



February 19, 2023

Via U.S. Mail and email (@dpi.nc.gov and state_ec_complaints@dpi.nc.gov)
Dr. Carol Ann Hudgens, Director of EC Division
NC Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-6356

RE: Formal Systemic State Complaint Against the Wake County Public School System

Dear Director Hudgens:

Please consider this a Formal Systemic State Complaint filed on behalf of two students with mental health disabilities and related behavior needs who have not received appropriate supports and protections while attending East Garner Magnet Middle School (“EGMMS”), South Garner High School (“SGHS”), or the Garner Evening Program (“GEP”) in the Wake County Public School System (“WCPSS” or “the District”).

Both student complainants have experienced significant violations of their individual special education rights. Furthermore, the violations of the named students’ rights are reflective of the following systemic violations within the district:

- (1) WCPSS routinely fails to conduct adequate and timely functional behavior assessments (“FBAs”) and implement adequate behavior intervention plans (“BIPs”), resulting in continued behavior challenges for students, denial of access to a FAPE, and recommendations for inappropriately restrictive environments.
- (2) WCPSS routinely imposes unilateral and improper changes in placements for students with emotional disabilities by placing them in BST classrooms and a BST “stabilization room” without following required safeguards or ensuring continued access to FAPE.
- (3) WCPSS repeatedly denies students consideration of needed related services, resulting in continued behavior challenges for students, denial of access to a FAPE, and recommendations for inappropriately restrictive environments.
- (4) WCPSS routinely fails to identify and meet the academic needs of students with behavioral and emotional disabilities.
- (5) WCPSS routinely fails to conduct manifestation determination review (“MDR”) meetings in a timely fashion and according to North Carolina Policies’ Procedural Safeguards.
- (6) WCPSS routinely fails to provide continuation of services guaranteeing a FAPE starting on the 11th day of suspension.
- (7) WCPSS routinely fails to accurately document whether students are subject to a change in placement due to disciplinary consequences and for how many days, resulting in a failure to provide appropriate compensatory services.
- (8) WCPSS has an illegal policy of limiting students’ homebound service delivery hours to 10 hours per week.

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 FAPE in the least restrictive environment (“LRE”).

We are filing this systemic complaint because the individual student violations (detailed below) are indicative of a pattern and practice of failing to appropriately support students with emotional disabilities and related behavioral needs, resulting in the deprivation of a FAPE to all similarly situated students in the District. Individual remedies alone have been and continue to be insufficient to ensure that these and other WCPSS students with disabilities are not treated in the same manner in the future. WCPSS has at times attempted to remedy significant violations via individual compensatory education, which does not address the widespread systemic noncompliance with state and federal law. Systemic remedies are necessary. For these students, additional individual remedies are also needed to compensate them for the District’s violation of their rights.

Introduction

Wake County Public School System disproportionately suspends students with disabilities. In 2023, the rate of short-term suspensions district-wide was 164.57 per 1000 students, while the rate of short-term suspensions for students with disabilities was 284.22 per 1000 students. Referrals to law enforcement were also greater, from a rate of 6.22 per 1000 students overall to 8.97 per 1000 students with disabilities.

At East Garner Magnet Middle School in particular, data indicate that the use of punitive measures is the norm rather than the exception. During the 2022-23 school year, the short-term suspension rate at East Garner was 287.05 per 1000 students, which was roughly 3.5 times the district average. The rate of referrals to law enforcement was five times the district average, at 5.11 per 1000 students.

And even within that already punitive environment, the statistics are worse for students with disabilities, who were short-term suspended at a rate of 623.04 per 1000 students and referred to law enforcement at a rate of 15.71 per 1000 students. Both the short-term suspension rate and the rate of referral to law enforcement are the second highest of any subgroup at the school, exceeded only by multiracial students. EGMMS staff are chronic overusers of punitive discipline, and this overuse is targeted at students with disabilities and students of color like the complainants more than any other group.

This matters because students with disabilities have a right under the Individuals with Disabilities Education Act (“IDEA”) to a free and appropriate public education (“FAPE”) in the least restrictive environment (“LRE”). The mandate to provide a free appropriate public education in the least restrictive environment for students with behavior disabilities applies fully to Wake County Public School System. As shown by the experiences of the students below, suspensions and referrals to law enforcement result in repeated exclusion from the classroom environment and from peers in a way that violates the mandates of the IDEA. At EGMMS in particular, short-term suspensions for students with emotional disabilities were accompanied by use of the “BST” or behavior support classroom while the students were in school. Ostensibly a

In the fall semester of his 8th grade year, █████ was suspended twice, once after being accused of engaging in disruptive behavior and once after being accused of engaging in aggressive behavior. On January 29, 2023, he was again suspended based on allegations that he demonstrated disruptive behavior. On February 7, 2023, his IEP team decided that it needed more data to better support him and to update his BIP, which had last been formally reviewed in March 2022. The team agreed to conduct a functional behavioral assessment (“FBA”), psychoeducational evaluation, and observations. His parent signed a consent form the next day.

On February 22, 2023, █████ was suspended for six days after getting into a verbal disagreement with a teacher. On the day of this suspension, █████ was already in a heightened mental state: earlier that day, Principal James Sposato used the word “*igger” in front of █████ and a group of other Black students in the bathroom in a way that felt callous and confusing to █████¹ After this incident in the bathroom, █████ was emotionally dysregulated and not able to conduct himself appropriately in class. The strategies in his BIP, particularly support from BST teachers and the ability to take a break in a different location, were not used to support him. When faced with a challenge from the classroom teacher, his emotional state predictably escalated.

Because █████’s total days of suspension for the year was now at 16, his IEP team held an MDR on March 7, 2023,. This meeting was convened after his suspension had been fully served. At this meeting, the team determined that █████’s behavior was due to his disability, as well as the school’s failure to implement his IEP. █████ received no access to educational services of any kind during his 6 days of disability-related suspension.

The team held a follow-up meeting on March 9, 2023, ostensibly to discuss how to better support █████ However, no FBA was generated at this meeting, and no BIP review was conducted – in fact, the meeting was adjourned because no one from East Garner Behavior Support staff was present.

In between suspensions, █████ reports that he would periodically be assigned to spend some or all of the day in the Behavior Support (“BST”) classroom setting. While in BST, █████ had no access to any of his non-disabled peers, even though his IEP required that he spend the majority of his time in the general education setting. His specially designed instruction allocation as of his February 7, 2023 IEP meeting was 30 minutes of social/emotional instruction 10 times per month and 20 minutes of academic skills instruction 10 times per month. █████’s records do not contain a log of how often he was in BST, so it is impossible to document exactly how much time he spent in that segregated setting away from his general education peers. █████ reports that he was given little to no academic instruction while in BST. Any instruction provided focused on behavior and social skills.

¹ This incident is being investigated by WCPSS’ Human Resources department, and is described here to provide context to the situation.

█████ was suspended on March 14, 2023 for five days as a result of an allegation that he engaged in disruptive and physically aggressive behavior, bringing his cumulative total of suspensions to 21 days. Without an MDR being convened and after fully serving his five-day suspension, █████ was again suspended on March 23, 2023 for five days as a result of being out of area and allegedly making threats, bringing his cumulative total of suspension to 26 days. He again fully served this suspension without his IEP Team convening an MDR even though the suspensions clearly constituted a change in placement. In fact, MDRs were not held for either of these incidents until April 14, 2023. █████ received no access to educational services of any kind during his 10 days of disability-related suspension.

At the April 14, 2023 MDR, the team found that both the March 13, 2023 and March 23, 2023 incidents were manifestations of █████'s disability. While the team also indicated that the incidents were not caused by █████'s IEP or BIP not being implemented, incident documentation shows that both incidents involved challenges from adults and that █████'s BIP was not followed during either incident. His BIP was also updated for the first time that school year at the April 14 meeting. However, there is no indication in the records that his BIP updates were informed by an updated FBA. In fact, there is no evidence that the FBA or any of the other evaluations requested by the team over two months prior on February 7th had been started, much less completed.

On April 10, 2023, just days before the completion of his MDR, █████ underwent a traumatic incident at East Garner Magnet Middle School where he was searched, handcuffed, and thrown to the ground by an SRO while his backpack was searched in response to a report of a weapon on campus. It later came to light that █████ had been mistakenly targeted for the search, and the SRO in question apologized to him for the incident. This incident contributed to █████'s growing sense that he was being targeted at school and that school staff were not interested in supporting him.

On April 20, 2023, █████ was suspended for five days after being accused of engaging in disruptive behavior at school. That same afternoon, he was issued a separate 10-day bus suspension after he and a group of other students jumped out of the back door of the bus. Notably, it does not appear that any of the other students involved in the bus incident faced suspension. █████ is aware of this because those same students contacted him after the incident trying to find out where he was and why he was not at school or on the bus anymore.

On April 24, 2023, the IEP team met to conduct an MDR, this time with district staff in attendance as well. In that meeting, the IEP team looked only at the school-based incident resulting in a 5-day suspension and determined that █████'s behavior was a manifestation of his disability. The team did not conduct an MDR related to the bus suspension at that time. Instead, they waited until weeks later, on May 4th, to conduct an MDR for the bus incident and 10-day suspension.

In that meeting, the team did not discuss any collected data or observations to determine how to better support █████ in the classroom, consider related services aimed at supporting █████ in the school environment (e.g. counseling, social work services, etc.), work to expedite the completion of the FBA and updated evaluations that had been ordered two and a half months prior, or discuss changes to his BIP that could actually be implemented with fidelity. Instead, the

team offered ██████ an ultimatum: if he wanted to avoid future suspensions, he would finish the school year spending his entire school day in a newly created “BST stabilization room”. The only alternative proposed was for him to be on homebound or on modified day and spend the few hours he would be at school in the BST classroom. This was labeled as his “last chance”. ██████ was told that any more disciplinary incidents would result in a homebound placement. This predetermination of his setting was memorialized as follows in his prior written notice from that meeting:

After one write-up ██████ will transition to Home Hospital with no warnings or conversation. The team will meet to finalize Home Hospital.

Feeling as if he had no other option that would allow him to remain in school, ██████ reluctantly agreed to spend the rest of the school year in the BST stabilization classroom full-time. The only service added to ██████’s IEP in that meeting was special transportation. As described below, this related service has at all times been employed—not as a necessary, therapeutic intervention—but instead as an ostracizing tool that has made ██████ feel further targeted and harassed.

Notably, the IEP team failed to properly update his IEP to reflect his significant change in placement. Even though ██████ was being removed from non-disabled peers 100% of the day, his service delivery indicated that he was spending 85 minutes per day in a special education setting:

Specially Designed Instruction:

Service	Amount of Time in Minutes	Frequency	Location	Duration
Social/Emotional Skills	30 minute(s)	5 per week	Special Education	04/18/2023 to 11/17/2023
Social / Emotional Skills	5 minute(s)	5 per week	Special Education	04/18/2023 to 11/17/2023
Academic Skills	20 minute(s)	5 per week	Special Education	04/18/2023 to 11/17/2023
Academic Skills	30 minute(s)	5 per week	Special Education	04/18/2023 to 11/17/2023
Social / Emotional Skills	15 minute(s)	5 per week	General Education	04/18/2023 to 11/17/2023

His LRE justification statement remained the same as well, with no support for why a completely separate setting was necessary to meet his disability-related needs.

██████ requires specially designed instruction taught by a special education teacher to work on his social/emotional deficits. He also needs additional support with self regulating his behavior so he can gain access to all areas of the general ed. curriculum.

Although ██████’s behavior was found to be a manifestation of his disabilities on April 24th, he did not return to school right away because he continued to be suspended from the school bus. In the days that followed, ██████ attempted to ride the bus, but received direction from administrative staff that he was banned from the bus. Of note, ██████ appears to have been the only student involved in the April 20th incident to be banned from the bus.

On May 4th, the IEP Team reconvened because ██████’s April 20th 10-day bus suspension had resulted in him not being able to attend school. The disciplinary change in placement notice was not even sent to ██████ until May 4th, the same day as the MDR and over 2 weeks after the incident triggering the MDR. In that MDR, it was determined that the behavior leading to

█'s bus suspension was a manifestation of his disabilities. █ had received no educational services of any kind during those days of suspension.

In that same meeting, the team proposed conducting an FBA, ignoring completely the fact that months early—on February 7th—it had already been decided that an FBA was needed and consent from █ to conduct that FBA and an updated psychoeducational evaluation obtained. Inexplicably, the team took no steps to complete the FBA, and then determined in the May 4th meeting that an FBA was not needed because it was only being offered to explore a transition plan back to a regular setting and, at that point, █ was so alienated from and frustrated with his school that he had expressed that he did not want to go back to the regular setting out of fear that he would just keep getting suspended if he returned to that unaccommodated setting. Based on █'s fear of returning to the regular setting and facing more discipline, the IEP team declined to move forward with conducting an FBA for a student whose behaviors had changed and intensified in the months since the original FBA was ordered.

Delays continued in getting █ set up with transportation and, in the intervening times, █ was forced to provide transportation herself. In fact, the school increasingly tried to pressure her to sign an agreement to provide ongoing transportation for █—something that, as a working single parent, █ was not able to commit to. Because he still was not receiving adequate consistent transportation, █'s IEP Team reconvened on May 15th to update his transportation accommodation to clarify that he should receive door-to-door special transportation.

The start of special transportation only brought more stress and frustration for █. While riding the vehicle, █ was directed to wear a safety vest and a helmet. Nothing in his IEP dictated that he required these supports. Instead, these tools served no purpose other than to humiliate him. The driver of his special transportation van ultimately contacted his mother to let her know about what was going on and that she had quit in protest of how she was being ordered to treat █. The driver told █'s mother that █ was always respectful to her and never gave her problems, and that she did not understand why the school was treating him like that and requiring others to do the same.

During the month of May, █ spent every day in the BST stabilization room. The BST stabilization room was not an actual classroom. It was detached from the rest of the school and appeared as though it used to be a storage closet. Dimly lit with just one small window, the stabilization room had no posters or other educational materials on the walls and no educational materials stored around the room. In that cold, sterile setting, █ had extremely limited access to peers or to direct instruction. █ was treated and felt like an unwanted outcast.

█'s last IEP meeting of the school year was on May 24, 2023. This meeting was meant to be a transition meeting for high school, although his parent reports that the members of the receiving IEP team from South Garner High School (“SGHS”) did not actively participate in the meeting and did not seem to understand why they were there. In that meeting, the IEP team finally updated █'s special education service delivery times to match the restrictive setting he had been placed in for over a month. At the same meeting, the team also determined that █ would require a fraction of the amount of specialized instruction in high school.

Specially Designed Instruction:

Service	Amount of Time in Minutes	Frequency	Location	Duration
Academic Skills	60 minute(s)	5 per week	Special Education	07/01/2023 to 11/17/2023
Social / Emotional Skills	10 minute(s)	5 per week	Special Education	07/01/2023 to 11/17/2023
Academic Skills	280 minute(s)	5 per week	Special Education	05/25/2023 to 06/30/2023
Social / Emotional Skills	95 minute(s)	5 per week	Special Education	05/25/2023 to 06/30/2023

At the same time, the team amended [REDACTED]'s LRE statement to indicate that he required intensive specialized instruction in a stabilization setting as of the month prior, and then documented that as of a month and a half *after* that current meeting, [REDACTED] would no longer require that same intensive level of specialized instruction.

“As of April 24th, the IEP team determined that [REDACTED] requires specially designed instruction in a stabilization special education setting on campus all day to support his needs for self regulating his behaviors. He has eloped from campus and the bus. He was out of area and refused to attend classes. He has disciplinary referrals for harassing staff and students as well as disrupting multiple classes.

As of July 1, 2023, [REDACTED] requires specially designed instruction taught by a special education teacher to work on his social/emotional deficits. He also needs additional support with self regulating his behavior so he can gain access to all areas of the general ed. curriculum.”

Finally, the IEP team discussed in the May 24th meeting that [REDACTED] was owed compensatory education and would be eligible for summer school. They also noted that the FBA and other evaluations had never been completed and needed to be completed in the fall.

In total, [REDACTED] was summarily removed from his general education peers into a separate BST stabilization room and/or at home due to a lack of transportation for approximately 33 days in total during the last six weeks of school. While positive feedback was shared about his progress when isolated from all peers and triggers, this setting failed to provide [REDACTED] an opportunity to work and make progress on his IEP goals in the least restrictive environment. These removals were carried out *on top of* the more than 30 days of out-of-school suspension that he served. In total, [REDACTED] spent approximately 1/3 of the 2022-23 school year completely excluded from his non-disabled peers.

These removals were carried out in an environment that increasingly made [REDACTED] feel ostracized, harassed, humiliated, and unwanted. From his treatment on the special transportation to an incident on May 22nd where a female teacher burst in on him in the bathroom while he was urinating, [REDACTED] was constantly made to feel as though he was an outcast and a target at EGMMS. At no point during his 8th grade year at EGMMS did [REDACTED] receive access to a free appropriate public education in the least restrictive environment.

While there are several “Change in Placement” worksheets in [REDACTED]'s records purporting to document the days of compensatory education [REDACTED] is owed due to East Garner's use of punitive discipline, the worksheets contain inaccurate calculations. Further, they do not account

for the days of transportation-related exclusion and/or [REDACTED] days in the BST stabilization room. While some compensatory education services were offered last year, those hours were based on incomplete information and did not come close to covering the full deprivation faced by [REDACTED]. To date, none of those compensatory education hours have been provided.

9th Grade – South Garner High School (2023-24)

[REDACTED] was excited about the opportunity for a fresh start at South Garner High School (“SGHS”), but he was unfortunately not set up to succeed. His BIP was not adjusted to the high school setting at the May transition meeting, and no follow-up transition meeting or IEP meeting was held before he started school. SGHS staff did not know [REDACTED] nor did they understand the way his disabilities present because of this lack of transition.

Without proper supports in place, [REDACTED] was suspended for ten days on the second day of school for an incident similar to those at EGMMS, where he escalated into aggression when challenged by an adult. His BIP was not followed during this incident.

A psychoeducational evaluation was completed on September 25, 2024. The results of those evaluations demonstrated that [REDACTED] was demonstrating below average skills in every area tested:

“Reading: This section evaluates the individual's reading skills, including word recognition, sentence comprehension, and passage comprehension. [REDACTED]’s Reading Composite fell in the Low Average range. He performed in the Average range in Word Reading, which required him to read words that gradually increased in difficulty. This area was a relative strength for [REDACTED]. He performed in the Below Average range on Sentence Comprehension, which required him to read and comprehend a sentence while also filling in the blank to make the sentence meaningful.

Spelling: The spelling component assesses the individual's ability to spell words correctly, thereby measuring their mastery of written language. [REDACTED]’s score on the Spelling subtest fell in the Below Average range.

Arithmetic: In this section, the individual's mathematical skills, such as addition, subtraction, multiplication, and division, are evaluated. [REDACTED]’s score on the Math Computation subtest fell in the Below Average range. He was given 15 minutes to complete as many items as he could. [REDACTED] said he was done after completing 15 problems within six minutes. He noted that it was all he could do and he felt as though he did not learn many of the concepts previously.”

9/25/23 Psychoeducational Evaluation Report.

Although [REDACTED]’s updated evaluation raised concerns related to core academic skills, there is no indication that [REDACTED]’s IEP Team revised his IEP based on this evaluation data. Instead, the November 8, 2023 Addendum IEP continued to include only social skills and behavior goals. Similarly, his November 16, 2023 Annual Review IEP likewise included no academic present

levels or goals. In fact, the Annual Review IEP maintained significantly outdated evaluation data that indicated that [REDACTED] was demonstrating average to above average core academic skills – data that is directly contradicted by the updated evaluation results. Despite having clear data that [REDACTED] had been experiencing significant regressions in his academic skills, no steps were taken to target the underlying unmet academic needs that were contributing to his frustration and resulting behavioral struggles in the classroom. Notably, his IEP Team explicitly documented in his IEP that academic struggles were often at the foundation of [REDACTED]’s behavioral struggles:

“Describe how the disability impacts involvement and progress in the general curriculum: [REDACTED]’s unwillingness to engage with subjects that he finds difficult or uninteresting continues to impact his progress in the general curriculum. Additionally, [REDACTED] has difficulty managing his anger toward adults when he becomes upset. This will often result in non-compliant behaviors and classroom disruptions. He requires explicit instruction to assist him in developing strategies to cope with difficult situations and interactions with adults and peers.”

11/8/23 Addendum IEP and 11/16/23 Annual Review IEP. Despite having no academic goals, [REDACTED]’s service delivery in his high school IEP inexplicably includes 60 minutes of daily “academic skills” specialized instruction. This is the case even though his LRE justification statement makes no mention of academic specially designed instruction:

“Least Restrictive Environment Justification. If the student will be removed from nondisabled peers for any part of the day, explain why the services cannot be delivered with nondisabled peers with the use of supplemental aids and services.

[REDACTED] requires specially designed instruction taught by a special education teacher to work on his social/emotional deficits. He also needs additional support with self regulating his behavior so he can gain access to all areas of the general ed. curriculum.”

11/8/23 Addendum IEP and 11/16/23 Annual Review IEP. In this manner, [REDACTED]’s IEP is in no way reasonably calculated to address the full scope of his identified disability-related needs.

[REDACTED]’s records also do not show that any FBA was ever conducted, despite the transition IEP meeting team determining that it would need to be done as soon as school started in the fall. Throughout the start of his time in high school, [REDACTED]’s BIP was out of date and was not informed by any data or an evidence-based FBA process.

An informal school meeting was held with the EC Case Manager [REDACTED] on October 16, 2023 to discuss changes to [REDACTED]’s IEP and BIP. [REDACTED] and his parent misunderstood the nature of the meeting and believed that these changes, including a removal of [REDACTED]’s accommodation for separate testing, had been formally agreed upon and were in place after the October 16 meeting.

On October 30, 2023, [REDACTED] got into an argument with a teacher when he was asked to leave the room to test separately. [REDACTED] was under the impression that he was not required to do this anymore and that this accommodation had been removed from his IEP after the October 16th meeting with [REDACTED]. This conflict escalated into an incident for which [REDACTED] received a long-term suspension/disciplinary reassignment recommendation. A Disciplinary Change in

Placement notice was not generated or sent until over a week later, on November 8th. That same day, an MDR was held and ██████'s conduct was inexplicably found not to be a manifestation of his disability. ██████'s mother was notified the night before the MDR that ██████, ██████'s EC Case Manager and someone with whom ██████ had built a relationship and who had the strongest understanding among school staff of the nature of ██████'s disability, would not be attending the meeting due to an emergency. ██████'s parent wanted ██████ to be there and asked by email for the meeting to be rescheduled, but this request was denied.

The team at the MDR consisted of the SGHS principal, a regular education and special education teacher, a “coordinating teacher” to replace the case manager, ██████'s parent, and a parent advocate. None of the school staff present at this meeting knew ██████ well. Concerningly, the IEP team did not consider data from the previous year's disciplinary incidents. Instead, it considered outdated data from a 2019 FBA and ██████'s May 2023 BIP, which still had not been updated to fit the SGHS setting. Over ██████'s parent's objection, the team determined that there was no manifestation of his “impulsivity” during the incident, but failed to discuss his other diagnoses, and most crucially failed to discuss how ██████'s ██████ might have been triggered in this incident. The team found that ██████'s conduct was not a manifestation of his disability. ██████'s parent reports that it was clear to her from the beginning of the meeting that the LEA, school principal Keith Faison, had predetermined the outcome of the meeting.

Garner Evening Program (2023-24)

██████ was eventually reassigned to the Garner Evening alternative learning program. He has continued to be left unsupported in that environment. In a recent IEP meeting held on February 12th to review his progress and to update his IEP and BIP, ██████ and his mother shared that his BIP was not being properly applied and that he was not receiving targeted behavioral specially designed instruction at the program.

“Step 1: Review the current plan. (Is it working? Why/ Why not? What are the barriers?) **2/12/24:** The plan has been inconsistent at times with the barriers of a change in placement and moving from a large setting to a small setting and both staff and student learning how to work with one another. The team made a few adjustments to the plan to try and help create more consistency and to have [██████'s voice heard. [██████'s mother] and [██████ stated that the GEP has not been teaching coping skills, communications skills, or anger management skills during the CA lessons.”

2/12/24 BIP Review. Notably, no one from the Garner Evening Program even attended this IEP meeting. Instead, it was attended only by South Garner High School staff who have no interactions with ██████ in his current educational setting.

The violations outlined above have caused significant academic and emotional harm for ██████. He currently struggles to maintain a regular sleep schedule and maintain motivation towards school. He is hopeful about returning to the regular school setting next year but is also concerned about facing further disciplinary consequences. His parent feels as though the lack of understanding shown for ██████'s needs at school has had a permanent negative effect on his ability to be successful at school and in the future.

Student 2: ██████████ (██████████), East Garner Magnet Middle School

██████████ is a 13-year-old multiracial student in the 8th grade. ██████████ is diagnosed with ██████████. He has received special education services under the IDEA since he was five years old. His current area of eligibility is Emotional Disability. His entire school career has been in the District.

Like ██████████ ██████████ also has a history of traumatic experiences at school. When he was in Kindergarten, ██████████ ██████████ This has resulted in ongoing difficulties with authority figures, particularly in the school setting. He has required support to regulate his behavior in the school setting, through Behavior Intervention Plans and behavior goals in his IEP, for essentially his entire school career.

7th Grade at EGMMS (2022-23)

██████████ returned to in-person school for the first time after the pandemic in fall 2022 at EGMMS for 7th grade. Although he began the school year excited to return in-person, he almost immediately began experiencing difficulty with regulating his behavior and emotions. All of these incidents involved some sort of confrontation with a staff member who attempted to get ██████████ to behave in a certain way (for example, to give up his cell phone or to move to another setting). ██████████'s response in each of these incidents involved what staff labeled as aggressive verbal or physical behavior towards other students or towards staff. He was suspended four times in the first semester for a total of 19 days.

The fourth incident occurred on December 9, 2022, for which ██████████ was given a 10-day suspension. On December 21, 2022, his IEP team held an MDR and found his most recent conduct to be a manifestation of his disability. At this meeting, the team noted that ██████████ needed an updated FBA, as his last FBA had been conducted in 2015.

██████████ was suspended for one day on January 26, 2023. No MDR was conducted for this incident.

On February 2, 2023, his IEP team met to review data that had been collected as part of an FBA. The team created a BIP for ██████████ as well. His parent shared at this meeting that ██████████ is triggered by certain peers in the school setting, and that she does not see the behaviors reported at school when ██████████ is at home. The BIP created for ██████████ included some of the following strategies:

- “When upset, allow [██████████] 10 minutes to choose a calming strategy (draw, or use deep breathing) to help him calm down”
- “BST will push in to general education classes for additional support”
- “Staff will provide 2-3 minutes of wait time for compliance when providing a directive. Staff should provide a short 2-3 prompt in an even tone and walk away.”
- “Staff will provide [██████████] with positive If/Then statements (not consequences) when he is refusing and/or engaging in verbal disruption.”

- “Staff will provide [REDACTED] three choices when he is refusing and/or engaging in verbal disruption and allow time for processing to make the choice.”
- “Staff will not engage in verbal back and forth with [REDACTED]”
- “Staff will provide a communication tool to parent that will allow her to receive daily feedback on [REDACTED]’s behavior”

Throughout the rest of the semester, the IEP team failed to follow [REDACTED]’s BIP or meet his needs in the school setting, instead immediately suspending him any time he displayed disability-related behaviors. Each of these incidents followed the pattern of verbally or physically aggressive behavior in response to challenges from peers or authority figures.

- [REDACTED] was suspended on February 7th for 3 days. His behavior was found to be a manifestation of his disability on February 10th, after he had fully served his suspension.
- [REDACTED] was suspended on February 22nd for 5 days. His behavior was found to be a manifestation of his disability on February 27th. According to his change in placement worksheets, he continued to be disciplinarily placed in an “Alternative Learning Center” for two additional days after his team determined that his behavior was disability-related.
- [REDACTED] was suspended on March 9th for 5 days, which was to begin on March 15th. His behavior was found to be a manifestation of his disability on March 16th. According to his change in placement worksheets, he continued to be disciplinarily placed in an “Alternative Learning Center” for three additional days after his team determined that his behavior was disability-related.
- [REDACTED] was suspended on March 23rd for 10 days. His behavior was found to be a manifestation of his disability on March 28th, resulting in him being suspended for 5 days for disability-related behaviors.
- [REDACTED] was suspended on April 17th for 5 days. His behavior was found to be a manifestation of his disability on April 20th. It is unclear from documentation in the file whether he was allowed to return to school or whether he served the entire 5-day suspension either as an out-of-school suspension or a disciplinary Alternative Learning Center placement.

After the February 22nd suspension, the team held an MDR on February 27th and added to [REDACTED]’s BIP the ability to use a pass to go to the “BST” or Behavior Support classroom setting. The team also decided that [REDACTED] would receive BST support for the first part of his ELA and science classes by starting class in the BST room and then transitioning to class for “15-20 minutes” before returning to BST “to complete independent work.” His IEP was changed to drastically increase his “Academic Skills” service delivery time from 25 minutes 10 times per month to 60 minutes each day. This was done without considering the need for reevaluations and/or the addition of any related services. Other than transportation, [REDACTED] received no related services to support his increasing disability-related needs in school. Further, despite this significant change in the restrictiveness of his setting, his LRE justification statement remained unchanged in his IEP.

From this point forward, whenever he was in school [REDACTED] would spend partial or full days in the BST classroom setting. [REDACTED]’s records do not contain a log of how often he was in BST, so it is impossible to know how much time he spent in that segregated setting away from his general

functional performance (PLAAFP) shone a light on how little academic progress [REDACTED] had been supported in making that year.

- In **Math**, the entirety of [REDACTED]'s annual review PLAAFP was "4/20/203 - Currently a 45 in Math. Missing 1 quiz." His Math goal was then repeated almost verbatim from the prior year:
 - *2023 Math Goal:* When given a multi-step math problem, [REDACTED] will use the proper order of operations (addition, subtraction, multiple or divide) to help him solve the equation.
 - *2022 Math Goal:* When given a multi-step math problem, [REDACTED] will use the proper order of operations (addition, subtraction, multiple or divide) to help him solve the equation 80% of the time in 4 out of 5 trials.

- In **Written Expression**, [REDACTED]'s annual review PLAAFP simply summarized his grades, absences, and a statement that he had completed no writing assignments and therefore that the team could not determine his strengths or needs: "ELA Grades – Q2: 26%; Q3: 0%; Q4: 45% - this grade will be updated. Absences – 45. [REDACTED] has not completed any writing assignments in the language arts classroom during quarters 2, 3, and 4. Current strengths and needs cannot be determined at this time." His writing goals were likewise left substantively the same from the prior year.
 - *2023 Writing Goal:* When given a topic, [REDACTED] will check his work to make sure he has used the following (proper capitalization for the beginning letter of a sentence and proper nouns, spelling and punctuation) in four out of 5 opportunities.
 - *2022 Writing Goal:* When given a topic, [REDACTED] will check his work to make sure he has used the following (proper capitalization for the beginning letter of a sentence and proper nouns, spelling and punctuation) in four out of 5 opportunities.

- In **Reading**, [REDACTED]'s annual review PLAAFP restated his writing PLAAFP and then added notes regarding his performance on a single national standardized test taken in the Fall (Fastbridge Diagnostics), noting that his "score on aReading was in the High Risk range" and was "higher than 1% of students in the same grade across the nation", indicating that "[REDACTED] needs additional support to improve overall reading skills." In that same test in the fall, it was noted that [REDACTED]'s score on AUTOREading is in the Some Risk range", meaning that he "may need additional support to improve phonemic awareness, phonics, and vocabulary skills." His IEP team then repeated the same reading goal from the prior year almost verbatim.
 - *2023 Reading Goal:* [REDACTED] will answer comprehension questions to demonstrate understanding of an independent level text, referring explicitly to the text as the basis for the answers and providing textual evidence to support his answers in 4 out of 5 opportunities.
 - *2022 Reading Goal:* [REDACTED] will answer comprehension questions to demonstrate understanding of grade level text, referring explicitly to the text as the basis for the answers, with 85% accuracy on 3 out of 4 attempts.

- **In Reading Fluency,** ■■■■■'s IEP Team added a new present level and goal. In his PLAAFP, his team noted data from a January 2023 assessment demonstrating a Lexile score of 450, indicating 2nd grade proficiency. When repeated in March, ■■■■■'s score increased to 615, which is still in the 2nd grade range. Despite this and other data showing that ■■■■■ was struggling with fluency and other mechanics of reading, his team established a reading goal aiming for grade level reading fluency of 145 WPM: "Given a passage on a 7th grade level, ■■■■■ will read 145 words correct per minute with 99% accuracy."

After outlining ■■■■■'s significant academic needs, his team still summarized his disability-related needs as being fully based in his behaviors: "[■■■■■ requires intensive behavior support and a small group setting in order to make academic and functional behavioral gains." No attention was paid to his significant underlying academic needs, whether those were disability-related, and how they contributed as root causes of his behavioral needs. Instead, ■■■■■ was at all time labeled and treated as a "behavior case" to be dealt with rather than understood and holistically supported.

When the school year ended, ■■■■■ had been suspended for at least 43 days, and had spent a significant amount of time in addition to that removed from his general education peers in the BST setting. ■■■■■ received no access to the curriculum nor meaningful access to his specially designed instruction while suspended for those days.

8th Grade at EGMMS (2023-24)

EGMMS staff started out the new school year by telling ■■■■■'s parent that they wanted "a fresh start" for ■■■■■. Despite this assurance, on September 22, 2023 ■■■■■'s BIP was changed to create an option for "Daily Stabilization," where ■■■■■ could be assigned to a stabilization room for up to 3 days without an IEP meeting. The stabilization room was the very same punitive space that was created and utilized to segregate ■■■■■ from his peers the year prior. ■■■■■ describes the stabilization room as a small, prison-like dark room with one tiny window that barely let any sunlight in. While a sympathetic math teacher tried to brighten the room by bringing in decorations and a bean bag chair, those were removed and the teacher was reprimanded, making abundantly clear that the space was meant to be punitive.

■■■■■ was most frequently forced to spend the day in the stabilization room after returning from out-of-school suspensions. He and his mother were told that this placement was required so that ■■■■■ could get "stable in his mind" before he was "released to the regular population." ■■■■■ and his mother report that his length of placement in the stabilization room varied from 1 day at a time upwards to 3 days at a time. While in the stabilization room, ■■■■■ received no instruction of any kind – regular education or special education. Instead, he would be provided with stacks of work to complete on his own. ■■■■■ and his mother report that he would shut down on days when he was placed in stabilization because the workload was so overwhelming and the environment so isolating and triggering.

The stabilization placements began in earnest in October when ■■■■■ began receiving regular suspensions. On October 4th, ■■■■■ was given a five-day suspension on October 4, 2023,

for aggressive behavior. After serving his suspension, he was required to remain excluded from peers for additional days in the stabilization room upon his return to school.

On October 18, 2023, ■■■ was given a 10-day suspension after being accused of physically aggressive behavior in response to a challenge from a teacher. At the MDR, which wasn't conducted until October 27th, the team found that ■■■'s behavior was once again a manifestation of his disability and a direct result of the school's failure to appropriately implement ■■■'s IEP. When ■■■ returned from his out-of-school suspension, he was required to serve additional days in the stabilization room without instruction and in isolation from his peers.

At this point, ■■■'s parent reports that he was becoming increasingly reluctant to go to school. He would cry and beg to stay home, sharing his fear that he would get in trouble for something at school. ■■■ felt unwanted and unwelcome at his school. He shared that, on one occasion while in route to his BST classroom, he overheard a teacher telling another staff member as she pointed at the BST classroom "I don't mess with the kids in that room: They are crazy." ■■■ felt dejected and his confidence plummeted.

After a third suspension on November 9, 2023 where ■■■ was accused of engaging in harassing conduct that he denied and that even the alleged "victim" said did not occur, his parent felt unsafe sending him to a school environment where she felt he was being increasingly targeted for discipline. No MDR was conducted for this incident even though ■■■ had been suspended for far more than 10 days as a result of engaging in behavior that the school had labeled as aggressive, harassing, or threatening. Instead, the school claimed that this behavior was not part of the same pattern of behavior and refused to even assess the link between ■■■'s disability and the behavior he was accused of engaging in.

Seeing no other option for ■■■ to remain safe from what increasingly felt like harassment at school, ■■■'s mother contacted the school regarding pursuing a homebound placement for ■■■. As of the filing of this complaint, he remains on a homebound placement and receives services for only 10 hours per week. No explanation has been provided regarding why 10 hours is appropriate to meet ■■■'s disability-related needs. Instead, his mother was told that 10 hours is the maximum number of homebound service hours that can be provided to any student in the district.

As of February 2024, ■■■ has also begun receiving limited compensatory education services at the end of his homebound hours. Specifically, a compensatory education teacher is sent to his home 2-3 days per week to provide an additional hour of services after his homebound teacher has completed her services. ■■■'s mother reports that he has done quite well with this extension of educational access and believes strongly that he needs and should be receiving more than 10 hours of services as part of his ongoing access to FAPE. Instead, the district is utilizing compensatory education hours to inappropriately fill in gaps left from them providing such a reduced foundational access to homebound education.

There are several "Change in Placement" worksheets in ■■■'s records purporting to document the days of compensatory education ■■■ is owed due to EGMMS's use of punitive

discipline. However, the worksheets contain inaccurate calculations. Additionally, the change in placement worksheets do not account for periods of time in which ██████'s placement was unilaterally changed by placing him in the BST classroom for hours and days at a time in response to classroom misbehavior.

Violations

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

1. WCPSS routinely fails to conduct adequate and timely functional behavior assessments (“FBAs”) and implement adequate behavior intervention plans (“BIPs”), resulting in continued behavior challenges for students, denial of access to a FAPE, and recommendations for inappropriately restrictive environments.

The U.S. Department of Education finds that an FBA may be a formal evaluation, and – indeed – WCPSS considers them to be so, requiring parental consent. *See also* 71 Fed. Reg. 46,643 (2006). An FBA without sufficient collected data as to antecedents and consequences of behavior can result in a district’s denial of FAPE via development of an ineffective IEP or BIP. *See Cobb County Sch. Dist, v. D.B.*, 66 IDELR 134 (N.D. Ga. 2015). WCPSS routinely develops FBAs without adequate data concerning the antecedents or consequences of behavior, leading to IEPs and BIPs which together do not offer a FAPE.

In addition, NC Policies 1504-2.1 requires a District to conduct an FBA and/or develop or revise a BIP, as needed, to address behavioral violations in circumstances relevant to each of the complainant students. NC Policies 1503-4.1(a)(4) requires that the IEPs created by a District 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, ... 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 ..., and to be educated ... with nondisabled children.” FBAs and BIPs are supports provided in education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate; per NC Policies 1500-2.34, FBAs and BIPs thus qualify as supplementary aids and services, which must be based on peer-reviewed research to the extent practicable, in order to comport with the law. The IDEA sets here a high bar, which the District has failed to meet for the complainant students – instead relying on informal evidence to support FBAs for students with intensive behavioral disabilities resulting in the creation of plans with inadequate behavior interventions, leading to continued behavioral challenges for students and increasingly restrictive placements.

There are ample peer-reviewed and evidence-based practices relating to functional behavioral assessment and behavior intervention planning.² At the heart of the peer-reviewed

² *See, e.g.*, Office of Special Education Programs. “What are Student Level Tier 3 Systems?” <https://www.pbis.org/school/tier-3-supports/what-are-student-level-tier-3-systems?text-only> (sections on descriptive

research base are two inseparable requirements: 1) that an FBA include objectively gathered data on the antecedents, frequency/intensity/duration, and consequences of the target behavior, and 2) that a BIP be individualized – based on the FBA.

In numerous FBA and BIP meetings for the complainant students and as noted in reviewing these students' FBAs and BIPs, these requirements were not met, particularly for ██████. In ██████'s case, both EGMMS and SGHS wholly failed to conduct any FBA whatsoever, much less an appropriate FBA. On February 7, 2023, ██████'s IEP team decided that it needed more data to better support him and to update his BIP, which had last been formally reviewed in March 2022. To date, he still has not received an updated FBA. Since his FBA was requested and consent signed, he has received an additional 23 days of short-term suspensions, was removed to a separate BST setting for the entire day, received a long-term suspension/disciplinary reassignment, and his IEP Team has met over 10 different times to conduct MDRs and review his BIP and IEP. ██████'s escalating behavioral struggles have been at the core of all of his suspensions and placement changes in the last year. However, at no point during that time have any decisions related to ██████'s school-based interventions or placements been based on an evidence-based evaluation regarding the root causes of his behavioral struggles and/or the most appropriate strategies to address those root causes. This was the case across two different schools within WCPSS, establishing that this pattern of violations extends beyond just EGMMS.

Notably, EGMMS also routinely failed to implement the BIPs that were in place for ██████ and ██████ resulting in escalating behaviors, suspensions, and restrictive placements. Their IEP teams documented in multiple MDRs that their behaviors were directly caused by staff's failure to implement his existing BIP. In other cases where the team documented that their BIPs were being followed, the write-ups from the incidents clearly establish that they were not. In fact, in May of 2023, district-level staff conducted an observation of ██████ at school and specifically found that his BIP was not being implemented in the classroom settings. In particular, staff were failing to implement proactive supports to prevent ██████ from getting triggered.

Without proper, evidence-based supports in place in the regular school environment, both ██████ and ██████'s behavior and well-being continued to spiral, resulting in the more suspensions and increasingly restrictive placements.

2. WCPSS routinely imposes unilateral and improper changes in placements for students with emotional disabilities by placing them in BST classrooms and prison-like “stabilization rooms” without following required safeguards and without ensuring continued access to FAPE.

Federal special education regulations require that, to the maximum extent appropriate, children with disabilities shall be educated with children who are not disabled, and that separate schools or other settings that remove children with disabilities from the regular educational

assessment and FBAs for students with intensive behavioral needs); *see also id.* (listing numerous research articles supporting best practices for FBAs for students with intensive behavioral needs).

environment occurs only when “the nature of the disability is such that education in the regular classes *with the use of supplementary aids and services* cannot be achieved satisfactorily.” 34 CFR 300.114. Placement decisions—including those that alter a student’s access to the services in their IEP and/or meaningfully alter their access to non-disabled peers—must be made by an IEP Team. 34 CFR 300.116. Prior Notice must be provided to parents before their student’s placement is changed. 34 CFR 300.503. Placement decisions can be made only after the development of an IEP and in accordance with its terms. 65 Fed. Reg. 36,591 (2000).

At EGMMS, the BST classroom and the BST stabilization room are routinely used to unilaterally change struggling students’ placement without any required procedural safeguards. In those settings, students are segregated from all non-disabled peers and, based on reports from [REDACTED] and [REDACTED] receive minimal access to educational services of any kind. Instead, the focus of those classroom spaces is on behaviors and on keeping students out of the mainstream environment so as to prevent them from being triggered.

For both [REDACTED] and [REDACTED] their access to the mainstream environment and the services required in their IEPs was materially limited through the use of BST classroom placements—particularly the BST stabilization room. However, their IEP teams never amended their IEPs to reflect these changes nor proper justification for placing them in such restrictive settings without first completing necessary evaluations and implementing proper interventions.

For [REDACTED] his placements in the BST classroom occurred intermittently between August of 2022 and March of 2023, after which he was placed fully in the restrictive BST stabilization setting from April of 2023 through the end of the school year. Prior to his full-time placement in the stabilization room, [REDACTED] reports that he would periodically be assigned to spend some or all of the day in the BST classroom setting. While in BST, [REDACTED] had no access to any of his non-disabled peers, even though his IEP required that he spend the majority of his time in the general education setting. [REDACTED]’s records do not contain a log of how often he was in BST, so it is impossible to document exactly how much time he spent in that segregated setting away from his general education peers. [REDACTED] reports that he was given little to no academic instruction while in BST. Any instruction provided focused on behavior and social skills.

Beginning in April, [REDACTED]’s placement was fully changed to the BST stabilization room. Nevertheless, his IEP team failed to properly update his IEP to reflect his significant change in placement. Even though [REDACTED] was being removed from non-disabled peers 100% of the day, his service delivery indicated that he was spending only 85 minutes per day in a special education setting. His LRE justification statement remained the same as well, with no support for why a completely separate setting was necessary to meet his disability-related needs. Notably, [REDACTED]’s IEP team also predetermined in April that, if he had another disciplinary incident, his placement would be automatically changed to homebound. His April 24th Prior Written Notice specifically documented this as follows: “After one write-up [REDACTED] will transition to Home Hospital with no warnings or conversation. The team will meet to finalize Home Hospital.” While this provision was ultimately removed by the team on May 4th before it could be implemented, the backdrop of [REDACTED]’s history of unilateral BST placements along with fact that district staff wrote similar unilateral actions regarding home hospital into [REDACTED]’s BIP and prior written notice in the first

place raises serious flags regarding entrenched beliefs that students with behavioral and emotional disabilities can be pushed out and segregated with little to no procedural protection.

█████ likewise experienced a pattern of having his placement continually changed by assignments to the BST classroom and the BST stabilization room. Beginning in February of 2023, █████ would spend partial or full days in the BST classroom setting. █████'s records do not contain a log of how often he was in BST, so it is impossible to know how much time he spent in that segregated setting away from his general education peers. █████ reports that he was given little to no academic instruction in BST. The instruction provided focused only on behavior and social skills.

█████'s isolation from his peers continued to escalate and, in September 2023, █████'s BIP was changed to create an option for "Daily Stabilization," where █████ could be assigned to the BST classroom for up to 3 days without an IEP meeting. Through the BIP, the EGMMS team gave themselves a free pass to unilaterally change █████'s placement without prior written notice, participation from his parent, or adherence to the LRE requirements. █████ reports that, between the BST classroom and the stabilization room, he spent approximately half of the year in a segregated setting.

3. WCPSS repeatedly denies students consideration of needed related services, resulting in continued behavior challenges for students, denial of access to a FAPE, and recommendations for inappropriately restrictive environments.

Federal special education regulations require that the IEPs created by a District 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, ... 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 ..., and to be educated ... with nondisabled children." 34 CFR 300.320. Related services may include, among others, counseling services, psychological services, and social work services in schools. 34 CFR 300.320. These related services may involve: psychological or other group and individual counseling, consultation on effective learning/teaching strategies, referring children and families to community agencies, and "assisting in developing positive behavioral strategies." Related services are required, as needed, *in addition to* special education services. 34 CFR 300.320.

As evidenced by the IEPs for both █████ and █████ it is EGMMS' practice to not to offer behaviorally supportive related services to many students who need it and where such support would allow the student to more effectively access a FAPE in the LRE.

For both █████ and █████ special transportation was the only related service ever considered for either of them prior to removing them to more restrictive settings. At no point prior to placing either student in BST, on suspension, in the stabilization room, or on homebound did district staff ever consider the need for related services such as appropriate use of behavior-focused related services, including counseling, psychological services, and social work services in schools.

In ██████'s case, WCPSS also denied him timely access to transportation related services, resulting in his mother being required to transport him herself.

4. WCPSS routinely fails to identify and meet the academic needs of students with behavioral and emotional disabilities.

Federal special education regulations require that students' IEPs "[m]eet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum" and also "[m]eet each of the child's other educational needs that result from the child's disability." 34 CFR 300.530. These protections are intended to ensure that the services and focus of a child's IEP address their holistic needs, and not just the needs that align with their disability category.

In both ██████ and ██████'s case, WCPSS focused narrowly on their behaviors and failed to appropriately identify and support their significant and related academic needs. In ██████'s case, his IEP included no academic PLAAFPs or goals, instead focusing narrowly on behaviors and social-emotional skills. This is the case even though his team noted academic concerns in February 2023 that warranted a psychoeducational evaluation, and the September 2023 psychoeducational evaluation revealed that ██████ had regressed significantly in all areas of academics and was performing below average in every area. Nevertheless, his IEP was not updated to include academic present levels, goals, or services sufficient to meet those identified needs.

Similarly, ██████'s IEP Team narrowly focused on his behaviors to the detriment of his academic needs. While ██████ did have academic present levels and goals, those remained virtually unchanged during the last two years while all focus was placed on labeling and controlling ██████'s behaviors without any real understanding of their root cause. In ██████'s annual review in May 2023, his team explicitly noted that they could not even identify his strengths or needs in most of his core areas of academic need. Instead of working to better understand those needs, his IEP team simply repeated his same goals from the prior school year.

At no point during the last year has either ██████ or ██████'s been reasonably calculated to meet their disability-related academic needs. As a result of the district's complete de-investment in their academic success, both students have regressed significantly in their academics.

5. WCPSS routinely fails to conduct manifestation determination review ("MDR") meetings in a timely fashion and according to North Carolina Policies' Procedural Safeguards.

Federal special education regulations require an MDR to be completed "within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct." 34 CFR 300.530. In conducting an MDR, the IEP team must consider "all relevant information in the student's file, including ... any relevant information provided by the parents" in making the manifestation determination. 34 CFR 300.320. This requirement harkens back to the initial intent of the IDEA, which was to stop the practice of

emotionally disabled students being excluded because of disability-related behaviors. *Honig v. Doe*, 484 U.S. 305, 323 (1988) (“In drafting the law, Congress was largely guided by recent decisions. . . which involved the exclusion of hard-to-handle disabled students.”).

While at EGMMS, █████ engaged in the same pattern of disability-related behavior through the entirety of the school year, resulting in over 30 days of suspension. His MDRs were routinely conducted after his suspension had been fully served and/or beyond the 10-day requirement.

- █████ was suspended on February 22nd for 6 days. His behavior was found to be a manifestation of his disability on March 7th, after he had fully served his suspension.
- █████ was suspended on March 13th for 5 days. His behavior was found to be a manifestation of his disability on April 14th, over a month after he had fully served his suspension.
- █████ was suspended on March 23rd for 5 days. His behavior was found to be a manifestation of his disability on April 14th, after he had fully served his suspension.
- █████ was suspended on April 20th for 5 days. His behavior was found to be a manifestation of his disability on April 24th, but he continued to be excluded from school because of an ongoing bus suspension.
- █████ was suspended from the bus for 10 days on April 20th, resulting in a summary denial of access to school. An MDR was not conducted for the bus suspension until May 4th, after he had almost fully served his suspension.

At EGMMS, █████ also engaged in a pattern of disability-related behavior through the entirety of the school year, resulting in over 40 days of suspension. As with █████ he likewise experienced the same pattern of his MDRs being conducted only after his suspension had been fully served.

- █████ was suspended on February 7th for 3 days. His behavior was found to be a manifestation of his disability on February 10th, after he had fully served his suspension.
- █████ was suspended on February 22nd for 5 days. His behavior was found to be a manifestation of his disability on February 27th. According to his change in placement worksheets, he continued to be disciplinarily placed in an Alternative Learning Center for two additional days after his team determined that his behavior was disability-related.
- █████ was suspended on March 9th for 5 days, which was to begin on March 15th. His behavior was found to be a manifestation of his disability on March 16th. According to his change in placement worksheets, he continued to be disciplinarily placed in an Alternative Learning Center for three additional days after his team determined that his behavior was disability-related.
- █████ was suspended on March 23rd for 10 days. His behavior was found to be a manifestation of his disability on March 28th, resulting in him being suspended for 5 days for disability-related behaviors.
- █████ was suspended on April 17th for 5 days. His behavior was found to be a manifestation of his disability on April 20th. It is unclear from documentation in the file whether he was allowed to return to school or served the entire 5-day suspension either as an out-of-school suspension or a disciplinary Alternative Learning Center placement.

- ■■■ was suspended on October 18th for 10 days. His behavior was found to be a manifestation of his disability on October 27, after he had served almost his entire 10-day suspension.
- ■■■ was suspended on November 9th for 3 days. No MDR was conducted because EGMMS claimed the removal did not constitute a disciplinary change in placement.

■■■ also experienced violations of his disciplinary safeguards while at SGHS, as his IEP Team failed to consider data and information from his prior school year and/or his medical record, resulting in the team erroneously concluding that his behavior—which was part of the same pattern of disability-related behavior exhibited at EGMMS—was not disability-related.

6. WCPSS routinely fails to provide continuation of services guaranteeing access to a FAPE starting on the 11th day of suspension.

Federal special education regulations require a District to provide continuing educational services – including, if applicable, related services – that afford the student a FAPE and enable a student to progress in the general education curriculum and to make progress on his/her IEP goals. 34 CFR 300.530(d). Furthermore, federal regulations and comments make clear that these services must be provided no later than the 11th cumulative day of suspension in a school year. 71 Fed. Reg. 46717 (2006) (“Beginning on the 11th cumulative day in a school year that a child with a disability is removed from the child’s current placement, and for any subsequent removals, educational services must be provided to the extent required in 300.530(d), while the removal continues.”)

As evidenced by the experiences of both ■■■ and ■■■ EGMMS as a matter of pattern and practice fails to provide uninterrupted access to required educational services for students with disabilities who are suspended for more than 10 cumulative days. Neither of the students involved in this complaint received access to appropriate educational supports beginning on the 11th day of suspension for *any* of their numerous suspensions. Notably, this same violation repeated for ■■■ when he moved to SGHS, indicating that this pattern of violations extends beyond just EGMMS.

While the District has in certain circumstances, after the involvement of students’ counsel, offered compensatory services for its failures to provide uninterrupted access to a FAPE during suspensions, these services cannot fully compensate students for time and opportunities lost to learn with their peers, access a FAPE, and not fall behind. Moreover, after-the-fact compensatory services do nothing to remedy the systemic practice that continues to summarily violate the rights of students with disabilities across the district who accumulate more than 10 days of suspension in a given school year.

7. WCPSS fails to accurately document whether students are subject to a change in placement due to disciplinary consequences and for how many days, resulting in a failure to provide appropriate compensatory services.

For both ■■■ and ■■■ district staff utilized change in placement worksheets to calculate compensatory education owed. However, for both ■■■ and ■■■ the worksheets included

incorrect numbers and calculations, resulting in inappropriate documentation and calculation of compensatory education services owed.

8. WCPSS has an illegal policy of limiting students' homebound service delivery hours to 10 hours per week.

A fundamental protection under the IDEA is the guarantee that a student with a disability will be provided with the services and supports that are “reasonably calculated to enable the child to make progress appropriate in light of his circumstance.” *Endrew F. v. Douglas Cnty. Sch. Dist.* RE-1, 580 U.S. 386, 386. Further, “[i]n all cases ... placement decisions must not be made solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience (emphasis added).” *Letter to Rowland* (OSEP 2019) (emphasis added).

Despite these clear requirements, ██████'s current service delivery is based on a district cap related to homebound services—not based on his individual needs and circumstances. ██████ was placed on homebound during the fall semester of 2023-24 as a result of his worsening mental health status while being routinely confined to the BST stabilization room at EGMMS. Since being placed on homebound, ██████ has received only 10 hours of homebound instruction each week. His mother reports that this cap on services is not because ██████ does not need and/or cannot handle more than 10 hours of services per week. Instead, ██████'s mother was informed that 10 hours of services is the most that WCPSS is able to offer to any student placed on homebound. Upon information and belief, this deprivation in ██████'s case is representative of a district-wide policy and practice of limited homebound services to a maximum of 10 hours per week.

Remedies

The following remedies are requested to address the individual and systemic violations outlined above:

Compensatory services for named students

1. Complainants seek retrospective relief in the form of compensatory special education for ██████ and ██████. 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.
2. For ██████ Complainants seek reimbursement of the costs incurred by ██████'s mother as a result of being required to provide transportation for ██████ during periods of time when his special transportation was not set up.

Independent evaluations for named students

3. Complainants ask that WCPSS be required to contract with independent educational evaluators for (a) the completion of an appropriate, evidence-based FBA and creation of an appropriate BIP; and (b) the completion of appropriate educational assessments needed to properly understand the current academic skills and needs of each student.

Overturing of █████'s MDR

4. █████ requests that DPI review his most recent MDR and find that SHGS erred in finding his behavior was not a manifestation of his disabilities and of the school's failure to properly implement his IEP and BIP.

IEP Team meeting for named students

5. Complainants request that both students' IEP teams be required to convene to review and update their IEPs to ensure that the students are being provided appropriate services in the least restrictive environment.
6. Complainants request that a state-level member of DPI staff knowledgeable in appropriate related services for students with behavioral and emotional disabilities be invited to participate in this IEP meeting.

Apology

7. Complainants request that an apology be given to █████ and █████ regarding the violations of their rights and the harm caused by those violations.

Audit

8. Complainants request that DPI conduct an audit of the BST classroom, BST stabilization room, and staff from the 2022-23 school year, including an investigation into:
 - a. How many students spent time in the BST classroom and/or stabilization room.
 - b. How many hours students spent in the BST classroom and/or stabilization room.
 - c. What instruction was provided in the BST classroom and/or stabilization room and by whom.
 - d. Whether the IEPs of students placed in the BST classroom and/or stabilization room and were properly amended to document placement changes.
 - e. Whether the IEPs of students placed in the BST classroom and/or stabilization room and were properly updated to include all necessary related services and supplemental aids and accommodations before those restrictive settings were employed.
9. Complainants request that DPI conduct an audit of the files of students with IEPs who were suspended for more than 10 days to determine whether those students:
 - a. Received timely MDRs.
 - b. Received uninterrupted access to educational services during their days of suspension beyond 10 days.
 - c. Received Disciplinary Change in Placement Worksheets that properly captured their days of suspension and/or removal.
10. Complainants request that DPI conduct an audit of the files of students who have been placed on homebound to determine whether those students have received the services

needed to meet their individualized needs and have not been capped at 10 hours per week of services as a matter of policy and practice.

Compensatory education for similarly situated students

11. Complainants seek retrospective relief in the form of compensatory special education for similarly situated students identified through the audit above to have experienced violations of their rights and subsequent denials of FAPE.

Training

12. Complainants seek training by DPI for EC staff and behavior specialists at EGMMS and SGHS in:
 - a. evidence-based FBA practices, data collection, and data analysis and their application to the development of BIPs using peer-reviewed practices.
 - b. the appropriate use of related services, particularly behavior-focused related services, including counseling, psychological services, and social work services.
 - c. the proper conduct of manifestation determination reviews, including related documentation that must be maintained when students' placements are disciplinarily changed.
13. Complainants seek training for *all* staff at EGMMS and SGHS regarding best practices for working with students with emotional disabilities. Training shall be provided by independent experts and should include at least the following topics:
 - a. An overview of emotional disabilities such as oppositional defiant disorder, conduct disorder, and post-traumatic stress disorder, how they impact the behaviors of youth, and best practices for creating a supportive environment for youth with emotional disabilities;
 - b. Common physiological responses to stress and trauma in young people;
 - c. The difference between the social and the medical model of disability; and
 - d. Antiracist, antiracist, and culturally responsive instruction and intervention.

Other

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

Sincerely,



Jennifer R. Story, Esq.
Managing Attorney, LANC-REP



Hetali Lodaya, Esq.
Staff Attorney/Everett Fellow

ENCLOSURES: Consent form signed by the parents of [REDACTED] and [REDACTED]