

Legal Aid of North Carolina, Inc.

ADVOCATES FOR CHILDREN'S SERVICES

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Via U.S. Mail and email (sherry.thomas@dpi.nc.gov and state_ec_complaints@dpi.nc.gov)
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NC Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-6356

Re: Formal Systemic State Complaint filed against Guilford County Schools

To Whom It May Concern:

Please consider this a Formal Systemic State Complaint filed on behalf of two students with mental health disabilities and related behavior needs who have experienced a complete deprivation of appropriate supports and protections while incarcerated in adult jails. Both student complainants have experienced significant violations of their special education rights. Guilford County Schools (hereinafter referred to as "GCS") has violated the named students' rights by failing to provide them with special education services while those students were incarcerated. These actions in violation of the Individuals with Disabilities Education Act ("IDEA") and corresponding federal regulations and state laws, regulations, and policies have deprived the named students of a free appropriate public education ("FAPE") in the least restrictive environment ("LRE").

The violations alleged against GCS are systemic in nature and are raised together in this complaint because we believe, due to the similarity of the violations, that they are indicative of a statewide failure of school districts to serve incarcerated students with disabilities in accordance with requirements under the IDEA. Individual remedies alone are insufficient to ensure that these and other GCS students, as well as other students with disabilities across the state are not treated in the same manner in the future.

INTRODUCTION

In *Brown v. Board of Education*, the Supreme Court stated, "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."¹ For incarcerated youth, the denial of access to education deprives our most vulnerable children whose lives have lacked opportunity in a multitude of ways. The stakes are especially high for incarcerated youth. The link between education and reduced recidivism rates is well-established

¹ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

"The test of the morality of a society is what it does for its children." -Dietrich Bonhoeffer



A United Way Agency



in research.² When we fail to educate these youth, we return them to their communities without the knowledge that will allow them to function in society. In essence, we thwart their opportunity for rehabilitation and commit them to failure.

The population of incarcerated juveniles is disproportionately poor and minority. It also includes a staggering, disproportionate number of youth with mental and behavioral health disabilities.³ In North Carolina, among boys incarcerated in Youth Detention Centers, 89 percent have been diagnosed with disruptive, impulse-control and conduct disorders, 69 percent have been diagnosed with neurodevelopmental disorders, 55 percent have been diagnosed with substance-related and addictive disorders, 40 percent have been diagnosed with trauma and stressor related disorders, and 24 percent have been diagnosed with depressive disorders.⁴ These figures are equally striking for girls.⁵ Given the high prevalence of these disabilities in the population of incarcerated youth, they are the exact population the IDEA was intended to provide for. The IDEA and its predecessor laws were passed in large part to limit the deprivation of a FAPE for students with mental health and behavior disabilities. Referring to the IDEA's predecessor law, the Supreme Court of the United States stated: "Among the most poorly served of disabled students were emotionally disturbed children: Congressional statistics revealed that for the school year immediately preceding passage of the Act, the educational needs of 82 percent of all children with emotional disabilities went unmet."⁶

The failure to provide incarcerated youth with the educational services to which they are entitled is a longstanding problem of national proportions.⁷ Fortunately, this problem has not gone entirely unnoticed. One source which compiled a list of some of the lawsuits filed between 1975 to 2005 found that plaintiffs have filed over 30 class action lawsuits under the IDEA challenging deficiencies in educational services provided to incarcerated students with

² Katherine Twomey, *The Right to Education in Juvenile Detention Under State Constitutions*, Vol. 94 Virginia Law Review, 765, May 2, 2008.

³ Katherine Twomey, *The Right to Education in Juvenile Detention Under State Constitutions*, Vol. 94 Virginia Law Review, 765, May 2, 2008.

⁴ *NC DPS Juvenile Justice Section 2018 Annual Report*, North Carolina Department of Public Safety, <https://www.ncdps.gov/documents/juvenile-justice-section-2018-annual-report> (accessed April 29, 2020).

⁵ In North Carolina, among girls incarcerated in Youth Detention Centers, 93 percent have been diagnosed with disruptive, impulse-control and conduct disorders, 73 percent have been diagnosed with neurodevelopmental disorders, 47 percent have been diagnosed with substance-related and addictive disorders, 80 percent have been diagnosed with trauma and stressor related disorders, and 60 percent have been diagnosed with depressive disorders. See *NC DPS Juvenile Justice Section 2018 Annual Report*, North Carolina Department of Public Safety, <https://www.ncdps.gov/documents/juvenile-justice-section-2018-annual-report> (accessed April 29, 2020).

⁶ *Honig v. Doe*, 484 U.S. 305, 309 (1988).

⁷ See United States Department of Education, Office of Special Education and Rehabilitative Services, Dear Colleague Letter on Students with Disabilities in Correctional Facilities (Dec 5, 2014). See also The Atlantic, *The Education Problem in Juvenile Detention Centers* (December 24, 2017), <https://www.theatlantic.com/politics/archive/2017/12/juvenile-solitary-confinement/548933/> (accessed May 7, 2020).

disabilities.⁸ Some of those listed were filed in North Carolina. Some more recent cases have elicited the involvement of the federal government. The United States has filed a Statement of Interest in some of the cases which included allegations that incarcerated youth were not receiving educational services that should have been provided to them under the IDEA.⁹

In North Carolina, with regard to their education, the most neglected of juveniles reside in adult correctional facilities. As outlined using the examples in this complaint, these juveniles typically receive no education. Though the number of juveniles in adult facilities has been reduced considerably due to recently enacted legislation, some still remain, and more will continue to enter these facilities. Prior to the 2019 implementation of the “Raise the Age” legislation, juveniles sixteen years and older were automatically transferred to adult criminal court and the adult correctional system. The recently enacted legislation raised the age of juvenile jurisdiction from 16 to 18, but with some exceptions.¹⁰ Little data exists on the current size of the population of children still housed in adult jails. What is clearer is that these children are valuable members of society who not only deserve an education, but are legally entitled to one.

NC Policies Governing Services for Children with Disabilities (“NC Policies”) 1501-1.1(d) requires a District to provide FAPE to students with disabilities incarcerated in local jails who were eligible for FAPE prior to their incarceration. In general, a FAPE must be available to all children with a disability residing in the State between the ages of three through 21, including children with disabilities who have been suspended or expelled from school.¹¹ No exception is made for children who are being educated in state operated adult correctional facilities. In fact, the law specifically states that special education provisions “apply to all public agencies within the State that are involved in the education of children with disabilities, including: (iv) state and local juvenile and adult correctional facilities.”¹² These laws are binding on the public agency regardless of whether that agency is receiving funds under Part B of the IDEA.¹³ The requirements in 34 CFR §300.2(b)(1)(iv) and (2) and 34 CFR §300.154 govern the

⁸ National Center on Education, Disability and Juvenile Justice, *Class Action Litigation Involving Special Education for Youth in Juvenile and Adult Correctional Facilities* (2005), <http://www.edjj.org/Litigation/> (accessed April 28, 2020).

⁹ See Statement of Interest for the United States, *G.F. v. Contra Costa County*, No. 3:13-cv-03667-MEJ (N.D. Cal.) (filed Feb. 13, 2014). See also Statement of Interest for the United States, *H.C v. Bradshaw*, No. 9:18-cv-80810-WPD (F.L.S.D) (filed Oct. 1, 2018)

¹⁰ The “Raise the Age” legislation that went into effect on Dec. 1, 2019, mandated that all criminal cases for juveniles up to age 18 will begin in juvenile court. However, for Class A-G felony complaints, transfer to adult (superior) court is mandatory upon notice of an indictment, or a finding of probable cause after notice and a hearing; For Class H or I felonies, any transfer to adult (superior) court requires a transfer hearing. Moreover, emancipated and married juveniles are excluded from juvenile jurisdiction. Finally, all G.S. Chapter 20 motor vehicle offenses committed by 16 and 17 year olds are entirely excluded from the “Raise the Age” legislation. Those offenses are still automatically transferred to adult court and the adult correctional system. *Raise the Age- NC*, North Carolina Department of Public Safety, <https://www.ncdps.gov/our-organization/juvenile-justice/key-initiatives/raise-age-nc> (accessed April 28, 2020).

¹¹ 20 U.S.C. 1412(a)(I)(A); 34 CFR 300.101; NC Gen. Stat. §115C-107.1; NC Policy 1501-1.1.

¹² See NC Policy 1500-1.2(b); See also 34 CFR 300.2(b).

¹³ *Id.*

responsibilities of noneducational public agencies for the education of students with disabilities in correctional facilities.

Federal law makes clear that incarcerated students have a right to access education.¹⁴ As the U.S. Department of Education’s Office of Special Education and Rehabilitative Services stated in 2014, “the fact that a student has been charged with or convicted of a crime does not diminish his or her substantive rights or the procedural safeguards and remedies provided under the Individuals with Disabilities Education Act (IDEA) to students with disabilities and their parents.”

FACTS

Student 1, Guilford County Schools

STUDENT 1 is an X-year-old African American student with mental health disabilities. He has received special education services under the IDEA since 2011. His area of eligibility is Serious Emotional Disability (“SED”).

STUDENT 1 has a tumultuous family history. His exposures to domestic violence, adult alcohol/substance abuse, parental mental illness, neglect and impoverishment have resulted in significant behavioral and mental health issues. STUDENT 1 spent much of his childhood and adolescence in foster care. Over the years, STUDENT 1 has been diagnosed with the following medical and mental health conditions: Central Processing Disorder, Attention Deficit Hyperactivity Disorder, Adjustment Disorder, Intermittent Explosive Disorder, Anxiety, Oppositional Defiant Disorder, and other specified trauma and stressor disorders. His diagnoses resulted in him being prescribed medication to manage depression, anxiety, impulsive behavior, and sleep disorder.

Eleventh Grade: 2018-2019 School Year

STUDENT 1’s IEP Team met for an Annual Review of his IEP in the Winter of 2018. According to the Prior Written Notice, the Team decided to update the IEP goals, create transition goals, present levels of performance and behavioral support needs. The IEP team updated STUDENT 1’s reading comprehension and math computation present levels of performance and annual IEP goals. In addition, the team found that STUDENT 1 needed to continue special education services and decided that a BIP was not necessary at that time because STUDENT 1 demonstrated positive interactions with school staff and students and had no major incidents since enrolling at the high school at the beginning of the year.

His IEP contained goals related to reading comprehension, math, and staff interactions:

- Given a grade level reading passage, STUDENT 1 will be able to answer 60% of the comprehension questions accurately, 2 out of 3 trials.

¹⁴ 20 U.S.C. 1412(a)(I)(A); 34 CFR 300.101; NC Gen. Stat. §115C-107.1; NC Policy 1501-1.1.

- Given 10 quadratic polynomials, STUDENT 1 will be able to factor them completely using the greatest common factor and slide and divide methods as a 60% accuracy, 2 out of 3 trials.
- STUDENT 1 will have positive interactions with school staff at a 90% accuracy, 2 out of 3 trials.

In order to ensure STUDENT 1 could reach his IEP goals and make progress in the general curriculum, his IEP determined that he needed to be served in the special education resource classroom for Math and English. In that setting, he was found to require 80-minutes of direct special education instruction on a near-daily basis.¹⁵ He also required periodic check-ins with behavioral support staff. He required extended time on all his assignment, tests, and quizzes; twice the allotted time to complete assigned tasks; read aloud assistance by request; a separate setting for quizzes and tests; and preferential seating.

In the Spring of 2019, STUDENT 1 was suspended for an incident that happened at school. STUDENT 1 received criminal charges as a result of this incident. As a result, in the Spring of 2019, STUDENT 1 was incarcerated at Guilford County's Detention Center A. STUDENT 1's Manifestation Determination Review meeting took place at his school in the Spring of 2019. The IEP Team noted that, at the time of the incident, STUDENT 1 did not have a BIP in place, but did not take steps to create one or otherwise update his IEP. Further, his Team did not discuss how he would be provided services while incarcerated.

STUDENT 1's incarceration lasted until the Summer of 2019. While incarcerated, STUDENT 1 did not receive any instructional services – special education or regular education. According to STUDENT 1, a GCS staff member came to the detention center and dropped off a packet approximately three times. Despite STUDENT 1 informing the GCS staff member that he did not understand the work and needed help, no instructions were given. In addition, no feedback, quizzes or tests were given to measure progress.

STUDENT 1's IEP, which remained in effect at that time, indicated that he required near-daily, 80-minute sessions of special education services to be able to make progress on his IEP goals and in the regular curriculum. His IEP also indicated that he required numerous accommodations, including extended time on all his assignments, tests, and quizzes; twice the allotted time to complete assigned tasks; read aloud assistance by request; a separate setting for quizzes and tests; and preferential seating. None of these special education services or accommodations were afforded. Further, STUDENT 1's IEP Team never reconvened to address the fact that no services were being provided and ABC County Department of Social Services, STUDENT 1's guardian, was never provided with written notice informing them that STUDENT 1 would not receive special education services while incarcerated.

STUDENT 1 was released from Detention Center A unexpectedly in the Summer of 2019 without being given any instructions on how to re-enroll in school or access FAPE in an

¹⁵ STUDENT 1's IEP indicated that he required 160 sessions of these 80-minute special education services per year.

alternative school setting. He was placed in an emergency therapeutic placement for a few weeks following his release. He was then moved to a therapeutic foster home in XYZville for a couple of weeks, before being transferred to a regular foster home. Throughout that time, STUDENT 1 continuously expressed his desire to continue his education, but wasn't given any information on how to reenroll after his release. Education was and still is very important to him and he was willing to do what needed to be done to achieve his goal of graduating high school. STUDENT 1 was later transferred to an independent living facility where he currently resides. At the time of this complaint, STUDENT 1 is attending ABC School and is working hard to overcome the deficits he accrued while he was denied an education at Detention Center A.

Student 2, Guilford County Schools

STUDENT 2 is an X-year-old Latino student with Mental Health Disabilities. He has been diagnosed with Borderline Personality Disorder, Conduct Disorder, Unspecified Depressive Disorder, Unspecified Anxiety Disorder, and uncontrolled Diabetes Type I. Both his uncontrolled diabetes and mental health conditions have resulted in numerous hospitalizations. Some of these hospitalizations resulted from suicide attempts. STUDENT 2's area of eligibility is "Other Health Impairment" (OHI).

STUDENT 2's upbringing has been plagued with challenges. In addition to the challenges presented by his diagnoses, STUDENT 2's family experienced severe domestic violence. At school, he was bullied constantly because other students thought he was "weird." He was pushed against lockers, teased, and laughed at. He would eat lunch alone and sneak into classes just before the bell rang in order to avoid other students.

Twelfth Grade: 2018-2019 School Year

In twelfth grade, STUDENT 2 attended ABC High School. In the Fall of 2018, STUDENT 2's school held an Annual Review of his IEP. At that time, STUDENT 2 was in the Occupational Course of Study program. He was taking CTE classes and a Career Training Class. Due to the significant nature of his disabilities, STUDENT 2's IEP Team determined that he required 4 sessions per day of special education at 90 minutes per session, for a total of 6 hours of direct special education instruction each day. While his IEP notes that they placed him in a resource setting, his Prior Written Notice states that his educational placement "continues to be separate." Another odd addition to his Prior Written Notice was that although he had not yet been suspended, it states, "Conduct is NOT a manifestation of his disability."

STUDENT 2's IEP included goals related to math, reading comprehension, and functional skills:

- Given complex word problems with real-world applications requiring multiple steps/operations (addition, subtraction, multiplication, division, percents, decimals), STUDENT 2 will solve problems with 80% accuracy in 4 out of 5 trials.

- Given literature on his instructional level, STUDENT 2 will make inferences, draw conclusions and use the content of the passage to determine the meaning of unfamiliar words with 80% accuracy during 4 out of 5 work sessions.
- When given a form requesting personal data or requested information, STUDENT 2 will independently read the form and legibly write the correct data with fewer than 2 errors per assignment.
- Given a schedule of daily work task, STUDENT 2 will independently complete the task accurately without not being where he's suppose(sic) to be or rushing through the non-preferred task to get a preferred task 4 of 5 days.

In the Fall of 2018, shortly after his annual review, STUDENT 2 violated the code of student conduct and was suspended for the remainder of the school year. The next day, he was arrested and taken into custody at Detention Center B.

In the Fall of 2018, STUDENT 2 was withdrawn from ABC High School and enrolled at the XYZ Alternative Learning program. This program is intended to provide suspended students with the opportunity to continue their education off-campus. Per STUDENT 2, he was later told that he could not attend this program.

In the Fall of 2018, a manifestation determination review was held at the jail. The team determined that his conduct was not a manifestation of his disability. According to the minutes for this meeting, the team "provided work to STUDENT 2" and he "signed a receipt of work." There is no such document in his school records. Due to "the unique situation," STUDENT 2's parents were "not allowed in the secured facility per the facility officials." However, the school had no apparent problem securing and accessing a space to meet with STUDENT 2 to conduct a manifestation determination review. During the IEP meeting, no changes were made to STUDENT 2's IEP. Instead, it continued to reflect that he required 6 hours of special education services each day.

Even though GCS was aware and had clearly documented that STUDENT 2 required a significant amount of special education services in order to access FAPE, for the duration of STUDENT 2's time in jail, he received only one packet of work and no instructional services whatsoever. No one followed up with him to provide instruction, feedback, or tests to measure progress. No one reached out to STUDENT 2 or his parents to discuss the implementation of his IEP or any other effort to help him reach his academic or career goals. In early Winter of 2018, counsel for STUDENT 2 contacted the school district's attorney regarding the provision of educational services while STUDENT 2 was in jail. The school district blamed the Sheriff's Office for not allowing access to the facility, although the school had no trouble meeting with STUDENT 2 to conduct the Fall of 2018 manifestation determination review. Even though his IEP remained in effect and required that he receive 6 hours of special education services each day, STUDENT 2 continued to sit in jail with no educational services whatsoever.

In the Winter of 2018, STUDENT 2's father bailed him out of jail. After STUDENT 2 was released, he and his family received no communication from the school regarding his education or how to reenroll in school.

In the Spring of 2019, STUDENT 2 returned to jail. His father had revoked bail from the first time he was incarcerated. Yet again, he received no education while incarcerated and no one attempted to reach out to him or his family regarding his education. He was released from jail in the Summer of 2019, having had no access to any form of education and without being provided any instructions on how to re-enroll in school.

VIOLATIONS

The facts outlined above give rise to several violations of the IDEA and corresponding federal regulations and state laws, regulations, and policies.

1. GCS failed to provide FAPE and related procedural safeguards to STUDENT 1 and STUDENT 2 while those students were incarcerated in detention centers within their district.

The Individuals with Disabilities Education Act ("IDEA") requires "that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living."¹⁶ A free appropriate public education ("FAPE") is defined as including "special education and related services that— (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 1414(d) of this title."¹⁷

While incarceration presents unique challenges for students, this event does not alter the law's fundamental guarantee of FAPE for students with disabilities. Federal law makes clear that students who are incarcerated retain their right to access special education.¹⁸ The U.S. Department of Education has issued guidance on educating students who are incarcerated.¹⁹ As the Department's Office of Special Education and Rehabilitative Services stated in 2014, "the fact that a student has been charged with or convicted of a crime does not diminish his or her substantive rights or the procedural safeguards and remedies provided under the Individuals with Disabilities Education Act (IDEA) to students with disabilities and their parents."²⁰ "Absent a

¹⁶ 20 U.S.C. § 1400(d)(1)(A).

¹⁷ 20 USC § 1401(9).

¹⁸ 20 U.S.C. 1412(a)(I)(A); 34 CFR 300.101; NC. Gen. Stat. § I 15C-107.1; NC Policy 1501-1.1.

¹⁹ U.S. Department of Education Office of Special Education and Rehabilitative Services, Dear Colleague Letter, (December 5, 2014)

²⁰ *Id.*

specific exception, all IDEA protections apply to students with disabilities in correctional facilities and their parents.”²¹

- a) *GCS had an ongoing responsibility to afford FAPE to STUDENT 1 and STUDENT 2 while the two students remained incarcerated. GCS has summarily failed to afford FAPE by failing to provide any of the services included in the students’ IEPs or offering them meaningful access to the general curriculum.*

Incorporating well-settled federal requirements into North Carolina policy, the North Carolina Policies Governing Services for Children with Disabilities (“NC Policy”) make clear that “each LEA must ensure that FAPE is available to students with disabilities incarcerated in local jail who were eligible prior to their incarceration.”²² A FAPE must be available to all children with a disability residing in the State between the ages of three through 21, including children with disabilities who have been suspended or expelled from school.²³ No exception is made for children who are being educated in local adult correctional facilities.

STUDENT 1 and STUDENT 2 both had IEPs prior to incarceration. Further, at the time of their incarceration, neither of the students were over the age of twenty-one. Accordingly, both were entitled to be receiving FAPE during their incarceration. Specifically, as outlined in NC Policy 1501-1.1(d), GCS had an ongoing duty to provide FAPE to STUDENT 1 and STUDENT 2 while they were incarcerated in Detention Center A and Detention Center B.

Despite the clear responsibilities of their LEAs, while STUDENT 1 and STUDENT 2 remained incarcerated, they were summarily deprived of the special education services outlined in their respective IEPs and to meaningful access to the general education curriculum.

STUDENT 1 received only general packets of schoolwork with no instructions from GCS while incarcerated for two months. He was not provided with any instruction to accompany the work packets nor was he provided feedback on any work he completed. The dissemination of packets of work, without accompanying instruction or feedback, does not meet state standards. Further, even though STUDENT 1’s IEP indicated that he required 80 minutes of specialized instruction in Math and in English on a near-daily basis,²⁴ he received no special education services whatsoever. At no point was he provided with any special education services related to his IEP goals. As a result, his denial of FAPE was a summary deprivation.

STUDENT 2 received a single general packet of schoolwork from GCS when he was incarcerated in the Fall of 2018 and no schoolwork when he was incarcerated between the Spring and Summer of 2019. He was not provided with any instruction to accompany the lone work packet nor was he provided feedback on any work he completed. Even though his IEP indicated

²¹ *Id.*

²² NC Policy NC 1501-1.1(d)

²³ 20 U.S.C. 1412(a)(I)(A); 34 CFR 300.101; NC. Gen. Stat. § I 15C-107.1; NC Policy 1501-1.1.

²⁴ STUDENT 1’s IEP indicated that he was to receive 80-minute sessions of specialized instruction 160 times per year.

that he required 6 hours of special education services and numerous accommodations in order to access a FAPE, STUDENT 2 was provided with no instruction whatsoever while incarcerated. As a result, his denial of FAPE was a summary deprivation.

- b) *GCS failed to convene IEP meetings and provide prior written notice to STUDENT 1 and STUDENT 2 before dramatically altering the provision of FAPE to those students.*

A responsible public agency generally must convene an IEP meeting to develop an IEP at the beginning of the period of detention. While a district can change a student's placement without conducting an IEP meeting if the same programming is to be provided in the new setting, the likelihood that an IEP designed for another setting can be implemented in a full detention setting is so small that an IEP Team meeting should almost always be held to ensure the IEP is properly reviewed and revised.

A properly constituted IEP Team must in turn include, at a minimum, the parent, the student's regular education teacher, the student's special education teacher, and an LEA representative.²⁵

As is the case for any student, an incarcerated students' IEP Team must provide written notice of all decisions made pertaining to the student's IEP and the provision of special education services.²⁶ If services under the students' IEPs are changed or modified, federal and state law require that an IEP meeting be held. Federal regulations and North Carolina policies further require that parents receive formal written notice prior to changing "the provision of FAPE to the child."²⁷ This written notice must include key components that enable a parent to understand why changes were made to their students' special education services and to understand how and by when they can challenge any changes made to their student's special education services.²⁸

Even though GCS had a duty to provide STUDENT 1 and STUDENT 2 with the specially designed instruction that was included in their IEPs, neither of the students received instruction of any kind, much less the specially designed instruction included in their IEPs. This failure to provide services of any kind amounted to a significant revision of the services required under the students' IEP. However, IEP meetings were not held to discuss these changes nor were parents provided written notice of these changes.

Even though STUDENT 1 and STUDENT 2's provision of FAPE was dramatically altered, GCS did not convene IEP meetings for either student prior to ceasing the provision of special education services. Likewise, neither of the students' parents were provided with written

²⁵ NC Policy 1503-4.2(a). When necessary, an IEP Team must also include a member who is qualified to interpret testing results. When appropriate, a student should also be invited to participate on the team.

²⁶ NC Policy 1504-1.4

²⁷ 34 CFR § 300.503

²⁸ *Id.*

notice of GCS' apparent decision to cease providing special education services to the students and the parents' right to challenge that denial of services.

As a result, their parents had no notice that their students would not be receiving services and that they had the right to challenge that denial of services.

Overall, neither STUDENT 1 nor STUDENT 2 were provided with FAPE during their periods of incarceration. Neither of them received the services or accommodations required by their respective IEPs. Consequently, they were both deprived of their substantive rights and remedies under the IDEA as a result of their charges. Incarceration was instituted to rehabilitate individuals, not put them in a worse position when they are released. As the U.S. Department of Education stated, "[p]roviding the students with disabilities in these facilities the free and appropriate public education (FAPE) to which they are entitled under the IDEA should facilitate their successful reentry into the school, community, and home and enable them to ultimately lead successful adult lives."²⁹ GCS' failure to provide FAPE caused significant harm to both students that had lasting effects on their education.

2. The violations above are systemic in nature, both within the named districts and across the state

The North Carolina Department of Public Instruction (NCDPI), Exceptional Children Division's Complaint Investigation Procedures defines a systemic complaint as "a complaint that alleges that a public agency has a policy, practice, or procedure that is applicable to a particular group or category, or similarly situated, children." As evidenced by the experiences of the named students, both GCS as a matter of pattern and practice fail to provide FAPE and convene IEP meetings for students with disabilities who are incarcerated in correctional facilities across North Carolina.

GCS' actions demonstrate a pattern and practice of depriving incarcerated students of a FAPE and IEP meetings. Two separate GCS students had the same experience of not receiving a FAPE, not having their IEP teams convene, and not receiving specially designed instruction while incarcerated. Both STUDENT 1 and STUDENT 2 were incarcerated at differing points during the same school year, which gave GCS multiple opportunities to provide the students with FAPE. Both students were incarcerated for months at a time at pivotal points of their educational careers, yet instead of providing education services to these incarcerated students, GCS continuously failed to provide STUDENT 1 and STUDENT 2 with education services.

When education services were offered to complainant students, they were grossly inadequate and not individualized based on child-specific data. The packets did not include the services and accommodations required by their respective IEPs and did not include the specially designed instruction required to assist them in making meaningful progress towards their goals.

²⁹ See *supra* note 18.

In addition, at no point during STUDENT 1 and STUDENT 2's incarceration periods did their IEP teams meet to review or modify their IEPs. Furthermore, neither student's parents were provided written notice related to their IEPs. STUDENT 1 and STUDENT 2's shared experience gives evidence of GCS' pattern or practice of depriving students of their rights to a FAPE while they are incarcerated, resulting in a deprivation of services that created lasting effects on their education.

As outlined in a complaint filed with DPI against another North Carolina school district involving the same patterns of violations, GCS' actions not only show a district wide pattern and practice, but also a statewide pattern and practice of violating the rights of incarcerated students with disabilities. The violations described above are not isolated incidents. Multiple students' rights were violated in the exact same way in multiple districts during multiple points of incarceration. The complainants' experiences demonstrate a statewide pattern and practice of depriving similarly situated students of their right to FAPE while incarcerated and failing to convene IEP meetings to ensure students with disabilities continue to make reasonable progress towards their goals while incarcerated. These violations are not only egregious, but also systemic in nature and require immediate attention.

3. DPI has failed in its supervisory duties to ensure GCS and VCS provide FAPE to incarcerated students.

Pursuant to 20 U.S.C. § 1412(11)(A), State Education Agencies ("SEA") are responsible for supervising all educational programs for children with disabilities in the State, including all programs administered by any other state agency and ensuring these programs meet the educational standards established by the SEA. NC Policy 1501-9.1 states that SEAs must exercise general supervision over all educational programs for students with disabilities administered within the State, including programs administered in State and local agencies unless covered by an exception. NC Policy 1501-9.1 makes clear that it is the SEAs duty to ensure their educational programs meet State education standards and IDEA, Part B requirements. This responsibility includes monitoring public agencies that are responsible for providing FAPE to students with disabilities in correctional facilities.

In addition, the U.S. Department of Education detailed the responsibilities of SEAs in its 2014 Dear Colleague Letter. The Department of Education stated that SEAs "must exercise general supervision over all educational programs for students with disabilities in correctional facilities (unless covered by an exception) to ensure that their educational programs meet State education standards and IDEA, Part B requirements." According to the Department of Education, "[t]his responsibility includes monitoring public agencies that are responsible for providing FAPE to students with disabilities in correctional facilities."³⁰

³⁰ U.S. Department of Education Office of Special Education and Rehabilitative Services, Dear Colleague Letter, (December 5, 2014)

The North Carolina Department of Public Instruction (“DPI”) is the SEA responsible for monitoring all educational programs across the State. As the SEA, DPI has a duty under federal and state law to supervise the educational programs administered by GCS at Detention Center A and Detention Center B. STUDENT 1 and STUDENT 2 both have disabilities; therefore, they have a right to receive FAPE, even while incarcerated. As outlined above, GCS has deprived STUDENT 1 and STUDENT 2 of their right to FAPE when it failed to provide educational services while they were incarcerated. It is clear from the facts outlined above that the educational programs provided have not met state educational standards and IDEA, Part B requirements. These violations have been longstanding. Due to GCS’ failure to provide educational services, both students were deprived of the opportunity to make meaningful progress towards their educational goals. If DPI had exercised general supervision over the education programs at GCS, it would have noticed that no program met state education standards or requirements under Part B of the IDEA. DPI’s neglect of their supervisory duties resulted in significant harm to both complainants.

REMEDIES

Audit of special education services provided to incarcerated students

1. Complainants request that DPI conduct audits of GCS and all districts across the state to assess whether special education services and related safeguards are being properly afforded to students with disabilities who are incarcerated in adult detention facilities.

Training

2. Complainants request that district and school-level special education staff within GCS be required to receive training from an independent expert related to the proper provision of special education services in a correctional facility.

District-wide Policy Revision

3. Complainants request revision and/or creation of GCS Special Education Services policies in order to ensure that the rights of incarcerated students with disabilities are protected. Revised policies should include, at a minimum:
 - a. a requirement that the base schools of incarcerated students hold an IEP meeting for any juvenile entering the custody of the Sheriff’s Office within two weeks of entry into an adult facility.
 - b. A requirement that the base schools of incarcerated students hold an IEP meeting for any juvenile reentering their base school from an adult facility within two weeks of reentry.
 - c. Guidance related to how FAPE may be appropriately provided to incarcerated students within adult detention settings.
 - d. A requirement that the district designates a staff person to serve as transition coordinator, whom shall be responsible for ensuring legally compliant educational services for incarcerated students during the students’ entry into correctional facilities as well as the students’ exit from correctional facilities. The designated

staff person will also conduct site visits at each jail at least once per quarter to audit students' Individualized Education Plans.

Statewide Guidance by DPI

4. Complainants request that DPI issue statewide guidance to all EC Directors related to the proper provision of FAPE to incarcerated students with disabilities within adult detention facilities.

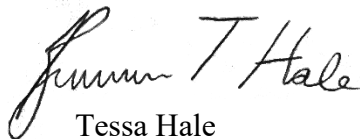
Compensatory services

5. Complainants seek retrospective relief in the form of compensatory special education for those students named in this complaint and for similarly situated students. Each compensatory service plan should be developed after a comprehensive independent expert evaluation of each student. The type and amount of compensatory services for students named in this complaint should address all areas of need and be based on the recommendations of the independent expert in consultation with each petitioner, petitioners' attorney, and DPI consultants. It should be provided at a mutually convenient time with transportation.
6. Specific compensatory education relief for STUDENT 1
 - a. Require GCS to provide direct services and/or a monetary stipend to STUDENT 1 to enable him to access a minimum of 44-hours of one-on-one tutoring and other educational supports to ensure he is able to successfully participate in community college courses in the Fall and Spring semesters of the 2020-21 school year, along with any Summer classes he chooses to enroll in during 2021.
7. Specific compensatory education relief for STUDENT 2
 - a. Require GCS to provide a minimum of 144 hours of one-on-one tutoring to remedy harm caused by him not receiving any of the special education services required under his IEP while incarcerated.

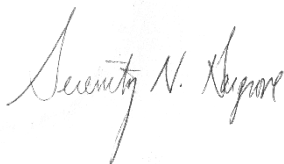
Other

8. Other remedies deemed appropriate by DPI in order to address the systemic violations found in investigating this complaint.

Sincerely,



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