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May 10, 2006

VIA FACSIMILE

Louisiana Department of Education
P.O. Box 94064
Baton Rouge, LA. 70804-9064
ATTN: Legal Division, Ms. Adrienne DuPont
Fax No. 255-342-1197

Re: **Administrative Complaint on behalf of [REDACTED] (Individually); and Class Administrative Complaint on behalf of [REDACTED], [REDACTED], [REDACTED], and a Class of All Similarly Situated and Treated Emotionally Disturbed Students in the East Baton Rouge Public School System.**

I.

[REDACTED]
[REDACTED]
6th Grade
[REDACTED]
[REDACTED]

Exceptionality: Emotionally Disturbed (Secondary: SLD)

II.

[REDACTED]
[REDACTED]
7th Grade
[REDACTED]
[REDACTED]

Exceptionality: Emotionally Disturbed (Secondary: SLD)

Dear Ms. DuPont,

The undersigned counsel are filing this Individual Complaint (on behalf of [REDACTED] and this Class Administrative Complaint (on behalf of [REDACTED], [REDACTED], [REDACTED], and all similarly situated ED students) versus East Baton Rouge Parish School

System (hereinafter "EBR") for violations of the Individuals with Disabilities Education Improvement Act (hereinafter "IDEA"). On behalf of [REDACTED], and a class of all similarly situated and treated Emotionally Disturbed students in EBR, the undersigned counsel make the following class claims. Petitioner [REDACTED] was a student at [REDACTED] Middle School during the 2005-06 school-year before being sent to the [REDACTED] Alternative School in February 2006. At all times relevant to this complaint and since 2004, he has been determined eligible for special education services under the Individuals with Disabilities Education Improvement Act of 2004 (hereinafter "IDEA"), 20 U.S.C. § 1400 *et seq.* Petitioner [REDACTED] is a student at [REDACTED] Middle School. At all times relevant to this complaint and since 1998 he has been determined eligible for special education services under IDEA.

INDIVIDUAL CLAIMS ON BEHALF OF [REDACTED]

- Denial of FAPE- Insufficient Related Services
- Denial of FAPE- Failure to Provide Educational Services in the Least Restrictive Environment

EBR HAS FAILED TO PROVIDE SUFFICIENT RELATED SERVICES

The individual claims on behalf of Petitioner Stewart are as follows: East Baton Rouge has failed to provide Petitioner Stewart with the Related Services needed to address the inherent behavioral characteristics and issues associated with his classification of Emotionally Disturbed; to function successfully in the Least Restrictive Environment, to progress in the general curriculum; and to make progress toward his IEP goals. Petitioner [REDACTED] currently receives 30 minutes of Counseling/Other Therapy per week as a related service. However, EBR's failure to modify the quantity of counseling services received by Petitioner [REDACTED] after readily acknowledging during the 2005-2006 school-year that Petitioner failed to make any meaningful academic or behavioral progress and in light of several disciplinary referrals that led to Petitioner being expelled and assigned to Valley Park Academy in February 2006¹ reflects that the provision of related services in East Baton Rouge is cookie-cutter in nature and not related to the level of individual need of Petitioner [REDACTED]. Despite the above circumstances, the amount of "Counseling/Other Therapy" services provided to Petitioner Stewart has never varied since his initial December 2004 IEP which also lists 30 minutes of Counseling/Other Therapy per week. Consequently, the failure of EBR to increase the amount of Counseling/Other Therapy during the current school year can only be explained by a profound and appalling indifference to Petitioner [REDACTED] needs, particularly in light of his IEP team's admission in September 2005 [REDACTED] has not achieved any objectives at the time this IEP was developed." (See Petitioner's 9/16/2005 IEP) and in light of numerous ensuing disciplinary referrals that led to Petitioner's expulsion and assignment to an Alternative School by mid-year. See 20 U.S.C § 1401; 20 U.S.C § 1414 (d)(1)(A)(i)(IV)(IEPs must include a statement of related services and supplementary aides and services based on peer-reviewed research to the extent practicable, to the extent practicable).

¹ Petitioner's records reflect that he consistently received Ds and Fs in conduct and work habits. His 2004 Evaluation clearly reflects that he has significant behavioral issues associated with this classification of Emotionally Disturbed.

EBR HAS FAILED TO EDUCATE PETITIONER ██████████ IN THE LEAST RESTRICTIVE ENVIRONMENT:

EBR's placement decisions violate IDEA's mandate that, to the extent possible, disabled students be educated in the least restrictive environment. See 42 U.S.C. § 1412 (a)(5); 34 C.F.R. 300.550-556; Bulletin 1706, Subpart A §446,448. Petitioner's December 2004 Initial IEP placed Petitioner in a self-contained setting with Physical Education and Art/Music being his only regular classes. EBR's decision to place Petitioner ██████████ in a self-contained setting immediately upon classifying him as Emotionally Disturbed is clear evidence that no attempt was made to provide sufficient supplementary aides and services and/or curriculum modifications in regular education settings so that he could remain in some of his core academic classes. EBR failed to pursue any number of strategies that would have allowed Petitioner to continue accessing general education classes including the use of a Paraprofessional Aides, Social Worker/School Psychologists and/or Special Education Teachers in general education settings; modifications of the curriculum; school-wide and classroom based positive behavioral support plans; peer supports/coaching and peer tutoring. Instead of implementing any of these supplemental aids/services/supports prior to removing Petitioner from regular education, EBR chose to segregate Petitioner in a highly restrictive self-contained setting.² Furthermore, at no point did East Baton Rouge provide any cogent justification or reasoning for its determination that ██████████ was capable of functioning in a regular education setting for ancillary subjects such as Physical Education and Art/Music but not for other academic subjects such as reading.

Petitioner's September 2005 IEP maintained his restrictive and segregated self-contained placement and only afforded him access to general education for Physical Education and one unspecified elective. In both the 2004 and 2005 IEPs, the only justification given for not placing ██████████ in a regular or resource setting is ██████████ emotional/behavioral disorders. There is no evidence in any of his records however that EBR ever attempted to increase the amount of counseling or implement any of the previously described supplemental aids/services/supports in order to enable Petitioner to

² For example, even a cursory review of Petitioner's records reveal that he could have easily been included in general education for reading with proper supplemental academic and behavioral aids/services/supports. Petitioner believes that Regular/General Education in EBR simply does not welcome, much less include ED students and there has been inadequate staff training regarding the types of supplemental aids, services, accommodations, supports, modifications and other teaching practices that would provide ED students with opportunities to participate and progress in the general curriculum. There has also been a woefully inadequate provision and use of Paraprofessional/Behavior Aides, much less Special Education Teachers with ED students in general education settings. Team or Co-Teaching arrangements and coordination amongst General Education and Special Education teachers is essentially nonexistent in EBR for ED students and this reality effectively denies ED students with opportunities to participate and progress in the general curriculum. This reflects EBR's systemic failure to provide appropriate supplemental aids and services, accommodations, supports and modifications necessary to enable ED students to participate in general education.

Petitioner also believes EBR views Special Education as a place rather than an array of services and supports for many students with disabilities and particularly ED students. This district philosophy has produced a self-contained class/setting placement rate for students with disabilities that is currently thirty-six percent (36%) higher than the statewide average.

access and succeed in a less restrictive setting in at least some of his core subjects. Instead of helping to address his academic and behavioral needs, EBR's self-contained placement has adversely affected his academic and behavioral functioning and thus only further harmed his chances of succeeding academically and eventually graduating with a high school diploma. This is clearly evidenced by EBR's own admissions that Petitioner failed to achieve any of his December 2004 objectives and by EBR's repeated disciplinary referrals during the current school-year culminating in Petitioner being expelled and transferred to [REDACTED] Alternative School in February 2006.

**CLASS CLAIMS ON BEHALF OF [REDACTED] [REDACTED]
[REDACTED], AND A CLASS OF SIMILARLY SITUATED
EMOTIONALLY DISTURBED STUDENTS:**

- Denial of FAPE- Failure to Provide Educational Benefit
- Denial of FAPE- Failure to Comply with IDEA's Discipline Regulations

Petitioners contend that EBR has violated their substantive and procedural rights under the IDEA, and those of similarly situated Emotionally Disturbed students, resulting in a denial Free Appropriate Public Education (hereinafter "FAPE"), specifically related to EBR's failure to provide Emotionally Disturbed students with services that confer meaningful educational benefit and EBR's failure to adhere to IDEA's provisions.

Specifically, EBR's systemic violations of IDEA include, but are not limited to the following:

1. EBR Has Failed to Confer Meaningful Educational Benefit.

EBR has denied Petitioners and all other similarly situated ED students FAPE by providing Petitioners and these students with an education that has failed to confer meaningful educational benefit as required by IDEA. Petitioners have not been able to make any meaningful academic and in many cases non-academic (behavioral) progress for the past several years due the denial of FAPE. The pervasive reality for ED students across EBR is that even though they are of average intelligence, by the time they reach junior high school, they are typically performing years behind their chronological grade level and their peers. One result is that ED students are typically placed in restrictive self-contained settings and this leads to an almost non-existent High School Diploma rate for such students, which is the ultimate evidence of lack of meaningful educational benefit. The high school graduation rate for disabled students in East Baton Rouge is consistently among the lowest in the state. This reality reflects an obvious and systemic practice of providing inappropriate special education and related services to Emotionally Disturbed students. This is particularly true with the Petitioners, as they are as young as 13 years-old, and are already three or four years behind their non-disabled peers. *See Board of Education of Hendrick Central*

School Dist. v. Rowley, 458 U.S. 176, 200-201 (1982); *Cypress-Fairbanks ISD v. Michael F.* 118 F.3d 245, 253-254 (5th Cir. 1997).

Consistent with practices and policies that are widespread and reflected in EBR's remarkably low high school diploma rate for disabled students (16.9%), EBR effectively removed both of the petitioners from the high school diploma track when they were ten years old. Petitioners were both administered the IOWA Test of Basic Skills as elementary school students. As a third grader, Petitioner ██████ tested in the 55th percentile rank in reading, the 31st percentile rank for his language score, and the 10th percentile rank for his math score. Petitioner's September 16, 2005 IEP reflects that his current performance levels based on WRAT testing are: reading 4.0, math 3.0, spelling 5.0. Petitioner ██████ is clearly several years behind his chronological grade level and peers after being close to average prior to entering special education when he was in the third grade. Moreover, he is currently in a self-contained classroom where he is not taking any regular academic classes, and thus his chances of improving and obtaining a high school diploma are essentially non-existent. Similarly, as a sixth grader, Petitioner ██████ took the fifth-grade IOWA Test of Basic Skills and scored in the 2nd percentile rank in reading, the 8th percentile rank in language. That is more than two standard deviations from the norm. As of the 2002-2003 school-year (when he was in the fifth grade) Petitioner ██████ participated in out-of-level testing, so he is no longer taking standardized tests with his grade level. He took the LEAP test this school year because his grade level eliminates any other testing options according to his IEP, but the IEP also indicates that LAA-2 will be an option again for next year. There is no chance that he will ever pass LEAP or earn enough Carnegie units to graduate from high school because his services have been so inadequate.

2. **EBR Has Violated IDEA's Discipline Provisions.** EBR has further denied Petitioners and all other similarly situated ED students FAPE by its violations of IDEA's discipline provisions involving students with disabilities who have been removed from their educational placement for more than 10 school days in a school year. These provisions require EBR to conduct Manifestation Determination Reviews within 10 days of the change of placement; to furnish on-going educational services that enable students with disabilities to continue to participate in the general education curriculum and to progress toward meeting the goals set out in their IEPs; to have IEP committees conduct appropriate functional behavioral assessments; and to draft, review, or modify as necessary behavior intervention plans that also include positive behavioral interventions, strategies and supports. *See* 20 U.S.C. § 1415 (k) (1) (A)-(H); 34 C.F.R. § 300.121(d); 34 C.F.R. § 519-526; *See also* 34 C.F.R. § 300.346 (a)(2), (d); Bulletin 1706 Subpart A § 519. At all times relevant to this administrative complaint, EBR has failed to comply with these IDEA requirements. EBR's in-school-suspension rate for the 2004-2005 school-year was 20.72% for disabled students (versus the state's average of 12.38%). This highly disproportionate rate reflects that EBR's solution for addressing the behavioral and emotional needs of students with disabilities is to send them to an in-school-suspension rather than to adjust their behavioral programming.

This is clearly the case with Petitioner [REDACTED] who was expelled and transferred to an alternative school after being in-school-suspended five times for a total of 25 days for offenses such as disobedience, cursing, being disrespectful and fighting. As previously noted EBR did not revise his IEP to include increased level of Counseling\Other Therapy related services, did not revise his behavioral goals, did not revise his Behavior Intervention Plan. EBR's failure to revise Petitioner [REDACTED] behavior plan in light of its obvious failure this year, in light of Petitioner's ED classification, is evidence of the district's failure to follow the discipline regulations. After the sixth and final removal – Petitioner [REDACTED] expulsion from [REDACTED] school – an MDR was conducted. However, the mother was not present and was not given a chance to argue that the behavior was clearly related to the exceptionality. No manifestation determination review was conducted after any of the first 5 removals totaling 25 days, a new FBA was not conducted, and a new behavior intervention plan was not put into place. Instead, [REDACTED] was removed from [REDACTED] Middle School and sent to an alternative school for the remainder of the year. He was given a “remainder of the school year” suspension to an interim alternative educational setting for 64 days. Such action was patently illegal. None of Petitioner [REDACTED] disciplinary write-ups were for drugs, weapons, or serious bodily injury. Nothing in the IDEA allows this severe a penalty for such minor offenses. Major offenses involving weapons, drugs and serious bodily injury only warrant 45 day suspensions. Therefore, the most punishment he should have received was a 10-day suspension from [REDACTED] Middle School. In addition to the numerous suspensions he received throughout the school year for behavior clearly related to his exceptionality, EBR is violating Petitioner [REDACTED] rights by placing him in an alternative school for the remainder of the current school year.

Petitioner [REDACTED] case reflects similar illegal disciplinary practices by EBR. Petitioner [REDACTED] has been suspended at least five times for a total of nine days from [REDACTED] Middle School and was placed in an alternative school each time. In addition to these suspensions to the alternative school, Petitioner [REDACTED] mother has been called no less than six times³ this year to come pick him up and bring him home for a “cool down” day. No educational services are provided during these illegal removals from school.⁴ Moreover, Petitioner's other suspensions and placement at the [REDACTED] discipline center resulted in the provision of woefully inadequate educational services that did not to allow him to continue to work toward his IEP goals and objectives. His test scores suggest that he is sorely in need of significant academic remediation. Concurrent with these repeated removals from the academic environment, EBR deliberately eschewed compliance with IDEA's discipline procedures. EBR has not conducted any manifestation determination reviews in accordance with the law for [REDACTED] despite the fact that he has been

³ The mother made notes in her calendar of a few of the dates that she was called to pick her son [REDACTED] up from school. Some of the dates were: 12/7/2005, 12/13/2005; 1/10/2006; 3/6/2006; 3/22/2006; 3/27/2006.

⁴ These “cool down” suspensions were actually written into his 2004 IEP and the practice has continued. In his December 16, 2004 IEP, one of the solutions in place in the event that “all prevention strategies fail” is “time at home (1 to 3 days cool off period)” even though this would also deny him much-needed educational benefit.

put out of school well over 10 days. This is consistent with EBR's history of refusing to address the inherent behavioral characteristics and issues associated with Emotionally Disturbed students' disability and refusing to allow such students to access the general curriculum. EBR instead has established a pattern and practice of sending ED students to alternative schools, to their homes, or, at best, to self-contained classrooms. However, in none of these settings are they being provided FAPE or the tools they need to learn or become independent. EBR's remarkably high and significantly disproportionate in-school suspension rates the past several years reflect pervasive noncompliance with IDEA's disciplinary provisions and also raise the specter of pervasive discriminatory practices towards students with disabilities versus students without disabilities.

Individual Remedies for [REDACTED] Necessary to Settle His Individual Complaint

EBR will need to take the following action to address [REDACTED] individual claims in order to settle this administrative complaint:

- (1) Increase the frequency and duration of social work, counseling or psychological services provided to Petitioner [REDACTED] immediately;
- (2) Return Petitioner [REDACTED] to [REDACTED] Middle School with appropriate supports (including additional related services mentioned above) and conduct a new IEP meeting prior to the beginning of the 2006-2007 school year;
- (3) Develop a new functional behavioral assessment and a new behavioral intervention for Petitioner [REDACTED] using a licensed school psychologist;
- (4) Ensure that Petitioner [REDACTED] is moved to a regular education reading class for the 2006-2007 school year;
- (5) Provide after school one-to-one tutoring to Petitioner [REDACTED] for a period of one school year to compensate him last year's denial of FAPE.

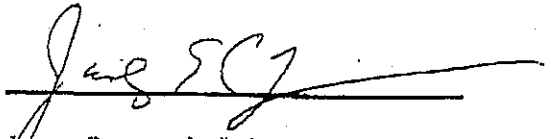
Systemic Remedies Necessary to Settle This Class Due Process Complaint

EBR will need to take the following action to address the systemic IDEA violations delineated in Section:

- (1) Compel EBR to develop a systemic training protocol that includes the provision of training by a national recognized expert in FBAs, BIRs and positive behavioral supports for all pupil appraisal staff in the school system and all teachers, paraprofessionals, disciplinarians, and administrators working at schools which have ED students. The training protocol shall also include the active use of pupil appraisal staff for ongoing follow-up with staff in the designated schools above;

- (2) Compel EBR to develop specific school system policies that are disseminated by the Superintendent to all school building administrators including principals, vice-principals, and disciplinarians outlining and mandating strict compliance with IDEA's discipline requirements including the requirements of Manifestation Determination Reviews; providing IEP services upon reaching the 11th cumulative day of out-of school suspensions; development of appropriate FBAs; development of BIPS involving positive behavioral supports, strategies and services; review and modification of BIPS after every 10 days of suspensions;
- (3) Compel EBR to develop with LDE, SPLC and SDLC, as well as the nationally recognized expert above specific annual strategies and objectives for significantly reducing the number of suspensions of ED students;
- (4) Compel EBR to place certified special education teachers in its self-contained classrooms, its alternatives schools and its disciplinary centers;
- (5) Compel EBR to develop with LDE, SPLC and SDLC specific strategies and objectives for implementing intensive reading remediation programs at all elementary schools serving ED students to ensure that they are reading at or within one year of chronological grade level by the time they move onto junior high school.

Sincerely,

A handwritten signature in black ink, appearing to read "James CG", is written over a solid horizontal line.

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