Complaint against Achievement First Hartford Academy Middle School

We are attorneys with Greater Hartford Legal Aid (GHLA). GHLA is a non-profit law firm whose attorneys advocate for equal justice for poor people, work with clients to promote social justice, and use the law to address the effects and root causes of poverty. GHLA represents students with disabilities to enforce their right to a free and appropriate education, special education services, due process in school discipline, culturally competent testing and identification of disabilities, and quality compensatory educational services if required to remediate failures of the school system.

GHLA files this complaint as an organizational complaint on behalf of all students[1] at Achievement First Hartford Academy Middle School (AF) with identified disabilities who have been denied a free and appropriate education due to AF's failure to provide accommodations, modifications, and specialized instruction per 504 plans or IEPs, and AF's pervasive discriminatory discipline practices that violate federal and state law. AF is a public charter school in Hartford, CT, that receives federal and state money.

GHLA offers the following background on AF's discipline policy as well as five case studies to illustrate AF's non-compliance. All acts or omissions that resulted in violations of federal law occurred during the period of August 1, 2010 to the present. GHLA submits that the violations are based on a continuing discriminatory policy and practice at AF and thus are timely submitted. In each of the examples, the parent was not represented by legal counsel until noted. The final case study is by far the most egregious.

Each parent enrolled their child at AF full of optimism in the promise of a quality education from AF and fully endorsed the school's five underlying core REACH values (Respect, Enthusiasm, Achievement, Citizenship, and Hard work). As a result, each of the parents come forward reluctantly in the hope of improving the education for their own children with disabilities and for all those others with disabilities currently attending AF or who may attend AF in the future. This complaint is filed after educational planning for each of the students in the case studies has proven unsuccessful in timely or fully remediating discriminatory practices. In addition to representing individual clients, the undersigned counsel have met with AF administration and legal counsel to discuss the systemic issues that have come to light in our individual cases. At the very core of the disagreement is the degree to which AF need adapt its overarching educational and discipline philosophy to accommodate children with disabilities, particularly those with learning, emotional and behavioral disabilities.

Specifically, GHLA asserts that AF has violated Title II of the ADA and Section 504 of the federal Rehabilitation Act and their implementing regulations in that AF has:

1. Excluded individuals with a disability from access to the general education curriculum on the basis of disability (42 U.S.C. 12132; 29 U.S.C. 794(a));
2. Failed to identify students with disabilities within a reasonable timeframe (34 C.F.R. 104.35);

[1] AF refers to students as "scholars." For the remainder of this complaint, "scholar" and "student" will be used interchangeably.

3. Failed to ensure that students with disabilities are educated in the least restrictive environment (34 C.F.R. 104.34(a));
4. Failed to evaluate or re-evaluate students with disabilities before substantially modifying their educational placement (34 C.F.R. 104.35 (a));
5. Failed to conduct manifestation determinations prior to imposing long-term suspensions or a series of short term exclusions (34 C.F.R. 104.35);
6. Failed to consider whether a series of short-term exclusions constituted a significant change in placement (34 C.F.R. 104.35);
7. Failed to consider educational placement options based upon a student's individualized needs and failed to maintain adequate records in order to fully understand a student's individualized needs (34 C.F.R. 104.35(c));
8. Failed to provide a free and appropriate education (FAPE) to students with disabilities with resulting emotional and behavioral symptoms (34 C.F.R. 104.33);
9. Failed to appoint a 504 Coordinator, provide parental notice of such appointment, or provide notice of procedural safeguards under 504 (34 C.F.R. 104.7, 104.8, and 104.36); and
10. Failed to make reasonable modifications to policy, practices, and procedures (42 U.S.C. 12131 et seq.).

AF's Education and Discipline Policy

According to Achievement First's website, Achievement First operates a network of 22 public charter schools in New Haven, Bridgeport and Hartford, CT, as well as Brooklyn, NY. Based on information and belief, the network utilizes a consistent discipline policy, with minor variations, across all of its charter schools. Achievement First espouses as it core values, "REACH": Respect, Enthusiasm, Achievement, Citizenship and Hard Work.[2] One of Achievement First's "key elements" in promoting a strong school culture is also "Sweating the small stuff."[3]

Paramount to school philosophy is AF's belief that "students are capable of making choices. Students can choose to follow rules or violate them."[4] Equally important is AF's belief in "No Excuses": "We must refuse to make excuses for our students because of their prior education, their family situation, their community, or other potential excuses."[5] While we sincerely applaud AF for their high expectations and belief that all students can succeed, based on our experiences with AF, learning, emotional or behavioral disabilities are often viewed as just another "potential excuse." Moreover, the school culture dismisses the notion that students with disability-related impulsivity may not be capable to make a reasoned "choice" at all times, or that students with cognitive disabilities with slow processing speed may be unable to make the "right" choice (i.e., follow the rules, take out book, etc.) as quickly as their non-disabled peers. Based on the AF School Culture and Parent Handbooks, and based upon information and belief, AF's discipline

[2]Appendix 1, Achievement First Hartford Academy Family Handbook 2011-2012 [hereinafter Family Handbook], p. 10; Appendix 2, Achievement First Hartford Academy School Culture Manual 2011-2012 [hereinafter SC Manual], p. 5. NOTE: The SC Manual was provided to GHLA without page numbers. GHLA has added hand-written page numbers 1-50 (in the bottom right-hand corner) to the SC Manual that is submitted with this complaint. The page numbers do not correspond, though, to the Table of Contents of the SC Manual.
[3] Appendix 1, Family Handbook, p. 0 (cover); Appendix 2, SC Manual, p.1 (cover).
[4]Appendix 2, SC Manual, p. 5.
[5] Appendix 2, SC Manual, p. 1 (cover), p. 8.

policy is a complicated system of progressive and compounding discipline.[6] In our clients' experience, accommodations provided seem not to allow for any reasonable departure from AF's established discipline code.[7]

If expectations have been clearly articulated[8] once by a teacher, or are standing classroom rules, any violation will earn a "demerit" as a warning.[9] "Demerits" may be issued for missing homework that requires a parent signature, being unprepared for class, talking out of turn[10] inappropriate hall/line conduct,[11] inappropriate contact[12] or uniform violations. After four demerits in one week, a student earns after-school detention.[13] Students may respectfully disagree with four demerits and/or automatic detentions per trimester in writing, using a standard form, by the end of the school day in which the demerit/detention is issued. [14]

Some offenses that earn a "demerit" also require an "automatic Detention."[15] Per the School Culture Manual, "In general, there is no 'less invasive' intervention for [these] acts. 99.999% of the time, any of the [below] behaviors should receive an immediate consequence of automatic detention, plain & simple, cut & dry, black & white."[16]

After-school detention has its own rules for behavior. Per the School Culture Manual: "The rules are clear, simple, and non-negotiable." Non-emergency questions are not permitted during detention. If the detention rules are violated, students will re-serve detention the following day

---

[6]Appendix 2, SC Manual, p. 23.

[7] For example, while on an ad hoc basis, some students who need to calm down may be removed from the classroom. Students who have well-documented ADHD, PTSD, and anxiety do not have movement breaks written into their plans (See case study for C below. C was generally punished with an out-of school suspension for leaving the classroom or the building when he felt the pressure to do so, or he was given warnings and demerits for fidgety behaviors such as biting his pencil eraser.) The apparent recent loss of almost a dozen paraprofessional aides may exacerbate the school's difficulty in providing such accommodations in the future.

[8] Examples of "clear directions" are provided in the AF School Culture Manual. (See AF Handbook, "Classroom Leadership.") "Clear Directions" may be multi-step, which may negatively impact students with cognitive, processing speed, or attention disorders. Appendix 2, SC Manual, p. 10.

[9] Based on information and belief, some teachers may give one warning or cue of an expected behavior, but expect the student to correct behavior by the next pass of the student's desk, often within a minute.

[10] "Talking out of turn" includes calling out an answer or talking after a cue for silence has been given. Appendix 2, SC Manual, pp. 24-30; Appendix 1, Family Handbook, pp. 20-21.

"[11]Inappropriate hall or line conduct" includes "not being in a straight line" or "leaning on door/wall/etc. when in line." Appendix 2, SC Manual, pp. 24-30; Appendix 1, Family Handbook, pp. 20-21. Appendix 2, SC Manual, pp. 24-30; Appendix 1, Family Handbook, pp. 20-21.

[12] "Inappropriate contact" includes "leaning against [my] friend… in gym class." Appendix 2, SC Manual, pp. 24-30; Appendix 1, Family Handbook, pp. 20-21.

[13] Appendix 2, SC Manual, pp. 24-30; Appendix 1, Family Handbook, pp. 20-21.

[14] SC Manual, p. 30. While not represented in our case studies below, we contend that this policy too may negatively and disparately impact students with disabilities who have difficulty producing timely written work, who process information slowly, or who lack the self-esteem to contest a demerit.

[15] These offenses fall under the broad categories of Disrespect, Disruption of Class, and Non-Compliance. Offenses included under "Disrespect" include: "arguing a demerit in any way," "calling the adult other than what the adult has asked to be called "e.g., just "Miss" instead of Ms. McNally…," refusing to return a greeting or handshake from an adult staff member," "blatantly ignoring a clear direction, or "ostracizing a peer." (But, one might argue that Reorientation rules where students may not talk to or sit by students on Re-Orientation is school -mandated mass ostracism.) "Disruption" may include: "making noises in class," "anything that makes the whole class come to a stop, even briefly," "anything that makes more than 2 classmates be off-task, even briefly," "any lesser demerit-worthy behavior (not following directions, talking out of turn, etc.,) that is repeated after a demerit has already been given." "Non-compliance" may include: "refusal to follow directions after a demerit has been given" or "not on-task during independent work after re-direction and demerit." Appendix 2, SC Manual, pp. 24-26.

[16] Appendix 2, SC Manual, p. 24.

or if disrespectful or disruptive during detention, will be suspended out-of-school the following day.[17]

Accumulating four detentions in one week earns a scholar "Re-Orientation (RO)."[18] Typically, a student earns one day of RO, unless the Dean of Students determines otherwise based on severity of the offense. While on RO, a scholar must wear a different uniform shirt to distinguish his status to staff and peers. Students must attend all classes, but cannot participate in "specials," such as physical education, art, music, etc., or electives offered to upper class students. Students on RO are prohibited from communicating verbally or non-verbally with other students. If non-RO students communicate with the RO students, the non-RO students earn a Demerit. In order to move back to regular scholar status, a scholar must complete a written apology that must be accepted by staff and peers and must demonstrate positive, compliant behavior for the entire day, as determined by a behavior check sheet. If behavior has been subpar for the day, the student's RO is extended for an additional day. Depending on the behavioral infraction while on RO, a student may receive another day of RO, an automatic detention, or if two automatic detentions in one day, then an OSS.[19]

A child is automatically removed from class when deemed necessary by staff due to safety or disruption of the academic process. A teacher should remove a student if misbehavior continues after an automatic detention, if a second automatic detention is earned during a class period (even if behavior is unrelated), or for certain behaviors while on RO. According to the School Culture Manual, "We trust your gut, better to refer than to ignore. If unsure, please refer. *If in doubt, send them out."* (Emphasis added.)[20]

After removal, a student may be suspended, put in RO, or serve a longer time in Isolation.[21] Students are permitted up to 15 minutes to "cool down" in Isolation, except that talking is not permitted. After 15 minutes, the "accountability system" kicks in, where "strikes" are given for misbehavior. One strike requires an additional period in Isolation, two strikes requires staying in Isolation the remainder of day, three strikes, mandates another full day in Isolation, four strikes earns an OSS. If the student is already serving an all day Isolation, then strike 2 gives an additional day, and strike 3 earns an OSS. According to the School Culture Manual, students should not earn more than two full days in Isolation. If they would have earned a third day in Isolation, they will receive an OSS instead. Upon return to school, the students are placed on RO.[22] However, based on information and belief, the amount of time actually served in Isolation is not recorded.[23] Based on information and belief, parents are not notified by AF when

[17] Appendix 2, SC Manual, p. 33; Appendix 1, Family Handbook, p. 22.
[18] Appendix 2, SC Manual, pp. 34-35; Appendix 1, Family Handbook, pp. 23-24.
[19] Appendix 2, SC Manual, pp. 34-38; Appendix 1, Family Handbook, pp. 23-24.
[20] Appendix 2, SC Manual, pp. 39-41.
[21] Despite its name, based on information and belief, "Isolation" is a staff-supervised, well-lit, safe auditorium style classroom; the same room used for after-school detention. Many students serve Isolation in the same room at the same time.
[22] Appendix 2, SC Manual, pp. 39-43; see also Appendix 1, Family Handbook, p. 25.
[23] Suspension logs or "Behavior Detail Reports" (the terms will be used interchangeably within this complaint) from AF do not record Isolations. The logs do, however, occasionally reference "in school suspension" even though ISS is not a term used by AF in the School Culture Manual or Family Handbook. Based on information and belief, ISS sentences that are tracked on the suspension logs do not capture all of the time a student serves in Isolation. (See, e.g., case study for A below.) As practiced by AF, Isolation is akin to ISS but for AF's failure to follow Connecticut state suspension laws. AF's response to a Freedom of Information Act request suggests that materials for tracking Isolation are not yet developed. A request for tracking protocols or documents used during recent years has been made, but documents have not yet been provided. Appendix 4.

students are placed in Isolation. Parents, thus, are not able to easily track time served in Isolation and must rely on the self-reporting of the student.

The basic rules of Isolation are the same as for after-school detention: non-emergency questions are not permitted; students may not communicate with one another verbally or non-verbally; students may not leave their seats for any reason; and may not look around the room instead of being focused on their assigned task.[24]

A reflection packet is given to scholars in Isolation for completion. A reflection packet consists of students telling their side of the story, students copying the Isolation/Detention rules, and copying the Honor Code. Assistance is not provided to complete reflection packets.[25] A child is required to stay in Isolation until the reflection packet is completed. [26]

While assigned to the Isolation room, a student may not attend any academic or special class. It is unclear whether classwork from a scholar's individual teachers/classes is consistently provided. [27] Based on information and belief, classwork assignments may be picked up after Isolation is fully served and homework may be picked up in the office upon parental request. Based on information and belief, no academic instruction is provided during Isolation[28] nor is assistance provided with assignments.[29] Without academic instruction from class, the materials provided for classwork and homework are often too difficult to understand and students fall behind in the academics and special classes as a result of time in Isolation. Because academic instruction is not provided during Isolation, which again serves as the AF equivalent of ISS, time in Isolation should count toward the days of suspension and change of placement analysis. [30]

In addition to compounding into detention, re-orientation, and Isolation, demerits also result in loss of "Scholar Dollars." Scholar Dollars have no extrinsic value, but a student must maintain a certain Scholar Dollar amount in order to earn certain privileges. Scholars are prohibited from attending after school events, Friday celebrations, or field trips if their Scholar Dollars drop

---

[24] Appendix 2, SC Manual, p. 41; Appendix 1, Family Handbook, p. 25.

[25] Isolation Room Monitors do check "reflection packets for completeness and basic quality." Appendix 2, SC Manual, p. 41.

[26] Appendix 2, SC Manual, p. 42.

[27] Based on information and belief, classwork is not regularly provided. The SC Manual, however, indicates that a classroom teacher should "place class work assignments for the isolated scholar in the advisory outbox; Dean of Students will handle setting scholar up in the Isolation Room." Appendix 2, SC Manual, p. 36.

[28] The Family Handbook, however, indicates that "Those students removed for a period fewer than ten days will receive all classroom assignments and a schedule to complete such assignments during the time of his or her suspensions…The school must provide additional alternative instruction for the first ten days of suspension so that the student is given full opportunity to complete assignments and master curriculum, including (but not limited to or guaranteeing) additional instruction, phone assistance, computer instruction, and/or home visits and one-on-one tutoring." Appendix 1, Family Handbook, p. 30. Based on information and belief, this "alternative instruction" is not provided in any manner.

[29] Based on information and belief, the Isolation Room Monitor does not offer any assistance with classwork. Again, students may not ask "non emergency" questions during Isolation without the risk of receiving a "Strike." Appendix 2, SC Manual, p. 33.

[30] In-school suspension days do not count toward days of suspension as long as:

- the child is afforded the opportunity to continue to appropriately participate in the general curriculum;
- the child continues to receive the services specified on the child's IEP; and
- the child continues to participate with nondisabled children to the extent that he or she would have in his or her current placement.

Appendix 3, Guidelines for In-School and Out of School Suspension, Revised December 2010, Connecticut State Department of Education [hereinafter "Guidelines"], pp. 34-35 (citing Office of Special Education Programs). A similar analysis exists for students with 504 Plans. Appendix 3, Guidelines, pp. 36-37.

below a certain, specified amount.[31] The Scholar Dollar paycheck is sent home each week for parental review and signature. It is the primary way of keeping parents informed of a student's progress.[32]

OSS is the next step in the progressive disciplinary scheme. Based on information and belief, an out-of-school suspension (OSS) is required if the single behavioral incident is deemed serious, or based on cumulative offenses. The length of the OSS varies depending on the offense and the Dean's discretion. Students who are on suspension cannot attend school events, dances, or other school sponsored events. After returning from a suspension, all missed work is required to be made up in a timely manner.[33]

All suspensions, whether ISS or OSS, are considered absences.[34] Attendance data from AF does not disaggregate suspensions and absences. It is unclear whether Isolations are counted as absences under AF attendance policy. Based on information and belief, the length of any single OSS is not adequately tracked. (See case study for C below.)

Excessive absences, even if the result of ISS or OSS, will be considered truancy. (See case study for A below.) Action may be taken against a student in Juvenile Court. Every three tardies will be recorded as an absence.[35] Absences and tardies will also result in withholding of Scholar Dollar awards.[36]

Excessive discipline at AF

Connecticut State law requires the use of ISS under most circumstances.[37]

Based on 2010-2011 discipline data reported by AF to the State of Connecticut Department of Education (Connecticut Education Data and Research, CEDaR):[38]

---

[31] Each demerit results in a $2 deduction, each automatic detention results in a $10 deduction, re-orientation cause a $40 deduction, out of school suspension results in a $40 deduction plus $10 for each day of the suspension, plus any teacher or Dean imposed additional deductions. A homework demerit leads to a $5 deduction, late arrival or early dismissal is another $5 deduction, excused absences are $10 deductions, and unexcused absences are $15 deductions. Appendix 2, SC Manual, pp. 19-23.

[32] Appendix 1, Family Handbook, p. 20.

[33] Appendix 2, SC Manual, pp. 44-45; Appendix 1, Family Handbook, pp. 27-28.

[34] Appendix 1, Family Handbook, p. 12.

[35] Appendix 1, Family Handbook, pp.13-14

[36] Appendix 1, Family Handbook, p. 18; Appendix 2, SC Manual, pp.19-20.

[37] Under Connecticut state law, Conn. Gen. Stat. 10-233c(g), ISS is required unless:

> (1) the administration determines that the pupil being suspended poses such a danger to persons or property or such a disruption of the educational process that the pupil shall be excluded from school during the period of suspension, or (2) the administration determines that an out-of-school suspension is appropriate for such pupil based on evidence of (A) previous disciplinary problems that have led to suspensions or expulsion of such pupil, and (B) efforts by the administration to address such disciplinary problems through means other than out-of school suspension or expulsion, including positive behavioral support strategies.

[38] Discipline data is collected by the State of Connecticut per the ED166 Disciplinary Offense Data Collection System. Discipline data is also required to be collected and disaggregated by disability pursuant to 20 U.S.C. 1418(a)(1)(A).

-Overall, of 749 individual sanctions reported, 623 were for "school policy violations" = 83% of all sanctions were "school policy violations"

-Overall, of 879 sanction days imposed, 699 were imposed for "school policy violations". = 79.5% of all sanction days were for "school policy violations"

-Overall, of 879 sanction days, 758 sanction days were for OSS= 86% of all sanction days are OSS

-Overall, 121 sanction days out of 879 sanction days were for ISS= only 14% of all sanction days are ISS

(Appendix 5). The data indicates that AF relies heavily on OSS, especially for "school policy violations," running afoul of Connecticut law which favors ISS.

Upon information and belief, AF excludes students without following the procedural rights set forth under Connecticut state law. (See case study below for A.) Under Connecticut law, removals from class are permissible when a student deliberately causes a serious disruption to class. A classroom teacher must immediately notify the building principal or designee of the student's removal and the reason for the removal. Removals from class may not occur more than twice in a week or six times during a school year without an informal hearing before the administration, as would occur in cases of suspension. Conn. Gen. Stat. 10-233b. Removals that exceed 90 minutes are to be documented and treated as suspensions. For all children, a suspension is limited to no more than 10 school days at a time. Conn. Gen. Stat. 10-233a(d). Students, whether disabled or not, may not be suspended more than ten times in a school year or for a total of fifty days without administration following the more formal procedures for an expulsion. Conn. Gen. Stat. 10-233c.

For students with disabilities, Connecticut has also advised that ISS count toward the federal ten-day suspension time frame in determining whether the suspension(s) amount to a major change of program when instruction services per the child's IEP or 504 Plan are not provided during the ISS.[39] At AF, because Isolation is the working equivalent of ISS, and academic instruction is not provided during Isolation times, we submit that Isolation days count toward the major change of program analysis.

Case Studies:[40]

Comprehensive record requests were made by undersigned counsel to AF. Despite our requests for each of the students below, AF did not provide a list of:

[39] Appendix 3, Guidelines, pp. 34-37.
[40] Signed Consent Forms for each of the case studies are attached as Appendix 6.

- the individual student's classroom removals to Isolation, the reason for the removal, or the time served in Isolation;

-demerits issued, or the reasons for the demerits;[41]

-detention time served, or the reasons for the detention; or

-RO time served, or the reasons for the RO.[42]

Data provided on ISS or OSS for each student was inconsistent in that parental notice of the disciplinary action and reasons for the actions, were only partially provided.[43] The suspension data provided listed the generic offense (e.g., "gross disrespect"), but usually did not flesh out the details of the student's behavior that warranted its classification as an offense. Data recorded on AF's suspension log as to length of the individual suspensions is misleading. (See case study below for C).

Discipline data should be routinely kept by AF pursuant to state and federal law.[44] Inaccurate or incomplete record-keeping makes it difficult, if not impossible, to determine to what degree children with disabilities are excluded from instructional time. As a result, it is challenging to pinpoint when substantive and procedural violations of their right to a free and appropriate education (FAPE) are occurring.

D, and Parent of D

Dis a child with Attention Deficit Hyperactivity Disorder (ADHD), Acute Post Traumatic Stress Disorder (PTSD), Mood Disorder, and Psychotic Disorder. Autism Spectrum Disorder was only recently ruled out. D also suffers from and . He is described as impulsive, aggressive, and sad. He lacks age-appropriate social skills and has problems with peers. D has a relative weakness in understanding directions. At times, D talks out frequently which disrupts the classroom, has difficulty following teacher's directions, is argumentative, shuts down and refuses to cooperate, and is verbally combative. (Appendix 7).

D was referred for 504 eligibility in 2005, 2008, and 2010, before finally being found eligible for a 504 Plan in February 2010 by the Hartford Public Schools (HPS).

D's February 2010 504 Plan set forth a number of accommodations for D. (Appendix 7).[45] D transferred from HPS to AF for 6th grade for the beginning of academic year 2010-2011. An annual 504 conference was convened by AF on December 3, 2010. Parent of D reported on the

[41] A blank form "Behavior Tracker" was received for one student (B), which apparently could track warnings, demerits, automatic detentions, and removals. (Appendix 14). Completed forms for a short period of time were received for one student (C). (Appendix 33).

[42] A handful of RO trackers for one student (C) were received but are difficult to interpret. (Appendix 33).

[43] Based on information and belief, written disciplinary notices are not always provided to parents.

[44] Discipline data is collected by the State of Connecticut per the ED166 Disciplinary Offense Data Collection System. Discipline data is also required to be collected and disaggregated by disability pursuant to 20 U.S.C. 1418(a)(1)(A).

[45] D's 504 Plan included: alternative setting, extra time for tests, association with school social worker, FBA/BIP , "safe harbor in class," pass to school social worker for anger de-escalation, and redirection and refocus as needed.

bullying that D was experiencing. D's 504 plan developed by AF required a number of different accommodations. (Appendix 8).[46]

By May 2011, D was struggling daily at AF. At Parent of D's request, an IEP team meeting (PPT)[47] per the Individuals with Disabilities Education Act (IDEA) was convened by AF with HPS present on May 16, 2011. Counsel attended this PPT with Parent of D. Comprehensive evaluations were recommended. Minutes from the May PPT reflect that D was humming in class, talking, taking a long time to follow directions, was being defiant, was having difficulty following directions and turning in homework. D was also having a number of tardies-- some attributed to his school bus arriving to school late; other tardies were the result of [redacted]. School anxiety was particularly noticeable when D was issued a demerit or detention. AF agreed to assist with developing homework organization skills, and to award credit for all homework turned in to teachers. (Appendix 10).

D failed his reading and writing classes in academic year 2010-2011. (Appendix 9). Per Parent of D, bullying continued throughout 2010-2011, in part because of [redacted]

On December 1, 2011 (academic year 2011-2012), with D now in 7th grade, the PPT/504 re-convened to review evaluations,[48] and to address Parent of D's concerns about bullying and academic performance from academic year 2010-2011. At AF's December 2011 meeting, AF disclosed that it did not have a 504 case manager or coordinator for academic year 2010-2011. Parent of D explained that she met with individual teachers repeatedly about D's 504 Plan; all were unfamiliar with his 504 plan. Despite Parent of D's efforts to educate D's teachers in academic year 2010-2011, she felt that his 504 Plan was largely ignored and not implemented. (Appendix 11). Per Parent of D, through academic year 2011-2012, some AF teachers also "bullied" D by making derogatory comments about [redacted]

Evaluations found D to be working at grade level with above average cognitive abilities. The psychological evaluation recommended that staff:

> give directions one step and a time and have D repeat to make sure he understands…make sure the classroom atmosphere is positive, not punitive…. Maintain a positive relationship by responding to D as a human being, rather than responding simply to overt behavior… be tolerant and use judgment for enforcing compliance, time for cooling off and no penalty for unresponsiveness as appropriate.

(Appendix 12, Psychological evaluation, [redacted], M.A., C.A.G.S., dated 6/13, 6/20/11).

D's education (i.e., achievement) evaluation recommended that "due to a relative weakness in understanding directions, teachers should provide very clear and concise directions. Directions

[46] The 504 Plan accommodations included: alternate setting, extra time for written work, extra time for tests, extra response time, checklists to aid organization, positing assignments, a peer or teacher to assist with tracking and organizing assignments, allowing additional use of restroom, periodic movement breaks, modified grading criteria for spelling, selective seating, allowing to stand to work, student to re-state information, immediate feedback, behavioral chart, positive reinforcement, daily feedback, cue expected behavior, breaks between task, parent to sign behavioral contract, and ongoing communication with parent.

[47] Under Connecticut State law, an IEP team meeting is referred to as a PPT (Planning Placement Team). Regs., Conn. Agen. 10-76a(15).

[48] Connecticut state law requires an IEP to be implemented within forty-five days of referral, exclusive of the time to obtain parental consent. Regs., Conn. Agen. 10-76d-13(a)(1). The December 1, 2011 PPT was already well beyond the forty-five day timeline for having completed and reviewed evaluations, and developing an IEP if found eligible for special education.

should be repeated or rephrased when necessary. When possible, written directions should be provided." (Appendix 13).

Also on December 1, 2011, the PPT/504 discussed D's anxiety, his before leaving for school, and his difficulty with less structured time at AF. Although found ineligible for special education, D's 504 Plan was revised to reflect all underlying physical and mental health impairments. (Appendix 11).[49]

D's 504 Team re-met on May 21, 2012.[50] Since the December 2011 meeting, D had been suspended multiple times, and received numerous demerits. Demerits issued to D were due to not taking out supplies quickly enough after a verbal warning or for making humming noises in class. Due to the demerits, D did not maintain a high enough Scholar Dollar balance and was thus excluded from the spring field trip. Per Parent of D, D was also excluded from all after-school activities[51] because his Scholar Dollar balance was not high enough. As a result of the ongoing demerits for behavior related to D's disability, AF agreed to track the issuance of demerits in academic year 2012-2013 more closely.

According to Parent of D, academically, D did well for the last trimester of academic year 2011-2012. However, due to absences[52] he was required to attend summer school, which is one week long. On the last day of summer school, D received four demerits for reading (after his work was completed), and not tracking,[53] and one detention for not putting away his personal book quickly enough.

[49] The December 2011 504 Plan required AF to: use of verbal re-direction to re-engage D when he hums/talks to himself, provide white board so D can write answers on board rather than speaking out of turn, provide preferential seating, assist with organization, provide peer assistance, give teacher-prompted movement breaks, provide Velcro under his desk (for sensory issues), provide alternate setting for testing, maintain a change of school uniform in the main office with teacher prompting to leave room to change in the event of or enuresis, schedule times during specials/electives to change or freshen up, provide a folder to place work if D misses or is late to class, provide door- to- door transportation, and provide a peer group for social skills.

[50] Minutes from the May 21, 2012 have not been received by Parent of D or GHLA.

[51] These after-school activities would have benefited Din developing his social skills. After-school activities include dances, drumming, sport, and chess. Per Parent of D, D did play chess with a teacher one time during the spring 2012. D loves chess and plays well. On or about the following day, D was invited to attend a chess tournament that was taking place within days. D was unable to attend due to the short notice.

[52] Per Parent of D, twenty-seven absences were noted on his end of year report card, but upwards of eight days may have been outside suspensions, and several were for excused for medical appointments.

[53] "Tracking" refers to providing "undivided attention" by "facing and watching the person speaking." Appendix 2, SC Manual, p. 47.

Despite numerous accommodations and modifications named in D's 504 Plan designed to meet his individual needs, the plan was never faithfully and consistently implemented. AF imposed too many disciplinary sanctions for behaviors directly related to D's disabilities.

B, and Parent of B

B entered AF as a 5th grade student for the start of academic year 2011-2012. He came to AF already identified by HPS as eligible for special education supports under IDEA due to his learning disabilities. B has low average to borderline cognitive skills, with borderline processing speed and working memory. He also suffers from Major Depressive Disorder, Recurrent, Severe, and Post Traumatic Stress Disorder, Chronic. B has emotional instability, behavioral dysregulation, bouts of irritability, sadness, and anxiety. He is emotionally reactive.

B was given an OSS on September 21, 2011 due to misbehavior in Isolation. It is unknown how long B had been in Isolation as of that date. (Appendix 15).

A PPT was convened for B at AF on November 15, 2011. Parent of B was represented by counsel. At that time, B was leaving school early to participate in a therapeutic program with the Village for Children and Families in Hartford. The AF team expressed concern that B was missing instructional time for therapy, which made homework more difficult as well.
The PPT recommended modifying homework so that B could complete his homework independently and not earn demerits for failing to do homework. AF also recommended that B stay after school twice per week to participate in homework help club, which required B to miss his therapeutic program. Parent of D agreed to AF's request thinking homework club would provide B additional academic support. (Appendix 16).

B failed math, reading, and science for the first trimester. (Appendix 17).

B grew increasingly anxious and depressed over the difficulty of work at AF, and the constant fear of earning demerits. By December 5, 2011, B was arriving tardy and showing reluctance to enter the AF building or to go to his assigned floor.[54] On or about Monday, December 5, 2011, B entered the school building, needed coaxing to go up to the 2nd floor, but refused to go to class. B was told that he had two choices: go to class, or get an OSS. Upon learning about the possible suspension, B's behavior escalated to shouting and punching the wall. Because of his escalated behavior and signs of disrespect, B was given an immediate OSS. Following that incident, a late arrival plan was developed for B to make his transition into AF more manageable. It is unknown whether the plan was ever utilized. (Appendix 18).

Through mid-December 2011, B received demerits for eating lunch too slowly, for putting his head down on his desk (which is considered disrespectful), and for not completing homework. Yet, during this same period, B's homework was not being modified to his level as required by his Individual Education Plan (IEP). As a result, B was unable to complete his homework even with parental assistance. B received demerits for incomplete homework, even when his mother,

[54] AF is located on the 2nd floor of a building. The main floor is the AF Elementary School. The basement is home to a HPS magnet school.

Parent of B, indicated on the homework that B found the work too difficult to complete. B attended homework help after school. Per Parent of B, the homework club does not provide instruction or assistance. It merely afforded students a quiet place to complete homework. (Appendix 18).

An annual review PPT was convened on March 2, 2012. Parent of B expressed her concern that B would be unable to complete make-up work, because the make-up work was provided in large packets that took a considerable amount of time to complete and overwhelmed B. B's motivation to attend AF was waning. Academically, B was reading about three years below grade level. His basic math skills were also significantly delayed. Parent of B did acknowledge that B had recently been in detention and re-orientation less frequently, and that he was proud of this change. (Appendix 19).

However, during the period of April 9, 2012- May 1, 2012 alone, according to Parent of B, B received six after-school detentions and two days OSS (for not following directions). In addition, on two occasions, Parent of B received requests to pick B up early from school because of his behavior. AF did not characterize or document these early removals (with more than 90 minutes left in the school day) as suspensions as required under state law. (Appendix 20).

On May 2, 2012, at mother's request, a PPT was convened. Behavioral concerns were raised. AF proposed changing B's primary disability to Emotional Disturbance or possibly Intellectual Disability, but agreed to complete comprehensive evaluations before making any changes to B's primary disability label. AF agreed to track B's time out of class and to collect individual teacher reports, and to present documentation of both at the next meeting. AF further agreed to bring in an outside consultant to complete an FBA and BIP in the fall 2012. AF agreed to analyze the need for adult support, which would only be provided upon approval from HPS. (Appendix 21).

At a May 18, 2012 PPT, AF modified B's incentive plan to allow B to earn the ability to go home early (during study hall). For every 45 minutes that B had successful class time, he could earn leaving five minutes early. (Appendix 22).

Triennial testing was not completed by June 1, 2012 due to tardies and/or absences when the visiting evaluator was present. Parental permission was given to extend testing into the early fall 2012.

According to Parent of B, AF was calling home frequently at the very end of the year. Because she was unable to keep visiting the school, Parent of B decided to keep B home for the last 2-3 days of school.

B failed all of his classes for academic year 2011-2012.

AF's slow understanding and responsiveness to B's individualized educational and emotional needs have resulted in considerable school-based frustration and anxiety, which continues to negatively impact his academic progress.

<u>C, and Parent of c</u>

C is an 11 year old rising 7th grade student at AF. C was first determined to be eligible for special education by reason of emotional disturbance in April 2010, while he was a student at M.L. King School, HPS (MLK). A March, 2010 psychological evaluation diagnosed him with chronic PTSD, anxiety disorder, NOS, ADHD, and a Rule out diagnosis of Asperger's Syndrome. This evaluation noted average WISC scores except for processing speed, which was low average. (Appendix 23). Although C is very intelligent and capable of high academic performance, his behaviors negatively impact his ability to succeed in school. C is noted to have low self-esteem and to be very hard on himself when he earns a negative consequence. While at MLK, walking out of classrooms and overt defiance of teacher requests was noted to be a significant problem.

C first enrolled in AF in August 2010. In December 2010, a PPT determined that C had made good gains and that his overtly defiant and aggressive behavior at MLK had greatly diminished, to where he no longer needed a behavior intervention plan. However, a social work report noted that with his ADHD, C struggled to sit still, remain on topic, and not talk out of turn.

By the spring of 2011, however, excessive demerits, detentions, isolation/ ISS, and OSS, coupled with inaccurate or inadequate record keeping and inaccurate attendance records served to deprive C of an appropriate education. On November 14, 2011, GHLA sent a comprehensive records request to AF. Grades, attendance records, and copies of suspension letters sent to the parent for academic year 2010-2011 were not provided. Disciplinary records for 2010-2011 and 2011-2012, compiled into Behavior Detail Reports,[55] are incomplete in that they fail to note how many days each OSS lasted, or how many hours each Isolation/ISS lasted. (Appendices 24 and 25). For example, one Behavior Detail Report provided indicates that C was suspended out of school for seven times during academic year 2010-2011. The document suggests each OSS lasted one day. In fact, the total is at least 14 days in just the two months leading up to June, 2011. It is impossible to tell from these records when C reached 10 days of OSS. None of these 14 days of OSS was apparently for behavior which was violent or aggressive, or a serious threat to persons or property. Rather, the incidents are characterized as gross disrespect, skipping detention, and misbehavior in detention. AF contends that leaving a supervised area, such as leaving a classroom, is a safety violation, justifying an OSS. We disagree with this characterization and the punishment meted out. Leaving the actual school building, which C did on occasion, is a safety risk to himself, but we believe this could be avoided or prevented, and did not warrant an OSS. In addition, no records indicate how many times and for how long he was in Isolation, removed from his classroom and actual instruction, although he was. No manifestation determination PPT was held in academic year 2010-2011, although C's OSS's exceeded 10 days.

A PPT held on June 21, 2011 discussed C's many OSS and the failure of AF to conduct a manifestation determination review. One week of summer tutoring was offered as compensation. The team agreed to develop a functional behavioral assessment in late spring, so it would be in place for the beginning of the school year in late August. (Appendix 26). This recommendation is confusing, first, because there were virtually no days left to the school year that spring. Second, the minutes were silent on the point that C's behavior and numerous suspensions clearly required a Behavior Intervention Plan (BIP) as soon as possible. AF would

[55] Behavior Detail Reports are referred to as "suspension logs" elsewhere in this complaint.

need only a few days or a week at most in September, 2011, to gather data for a Functional Behavior Assessment, which would then guide the immediate development of a BIP.

Despite these recommendations, an FBA was not drafted until October, 2011. (Appendix 27). For some reason, it did not involve C's outside clinician, as the June PPT had recommended. A BIP was drafted and dated October 13, 2011. (Appendix 28). The BIP referred to unspecified rewards for desired behaviors, presumably which would be noted on "the attached behavior incentive tracker." Upon information and belief, the "behavior incentive tracker" is called "C's XP Points" and is a one-sheet matrix with x and y axes for desired behaviors (x) and times of day (y). (Appendix 29). Two points are awarded for each desired behavior. It is not clear whether these points translate directly into Scholar Dollars or something else. Where the BIP talks about rewards, it neither specifies what they are nor when they are to be delivered. The BIP contains no strategies involving movement breaks or daily preferred activity rewards. The FBA does not say whether C is motivated by the chance to earn Scholar Dollars. A social work report, undated, does say he loves activity, has a heard time sitting still, and is eager to release the energy in his body. It is not clear whether the BIP was approved at the December 2011 PPT, as the PPT recommended that AF "will develop an individualized plan to address escalation of behavior when in isolation. The team will meet again once this is done to discuss the plan." Upon information and belief, at none of the subsequent PPTs was a revised, individualized written behavior plan presented, nor did the undersigned receive any subsequent behavior tracking data.

A PPT did not convene to discuss the BIP until December 6, 2011. For the first time, Parent of c was represented by counsel. Since the start of school, C had been suspended for seven separate incidents in September 2011 alone, three of which were OSS (Appendix 30) for a total of nine OSS days. Records provided suggest that in the first five weeks of school in 2011, C was in Re-Orientation at least eight days, which further suggests he earned a very high number of detentions. These are all punishments that an appropriate BIP, timely provided, would have helped mitigate. His attendance record incorrectly indicated that C was absent just one day in this period. (Appendix 30).

Although by December 6th his behavior in school was improving overall, Parent of c told the PPT that during one of the OSS, C came home and [redacted]. AF said that they changed his plan after that to keep him in school, however, AF acknowledged that even an Isolation/ISS is a trigger for him. According to C's therapist, the school's discipline system becomes a focal point of anxiety for him. His teacher reported that the same consequences system is used with C that is used with other students although he receives other interventions to help him avoid earning consequences. It is unclear what these are, or how they affected his multiple suspensions that fall. The team agreed that C had been out of school nine days for suspensions, and that the record which showed one day out was incorrect and would be corrected The team agreed to develop a Behavior Intervention Plan, make his attendance records accurate, and update his suspension records. Upon information and, a revised BIP was never presented at any subsequent PPT meetings, despite further OSS and Isolation/ISS incidents. Failure to have a PPT discuss needed revisions to a written BIP, and to implement the BIP as needed, further denied C FAPE.

Weekly update reports dated September 16, 2011, and September 26, 2011 also misleadingly

indicate that C had zero absences. (Appendices 31 and 32). C's classwork grades, ranging from 63% to 38%, show the negative impact that being out of the classroom for discipline has on his academic performance. This snapshot of his grades in September 2011 suggests that he was not given his classwork assignments while he was in Isolation (ISS), rather, he was asked to work on reflection packets. If he was given an OSS, his parent would pick up homework assignments from the school office. But if C had been out of class during the day, he sometimes found this work difficult to complete. In contrast, other grades for tests and quizzes and sometimes homework tended to be in the 80's and 90's.

In addition to the XP Points matrix, C's behavior was also tracked with a form called C's Behavior Tracker. This form listed the daily blocks in rows and warnings plus numbers of demerits in columns. Four demerits result in an Isolation/ISS. A third form, the "Vanderbilt Re-Orientation Tracker" was also used, often on the same days, during the times C was in RO. This chart tracked positives and demerits for each scheduled block of the day. (Appendix 33).

The next PPT was held on March 14, 2012. Generally, at this time C was doing very well although he earned demerits for continuing to talk when teachers asked him to be quiet.

On May 8, 2012, while entering detention, C earned an OSS for continuing to ask questions of Ms. S, the staff person supervising detention.[56] According to AF's principal, Mr. H, Ms. S had never been given C's BIP and did not implement any of its recommended strategies.[57] On or about the evening of May 8, 2012, Mobile Crisis had to be called to the home because C was so upset by the school consequence. Contributing to his distraught state of mind was another school discipline-related event. Around this time, C had been on RO for other misbehavior. He had to ask his class to accept his apology. Unfortunately, the whole class refused to accept C's apology and he had to stay in RO. Leaving discipline in the hands of C's peers is inconsistent with his October, 2011 BIP, at a minimum, and further exacerbates the symptoms of his PTSD and anxiety.

A PPT was convened on May 23, 2012. Further suspensions had been imposed by this time. Upon information and belief, C had to serve so many after-school detentions he had to drop out of track team. Several more suspensions would be imposed before school let out for the summer, however, records requested on June 15, 2012 have not yet been provided.

E, and Parent of E

E is a repeating 5th grader at AF. He first enrolled in AF last August 2011, after having been at SAND Elementary School, HPS. According to his mother, Parent of E, E has been diagnosed with ADHD and has some other emotional issues. The symptoms of his ADHD -- lack of focus, speaking out of turn, low tolerance for frustration --led to the creation of a 504 plan while he was attending SAND.

[56] Taking objection to the OSS, Parent of c accompanied C to school the next day and stayed with him in school for the remainder of the day.

[57] The only formal written BIP of which we are aware is the one from October, 13, 2011, which for example, requires the use of expectation cards, strategies cards, rewards cards, visual and verbal cues, and so on. It is unclear whether a revised written BIP existed, as was recommended by the 12/6/2011 PPT team.

Upon entering AF, Parent of E reports that she told the school her son had special needs and that he had a 504 plan from SAND. It appeared to her that AF never found a copy of the 504 plan in E's cumulative file, nor did they try to convene another 504 meeting in order to revise the old one or to develop a new one. Parent of E believes no annual review of his 504 plan was ever held during academic year 2011-2012.

Meanwhile, E started to perform very poorly academically, so much so that he has been retained in the 5th grade. He was also given many, many demerits, detentions, and OSS for his behaviors. Parent of E reports that sometimes he was disciplined 2-3 times a week. He spent many days suspended out of school, for such things as talking out of turn, not focusing, not following directions, and other non-violent, non-safety, non-property related discipline offenses. Although E's academic and behavior performance was clearly unacceptable, according to Parent of E at no time did AF initiate a referral to a PPT to consider whether E qualified for special education services.[58] Nor did the school apparently take the interim step of convening to revise his 504 plan. Parent of E reports that E's teachers did ask her to come in several times to discuss his behavior, but apparently none of these meetings was a formal 504 or PPT meeting. A records request has not yet been submitted to AF. This information is reported by the parent.

A, and Parent of A

A is a student with ADHD and Oppositional Defiant Disorder, entering the 6th grade at AF in the fall 2012. She struggles with attention, following rules, and respecting authority. Cognitively, she performs in the average range, although her processing speed is a relative weakness.

A attended the HPS through 4th grade. In 4th grade, during academic year 2009-2010, A served 29 days of OSS. (Appendix 34). In April 2010, A was referred for evaluation for special education eligibility. (Appendix 35). Evaluations were never completed by HPS.

A entered AF for the start of academic year 2010-2011 as a 5th grader. There is some ambiguity as to when AF requested A's educational records from HPS, or when HPS actually provided the records, including the April 2010 special education referral, to AF.

Throughout 2010-2011, A received a number of disciplinary referrals. She was often in RO, in Isolation, or on OSS. A was retained in 5th grade for academic year 2011-2012 not as "consequence" but "due to behavioral concerns and lower academic performance." (Appendix 36). Despite poor behavioral and academic progress, AF did not refer A to a PPT in violation of federal and state law.[59]

[58] Pursuant to 34 C.F.R. 300.111 ("Child find"), Connecticut state law requires "the prompt referral to a planning and placement team of all children who have been suspended repeatedly or whose behavior, attendance or progress in school is considered unsatisfactory or at a marginal level of acceptance." Regs., Conn. Agen. 10-76d-7.

[59] Pursuant to 34 C.F.R. 300.111 ("Child find"), Connecticut state law requires "the prompt referral to a planning and placement team of all children who have been suspended repeatedly or whose behavior, attendance or progress in school is considered unsatisfactory or at a marginal level of acceptance." Regs., Conn. Agen. 10-76d-7.

On October 4, 2011, A received a one day OSS for misbehavior in RO and Isolation. According to the parent notice, A could return to school on October 5, 2011 "*only if a parent or guardian accompanies her to class for the entire day*." (Emphasis added.) (Appendix 37).

Despite poor academic and behavioral performance in academic year 2010-2011, and the spring 2010 HPS special education referral, AF did not convene a PPT to discuss special education until A' s mother, Parent of A, requested a PPT in or about October 2011. The PPT was convened on October 21, 2011. At this meeting, Parent of A expressed her reservations about A's retention in 5th grade. The PPT agreed to conduct FBA and BIP, to complete psychological, BASC –II, and reading evaluations. Parent of A reported that A was diagnosed with ADHD and was taking medications for the disorder for approximately two weeks. Although Parent of A was physically present at the PPT on October 21, 2011, she was not given the form to provide written consent to evaluate until on or about October 28, 2012. (Appendix 36).

Tardies were a concern beginning in the fall 2011. For a short time, a teacher picked up A and brought her to school, but this service was discontinued. Pursuing door–to-door bus transportation through HPS was not considered until requested by Parent of A through counsel at A's June 6, 2012 PPT.[60] (Appendix 38).

The FBA was conducted by the AF school social worker in January 2012.

A psychological evaluation was conducted in February 2012. The psychologist commented on A' s referral and made the following recommendations:

> It was reported on the referral…that when in class she does very well because of the structure but when she is removed from the regular classroom due to misbehavior and sent to "Isolation," a special study room, she "struggles to meet expectations and often misbehaves." …A was initially referred for 'inappropriate behavior in the unstructured setting.' This evaluation began with that premise but as the examiner reviewed her history, current academic status, and interviewed those who know and work with her, it is apparent that A' s lack of success in school is far more involved and complex than initially presented. She is currently repeating a grade yet continues to fail in all but one academic area. This is her second retention in the primary grades. Her attendance in school is very poor with 66 tardy or absences since the beginning of the year (includes suspensions). She has been suspended out of school 14 times and 9 times in school. When she is in school, much of it is spent in the Isolation or study room rather than in the classroom…The most apparent and immediate problem preventing A from obtaining passing grades is her absence from school or time out of the classroom. It would appear that she has been out of the classroom for as much as 2/3 of the school year so far. While the [cognitive] assessment is being conducted, it is recommended that she be provided with a one-to-one tutor who can work with her…Given the number of suspensions both in and out of school, it is the obligation of the school to develop a behavior intervention plan to address the behaviors leading to suspension. The current BIP simply addresses attendance issues, and therefore needs to be revised.[61] Finally, the highly structured program at Achievement First does not appear to be the best fit for A. While structure and consistency is always to be valued as a means to assist student learning, in A's case, it does not allow the flexibility and "give" that A apparently needs to minimize the escalation of her negative behavior, which happens so often in her current program.

(Appendix 39, Psychological Evaluation, February 2-9, 2012, Dr. S, School Psychologist). The evaluation results found A exhibited hyperactivity and conduct problems in the "clinically

[60] This request was denied by HPS on July 26, 2012 until AF agreed to collect data for three weeks on A's tardies and her emotional state upon arrival to school, which would then be reviewed by her PPT.

[61] Appendix 48, Behavior Intervention Plan, undated.

significant" range. On the rating scales, teachers reported that A "almost always" "has to stay after school for punishment." (Appendix 39, Psychological Evaluation, February 2-9, 2012, Dr. S, School Psychologist).

During this period of initial evaluation, A continued to be disciplined. She received a one day OSS on January 10, 2012 "earning 2 automatic detentions in Re-orientation and for gross disrespect." On February 15, 2012, A received a one day OSS for "earning 4 strikes in Isolation." (Appendix 40).

A PPT was convened on February 16, 2012[62] at which time Dr. S's psychological evaluation was reviewed. Based on his recommendations, A was then referred for a cognitive evaluation to rule out a learning disability.[63] As a result of the need to conduct additional evaluations, A's identification as eligible for special education supports and services was further delayed. The team agreed to revise A's behavior plan to include more positive reinforcement. Based on information and belief, A's BIP (for attendance issues) was not formally revised, but a behavior tracker and token system were implemented, whereby A could earn time with a preferred teacher, take structured breaks with adult supervision, and was given an 8th grade mentor. One-to-one tutoring, recommended Dr. S, was not discussed by the PPT, offered by AF, or implemented. (Appendix 41).

From February 16, 2012 to April 30, 2012, still pending evaluation to determine primary disability, but as a child with a known disability, A received one day of ISS and twelve days on OSS according to the AF suspension logs.[64] (Appendix 40). A manifestation determination was never convened.

On April 9, 2012, a cognitive evaluation was completed. A's testing placed her in the average to low average range across all areas. Based on her performance on the processing speed subtest, the evaluator noted, "she may take longer to complete written work." (Appendix 42, Psychological Evaluation, 4/9/12, G, M.A., C.A.G.S.; see also Appendix 47). A social work evaluation was also completed with Parent of A, in which she expresses her serious concerns about A's recorded attendance and classroom removals. (Appendix 49).

On April 23, 2012, AF filed a "Family with Service Needs" (FWSN) complaint based on A's behavior. The complaint notes:

> A has missed numerous school days due to her misbehavior at school. She has been suspended for stealing (cell phones, school awards), fighting, spitting on another student, talking back to teachers in a

[62] Connecticut state law requires an IEP to be implemented within forty-five days of referral, exclusive of the time to obtain parental consent. Regs., Conn. Agen. 10-76d-13(a)(1). The February 16, 2012 PPT was already well beyond the forty-five day timeline for having completed and reviewed evaluations, and developing an IEP if deemed eligible.

[61] Both federal and state law requires assessments in all areas of suspected disability. Both federal and Connecticut law require ruling out a learning disability and intellectual impairments before identifying any child under IDES as having an "Emotional Disturbance." Connecticut guidelines strongly encourage comprehensive assessments for those student diagnosed with, or suspecting of having ADHD, in order to determine the existence of co-morbid disabilities, such as learning or language problems, depression, anxiety, mood disorders, etc. *See* Report on Attention-Deficit Hyperactivity Disorder, Connecticut ADHD Taskforce, 3rd Edition, Spring 2005 (available through www.sde.ct.gov)

[64] Again, AF's suspension logs may not accurately reflect the full time actually served on suspension. Moreover, the amount of time in Isolation was not recorded or provided.

> disrespectful and aggressive manner, gross disrespect to school deans, walking away from supervised areas without permission (i.e. leaving classroom and school building), bullying other students, and being physically aggressive.[65]

(Appendix 43).

A PPT was convened again on April 30, 2012 to review all evaluations and determine eligibility. The team noted, "A thrives in structured setting, which is the case in most of her classes. It is during moments where there is less structure where she tends to misbehave and earns consequences as a result of her difficulty accepting redirection." The team identified A as eligible to receive special education supports and services under the primary disability of "emotional disturbance." The meeting was continued to develop a behavior plan. (Appendix 44).

On June 6, 2012, the PPT met again and Parent of A was represented by legal counsel. The team discussed a BIP and began discussions about modifications to the AF discipline policy. The team reported that A had been out of academic classes more than she was in classes. As a result, A was unable to build up any momentum in regular education classrooms. It was remarked that for many weeks A may have attended a class, but not necessarily the same class, i.e. A may have been in any given class one time in the past two weeks. (Appendix 38).

A failed most classes in academic year 2011-2012, with her GPA declining steadily throughout the academic year, finally earning a GPA of O.O in term 3. (Appendix 45). A's progress during academic year 2011-2012 was significantly impacted by the AF discipline policy, as reflected in A's teachers' comments on her 2011-2012 progress reports:

> -"She has missed a lot of class because of her behavior. As a result, her homework is not top quality."
> -"When she is isolated or suspended and misses class, it takes a huge toll on her ability to compete her work and master the objectives."
> -"Your scholar's overall achievement has been negatively affected by re-orientation, Isolation and/or suspensions."
> -"A needs to continue making good behavior choices, so that A can participate in class."
> -"Students who are in RO do not get to participate in physical education class. If A works on her behavior, she would be able to take part in class, which would improve her PE grade."
> -"A's suspensions, Isolations, and frequent tardies have negatively affected her writing grades. I rarely see her in my class."
> -"I have rarely seen A in class during this trimester. She has mostly missing homework assignments and has not been in class to take our quizzes and tests."
> -"A has only been in class two times this trimester. "
> -"A has rarely been in class since history started. She has turned in very few homework assignments."
> -"A has not been in class enough to determine a grade for her thus far."
> -"A's progress and grade in music class have been greatly impacted by her behavioral issues."
> -"Scholars in RO are not able to participate in specials. When A is able to participate her effort is satisfactory."

(Appendix 45).

[65] Other than this FWSN complaint, there is little to no documentation in A's educational records as to many of these behaviors, other than the cursory notes in the suspension log, e.g., "theft" and "after school bullying."

Based on AF attendance and suspension data, A received 36 OSS sanctions, for a total of 38 sanction days out of school, from September 8, 2011 through June 1, 2012. During this same time period, she received 14 days of ISS.[66] (Appendix 40). Despite written requests for all discipline data, data has not been provided to document the number of days in Isolation, the number of demerits issued, or the underlying reasons for the discipline. Based on progress report comments above, and based on information and belief, A was in Isolation for much of the year. Written notice was never provided to Parent of A as to A's extended stays in Isolation. Informal and more formal hearings as required under Connecticut sate law were never convened. A manifestation determination was never considered until raised by counsel at the June 6, 2012 PPT. [67] (Appendix 38).

The PPT re-convened on July 26, 2012. (Appendix 46). AF, HPS, and Parent of A are trying to cooperatively work to develop an appropriate plan for A for academic year 2012-2013 so that she may be successful at AF. AF is finally providing one-to-one tutoring to A (first recommended by the school psychologist in February 2012) to help prepare A for the coming academic year. The duration of tutoring is still undecided. Parent of A in no way waives or has waived her right to pursue individual legal remedies for the excessive procedural and substantive violations during academic years 2010-2011 and 2011-2012 which denied A a free and appropriate public education.

[66] ISS as reported on the Suspension Log. Based on information and belief, the ISS reported on the AF suspension logs does not capture all time served in Isolation at AF.

[67] The Manifestation Determination, already months overdue, has been purposefully delayed until a HPS representative, knowledgeable about A, can be present at the PPT. Counsel contends that a Manifestation Determination so significantly delayed is virtually meaningless as the de facto significant change in placement for A (nearly full-time Isolation) was already made by AF.

Proposed Remedies:

To remedy AF's non-compliance with federal law, GHLA proposes the following:

1- Extensive training to AF on all available supplementary aids and services to utilize in the general education setting;
2- Extensive training to AF on positive behavioral interventions for children with emotional and behavioral disabilities;
3- Extensive training to AF on the procedural and substantive requirements of section 504 and IDEA, and Connecticut State law as it relates to discipline;
4- Detailed data collection by AF on all disciplinary practices (demerits, re-orientation, Isolation, OSS, detention, etc.) including reason for the disciplinary referral and length of sanction, and written, and written parental notices by AF upon the imposition of any discipline ;
5- Provision of educational services by AF in the in-school suspension and/or Isolation rooms so that scholars can access the general education curriculum while sanctioned and continue to make educational progress;
6- AF attendance data to accurately disaggregate suspension days, Isolation days, and non-school imposed absences;
7- Technical assistance to AF in developing discipline practices that appropriately accommodate students with disabilities;
8- AF's development of protocol implementing due process requirements for long term removals from class, whether through Isolation, ISS or OSS; and
9- Any other equitable relief deemed appropriate.

Respectfully Submitted,

Maria Morelli-Wolfe
Attorney for Parent of D,
Parent of B, and Parent of A
Greater Hartford Legal Aid, Inc.
999 Asylum Ave, 3rd Floor
Hartford, CT 06105
860-541-5042
mmorelliwolfe@ghla.org

Lynn Cochrane
Attorney for Parent of c
and Parent of E
Greater Hartford Legal Aid, Inc.
999 Asylum Ave, 3rd Floor
Hartford, CT 06105
860-541-5045
lcochrane@ghla.org