

# Legal Aid of North Carolina, Inc.

## Advocates for Children's Services

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July 19, 2012

Via U.S. mail and email ([watson@dpi.nc.gov](mailto:watson@dpi.nc.gov))

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### Re: Formal State Complaint filed against the Wake County Public School System

To Whom It May Concern:

Please consider this a Formal State Complaint filed on behalf of students with disabilities ("SWD") against the Wake County Public School System ("WCPSS" or "the District"). Complainants allege that WCPSS has violated, within the last year, the Individuals with Disabilities Education Act ("IDEA") and corresponding federal regulations and state laws, regulations, and policies. Complainants file this Complaint on behalf of their individual clients and all other similarly situated students.<sup>1</sup>

SWD are entitled to receive a free appropriate public education ("FAPE"),<sup>2</sup> even while suspended from school for more than 10 days.<sup>3</sup> A FAPE is one that emphasizes special education and related services *specifically* designed to meet SWD's *unique* needs, to permit them to benefit from instruction, and to prepare them for further education, employment, and independent living.<sup>4</sup> An SWD who is removed from her current placement due to disciplinary reasons must: a) receive educational services so as to enable her to continue to participate in the general education curriculum and progress toward meeting the goals set out in her Individualized Education Program ("IEP"); and b) receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.<sup>5</sup>

WCPSS' alternative education programs are not reasonably calculated to enable all SWD to receive educational benefit and make educational progress.<sup>6</sup> "It is undisputed that an 'appropriate education' requires something more than merely those services which would enable the student to graduate from grade to grade."<sup>7</sup> WCPSS cannot discharge its duty to SWD simply "by providing a program that produces some minimal academic advancement, no matter how trivial."<sup>8</sup> As set forth below, Complainants allege that, for SWD whose educational placements

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



are changed for more than 10 school days for disciplinary reasons (i.e., SWD who experience a change in placement), WCPSS fails to:

- Provide them with a FAPE;<sup>9</sup>
- Educate them in the least restrictive environment (“LRE”);<sup>10</sup> and
- Develop IEPs based upon their unique needs.<sup>11</sup>

## BACKGROUND

### SWD in WCPSS

SWD are disproportionately pushed out of WCPSS. They suffer from widespread academic failure and massive achievement gaps. During the 2010-11 school year, only 40.4% of SWD in grades three through eight were proficient in reading and math on the end-of-grade (“EOG”) exam, compared to 78.2% of non-disabled students.<sup>12</sup> Only 59.1% of SWD in high school passed all of their end-of-course (“EOC”) exams, compared to 88.4% of non-disabled students.<sup>13</sup>

Further, SWD are disproportionately suspended. During the 2009-10 school year, 29.9% of students suspended at least once were SWD,<sup>14</sup> even though they were only 13.4% of the total student population.<sup>15</sup> During the 2010-11 school year, 31.3% of students suspended at least once were SWD,<sup>16</sup> even though they were only 13.4% of the total student population.<sup>17</sup> The percentage of SWD who were suspended at certain schools is especially horrendous (See Table 1 below).<sup>18</sup> Many students are suspended year after year without meaningful interventions in their IEPs.

Table 1 (2010-11):

School	Total Students Suspended	% of Students Suspended Who Were SWD
Joyner Elementary	33	69.7
Green Elementary	32	53.1
Root Elementary	25	52.0
Moore Square Middle	55	50.9
Salem Middle	78	46.2
East Cary Middle	45	44.4

Given the high rates of academic failure and suspension for SWD, it is unsurprising that a disproportionate number of SWD drop out or do not graduate on time.<sup>19</sup> During the 2009-10 school year, the drop out rate for SWD was 7.9%, compared to the district-wide rate of 3.5%.<sup>20</sup> During the 2010-11 school year, the four-year cohort graduation rate for SWD was only 55.9%, compared to the district-wide rate of 80.9%.<sup>21</sup> The four-year cohort graduation rate for SWD in WCPSS was lower than the statewide average for SWD.<sup>22</sup>

### **Previous Complaints Against WCPSS**

On December 8, 2009, Advocates for Children's Services ("ACS"), a statewide project of Legal Aid of North Carolina, filed a Formal State Complaint with the North Carolina Department of Public Instruction, Exceptional Children Division ("DPI") alleging that WCPSS was in ongoing violation of the state and federal special education rights of long-term suspended students with disabilities.<sup>23</sup> On December 15, 2009, DPI opened an investigation of WCPSS. On April 30, 2010, DPI issued a "Complaint Resolution Final Report," which substantiated ACS' claims and found the following:

- "The records revealed students who had been retained for multiple grades and had not passed the End-of-Grade (EOG) Tests in Reading and Math or the End-of-Course (EOC) Tests in high school, yet they received 10 minutes of special education services a week or a reporting period prior to their removals. The duration and frequency of special education services in the IEPs for the students with 'regular' placements were, in most cases, very limited. The IEPs failed to provide adequate educational and behavioral supports for the students to progress in the general education curriculum or to remain in school."
- "[N]one of the 191 students with disabilities placed on [home/hospital] for behaviors or for [long-term] suspension during the current school year received more than six hours per week of homebound instruction...Their records provided no indication that the educational, functional and emotional needs, deficits, or behaviors of many of the students were addressed on their IEPs before the change in placement or were considered after the placement change to "[home/hospital]."
- "The WCPSS is found to be in noncompliance with the regulations for failing to develop an IEP based upon the unique needs of each student with a disability who is long-term suspended."
- "[T]he [Home/Hospital] teacher may not always be qualified to teach the subject or to address the student's special needs."
- "[M]any records contained no documentation that the student's homebound placement was reviewed monthly."
- "When the WCPSS discontinued its contract with the Richard Milburn School, it provided no other [Interim Alternative Educational Setting] as a placement option for students with disabilities who are given [long-term] suspensions. Although the school system has developed SCORE, the [Special Education Services] staff admitted that it is not appropriate for all students with disabilities."
- "The WCPSS is found to be in noncompliance with the IDEA regulations for failing to provide a continuum of placements, for limiting its IEP Team to only one option when determining the appropriate [Interim Alternative Educational Setting], and for failing to provide students with disabilities, who are long-term suspended, with a placement in the least restrictive environment (LRE). The WCPSS is also found to be in noncompliance for failure to convene monthly meetings to determine the continued appropriateness of homebound instruction for each student with a disability whose H/H [Home/Hospital] placement was for a disciplinary removal."

- "Several students had been placed on [long-term] suspension for two or more consecutive school years without meaningful interventions on the IEP."
- "IEPs for the high school [home/hospital] students frequently consisted of one goal for organization and one for making passing grades."
- "Many students failed to participate in the [home/hospital] instruction that was provided at locations such as their home, the public library, and in one case, Taco Bell, and they were withdrawn by the school."
- "The school system's failure to develop IEPs based upon the individual needs of the students who were placed on [home/hospital] for [long-term] suspensions and behaviors, failure to implement those IEPs, and failure to provide placements in the least restrictive environment impeded the students' rights to a free appropriate public education and deprived them of educational benefit."
- "The WCPSS is found to be in noncompliance with the IDEA for failure to provide a free appropriate public education for the students who were placed on [Home/Hospital] for [long-term] suspension and for behavior."

The following school year (2010-11), WCPSS continued violating the state and federal rights of long-term suspended SWD. Therefore, on May 19, 2011, ACS filed a second complaint with DPI.<sup>24</sup> On May 23, 2011, DPI again opened an investigation of WCPSS. On July 29, 2011, DPI issued a "Complaint Investigation Final Report," which substantiated ACS' claims and found as follows:

- WCPSS "failed to complete the corrective actions [from the first complaint] in a timely manner."
- The 164 SWD who were long-term suspended received three to 32 hours of educational services per month—113 students received five hours per week or fewer.
- More than two-thirds of the grades given to the students were D's and F's.
- More than three-fourths of the EOC exams taken received failing grades.
- "[T]he evidence does not support that special education services are addressing the unique needs of these students."
- "Student grades and EOC test results indicate that vast majority of the students are failing."
- "There is a group of students whose service time is so minimal per month (i.e. 3-8 hours) that on its face, it is found to be improbable, if not impossible, to conclude that the [local education agency] is ensuring participation in the general curriculum, progress made on the IEP goals, and as appropriate, the provision of behavior intervention services."
- "[T]hese students are in need of specially designed instruction or related services, such as counseling, conflict resolution instruction, character education, or the strategies taught in the Positive Intervention Support program. Such services are not being provided."
- "WCPSS is found to be noncompliant with the regulations for failing to develop IEPs based on the unique needs of each student with a disability, who is long-term suspended."
- Home/Hospital services "were provided in the following locations: home, school, public libraries, McDonalds, Starbucks, Dunkin Donuts, Borders, Hardees, Subway, and the YMCA."

- “A system of service delivery via computer is fraught with problems from its inception; and the data supports that it has not been proven successful. The data from first semester clearly indicates that a vast majority of students failed.”
- “[T]he evidence from grades and EOC test results indicates that the students are not benefitting from the services delivered via computer, i.e. SCORE and Infinity. The data of overwhelming failure were evident with first semester grades and EOCs, and yet no system change was initiated to address the fact that the placement in a program where services are delivered via computer was not ensuring participation in the general education curriculum.”
- “WCPSS is found to be noncompliant with the regulations for failing to provide a placement in the least restrictive environment for students who are long-term suspended.”
- “The data supports and the [local education agency] acknowledges that the majority of students participating in homebound services and the SCORE program were not successful relative to grades or EOCs.”
- “[T]he current system of delivering services to students who are long-term suspended for disciplinary reasons is not effective and has caused a deprivation of educational benefit. WCPSS is found to be noncompliant regarding the provision of FAPE for students who are long-term suspended.”

On August 23, 2011, representatives from DPI and WCPSS met to discuss and finalize a corrective plan.<sup>25</sup> The plan required WCPSS to maintain and produce to DPI a database that includes 14 fields or pieces of information. Although WCPSS created a template for the database, the District has failed to actually document individual student data within the majority of the required fields.<sup>26</sup>

## FACTS

During the 2011-12 school year, WCPSS had four Interim Alternative Education Services (“IAES”) for SWD who had been long-term suspended: Longview School (“Longview”); Home/Hospital (“H/H”); the Second Chance Online Resource for Education program (“SCORE”); and the Infinity program (“Infinity”). Additionally, WCPSS provided two “temporary services” for SWD while they were awaiting placement in an IAES: H/H and Alternative Learning Centers (“ALCs”).<sup>27</sup>

During the 2011-12 school year, an assessment was conducted “to better understand the quality of district-level and school-level special education services currently in place” in WCPSS. Included in the assessment was a survey of 952 WCPSS staff members, including principals, assistant principals, special education department chairs, teachers, and others.<sup>28</sup> The survey asked staff to respond to the following statement: “Our district has an appropriate range of educational placement options to adequately serve SWD.” The majority of assistant principals, principals, special education department chairs, and special education teachers disagreed with the statement. WCPSS staff do not believe WCPSS has an adequate range of placements to serve SWD.<sup>29</sup>

<b>Respondent Group</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Strongly Disagree or Disagree</b>
Assistant Principal or Other Administrator	16%	40%	56%
Other	30%	40%	70%
Principal	33%	42%	75%
Spec. Ed. Dept. Chair	23%	42%	65%
Spec. Ed. Teacher (Extended Content Standards)	17%	36%	53%
Spec. Ed. Teacher (Standard Course of Student)	27%	42%	69%

### **Longview**

Longview opened as an alternative school in the early 1980s and is the only "brick and mortar" school serving SWD who have been recommended for long-term suspension.<sup>30</sup> Longview "serves students in grades 6 through 12 who have been identified as in need of Special Education services and whose academic and behavioral needs require intensive and intrusive intervention."<sup>31</sup> Longview's capacity is 102 students.<sup>32</sup> In February 2012, it was 34.3% over capacity with 137 students.<sup>33</sup> Average daily attendance was a dismal 79%.<sup>34</sup>

Longview is a high-poverty, racially identifiable school. Over 75% of the students receive free and reduced-price lunch, whereas only 33.3% of the total WCPSS student population receives free and reduced-price lunch.<sup>35</sup> Over 90% of Longview students are non-White, compared to WCPSS at large, wherein non-White students comprise only 50.7% of the total student population.<sup>36</sup>

Most students at Longview fail academically.<sup>37</sup> A November 2010 study found: "Longview student survey findings reveal that building student resiliency has occurred less frequently at Longview compared to the other alternative settings. Additionally, students reported inconsistent levels of improvement within their problem areas...A five-year longitudinal study of a Longview cohort of 30 entering 9th-grade students indicates that few students have been successful."<sup>38</sup> During the 2010-11 school year, only 9.3% of middle school students at Longview passed their reading and math EOG exams.<sup>39</sup> During the 2010-11 school year, only 22.4% of high school students at Longview passed all of their EOC exams.<sup>40</sup> During the 2010-11 school year, the four-year cohort graduation rate for SWD at Longview was 35.3%.

### **Home/Hospital (H/H)**

For years, long-term suspended SWD in WCPSS have been placed on H/H in alarmingly high numbers, despite the fact that, according to WCPSS, "Home/Hospital should be a consideration only when all other programs are deemed inappropriate."<sup>41</sup> WCPSS has placed hundreds of students on H/H during the last few school years.<sup>42</sup>

As described above, DPI found WCPSS' H/H practices to violate state and federal special education law for two consecutive years. Unfortunately, little has changed. H/H practices continued to be problematic during the 2011-12 school year, as evidenced by the following:

- a) Many SWD experienced unreasonably large gaps in special education services during the time between their suspension from school and the onset of H/H services.
- An SWD long-term suspended from Southeast Raleigh High School on August 12, 2011, did not have a H/H teacher assigned until September 19, 2011.
  - An SWD long-term suspended from Athens Drive High School on September 1, 2011 did not start services until September 29, 2011, because the H/H teacher did not receive work from the school.
  - An SWD long-term suspended from Enloe High School on October 3, 2011, was not provided with any services until the week of January 17, 2012.
  - An SWD long-term suspended from Enloe High School on October 13, 2011, was not provided with any services until November 17, 2011.
  - An SWD long-term suspended from Wakefield High School on October 25, 2011, did not receive services because the school could not find a H/H teacher.
  - An SWD long-term suspended from Leesville Road Middle on October 21, 2011, and then from Longview on December 2, 2011, was never connected to a H/H teacher and, as a result, received no education services during his six months out of school.
- b) Many SWD received H/H services in inappropriate community settings.
- An SWD long-term suspended from Davis Drive Middle School on November 28, 2011, was provided with H/H services at McDonalds.
  - An SWD long-term suspended from Middle Creek High School on January 27, 2012, was provided with H/H services at McDonalds.
- c) No student placed on H/H received an adequate number of instructional hours.
- Most students placed on H/H received only four hours per week, even though the July 2011 report from DPI read: "There is a group of students whose service time is so minimal per month (i.e. 3-8 hours) that on its face, it is found to be improbable, if not impossible, to conclude that the [local education agency] is ensuring participation in the general curriculum, progress made on the IEP goals, and as appropriate, the provision of behavior intervention services."
  - No student placed on H/H received more than 7.5 hours of H/H services per week.
  - At least two students received only three hours of H/H services per week.
  - At least nine students received only two hours of H/H services per week.
  - At least two students received fewer than two hours of H/H services per week.<sup>43</sup>

In addition to the issues cited above, Complainants' clients and similarly situated students report the following concerns related to the provision of H/H services:

- H/H teachers are not always qualified to teach the academic subjects or to address the student's special needs.
- H/H does not involve specially designed instruction or related services, such as counseling, conflict resolution instruction, character education, or the strategies taught in Positive Behavior Interventions and Supports programs.
- H/H teachers often engage in other activities, such as their own work or reading a magazine, during the hours of services.

- During H/H services, students mostly complete worksheets—there is little to no actual instruction.
- Many students do not use their H/H hours because the services are not adequate and no transportation is provided.

## SCORE

SCORE is an online instructional program that was first implemented as an alternative to suspension program in WCPSS during the 2009-10 school year. According to WCPSS, "SCORE was not formally evaluated after the 2009-2010 school year" and the district made no plans to conduct a formal evaluation for the 2010-11 school year.<sup>44</sup> Though the program's efficacy was not formally evaluated after its first two years of existence, SCORE continued to serve students during the 2011-12 school year. Notably, WCPSS declined to evaluate the program and continued placing SWD in SCORE even though DPI's July 2011 report found: "the evidence from grades and EOC test results indicates that the students are not benefitting from the services delivered via computer, i.e. SCORE and Infinity."

In SCORE, all instruction is virtual.<sup>45</sup> Students sit in front of a computer for five to seven hours per day, five days per week. In order to successfully participate in SCORE, students must be able to: send and receive email; research topics on the Web; attach, send, and open documents; participate in live, online discussions; and post assignments to a discussion board.<sup>46</sup> Students receive only a brief orientation regarding these technological requirements. The only orientation provided for parents and guardians of participating students is a required session that is administered during the workday at WCPSS' main office in Cary, far away from where many families live.

The curriculum for SCORE is in no way tailored to meet the unique needs of SWD. Every student, regardless of disability, is administered the same online, grade-level curriculum. The program offers no option for the "content, methodology, or delivery of instruction" to be adapted so as to be appropriate to the needs of the individual student.<sup>47</sup> In 2010-11, all middle school students received 60 minutes per core class five times per week and Curriculum Assistance class five times per week.<sup>48</sup> High School students received 90 minutes per core class five times per week and 60 minutes per Curriculum Assistance class five times per week.<sup>49</sup> A standard letter that WCPSS Special Education Services sent to schools read: "SCORE should be limited to those students who are adequate readers and can work independently."<sup>50</sup> However, all of the students participating in SCORE who the Complainants have encountered are below grade level in reading and have difficulty working independently.

Some students participate in the program from home. Others participate in the program at one of six sites in Wake County, not located on WCPSS property.<sup>51</sup> There were a total of 55 seats at the sites during the 2010-11 school year.<sup>52</sup> The sites are not staffed by WCPSS employees. Students who are enrolled at the physical sites are not provided with transportation to or from the sites. Economically disadvantaged students who participate in SCORE are not provided with free and reduced-price lunch.<sup>53</sup>



The following statistics from the 2010-11 school year further raise concerns regarding the appropriateness of SCORE as a placement for SWD:

- 654 students were offered SCORE and 292 students enrolled in SCORE.
- 233 students "completed" SCORE.<sup>54</sup>
- 66 SWD were referred to SCORE and 53 SWD participated in SCORE.
- There were only two certified special education teachers in SCORE.<sup>55</sup>
- Each SCORE site was paid nine dollars per day, per student.
- No formal training was offered to SCORE site staff.
- There was no website to which students and parents could go for more information about SCORE.
- The caseload for each transition counselor varied between 119 students and 225 students.
- Only 44.5% of EOG exams completed by students in SCORE received passing scores.
- Only 41.7% of EOC exams completed by students in SCORE received passing scores.

Parents are enticed to forgo appeals of long-term suspensions under the promise that students who "successfully complete" SCORE are no longer counted as long-term suspended.<sup>56</sup> Notably, SCORE does not even meet DPI's definition of an alternative learning program.<sup>57</sup> It does not offer any of the following services:

- in-person (i.e., physically present) teachers;
- accountability for student attendance (students who simply log in are counted as attending);<sup>58</sup>
- kinesthetic or hands-on learning;
- group work;
- physical education courses or exercise;
- elective courses;
- honors courses;
- advancement placement courses;
- extracurricular activities;
- regular access to guidance counselors, school psychologists, or school nurses; or
- related services, such as counseling, conflict resolution instruction, and character education.

### **Infinity**

Infinity is a computer-based program provided by the private, Florida-based organization AMIkids, Inc. During 2009, AMIkids had approximately \$75,000,000 in total revenue.<sup>59</sup> In December 2010, AMIkids was prepaid \$213,930.<sup>60</sup> AMIkids is paid \$7,131 per student per school year by WCPSS, even though students only attend Infinity for half of a regular school day and WCPSS still pays the cost of building space, facility maintenance, internet service, related services as specified in the student's IEP, transportation, and the coordination of transition planning.<sup>61</sup> If the program is filled, AMIkids would be paid \$427,860.

Infinity is structured to serve middle and high school students under terms set forth in the contract between WCPSS and AMIkids stating: "The enrollment at the AMIkids Infinity Wake County will not exceed 60 students, divided over three, three hour sessions daily with approximately 20 students in each session." In practice, however, students attend the program in one of two sessions for a maximum of four hours per day. According to Infinity's course schedule, students in the "AM Class" are allotted 38 minutes to complete online coursework in Language Arts/English, 38 minutes in Science, 38 minutes in History, and 38 minutes in Math each day, for a grand total of two and a half hours of academic curriculum work in a given day. Students in the "PM Class" are allotted 51 minutes of each subject, for a total of just under three and a half hours of academic curriculum work in a given day. Notably, students work independently during this time, and there are no available records that track how much time a student actually spends on coursework and/or how many instructional units on average are completed during those allotted times.

Even though DPI ordered WCPSS to create "an alternative special education program" by August 5, 2010,<sup>62</sup> Infinity did not initiate operations until March 2011 and did not have any students until April 25, 2011.<sup>63</sup> It only served six or seven students during the 2010-11 school year. There was no evaluation of Infinity following the 2010-11 school year, yet the contract was renewed.

In 2011-12, Infinity operated as a racially identifiable program, with Black and Latino males comprising the overwhelming majority of the student population. Records indicate that, as of May 21, 2012, a total of 85 students had been enrolled at Infinity over the course of the two semesters, with 53 attending first semester and 32 attending second semester.<sup>64</sup> Of the 83 students for whom gender was reported, 78 (or 94%) were male.<sup>65</sup> Of the 81 students for whom race was provided, 68 (or 84%) were Black or Latino students.<sup>66</sup> In other words, approximately 79% of students placed at Infinity were Black or Latino males.<sup>67</sup>

According to records reflecting second semester data from Infinity, 19 students were "termed from Infinity Wake County."<sup>68</sup> Clarification was sought from WCPSS regarding the meaning of "termed", but none was provided. Therefore, the Complainants operate on the reasonable assumption that 19 students were terminated or suspended from the Infinity program in 2011-12. Of those 19 students, 17 (or 89.5%) were male and 15 (or 79%) were Black.

Conflicting information has been provided regarding Infinity's staffing patterns. Whereas the Request for Proposals indicated the program would staff ten different positions, the program appears to staff only seven positions. Additionally, though the current "Organizational Chart" indicates that the program will be staffed by two certified teachers, as of February 21, 2012, only one of those positions was staffed by a certified teacher.<sup>69</sup> No records were provided to Complainants indicating when, if ever, a second certified teacher was hired. No qualifications are provided for the additional Infinity staff members, including the "Director of Treatment," who is charged with providing "mental health and evidence-based services to youth," and the "Team Leader," who is charged with, among many other administrative tasks, serving as the

"Safety/Crisis Coordinator" and "[i]mplement[ing] and monitor[ing] AMIkids Behavior Modification System."<sup>70</sup>

Transportation is provided to participating students; however, the program is located at Heritage High School, which is in far northeast Wake County and over 40 miles from some areas of Wake County,<sup>71</sup> and the majority of participating students are from Raleigh.<sup>72</sup> Transportation costs over \$2,000 per day.<sup>73</sup>

The following information is also noteworthy:

- There is no information about Infinity on the WCPSS website.<sup>74</sup>
- Parents/guardians of participating students are given only a generic AMIkids brochure.<sup>75</sup>
- Students are not allowed to bring book bags or purses into the program.<sup>76</sup>
- Some students have been involved in community service projects but there are otherwise no extracurricular activities.<sup>77</sup>

### **Alternative Learning Centers (ALCs)**

ALCs started during the 2011-12 school year. ALCs were, in part, designed to replace in-school suspension ("ISS") after an internal WCPSS report found the following:

- "WCPSS as a district does not have an underlying philosophy or set of procedures guiding ISS operation."
- "WCPSS does not centrally collect, store, or analyze ISS data."
- "Limited academic and behavioral interventions are included in the [ISS] program to sustain long term change."
- "[S]tudents are missing valuable instructional time while assigned to ISS though no guidance has been provided to school administration as to why, when, and for how long students should be removed from the classroom."
- "In the majority of schools, the timely collection of appropriate academic assignments is problematic."
- "[S]ince assignments are not ready first thing in the morning, students do not always have things to work on when they arrive."
- "[S]tudents do not have enough work which results in the ISS coordinator having to find things for the student to do."
- "The inclusion of behavior modification into the ISS programs is limited. As such, the programs appear to have more of a punitive intent rather than one of behavior modification."
- "Formal interventions are not provided to determine the root causes of the students behavioral problems."<sup>78</sup>

ALCs are designed to be an "intervention option for students who repeatedly violate Level I and Level II offenses as outlined in the Student Code of Conduct."<sup>79</sup> Placement in an ALC may last up to 45 school days.<sup>80</sup> If used correctly, ALCs are theoretically a good idea.

However, Complainants have reason to believe that ALCs are being used as short-term punishment (like ISS) in many schools. For example, Longview's ALC policy states: "Unless otherwise specified by an administration students are only assigned to ALC for one day."

There is no publicly available, disaggregated data that provides insight into the following issues:

- How many SWD have been placed in ALCs;
- The length of time SWD are spending in ALCs;
- How special education and related services are being delivered in ALCs;
- Whether reviews are taking place for SWD who are placed in ALCs for more than 30 days; and
- Whether Manifestation Determination Reviews are happening for SWD who are placed in ALCs for more than 10 school days.

If such data is available, it should be provided to DPI. If such data is not available, WCPSS is again exhibiting gross negligence in its oversight of programs serving SWD.

## COMPLAINANTS

[REDACTED]  
[REDACTED] are SWD in WCPSS. During the 2011-12 school year, all six students experienced both of the following: a) a change in placement for more than 10 school days for behavior reasons; and b) a placement in one or more of WCPSS' IAES and/or temporary services. As explained in detail below, WCPSS failed to provide the students with a FAPE in the LRE and to develop their IEPs based upon their unique needs.

### I. [REDACTED]

#### *Background*

[REDACTED] is a 12-year-old, Black, economically disadvantaged, male SWD. During the 2011-12 school year, [REDACTED] was a sixth grade student at [REDACTED]. He will attend [REDACTED] for the 2012-13 school year.

The only area of eligibility in [REDACTED]'s IEP is Other Health Impaired ("OHI") for Attention Deficit Hyperactivity Disorder ("ADHD"), despite the presence of the following issues:

- From 2005 to 2009, his primary area of eligibility was Behavioral-Emotional Disability.
- [REDACTED]
- He has been diagnosed by his mental health provider as having Oppositional Defiant Disorder ("ODD").<sup>81</sup>

- During his annual review, the IEP team noted: “He continues to have difficulty with impulsivity and behavior.”
- His IEP reads: “[REDACTED]’s behavior can cause him and others significant difficulty.”
- His IEP has three functional goals related to behavior.

[REDACTED]’s IEP does not provide him with any nonacademic services, such as counseling, mentoring, or behavioral specialists. The only behavioral intervention in his IEP is preferential seating. He has not been reevaluated in over four and a half years—since December 2008.

[REDACTED] has a history of academic failure. He has never been at or above grade level—always scoring Is and IIs on EOG exams. In kindergarten through fifth grade, he received mostly 2s on his report cards. In sixth grade, his final grades were: one B, two Cs, one D, and one F. His last evaluation reads: “Review of school records indicates that [REDACTED] has consistently struggled to meet grade level expectations since kindergarten[.]”

[REDACTED] needs high-quality, comprehensive special education and related services.<sup>82</sup>

### *Facts*

On March 8, 2012, [REDACTED] was long-term suspended [REDACTED]. On March 23, 2012, a “HOME/HOSPITAL EDUCATIONAL SERVICES PLAN” form was completed. It indicated that services would start 24 days later—on April 16, 2012—and that [REDACTED] would receive four hours per week of services. The minutes from the MDR on March 22, 2012, indicated that he would receive three hours per week of H/H services and that the conduct in question was a direct result of the local education agency’s failure to implement the IEP.<sup>83</sup> An “Interim Alternative Educational Setting Data Sheet” was completed. The only comment under “Team Summary of Student Needs” reads: “Will 4 hours H/H, to successful the rest of the year.”

[REDACTED] met with his H/H teacher at the [REDACTED] Library. On some days, [REDACTED] had to walk 3.2 miles roundtrip to the library because his mother does not

have a car and transportation is not provided to students on H/H. [REDACTED] and his mother report that, on some days, the H/H teacher would not show up or would be late. They also report that the teacher was often on his phone or computer during their sessions and did not help [REDACTED] with his work. Therefore, in reality, [REDACTED] received, on average, less four hours per week

## II. [REDACTED]

### *Background*

[REDACTED] is a 13-year-old, Black, economically disadvantaged, female SWD. During the 2011-12 school year, she was in sixth grade at [REDACTED]. She will attend [REDACTED] for the 2012-13 school year.

The only area of eligibility in [REDACTED]'s IEP is Learning Disability (LD), despite the presence of the following issues:

- In January 2012, [REDACTED]'s mother told [REDACTED], [REDACTED]'s sixth grade guidance counselor, via phone and in person, about [REDACTED]'s diagnoses of ODD and Mood Disorder by her mental health provider, [REDACTED].
- In March 2012, special transportation was added to her IEP due to behavior problems on the school bus.
- On April 27, 2012, [REDACTED] sent her mental health records (containing her diagnoses) to [REDACTED].
- On May 3, 2012, her IEP Team found a fight to be a manifestation of her disability, noting her ODD and Mood Disorder.
- On June 7, 2012, her IEP Team found a "class/activity disturbance" to be a manifestation of her disability. The Team noted that her "mood disorder results in a roller coaster pattern of behavior" and that she takes Lexipro for ODD and Concerta for ADHD.
- Her current IEP has two functional/behavioral goals and states that her behaviors impede her learning and that of others.

None of the nine goals in [REDACTED]'s IEP are integrated with related services. She is supposed to receive two hours and 55 minutes of special education services per day; however, the IEP does not specify how the services will be delivered, other than during a generic Curriculum Assistance class. Behavioral goals were not added to her IEP and a Behavior Intervention Plan ("BIP") was not created until May 3, 2012—[REDACTED]. Moreover, prior to the May 3, 2012, Manifestation Determination Review ("MDR") meeting, no one from the school had conducted a Functional Behavioral Assessment ("FBA"). The meeting minutes read: "Where is the FBA? What is targeted behavior? Assume target behavior is to decrease negative interactions with peers." An inadequate FBA was hurriedly completed during the IEP Team meeting.

[REDACTED]

[REDACTED]

[REDACTED] has a history of academic failure. Her final grades in sixth grade were one C, three Ds, and one F. She has scored Is and IIs on all of her EOGs—she has never been on grade level. Her mother received notice that [REDACTED] was at risk of academic failure and retention in 2005, 2009, 2010, and 2011. She was retained in second grade.

[REDACTED]

[REDACTED] needs high-quality, comprehensive special education and related services.

*Facts*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In total, [REDACTED] was given only 28 total hours of H/H for the 39 total days of suspensions she received (approximately five hours per week of suspension). In other words, she was given 28 hours for the approximately 250 hours of school she missed. [REDACTED]'s mother also reports that [REDACTED] was placed into ISS on numerous occasions, which is a change in placement.<sup>84</sup> There were no MDRs held or H/H given for the days she was placed in ISS.

### III. [REDACTED]

#### *Background*

[REDACTED] is a 13-year-old, Black, economically disadvantaged, male SWD. During the 2011-12 school year, [REDACTED] was in seventh grade at [REDACTED]. He will likely attend [REDACTED] for the 2012-13 school year.

He has received special education services in WCPSS since 2008 under the exceptional children's classification of OHI. Since moving to North Carolina five years ago, [REDACTED] has been diagnosed, by various mental health providers, with ODD, ADHD, Mood Disorder, and Cyclothymia, and has received ongoing community-based support for those mental health disabilities. Despite these behavior-related diagnoses and his ongoing history of behavior struggles at school (see below), [REDACTED] has never had a secondary special education classification in his IEP that encompasses his behavioral disorders.

[REDACTED] did not receive support in meeting his IEP goals while at [REDACTED]. After he transferred to [REDACTED] at the beginning of the 2011-12 school year, the use of his behavioral point sheet, listed as a necessary service on his BIP and repeatedly noted by his mental health and school support teams as being integral to his success, immediately ceased. No meeting was held to facilitate or approve this change. Soon after the school year began, [REDACTED] began getting into trouble at school. His mother repeatedly asked the school for more services to be added to his IEP, such as a one-on-one aide, to address [REDACTED]'s behavior issues. In response to her request, she reports being told that the school had no money to provide the services, and that [REDACTED]'s behavior was just that of a "typical boy."

Though his behavior continued to escalate as the year progressed, [REDACTED]'s IEP Team did not convene until October 11, 2011. At that meeting, [REDACTED]'s IEP Team noted that he was experiencing ongoing struggles with peer interactions, aggression, and following redirection. However, the Team subsequently *removed* three behavior-related goals from his IEP that day. At that same meeting, the IEP Team reviewed [REDACTED]'s BIP and determined that "[t]he current behavior plan is still working," while simultaneously noting that [REDACTED] was "still verbally aggressive w/ peers, making inappropriate comments." Despite acknowledging that his verbal



aggression was ongoing, no constructive changes were made to his BIP. Additionally, no mention was made regarding the apparent decision to discontinue the behavioral point sheets, which had been listed as a necessary intervention in all previous BIPs and IEPs, and which had not been implemented during any part of the 2011-12 school year. On all of [REDACTED]'s previous BIPs, the point sheet had been utilized to assist [REDACTED] in self-monitoring his behavior, to allow his mother to stay apprised as to his daily behavior, and to allow the school to maintain ongoing and reliable data which could in turn inform the school's determination of whether or not his BIP was effective. In the context of [REDACTED]'s mental health services, the behavior point sheet was cited as being one of the most effective interventions for him.

[REDACTED]

In January 2012, [REDACTED] was hospitalized at [REDACTED]. He was discharged after two weeks in the hospital, and returned to school the next day. The school was informed of his extended hospitalization, yet his IEP Team did not reconvene to reassess whether his current IEP sufficiently met his obviously heightened mental health needs.

Academically, [REDACTED] has consistently struggled in his core classes. The most recent evaluation administered to him by WCPSS was in 2008. That assessment found that he performed below average in Reading Comprehension, Math Calculation Skills, Math Reasoning, and Written Expression. However, none of the seven goals in his IEP are integrated with related services.

[REDACTED] needs high-quality, comprehensive special education and related services.

#### *Facts*

[REDACTED] was short-term suspended from [REDACTED] with a recommendation for long-term suspension [REDACTED]. During his very brief MDR, it was decided that [REDACTED] would be transitioned out of [REDACTED] and would receive four hours of H/H per week, to be delivered between March 1, 2012, and March 29, 2012, or until he could be placed at Infinity. There is no mention in the meeting minutes about why only four hours were deemed sufficient.

On March 7, 2012, [REDACTED] was enrolled in Infinity. For the duration of [REDACTED]'s time in the program, his mother was given no information about the program and very limited information about [REDACTED]'s progress. She called Infinity on multiple occasions to try to speak

with someone about [REDACTED]'s progress, but would get the answering machine and could not leave a message because the voicemail box was full. She got only one email update while [REDACTED] was in Infinity. In that email update, she was informed that, in the course of an entire week, [REDACTED] had been logged into the online instructional program for a total of four hours and had completed a total of only two assignments.

While at Infinity, [REDACTED] was placed in online courses in Science, Language Arts, History, and Math. However, he received very little instruction and, as previously noted, completed very few actual lessons. Instead, [REDACTED] spent the majority of his day playing on the internet. When his mother found out he was spending his time on Twitter and Facebook, rather than on coursework, she contacted Infinity to ask that they block those sites and monitor his computer usage to help ensure that he was actually completing coursework. She was told that there was nothing they could do about his internet usage. To her knowledge, Infinity took no steps to ensure that [REDACTED] was completing coursework rather than playing on the internet.

[REDACTED] reports that, [REDACTED], he had a very difficult time understanding the material in the manner it was presented. He struggled in particular with Math, a subject that had been a central focus in his IEP. He reported that Math was likewise the most difficult subject for him at Infinity, and that he did not receive any sort of individualized help in understanding it. Ultimately, he does not feel like he learned anything while enrolled in Infinity. [REDACTED]'s mother likewise believes that, because of [REDACTED]'s disabilities, he was unable to benefit whatsoever from the limited online instruction he received while at Infinity.

When records were requested from Infinity, the school provided progress reports from March 12th, March 20th, and March 26th. Those reports indicated that [REDACTED] was consistently failing Math and Language Arts with grades of "0," was consistently failing Science with a "55," and was fluctuating between a "0" in history on March 20th and then a "77" in history on March 26th. On March 29th, [REDACTED]'s teacher confirmed via email that those grades were the same. However, despite those progress reports, along with reports from [REDACTED] that he never did work while at Infinity, [REDACTED] was exited from the Infinity program on April 25, 2012 with the following grades: History - 83%; Language Arts - 77%; Math - 80%; and Science - 81%. Notably, his exit Basic Achievement Skills Inventory and Student Training for Academic Readiness test scores were significantly lower than his entrance test scores in that same assessment program, and a grade report provided to Complainants from WCPSS appears to have been altered, with the letter "C's" written in black pen on top of what appear to be "Fs" that had been previously typed into the report. Complainants accordingly question whether [REDACTED]'s grades were based on his actual coursework or assessments, or whether his grades were artificially inflated to give the appearance that WCPSS and Infinity are providing him with a FAPE.

When asked about her general impressions of Infinity, [REDACTED]'s mother said the following: "For a child that has any type of learning issues, this would not be a good place for them to be put in. This program is just a daycare for the principal and the teachers to get a time

out for unruly children. This program I feel has denied my child the standard of education that Wake County is supposed to give to my child."

IV. [REDACTED]

*Background*

[REDACTED] is a 13-year-old, Black, economically disadvantaged, male SWD. During the 2011-12 school year, he was a seventh grade student, initially at [REDACTED] and then at [REDACTED].

His only area of special education eligibility is Mild Intellectual Disability ("ID"). He does not have a secondary classification despite the presence of the following issues:

- He was initially classified as Behaviorally Emotionally Disabled ("BED") in 1st grade (2006) as a result of his aggressive behaviors at home and in school.
- He continued to exhibit the same aggressive behaviors that initially triggered the BED classification throughout his time in WCPSS.
- According to a Behavioral-Emotional Assessment administered by WCPSS in 2009, [REDACTED]'s behavior was rated by teachers as being at risk and/or clinically significant in areas involving aggression, conduct problems, and peer relations.
- [REDACTED]
- His 2011-12 IEP contains eight goals, five of which are related to his behavior.
- His current IEP contains 10 goals, seven of which are related to his behavior.
- In 2005, [REDACTED] was diagnosed as having ADHD. Shortly after he was initially classified as BED (2006), his special education classification was changed to OHI on account of his diagnosis of ADHD.<sup>85</sup>
- His subsequent IEPs continued to indicate ongoing concerns relevant to his ADHD. His 2010-11 IEP indicated that "He is extremely distractible, and often interferes with the learning of others. He needs frequent reminders to refocus, even when working 1:1 with the special education teacher or teacher assistant."

[REDACTED] has a history of instability in school assignment. He attended the following six schools in five years: [REDACTED]

[REDACTED]



receive four hours of H/H services each week. There is no indication as to why four hours was found to be a sufficient amount of time to provide him with the necessary services under his IEP. Regardless, [REDACTED] did not even receive the four hours per week of services that his IEP required. Instead, for the entire six month time span between his suspension and the end of school, he received absolutely no form of educational services.

V. [REDACTED]

#### *Background*

[REDACTED] is a 14-year-old, Black, economically disadvantaged, male SWD. During the 2011-12 school year, he was an eighth grade student at [REDACTED]. He will attend [REDACTED] in WCPSS for the 2012-13 school year.

[REDACTED]

#### *Facts*

On February 15, 2012, [REDACTED] was recommended for long-term suspension. An MDR was held on February 24, 2012. [REDACTED] The IEP Team [REDACTED] recognized that the BIP was not being implemented. Yet, the IEP Team determined that there was not a substantial relationship between his disability and the school's failure to follow his IEP.

After being long-term suspended, [REDACTED] was assigned to Infinity. [REDACTED]'s mother reports that she received no paperwork or information of any kind from Infinity. She did not know what courses he was taking or how well he was doing. [REDACTED] reported sitting in front of a computer and not being able to get help from a teacher when he needed it. He did not bring home books or homework. Additionally, even though [REDACTED] was allowed to continue his core classes of History, Math, Language Arts, and Science, he reports that he did not receive the appropriate grade-level work. The only course that was challenging was History. There were teachers in his classroom, but they often declined to help him when he did not understand what was asked of him. He received some testing, but he was blocked access from other materials and tests. The teachers were not able to remove the block, so those materials and tests were not made available to him.

**VI.***Background*

██████████ is a 13-year-old, White, male, foster child with a disability. During the 2011-12 school year, ██████████ was a seventh grade student at ██████████.

*Facts*

In November 2011, ██████████ was long-term suspended ██████████. No one appealed the suspension on his behalf. He was placed on H/H for three hours per week for three weeks. Then, WCPSS tried to place him in SCORE. ██████████'s foster father knew that SCORE would be inadequate for ██████████ and refused placement in SCORE. Consequently, ██████████ was placed at in Infinity. He was in Infinity for approximately four months and then was kicked out of the program. ██████████ was again placed on H/H and received no more than six hours per week of H/H services at ██████████. During the H/H hours, ██████████ was generally handed worksheets to complete, and often his teacher would do her own work or leave for meetings.<sup>86</sup>

**REMEDIES**

Such flagrant violations require swift, corrective action to protect ██████████, ██████████, ██████████, ██████████, and students like them from further harm. Moreover, WCPSS' recidivism necessitates strong, unequivocal, punitive action by DPI to avoid the state enforcement mechanism, mandated by federal law,<sup>87</sup> from being perceived as unwilling or unable to perform its compliance function, and thereby reportable to federal authorities.

We propose that DPI, under its duty to "monitor all local educational agencies to determine compliance with state law and IDEA,"<sup>88</sup> order WCPSS to immediately take the following actions:

1. Review (and report to DPI on the results of the review) records of all SWD who have experienced changes in placement for more than 10 days due to behavior reasons and SWD who have been repeatedly short-term suspended to ensure that their IEPs are written to meet the SWD's unique academic, behavioral, and emotional and include:
  - a. Meaningful goals and ways of measuring progress toward the goals;
  - b. An adequate description of special education services (i.e., not just amount of time of services);
  - c. Necessary related services (e.g., psychological services, counseling, social work services, and parent counseling and training); and
  - d. Adequate FBAs and BIPs.

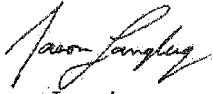
2. Review (and report to DPI on the results of the review) records of every student who experienced a change in placement for more than 10 days during the 2011-12 school year *and* interview the student and parent/guardian to determine whether the records are accurate and provide the full story.
3. Provide DPI with complete data and information for the 2011-12 school year that shows exactly what services were provided to SWD who experience a change in placement for more than 10 days due to behavior reasons.
4. Collect complete data and information for the 2012-13 school year that shows exactly what services are provided to SWD who experience a change in placement for more than 10 days due to behavior reasons.
5. Expand the availability of high-quality placements for SWD who experience a change in placement for more than 10 days due to behavior reasons, including, but not limited to, more high-quality “brick and mortar” school placements for suspended SWD.
6. Eliminate SCORE.
7. Provide ██████████, ██████████, ██████████, ██████████, ██████████, ██████████, and similarly situated students with a written apology and compensatory education. The compensatory education should be in an amount and frequency as determined by the tutoring service after its independent assessment.<sup>89</sup> The tutoring service should be selected and approved by the students, their parents, and their legal counsel. The tutoring should continue at WCPSS' expense until the students are proficient, as measured by EOG and EOC tests.
8. Provide detailed information about all IAES and temporary placements for SWD who experience a change in placement for behavior reasons in a prominent location on WCPSS' website and distribute the information to all staff and parents/guardians of SWD who experience a change in placement for behavior reasons.
9. Conduct on-going trainings for staff and parents/guardians, with a curriculum pre-approved by DPI, regarding special education law, including, but not limited to:
  - a. What constitutes a change in placement; and
  - b. What constitutes a FAPE in the LRE for a child who experienced a change in placement.
10. Provide funds sufficient to allow DPI to hire a full-time, independent compliance monitor for WCPSS.
11. Abide by any and all additional sanctions DPI deems appropriate pursuant to N.C.G.S. § 115C-107.4.

12. Report to DPI every three months on compliance with the above corrective actions.
13. Report (with proper redactions to protect students' privacy) to the public (via the WCPSS website) every three months on compliance with the above corrective actions.

### CONCLUSION

Based on the facts presented in the preceding sections, Complainants allege that WCPSS is in violation of IDEA and corresponding federal regulations and state laws, regulations, and policies by failing to provide adequate services for SWD who experience a change in placement for more than 10 days. Complainants specifically allege that WCPSS has violated the individual rights of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and similarly situated students,<sup>90</sup> by failing to provide them with a FAPE, failing to educate them in the LRE, and failing to develop and implement IEPs based upon their unique needs. For two consecutive years, DPI found WCPSS to be in substantial noncompliance with state and federal special education law. Even after DPI ordered WCPSS to take significant corrective actions, WCPSS continues to defy state and federal special education laws and DPI's clear authority.<sup>91</sup> Therefore, Complainants respectfully request that DPI investigate the claims contained herein.

Respectfully,



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<sup>1</sup> Complainants Jason Langberg and Jennifer Story are attorneys at Advocates for Children's Services ("ACS"), a statewide project of Legal Aid of North Carolina. ACS represents the following individual students: [REDACTED]. Complainant Mark Trustin is a private attorney at Trustin Law. He represents [REDACTED] and similarly situated students.

<sup>2</sup> 20 U.S.C. § 1412(a)(1) (2005); N.C. Gen. Stat. § 115C-107.1 (2006).

<sup>3</sup> 20 U.S.C. § 1412(a)(1)(A) (2005).

<sup>4</sup> 20 U.S.C. § 1400(d)(1)(A) (2010); 20 U.S.C. § 1401(29) (2010); Bd. of Educ. of Hendrick Hudson Central Sch. Dist., Westchester Cnty. v. Rowley, 458 U.S. 176, 188-89 (1982).

<sup>5</sup> 34 C.F.R. § 300.530(d)(1) (2006).

<sup>6</sup> Bd. of Educ. of Hendrick Hudson Central Sch. Dist., Westchester Cnty. v. Rowley, 458 U.S. 176, 206-07 (1982).

<sup>7</sup> San Francisco Unified Sch. Dist. v. State of California, 131 Cal.App.3d 54, 68 (Ct. App. 1982).

<sup>8</sup> Hall by Hall v. Vance Cnty. Bd. of Educ., 774 F.2d 629, 636 (4th Cir. 1985).

<sup>9</sup> See 34 C.F.R. § 300.115(a).

<sup>10</sup> 20 U.S.C. § 1412(a)(5) (2005).

<sup>11</sup> 20 U.S.C. § 1412(a)(5)(B)(i) (2005).

<sup>12</sup> DPI, Reports of Disaggregated State, School System (LEA) and School Performance Data for 2009 – 2011 (2011), available at <http://www.ncpublicschools.org/accountability/reporting/leperformancearchive/>.

<sup>13</sup> DPI, Accountability Services Division, Reports of Disaggregated State, School System (LEA) and School Performance Data for 2009 – 2011 (2011), available at <http://www.ncpublicschools.org/accountability/reporting/leperformancearchive/>.

<sup>14</sup> WCPSS, Office of Student Due Process, Annual Report of Student Suspensions 2009-10 School Year, Provided to ED Task Force.

<sup>15</sup> WCPSS, Special Education Services Demographics (2011), available at <http://www.wcpss.net/demographics/reports/book10/Ve-SpEd.pdf> (last visited July 13, 2012).

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<sup>16</sup> WCPSS, Office of Student Due Process, Annual Report of Student Suspensions 2009-10 School Year, Provided to ED Task Force.

<sup>17</sup> DPI, Exceptional Children Division, Child Count Reports, *available at* <http://ec.ncpublicschools.gov/reports-data/child-count/reports/april-1> (last visited July 13, 2012).

<sup>18</sup> WCPSS, Office of Student Due Process, Annual Report of Student Suspensions 2009-10 School Year, Provided to ED Task Force.

<sup>19</sup> Advancement Project, Test, Punish, and Push Out: How “Zero Tolerance” and High-Stakes Testing Funnel Youth Into the School-to-Prison Pipeline (2010), *available at* [http://www.advancementproject.org/sites/default/files/publications/rev\\_fin.pdf](http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf).

<sup>20</sup> WCPSS, Evaluation and Research Department, 2009-10 WCPSS Dropout Rate (March 2011), *available at* <http://www.wcpss.net/evaluation-research/reports/2011/1104dropouts2009-10.pdf>.

<sup>21</sup> DPI, Accountability Services Division, Cohort Graduation Rates, <http://www.ncpublicschools.org/accountability/reporting/cohortgradrate> (last visited July 13, 2012).

<sup>22</sup> DPI, Accountability Services Division, Reports of Disaggregated State, School System (LEA) and School Performance Data for 2009 – 2011 (2011), *available at* <http://www.ncpublicschools.org/accountability/reporting/leaperformancearchive/>.

<sup>23</sup> Complaint No. 09-28.

<sup>24</sup> Complaint No. 10-61.

<sup>25</sup> ACS, as the complainant, requested to be involved in the corrective action planning process. The request was denied. Similarly, no community members, including students with disabilities and their parents, were involved.

<sup>26</sup> Public records received from Kate Neal, DPI, on May 3, 2012.

<sup>27</sup> "Long Term Suspensions for Students with Disabilities: Where Are We Now?" Presentation to Principals (October 10, 2011). Received via public records request.

<sup>28</sup> WCPSS, Stakeholder Survey Data, <http://sesqualityassessmentplan.wikispaces.com/Stakeholder+Survey>

<sup>29</sup> <http://sesqualityassessmentplan.wikispaces.com/Announcements> (last visited July 13, 2012).

<sup>30</sup> Anisa Rhea, An Evaluation of the Wake County Public School System Alternative Educational Options 2009-10, 20 (November 2010), *available at* [http://www.wcpss.net/evaluation-research/reports/2010/1015alt\\_options.pdf](http://www.wcpss.net/evaluation-research/reports/2010/1015alt_options.pdf).

<sup>31</sup> WCPSS, School Directory, Longview School, *available at* <http://www.wcpss.net/school-directory/324.html> (last visited July 13, 2012).

<sup>32</sup> WCPSS, School Directory Archive, Longview School 2010-2011 (2011), *available at* <http://webarchive.wcpss.net/school-directory/324.html>; Anisa Rhea, An Evaluation of the Wake County Public School System Alternative Educational Options 2009-10, 24 (November 2010), *available at* [http://www.wcpss.net/evaluation-research/reports/2010/1015alt\\_options.pdf](http://www.wcpss.net/evaluation-research/reports/2010/1015alt_options.pdf).

<sup>33</sup> WCPSS, Deputy Superintendent for School Performance, School Statistics (February 21, 2012), *available at* [http://www.wcpss.net/superintendent/school-stats/office-school-performance\\_02-21-2012.pdf](http://www.wcpss.net/superintendent/school-stats/office-school-performance_02-21-2012.pdf).

<sup>34</sup> WCPSS, Deputy Superintendent for School Performance, School Statistics (February 21, 2012), *available at* [http://www.wcpss.net/superintendent/school-stats/office-school-performance\\_02-21-2012.pdf](http://www.wcpss.net/superintendent/school-stats/office-school-performance_02-21-2012.pdf).

<sup>35</sup> WCPSS, Schools: Detailed Reports with Graphs and Maps, *available at* [http://www.wcpss.net/demographics/quickfacts/index\\_qfreports.html](http://www.wcpss.net/demographics/quickfacts/index_qfreports.html) (last visited July 13, 2012); WCPSS, Schools: Detailed Reports with Graphs and Maps, Academic Achievement-ABC, AYP Results 2011-2012, *available at* <http://www.wcpss.net/demographics/reports/book11/VC-ABC.pdf>.

<sup>36</sup> WCPSS, Schools: Detailed Reports with Graphs and Maps, *available at* [http://www.wcpss.net/demographics/quickfacts/index\\_qfreports.html](http://www.wcpss.net/demographics/quickfacts/index_qfreports.html) (last visited July 13, 2012); WCPSS, Schools: Detailed Reports with Graphs and Maps, Race/Ethnicity and Gender Demographics 2011-2012, *available at* <http://www.wcpss.net/demographics/reports/book11/VB-race.pdf>.

<sup>37</sup> WCPSS, Evaluation and Research Department, Student Achievement in WCPSS 2010-2011 (August 15, 2011), *available at* <http://www.wcpss.net/evaluation-research/reports/2011/achievement2011.pdf>

<sup>38</sup> Anisa Rhea, An Evaluation of the Wake County Public School System Alternative Educational Options 2009-10, 6 (November 2010), *available at* [http://www.wcpss.net/evaluation-research/reports/2010/1015alt\\_options.pdf](http://www.wcpss.net/evaluation-research/reports/2010/1015alt_options.pdf).

<sup>39</sup> North Carolina Department of Public Instruction, Accountability Services Division, Reports of Disaggregated State, School System (LEA) and School Performance Data for 2009 – 2011 (2011), *available at* <http://www.ncpublicschools.org/accountability/reporting/leaperformancearchive/>.

<sup>40</sup> North Carolina Department of Public Instruction, Accountability Services Division, Reports of Disaggregated State, School System (LEA) and School Performance Data for 2009 – 2011 (2011), *available at* <http://www.ncpublicschools.org/accountability/reporting/leaperformancearchive/>.

<sup>41</sup> Records received from Ann Majestic, WCPSS, on June 22, 2012; sample letter from Pamela Jerro, Senior Administrator for Special Projects to Enloe High School.

<sup>42</sup> North Carolina Department of Public Instruction Report from April 30, 2010; North Carolina Department of Public Instruction Report from July 29, 2011; Public records received from Kate Neal, North Carolina Department of Public Instruction, on May 3, 2012.

<sup>43</sup> Records received from Kate Neal, North Carolina Department of Public Instruction, on May 3, 2012.

<sup>44</sup> Records received from Michael Evans, Wake County Public School System, on July 28, 2011.

<sup>45</sup> T. Keung Hui, [Wake County school board votes to join lawsuit against new online charter school](http://blogs.newsobserver.com/wakeed/wake-county-school-board-votes-to-join-lawsuit-against-new-online-charter-school), WakeEd (June 5, 2012, 9:57 PM), <http://blogs.newsobserver.com/wakeed/wake-county-school-board-votes-to-join-lawsuit-against-new-online-charter-school>; T. Keung Hui & Thomas Goldsmith, [North Carolina school districts opposing online charter school](http://www.newsobserver.com/2012/06/06/2118118/north-carolina-school-districts.html), newsobserver.com (June 7, 2012, 10:56 AM), <http://www.newsobserver.com/2012/06/06/2118118/north-carolina-school-districts.html> (Ironically, WCPSS has joined a lawsuit against a new online charter school).

<sup>46</sup> Records received from Michael Evans, WCPSS, on July 28, 2011.

<sup>47</sup> See 34 C.F.R. § 300.39 (2006) (“Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction”).

<sup>48</sup> Records received from Ann Majestic, WCPSS, on June 22, 2012.

<sup>49</sup> Records received from Ann Majestic, WCPSS, on June 22, 2012.

<sup>50</sup> Records received from Ann Majestic, WCPSS, on June 22, 2012; sample letter from Pamela Jerro, Senior Administrator for Special Projects to Enloe High School.

<sup>51</sup> During the 2010-11 school year, the sites were: Haven House; Riley Hill Center; Sowing Seeds; Harriet B. Webster; W.E.B. Dubois.

<sup>52</sup> Records received from Michael Evans, WCPSS, on July 28, 2011.

<sup>53</sup> It is unclear what WCPSS is doing with the free and reduced lunch money it receives for students in SCORE.

<sup>54</sup> Complainants requested from WCPSS a definition of “successfully completed;” however, a definition was never provided.

<sup>55</sup> Complainants have not received any indication that IEPs were implemented and reviewed.

<sup>56</sup> Technically, parents can both accept an offer of placement in the SCORE program and appeal the recommendation for long-term suspension; however, many parents are confused by the paperwork and do not realize that they can do both.

<sup>57</sup> [Alternative Learning Programs and Schools: Standards and Implementation Procedures](http://www.ncpublicschools.org/docs/alp/develop/alp-standards.doc), North Carolina Department of Public Instruction (2005), *available at* <http://www.ncpublicschools.org/docs/alp/develop/alp-standards.doc>.

<sup>58</sup> Records received from Michael Evans, WCPSS, on July 28, 2011.

<sup>59</sup> I.R.S. Form 990 (2009).

<sup>60</sup> Complainants do not know how much, if any, of the prepaid funds were returned since the program served only six or seven students during the 2010-11 school year.

<sup>61</sup> By comparison, the average per pupil expenditure in 2010 in WCPS was as a whole was \$7,727. See Dean-Paul Stephens, [North Carolina ranks 45th in per-student spending on public schools](http://www.newsobserver.com/2012/06/21/2152602/north-carolina-ranks-45th-in-per.html), The News and Observer, June 21, 2012, <http://www.newsobserver.com/2012/06/21/2152602/north-carolina-ranks-45th-in-per.html>.

<sup>62</sup> Complaint Resolution Final Report, Case No. 09-28 (N.C. Dep’t of Pub. Instruction Exceptional Children Div. April 30, 2010).

<sup>63</sup> Records received from Ann Majestic, WCPSS, on June 22, 2012.

<sup>64</sup> Records received from Ann Majestic, WCPSS, on June 22, 2012.

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<sup>69</sup> Records received from Ann Majestic, WCPSS, on June 22, 2012.

<sup>70</sup> Records received from Ann Majestic, WCPSS, on June 22, 2012.

<sup>71</sup> For example, Wake Forest High School is 37 miles from Fuquay-Varina Middle School.

<sup>72</sup> The complainants requested public records reflecting "the location of the program, including, but not limited to, documents reflecting how the decision was made to locate the program where it is located." WCPSS response indicated that there are no such documents.

<sup>73</sup> Records received from Ann Majestic, WCPSS, on June 22, 2012.

<sup>74</sup> See Wake County Public School System Home Page (2012), <http://www.wcpss.net>.

<sup>75</sup> Records received from Ann Majestic, WCPSS, on June 22, 2012.

<sup>76</sup> Records received from Ann Majestic, WCPSS, on June 22, 2012 (AMikids Infinity Wake County Student Handbook 2010/2011 School Year).

<sup>77</sup> Records received from Ann Majestic, WCPSS, on June 22, 2012.

<sup>78</sup> Provided to the ED Task Force, Alternative Strategies Subcommittee via email on August 30, 2011 (from Yvette E. Steele on behalf of Marvin Connelly).

<sup>79</sup> Handout provided to ED Task Force, Alternative Strategies Subcommittee via email on July 25, 2011.

<sup>80</sup> Handout provided to ED Task Force, Alternative Strategies Subcommittee via email on July 25, 2011.

<sup>81</sup> On November 9, 2011 [REDACTED] provided [REDACTED] with permission to exchange information with [REDACTED]'s mental health provider, [REDACTED].

<sup>82</sup> Hoke Cnty. Bd. of Educ. v. State, 358 N.C. 605, 649, 599, S.E.2d 365, 397 n.16 (2004) (For purposes of this complaint, Complainants use the North Carolina Supreme Court's definition of at-risk: "one who holds or demonstrates one or more of the following characteristics: (1) member of low-income family; (2) participate in free or reduced-cost lunch programs; (3) have parents with a low-level education; (4) show limited proficiency in English; (5) are a member of a racial or ethnic minority group; (6) live in a home headed by a single parent or guardian.").

<sup>83</sup> There is no explanation in [REDACTED]'s records as to how the LEA failed to implement the IEP or why he was not allowed to return to school.

<sup>84</sup> See 34 C.F.R. § 300.536 (2006).

<sup>85</sup> It has been the experience of the Complainants that WCPSS avoided classifications such as SED and ODD because such classifications make it more likely the behaviors will be deemed a manifestation of a student's disability.

<sup>86</sup> The facts alleged were obtained during an interview with [REDACTED] and his foster father. The Department of Social Services, [REDACTED]'s legal guardian, has refused, without providing a reason, to provide Complainants with authorization to represent [REDACTED] and obtain his education records.

<sup>87</sup> See 34 C.F.R. § 300.149(a)(2)(i-ii) (2006).

<sup>88</sup> See N.C.G.S. § 115C-107.4(a) (2006); 34 C.F.R. § 300.600(d) (2006).

<sup>89</sup> See 34 C.F.R. § 300.151(b)(1) (2006).

<sup>90</sup> Complainant Mark Trustin represents similarly situated students.

<sup>91</sup> See 34 C.F.R. §§ 300.151-153 (2006).