop and implement specific strategies and procedures for determining eligibility for ESY services for all students with disabilities enrolled in JPSS by documenting the use of objective and quantifiable data (i.e., ODR's, suspension rates, on-going behavior progress monitoring, current skill levels, on-going academic progress monitoring data, current academic grades, and curriculum-based measures).
2. JPSS shall ensure that ESY qualifying criteria are utilized in making ESY determinations in accordance with MDE ESY Standards adopted by the Mississippi State Board of Education (Extended School Year Handbook (September 2003)). Specifically, ESY eligibility determinations must be made by IEP Committees, by examining and utilizing data to assess a student's need for ESY services based upon the eligibility criteria for Regression-Recoupment, Critical Point of Instruction and Extenuating Circumstances.

**Timelines:**

- a. JPSS will develop and implement systematic procedures and written protocols for ESY determination and services, no later than 60 days from the receipt of the above training.
- b. JPSS shall arrange for and/or provide training on ESY guidelines as outlined by MDE/OSE policies for all members of the EES staff, no later than 90 days from the receipt of this Decision.

**J. Class Remedies for R.B., Rd.B., and Ra.B.,:**

Specific to the complaint filed on behalf of R.B., Rd.B., Ra.B., and a Class of students with disabilities who transfer into JPSS from in-state and/or out-of-state school districts, JPSS has agreed that it failed to timely rule R.B., Rd.B., and Ra.B., eligible for special education services when they reenrolled in JPSS from Georgia. JPSS further agreed that some remedy is in order since the District failed to timely rule these three Petitioners eligible for special education services.

In its October 4, 2010 response, JPSS agreed to the following remedies to resolve this complaint:

1. Provide compensatory services for Petitioners for missed/lost instructional time.
2. Provide compensatory services for any IDEA eligible student who transferred into the JPSS from an in-state or out-of-state school district during the 2009-2010 school term with an IEP in effect who did not receive the same or comparable IDEA services within 14 days of enrolling into the JPSS.

3. Develop and implement specific written policies and procedures whereby the JPSS will contact the student's previous school district within three days of enrollment to request all IDEA records, including IEP, evaluations, FBAs/BSPs, and discipline records and obtaining such IDEA records within 14 days.
4. Develop and implement specific written policies and procedures for providing FAPE to any IDEA eligible student who transfers from an out-of-state or in-state school district, including the same or comparable IEP services previously provided until an evaluation can be conducted and a new IEP developed.

**Corrective Action:**

1. JPSS shall develop a roster of IDEA eligible students who transferred into the JPSS from an in-state or out-of-state school district during the 2009-2010 school term with an IEP in effect who did not receive the same or comparable IDEA services within 14 days of enrolling into the JPSS.

**Timeline:** No later than 15 days from receipt of this Decision.

**Corrective Action:**

2. JPSS shall provide compensatory services for Petitioners for missed/lost instructional time.

**Timeline:** No later than 30 days from receipt of this Decision.

**Corrective Action:**

3. JPSS shall provide compensatory services for any IDEA eligible student who transferred into the district from an in-state or out-of-state school district during the 2009-2010 school term with an IEP in effect who did not receive the same or comparable IDEA services within 14 days of enrolling into the JPSS.

**Timeline:** No later than 30 days from receipt of this Decision.

**Corrective Action:**

4. JPSS shall develop and implement specific written policies and procedures whereby the district will contact the student's previous school district within three days of enrollment to request all IDEA records, including IEP, evaluations, FBAs/BSPs, and discipline records and obtaining such IDEA records within 14 days.

**Timeline:** No later than 30 days from receipt of this Decision.

**Corrective Action:**

5. JPSS shall develop and implement specific written policies and procedures for providing FAPE to any IDEA eligible student who transfers from an out-of-state or in-state school district, including the same or comparable IEP services previously provided until an evaluation can be conducted and a new IEP developed.

**Timeline:** No later than 30 days from receipt of this Decision.