



September 16, 2025

Dr. Carol Ann M. Hudgens
Director of Exceptional Children Division
North Carolina Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-6356

Re: Formal Individual and Systemic State Complaint on behalf of KS against Johnston County Public Schools

Dear Dr. Hudgens:

Please find here a Formal Individual and Systemic State Complaint filed on behalf of KS and similarly situated students with autism who have not received a free appropriate public education (FAPE) with adequate supports and protections while enrolled in Johnston County Public Schools (JCPS) in violation of the Individuals with Disabilities Education Act (IDEA). KS has experienced education in an unnecessarily restrictive environment due to JCPS' lack of a continuum of placements and supports for students with autism. In failing to educate him and other similarly situated students in the least restrictive environment (LRE), JCPS also failed to provide appropriate and legally required behavior supports, conduct appropriate and timely functional behavioral assessments (FBAs), and develop appropriate Individualized Education Programs (IEPs) and behavior intervention plans (BIPs).

KS has experienced significant violations of his special education rights under the IDEA. Specifically, JCPS has violated his rights systemically and individually in the following ways:

- (1) by maintaining a policy, practice, and procedure of failing to educate KS and similarly situated students with autism in the least restrictive environment (LRE), including by placing KS in one of the most restrictive settings—on a modified day in a self-contained classroom—away from his nondisabled peers;
- (2) by failing to timely and appropriately conduct an adequate functional behavior assessment (FBA) to inform an appropriate behavior intervention plan (BIP), resulting in continued behavior challenges, denials of access to a FAPE, and recommendations for an inappropriately restrictive educational environment;

- (3) failing to develop and implement Individualized Education Programs (IEPs) that are reasonably calculated to provide a FAPE, resulting in continued behaviors and denial of access to a FAPE; and
- (4) failing to comply with the IDEA's disciplinary safeguards, including failing to provide a continuation of services during lengthy, frequent short-term out-of-school suspensions.

These actions violate the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq.; the corresponding federal regulations, 34 C.F.R. Part 300; and state laws, regulations, and policies and have deprived KS and similarly situated students with autism of a FAPE in the LRE.

Factual Background

KS is a [teenager] at A JOHNSTON COUNTY HIGH SCHOOL. He is currently eligible for special education services under the primary category of intellectual disability (moderate) and secondary eligibility under autism. He has limited verbal speech. He has a history of trauma.

Since transferring from [his previous district] to JCPS during the 2022-23 school year, JCPS has prolonged KS's modified day schedule, with the amount of time KS is allowed in school fluctuating. KS continues to miss out on essential parts of the high school experience that nondisabled teens get to experience. He not only misses critical instructional time needed to learn alongside his peers in a diverse educational environment and take fun electives like art, physical education, and music, but he also misses out on lunch with his peers because he leaves school before school lunches are even served.

KS transferred to JCPS in the 2022-2023 school year—attending school on a modified day schedule [four days a week, with a full day on a fifth day of the week]—and he was present in school on that schedule for almost a year. However, as JCPS took away appropriate supports, KS began to experience difficulties at school.

2023-24 School Year: New Difficulties

During the 2023-24 school year, JCPS removed KS's communication device and did not provide a replacement for trial and error. After this, KS experienced a rapid deterioration in behavior, leading to prolonged exclusionary discipline due to alleged violations of the code of conduct. What's more, in November 2023, JCPS removed KS's direct speech services. By February 14, 2024, KS had been suspended for a total of 20 days. This occurred before the district proposed the implementation of a BIP and after the district had suggested conducting a Functional Behavior Assessment (FBA) on January 24, 2024, after multiple requests from KS's guardian, his grandmother [REDACTED]. The BIP was officially put in place on February 14,

2024. JCPS then held a manifestation determination review on February 19, 2024, where no revisions were made to KS's BIP at that time. But soon after, on March 19, 2024, the team discussed KS's educational placement. Though KS came to JCPS on a modified day so that he could participate in ABA therapy in the afternoons [four days a week], JCPS further modified his day by removing his [full day on a fifth day of the week], shortening his total school time to [3.3 hours] daily. Although there were no BIP revisions made, JCPS determined KS would be placed on a more restrictive modified day schedule due to the team's inability to reach a consensus. This decision was made despite Grandmother's disagreement with the modified day decision. Since the decision to further modify his day in March 2024, Grandmother has been in vehement opposition to his school schedule and has noticed even more behavioral regression and communication deficits following the removal of his communication device which he had been using since his time in [his former district].

On April 23, 2024, during another BIP review, it was noted that KS's speech services had been changed to a supplemental service. The guardian expressed her preference for KS to attend [full days four days a week], when he does not receive ABA services. Yet again, the team disagreed, stating that in order to maintain consistency, KS's schedule [on the fifth day, without ABA services] would remain a modified day, ending at 11:30 a.m.

During the May 14, 2024, MDR meeting, Grandmother requested updates to KS's FBA and BIP, which went unaddressed until the May 21, 2024, meeting. On May 21, Grandmother requested new evaluations—an FBA and sensory processing evaluation—and signed consent for JCPS to conduct these evaluations. JCPS also decided to shorten KS's modified day even more to two hours daily [REDACTED].

By the end of the year, JCPS had suspended KS for a total of 33 days.

2024-25 School Year: A Year Riddled with Violations

By September 23, 2024, KS's guardian expressed concerns about his continued placement on a modified day, particularly regarding the lack of sufficient academic time. In multiple meetings, Grandmother stated her desire for KS to be back on [full days a fifth day of the week] and to extend his time for his modified day schedule on [the other four days]. Since the decision to further modify his day in March 2024, his day fluctuated between 2 and 3.5 hours of school daily, despite consistent advocacy by his guardian and advocate for more time in school; any gains in time were the result of advocacy for increased related services, such as direct speech services, rather than a return to school plan. JCPS maintained KS's more truncated schedule despite evidence from his previous district that he could successfully be in school for more time, even while accommodating his ABA schedule. Additionally, Grandmother proposed multiple times that KS's current ABA provider deliver direct support and observation to JCPS staff to better address KS's challenging behaviors and the lack of sufficient academic time. JCPS rejected the proposal.

KS also experienced 40 days of suspension during the 2024-25 school year, resulting in the repeated removal of a student who only attended school for a few hours a day.

- [REDACTED] - OSS 10 days;
- [REDACTED] - OSS 10 days;
- [REDACTED] - OSS 10 days;
- [REDACTED] - OSS for 10 days.

Rather than putting in place the necessary supports, such as a communication device, direct speech services, or a relevant BIP, JCPS removed KS from school through his modified day schedule and through exclusionary discipline. Indeed, many of the code of conduct violations resulting in out-of-school suspensions are behaviors identified in his FBA and BIP as target behaviors to replace, yet JCPS continued to remove KS instead of revising his BIP and IEP goals or holding robust discussions regarding the necessity of a reevaluation. In addition, for each of the 30 days past the 10th day of suspension, JCPS did not provide KS with any of the instruction and services to which he was entitled through his IEP or schoolwork to help make sure he stayed on track towards his curriculum.

In fact, throughout the past school year, Grandmother experienced hesitancy from JCPS after she requested additional evaluations at several points in the year and provided multiple consents for those evaluations. She signed initial consents on October 24, 2024, for the following evaluations: psychological evaluation, speech-language screening, adaptive behavior evaluation, and a health screening. She requested additional evaluations during an IEP meeting on December 3, 2024, for autism/ASD, observation, social/developmental history, as well as speech-language and assistive technology evaluations. She provided consent for those additional evaluations on December 6, 2024, and then signed consent for *all* requested evaluations from October through December a second time on December 6, 2024. In addition to these delays, Grandmother and her advocate requested an Independent Educational Evaluation (IEE) for an FBA due to a long delay in conducting an updated FBA, for which Grandmother signed consent on December 12, 2024. Despite these repeated provisions of consent to evaluate, JCPS delayed or left the evaluations incomplete for months until presentation at the IEP meeting on March 28, 2025.

Through all of these evaluations, KS did not receive direct speech services or additional communication support until March 2025. He has not yet been given a replacement high-tech AAC device. Further, even with evidence that the high-tech AAC could work based on his time in [his former district], JCPS did not conduct trial and error to find alternative high-tech AAC devices that could aid KS in reaching his communication goals.

Since transferring to JCPS, the district has failed to provide KS with the instruction, services, and support that he needs to access FAPE. Instead, JCPS excludes him from his already restrictive setting—away from his peers, electives, and lunch time—in stark contradiction to his guardian

Grandmother's advocacy and goals for her grandson. Considering his previous success in school with the appropriate supports, Grandmother desires for KS to attend school on a modified day [four days a week for 3.3 hours], to accommodate his ABA schedule, and on [a fifth day a week for 7 hours], for a full instructional day.

Legal Violations

Violation 1: JCPS has failed to provide KS a free appropriate public education (FAPE) in the least restrictive environment (LRE), instead adhering to a policy, practice, and procedure of failing to appropriately educate students with autism in the LRE by placing students in the most restrictive settings—such as placements on modified day in self-contained classrooms—away from their nondisabled peers, without trying interventions and supports to help students remain in less restrictive settings.

The IDEA requires school districts to educate students with disabilities in the LRE “to the **maximum** extent appropriate.” 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114; NC 1501-3.1 (emphasis added). As with most requirements of the IDEA, placement decisions are individualized to meet a students’ particular needs; however, each school district must make available a “continuum of alternative placements” so that students can learn “as close as possible to...home” and in their base school. 34 C.F.R. §§ 300.115-300.116; NC 1501-3.2-1501-3.3. On the continuum, the more restrictive placements such as “special classes, separate schooling, or other removal of children with disabilities from the regular educational environment” should occur only when a child cannot receive a satisfactory education in “regular classes with the use of supplementary aids and services.” 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114; NC 1501-3.1. A modified day schedule is restrictive, as it also removes students from the educational environment. Further, LRE requirements are not limited to the classroom and academic settings within the education environment; rather, the LRE requirements extend to “nonacademic and extracurricular services and activities, including meals [and] recess periods.” 34 C.F.R. § 300.117; NC 1501-3.4.

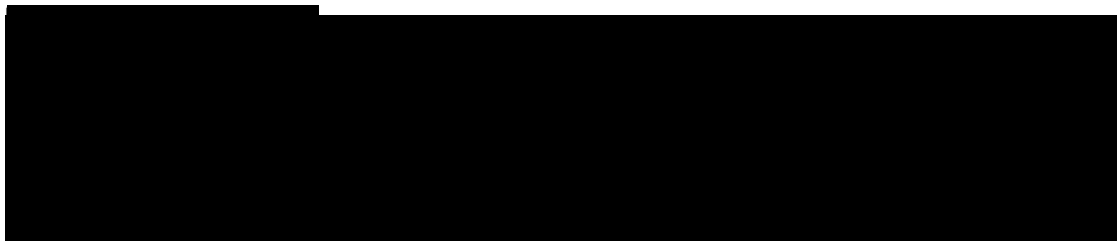
JCPS has repeatedly failed to provide education in the LRE to students with autism. This is not the first time Disability Rights North Carolina has observed concerning and unlawful LRE policies, practices, and procedures in Johnston County Public Schools. The district's failure to appropriately provide a continuum of alternative placements and appropriate supports is thus an ongoing systemic failure. *See* Complaint 24-196 (a complaint filed in March 2025 concerning similar systemic violations in JCPS). Due to the nature of the allegations in the instant complaint that so closely resembles the allegations in our previously filed complaint, DRNC requests that DPI review the records of other students with autism enrolled in JCPS schools for inappropriate LRE decisions.

For KS and similarly situated students with autism as outlined in our previous complaint, the district lacked an appropriate continuum of placements and supports resulting in immediate and/or inappropriate removals of students with autism into very restrictive placements, such as modified day. On his modified day, KS cannot receive the instructional and nonacademic time he needs to learn alongside his disabled and nondisabled peers. He not only misses critical instructional time needed to learn in a diverse educational environment and take a diverse array of courses like art, physical education, and music, but he also misses critical nonacademic periods like lunch. KS is not at school long enough to engage in any of these critical periods of the school day. He leaves school just after second period begins. In fact, Grandmother has raised concerns about how much time KS gets to spend with his peers even in his own classroom. At most, he is around two peers during his school day, depending on his behavior. During several IEP meetings, Grandmother and her advocate have questioned his classroom environment, whether he spends time around his peers in his self-contained classroom, and how much time he spends with his peers. He spends no time at all with his nondisabled peers.

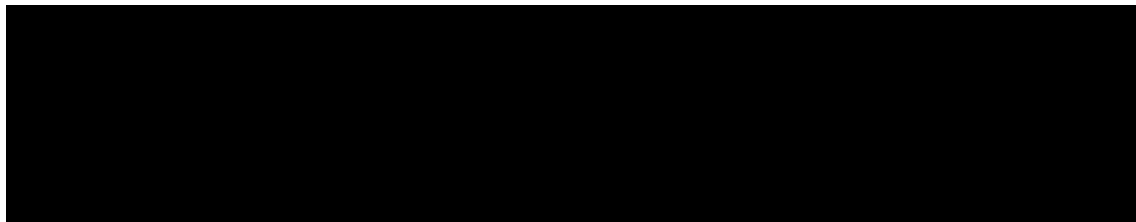
The IEP team decided to shorten his day, occurring on March 19, 2024, above objections and disapproval from his grandmother, justifying the decision as one that gave KS consistency but for no other academic or social purpose. From there, JCPS continued to chip away at KS's time in school. Similar to other students for whom DRNC has filed a systemic complaint, the district provided weak LRE justification statements while simultaneously failing to engage in robust data-driven discussions of IEP and BIP revisions. JCPS also failed to take immediate corrective action to remedy any IEP or BIP deficiencies. Despite observing the need for a concrete transition plan after reevaluation, no further discussion of the reason for KS's modified day has been discussed, nor has JCPS created a transition plan for increasing his time at school.

Since the initial March 19, 2024, decision to further shorten KS's time at school, Grandmother has expressed her rejection of and dissatisfaction with the modified day placement multiple times in multiple IEP meetings, including on April 23, 2024; May 21, 2024; September 23, 2024; January 15, 2025; April 21, 2025; and May 15, 2025. The IDEA emphasizes parental decision-making in any group deciding educational placement, and this right is reiterated throughout the statute. *See e.g.*, 20 U.S.C. §§ 1414(e); 34 C.F.R. § 300.116(a)(1); NC 1503-3.3(a)(1). Grandmother, by herself and through her advocate, has expressed repeated concerns about JCPS's failure to provide FAPE to KS in the LRE because of his limited modified day. She has just as repeatedly requested to extend and increase his time at school, recognizing that his behaviors are the result of his shortened day, not the reason to shorten his day. Though Grandmother has raised her objection to KS's placement repeatedly on multiple occasions since the initial decision on March 19, 2024, the district remains in ongoing violation of the IDEA's LRE requirements and, as a result, has denied KS access to a FAPE.

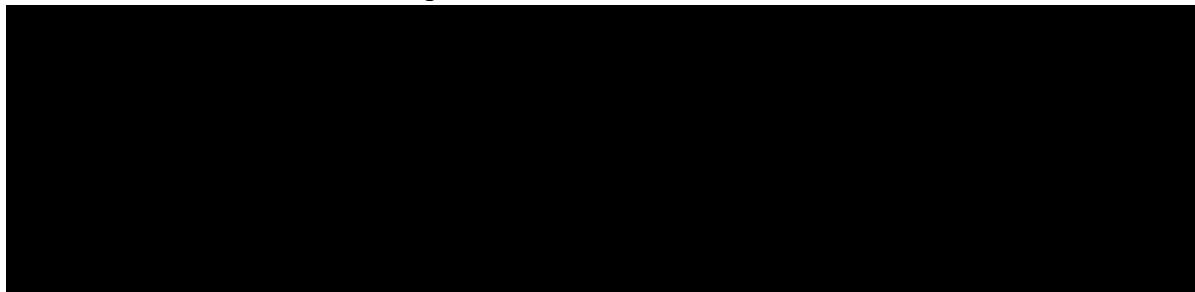
The denial of FAPE can be seen in the lack of services and supports JCPS fails to provide KS. The shortened day has resulted in decreased service times. The failure to provide FAPE in the LRE and instead provide education through a restrictive modified day placement resulted in decreased specially designed instruction and service time, making it more difficult to work on social-emotional and/or behavior goals that ensure KS could increase his time in school. For example, KS used to receive more instructional time throughout the week as indicated from his February 14, 2024, IEP, an IEP Addendum developed before the significant cuts to his school day.



After the decision on March 19, 2024, to further modify his day, his service times were provided as indicated in the chart below.



His current service times as of April 21, 2025, are indicated in his IEP as seen below.



As indicated in the charts above, with each adjustment to decrease his time spent in school, he also received significantly less instructional time. In the span of almost less than a year, a child with significant needs went from 420 total minutes of instruction to 240 total minutes to 210 total minutes currently.

There is no doubt that the decrease in time at school has significantly interfered with KS's ability to have the appropriate time he needs in school to work towards his IEP goals and receive the appropriate services and supports. JCPS's failure to provide FAPE in the LRE is the direct result of a policy, practice, and procedure that does not provide education for students with autism in the LRE to the **maximum** extent appropriate. Modifying KS's day did not help him progress or provide the consistency that the team justified it would. Instead, KS has displayed signs of

regression in the school environment. JCPS did not maximize KS's time in school learning alongside his peers in order to ensure he could make progress in the curriculum. Therefore, JCPS has violated KS's rights under the IDEA, an ongoing violation that the district has failed to remedy even in light of previous LRE violations. *See* Complaint 24-196.

Violation 2: JCPS failed to conduct timely and adequate functional behavior assessments (FBAs) that inform appropriate behavior intervention plans (BIPs), which has resulted in continued behavior challenges for KS, denials of access to a FAPE, and recommendations for inappropriately restrictive environments.

JCPS has failed to conduct timely and appropriate FBAs designed to support students in making progress towards their goals, help the team determine whether a BIP would be an appropriate tool, and guide the team in making appropriate placement decisions. In guidance from the NCDPI Exceptional Children's Division, produced in collaboration with Disability Rights North Carolina, FBAs and BIPs are critically important considerations in the decision-making process for modified day placements.¹ LEAs should conduct FBAs in a way that helps inform and shape student programming, guiding IEP team conversations about the appropriate supplementary services and supports the student will need in order to receive FAPE.² The team should begin with the assumption that "the student wants to behave appropriately but lacks essential skills to respond to demands at school in an adaptive way."³ Everything from ABC data collection (tracking the antecedent, behavior, and consequence of a student's challenging behaviors) to analyzing the behavior that led to the exclusionary discipline and/or restrictive placements flows from that assumption.⁴ The team may then develop a strong BIP that identifies challenging behavior(s) that the student learns to replace through a series of instruction, strategies, and environmental changes that minimize the triggers for the student.⁵

For KS, JCPS has continued to follow a policy, practice, and procedure of delaying requests and failing to timely conduct reevaluations, particularly FBAs. FBAs are critically important in determining the appropriate services and placements for students like KS with more significant needs; however, JCPS did not conduct an updated FBA prior to the decision to further modify his day despite noting in the meeting on March 20, 2024, that KS's behavior is sporadic and antecedents were difficult to identify. About two months following the decision to further modify his day, on May 14, 2024, Grandmother requested an FBA and BIP update during an MDR meeting. Grandmother signed the consent for reevaluation for the FBA the following week on May

¹ Disability Rights NC & NCDPI Exceptional Children Division, *Guidance for Homebound and Modified Day Placements* 5-6 (2018).

² *Id.* at 4-5.

³ *Id.* at 7.

⁴ *Id.*

⁵ *Id.* at 7-8.

21, 2024, and the IEP team agreed to conduct an updated FBA and sensory processing evaluations. By September 23, 2024, the Prior Written Notice (PWN) indicated that the FBA was still in progress and results would be provided on October 23, 2024. The FBA was not completed until November 19, 2024, six months after the initial request and over six months since the decision to further modify his school day. Grandmother, through her advocate, ultimately requested an Independent Educational Evaluation (IEE).

The failure to timely conduct a reevaluation is in direct violation of NC Policies 1503-2.4(a) which instructs school districts “that the...reevaluation for each child with a disability” must be “timely.” A six-month delay in conducting an FBA that ultimately was not informative or accurate is in direct contravention of the Policies. Though the Policies are silent on the precise timeline for reevaluation, districts must conduct timely evaluations without unnecessary delay. Here, the request for an evaluation occurred in May 2024, and JCPS did not provide results until November 2024. During the 85-day plus delay, KS continued to experience school exclusion throughout-of-school suspension.

Since receiving the results of the IEE FBA on March 5, 2025, the JCPS team unwillingly referenced the IEE’s clinical recommendations and implementation of interventions when revising KS’s current BIP and making educational decisions for KS, despite the BCBA IEE evaluator’s recommendations for how to address KS’s target behaviors. *See generally* NC Policies 1504-1.3(c). In lieu of working with the IEE evaluator to create a new BIP, the JCPS team continued to revise a BIP that had yielded KS 73 days of suspension and no increases to his modified day. For example, the IEE FBA recognized that the school’s BIP identified a target behavior that was not the most concerning or most prevalent of KS’s replacement behaviors. Instead, the IEE FBA identified property destruction within a tantrum as the primary maladaptive behavior. Cursing may occur as an antecedent or in conjunction with other maladaptive behaviors but was not the behavior that gave rise to the intense and aggressive behaviors the BIP needed to address. However, in the May 15, 2025, evaluation results meeting, JCPS chose to continue to include cursing as the target behavior despite evidence to the contrary that property destruction within a tantrum should be the target behavior as outlined in the IEE FBA. Despite the clinical recommendations, the district determined to keep KS’s BIP the same. JCPS came to the meeting with a drafted BIP that did not include any of the IEE recommendations or data suggesting the appropriate target behaviors. These actions appear to constitute predetermination because the district seemed to have already determined the contents of KS’s BIP prior to the meeting.

This procedural violation of failing to conduct a timely reevaluation for an FBA amounts to a failure to provide a FAPE because the delay resulted in more time that KS was not provided with appropriate instruction and adequate support through his BIP. For procedural violations, such as an LEA’s failure to conduct a timely evaluation, a FAPE is denied “only if the procedural inadequacies - (i) Impeded the child's right to a free appropriate public education; (ii) significantly

impeded the parents' opportunity to participate in the decisionmaking [sic] process regarding the provision of a free appropriate public education to the parents' child; or (iii) caused a deprivation of educational benefits.” *A.H. v. Sch. Dist. of Phila.*, No. 22-4460, 2023 U.S. Dist. LEXIS 154019, at *23 (E.D. Pa. Aug. 30, 2023) (citing 20 U.S.C. § 1415(f)(3)(E)(i)-(III)). In KS’s experience, the failure to conduct a timely FBA impeded his ability to receive FAPE in the LRE and deprived him of the educational benefits to which he is legally entitled. The FBA in place at the time the IEP team made the decision to further modify his day did not appropriately identify target/replacement behaviors, and thus, it could not adequately inform a BIP that could address KS’s challenging behaviors. Instead, because of the inadequate FBA, KS faced school exclusion through a modified day and frequent suspensions. Indeed, the modified day punished KS for those behaviors, rather than giving him the time he needed to build his skills and progress on his IEP goals.

Moreover, the inadequate FBA led the team to use inaccurate data to inform an inappropriate BIP. The BIP created from the district assessment did not address the appropriate target/replacement behaviors, nor did it address the behaviors causing the exclusions and removals. Despite contradictory evidence in the IEE FBA, JCPS resolved to focus on modification of language as the target/replacement behavior in his BIP, notwithstanding the data suggesting property destruction related tantrums. As courts have identified, a BIP is an important part of the IEP process that must “meet the FAPE standard...[by] be[ing] reasonably tailored to meet the needs of the student while being appropriately ambitious in light of the student's circumstances.” *Bouabid v. Charlotte Mecklenburg Sch. Bd. of Educ.*, No. 3:19-cv-00030-RKS-DSC, 2021 U.S. Dist. LEXIS 237161 *26 (W.D.N.C. Dec. 9, 2021) (citing *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 137 S. Ct. 988, 999-1000 (2017)). The legal standard is not about how successful the BIP is at positively changing behaviors, but the BIP should target the specific behaviors causing the most concern in order to appropriately meet the child’s needs. *Id.* at *28. Because KS’s BIP did not address the behaviors causing the most concern, his BIP could not appropriately meet his needs, nor was it appropriately ambitious in light of his circumstances. These inappropriate issues stemmed from JCPS’s failure to conduct and incorporate the findings from a timely and appropriate FBA. Thus, this procedural violation amounted to a failure to provide KS FAPE in the LRE and deprived KS of receiving educational benefit.

Overall, JCPS continues to follow a policy, practice, and procedure of timely conducting FBAs. Instead of using an FBA to determine appropriate placements, review exclusionary discipline during MDRs, or provide supplementary services and supports, JCPS IEP teams often agree to conduct FBAs *after* important decisions are made regarding FAPE. As KS’s experience showcases, JCPS failed to conduct an appropriate FBA prior to LRE decisions, within MDR decisions, or when amending his IEP. In fact, JCPS determined a modified day was appropriate for KS without conducting an updated FBA or consulting the previously completed FBA, and the decision to modify his day was made despite evidence observing that his behaviors were

unpredictable and sporadic. Instead of consulting or conducting an updated FBA, JCPS often makes the decision to place students on modified day for “consistency.” See Complaint 24-196. By making decisions based on inappropriate data and without implementing the appropriate aids and supports to minimize challenging behaviors, the team would rather deny KS access to a FAPE than to provide him with the supplementary aids and supports he needs to remain in school for an appropriate length of time. The inadequacy of the FBAs and failure to conduct a timely reevaluation for FBAs when new behavior challenges arose resulted in inadequate BIPs over the course of the 2024-25 school year.

As the NC Policies and NCDPI guidance reflect, FBAs and BIPs are tremendously important pieces of the IDEA puzzle. The quality of the decision-making process for modified day placements hinges on having the appropriate and accurate data needed to determine the appropriateness of the recommendation and whether the student can remain in school with supplementary supports and services. In the absence of the appropriate data, the team’s decisions are suspect. Therefore, JCPS’ continued systemic failure to appropriately and timely conduct FBAs and develop BIPs resulted in continued behavior challenges for KS, denials of FAPE, and inappropriately restrictive learning environments.

Violation 3: JCPS failed to develop and implement an Individualized Education Program (IEP) for KS that is reasonably calculated to provide a FAPE, resulting in continued behavioral challenges and denial of access to a FAPE.

In order to provide FAPE, a student’s IEP must be “reasonably calculated to enable a child to make progress in light of the child’s circumstances.” *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017). The IEP must be “appropriately ambitious in light of [the child’s] circumstances.” *Id.* at 402. “The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.* Thus, a failure to create an “appropriately ambitious” IEP results in a denial of FAPE. While the standard articulated in *Endrew F.* recognizes and respects the expertise of school officials, “[t]he Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child’s parents or guardians.” *Id.* at 399 (citation omitted). “Any review of an IEP must appreciate that the question is whether the IEP is reasonable.” *Id.* (citation omitted). The IEP cannot just provide the student with a merely more than *de minimus* educational benefit; the IEP must be “reasonably calculated” to allow the child to make progress. *Id.* at 402.

Assistive Technology, Communication Device, and Speech Therapy

When transferring to JCPS from [his previous district] during the 2022-23 school year, KS used assistive technology to help him communicate. At that time, he used the “total communication approach” where he used a combination of verbalizations, communication charts, and a high-tech

AAC device, which was LAMP Words for Life (WFL) installed on an iPad. Even though KS showed tremendous progress in communication and behavior when using his WFL device, JCPS removed access to this device because he showed signs of frustration. The district neglected to perform trial and error for other comparable modes of communication or conduct a new AT evaluation. Adding insult to injury, the district removed direct speech services. This decision incited a series of communication difficulties and struggles for KS, resulting in behavior challenges and increased frustration, for the next couple of school years until he began receiving direct speech services again in the spring of 2025.

Grandmother expressed her vehement concerns about KS's ability to communicate, particularly during moments of frustration, and initiated multiple requests for speech and assistive technology evaluations as well as the use of high-tech communication devices on January 24, 2024; February 14, 2024; September 23, 2024; and October 23, 2024. At each of these meetings, she shared her concerns that KS could not adequately communicate his needs; acknowledged his increasing frustrations, as evidenced by his behavioral outbursts; and wanted to make sure he had access to a communication device (AAC device). In response to each of Grandmother's concerns, JCPS assured her that his frustrations with the device and his "progress" during direct speech services were enough to support the limited level of supplemental speech-language services he was receiving in the absence of a high-tech AAC device, despite acknowledging that he had made limited progress on his speech goals.

Prior to the removal of his AAC device and direct speech services, KS was making progress towards his IEP goals and displaying limited negative behaviors at school. Since the removal of his AAC device and direct speech services until the return of direct speech services in May 2025, he has shown significant signs of regression, experiencing a combined 73 days of out-of-school suspension for both the 2023-24 school year and 2024-25 school year as well as further modifications and fluctuations shortening the length of his school day. The lack of support and services ultimately culminated in his echolalia, previously worked on as an IEP goal, being misidentified as a target/replacement behavior in the Functional Behavioral Assessment provided on November 19, 2024. During the majority of the 2024-25 school year, KS failed to receive the services he needed to make progress in his communication and language skills. Instead, JCPS relied on practices that resulted in *de minimus* services and regression for KS. Moreover, these failings began in 2023 and came to a head during the 2024-25 school year as KS continued to display signs of regression and spend increasing amounts of time outside of school. For that reason, KS is entitled to direct speech compensatory services for August 2024 until March 2025.

JCPS's decisions regarding the removal of KS's AAC device and direct speech services were not reasonably calculated in order to ensure that he could make progress in light of his communication difficulties and challenges. Rather than conducting an updated speech or assistive technology device evaluation or reviewing other high-tech AAC devices that would be less frustrating for KS

to use, the team decided to totally eliminate one of the methods he used as part of the total communication method. What resulted was increased frustration instead of less frustration for KS. These frustrations continued until the district conducted the appropriate evaluations in March 2025. JCPS thus failed to provide FAPE due to the failure to provide direct speech therapy services and appropriate assistive technology for KS, a student with severe communication deficits and profound speech-language needs.

Failure to Develop an IEP Based on Timely Gathered Data

JCPS not only delayed evaluations for an FBA, speech-language, and assistive technology, but also delayed conducting evaluations and providing timely results generally for tests requested in the fall of 2024, including a psychological evaluation, speech-language screening, adaptive behavior evaluation, speech-language/communication evaluation, and health screening. Developing an IEP that is “reasonably calculated” for the student to make progress towards his IEP goals means that the IEP team must consider all relevant and available data. *See Endrew F.*, 580 U.S. 386 (2017). Here, the data was not available, even though Grandmother [REDACTED] had repeatedly requested updated evaluations to better inform the IEP process, especially as KS’s time at school decreased and his behavioral needs increased. In fact, Grandmother signed consent for these evaluations on October 24, 2024. However, JCPS did not provide the results of those evaluations until March 24, 2025, and hold an IEP meeting to discuss the results of the evaluations until March 28, 2025.

Because of an over 151-day delay in providing evaluation results, the IEP teams that met previously, including for KS’s annual review in November 2024, did so in a limited way, for the delay limited the opportunity for the team to create an IEP “reasonably calculated” for KS to make progress in light of his current needs. The NC Policies require a 90-day timeline for initial evaluations, and reading that timeline into the timeline for reevaluations leads to the conclusion that 90 days is sufficient time to complete subsequent evaluations. *See NC Policies 1503-2.4(a)*. The IDEA requires timely, comprehensive evaluations in order to prevent pernicious delays in provision of services and interventions necessary for the student to make progress towards his goals. For KS, a 60-day delay over the 90-day timeline to conduct and provide results for additional evaluations created a time lapse in implementing the appropriate accommodations and supports to build more time in his school day. With timely gathered data, the IEP team could have created a better-informed IEP had JCPS conducted a timely evaluation. Instead, KS had a school year filled with behavioral challenges resulting in restraint, recurrent suspensions, and academic regression because his IEP was not reasonably calculated to provide him with a FAPE.

Despite Grandmother’s [REDACTED] repeated advocacy for reevaluation requests, JCPS did not adhere to those requests. The 151-day delay was not the only delay in providing evaluation results during the 2024-25 school year. Grandmother signed a consent form

for JCPS to conduct observations, social/developmental history, and assistive technology evaluations on December 6, 2024. These evaluations were not returned until the March 28, 2025, meeting, the same one where JCPS presented the results of evaluations requested on October 24, 2024, resulting in an almost 112-day delay. Again, these delays resulted in a failure to provide FAPE as evidenced by KS's experience with school exclusion and inability to make progress on his IEP goals.

In fact, Grandmother double-signed the consent forms for some of the evaluations requested on October 24, 2024, again signing on December 6, 2024. Thus, not only was there a delay in providing the results of the evaluation, JCPS also delayed conducting the evaluations once Grandmother provided initial consent. To reiterate, these delays only further denied KS access to FAPE.

Inadequate Service Times

Due to KS's modified day schedule, he received inadequate service delivery. Thus, KS was denied appropriate specially designed instruction and instructional time to work on his goals for reading, math, writing, daily living skills, social/emotional, communication, and behavior. He was also denied access to Adapted PE, OT, direct speech, and transition services. Finally, KS was fully denied access to accommodations allowing him to attend classes such as career/technical education (CTE), art, and music. For these reasons, he is entitled to compensatory services to make up for the inaccessibility to these services and curricular components.

Transportation

NC Policies task LEAs with the responsibility of "providing or paying the costs of transportation for children with disabilities enrolled in schools or programs in their local school systems." NC Policies 1506-1.13. KS's IEP notes that transportation is not required as a related service; however, it also notes that THE PROVIDER will conduct drop-off and pick-up each day. Considering that KS is on a modified day and does not follow the school's typical daily schedule, this deviation is one in which transportation should be required as a related service. KS could not access school without THE PROVIDER providing transportation. Further, THE PROVIDER does not receive reimbursement for costs from JCPS related to transporting KS to and from school daily. Per NC Policy, JCPS is responsible for providing for or paying for these transportation costs. The failure to take responsibility for these transportation costs contributed to the failure to develop an IEP aligned with NC Policies.

Violation 4: JCPS has failed to comply with the IDEA’s disciplinary safeguards by failing to provide a continuation of services during lengthy, frequent short-term out-of-school suspensions.

The IDEA requires a continuation of services for students disciplinarily removed from their current placement for specific lengths of time. 34 C.F.R. § 300.530(d); NC 1504-2.1(d). Once an LEA has removed the student from their current placement for 10 school days in the same school year and seeks to remove the student for an additional short-term suspension, the district and at least one of the student’s teachers must determine what appropriate services are needed in order for the student to continue participation in the general education curriculum and progress towards their IEP goals. 34 C.F.R. § 300.530(d)(4); NC 1504-2.1(d)(4). The continuation of services provisions is designed so that a removal constituting a change of placement and any subsequent days of removal do not prohibit students from progressing towards the goals outlined in their IEPs. 34 C.F.R. § 300.530(d); NC 1504-2.1(d).

JCPS suspended KS for 33 days during the 2023-24 school year and 40 days during the 2024-25 school year. The records indicate that KS received no continued services beginning after the 10th day of suspension during these frequent suspensions. As such, JCPS violated the IDEA when it failed to provide a continuation of services for the combined total 53 days KS spent completing out-of-school suspensions beyond day 10 for the 2023-24 school year and 2024-25 school years. The suspensions and failure to provide services for both of these school years represent an ongoing violation of KS’s right to receive education after repeated removals. These frequent suspensions of 5 or 10 days have accumulated into more frequent disruptions to KS’s routine and access to his education; the frequent suspensions have also contributed to his academic, behavioral, and social-emotional regression. By failing to provide KS with the appropriate services both during suspensions and during his school day, JCPS has failed to comply with the IDEA’s disciplinary safeguards and provide him with a FAPE.

Requested Remedies

The egregious violations alleged within this complaint require immediate corrective action to remedy the harms to the complainant and ensure that students with autism facing similar LRE violations and exclusionary discipline for disability-related behaviors do not suffer these same harms. Therefore, we request that DPI order the following:

- Oversight, Audit, and Support from DPI:
 - Increase DPI’s monitoring efforts of JCPS in order to ensure implementation of the revised policies, practices, and training requested below.
 - Conduct an audit by DPI of JCPS to determine which similarly situated students with autism have faced similar impacts of education in restrictive environments;

exclusionary discipline; and inappropriate, inadequate, or nonexistent FBAs and BIPs.

- Provide JCPS Department of Exceptional Children with support from the Autism Team at DPI and consultation services from autism specialists on the team to all JCPS autism specialists, behavior specialists, and principals at A JOHNSTON COUNTY HIGH SCHOOL.
 - Require JCPS to consult with the Autism Team at DPI before placement decisions and before suspending students with autism until December 2026 or until JCPS has adequate policies, practices, and procedures for determining appropriate placements for students with autism.
 - Individual Complainant:
 - Provide appropriate compensatory education services as outlined below for truncated service times during inappropriate modified day placements, missed services during suspensions, and direct speech therapy services missed during the unnecessary removal of those services, either through direct provision of services or by setting aside funds for Grandmother and KS to access private compensatory services, as chosen by them.
-
- Require JCPS to convene an IEP meeting to discuss increasing KS's time in school.
 - Require JCPS to assign an additional adult support staff who is trained by either a Registered Behavior Technician (RBT) or Board-Certified Behavior Analyst (BCBA) to KS.
 - Require JCPS to reimburse Grandmother or her designee for their reasonable expenses related to private tutoring and other costs acquired due to the district's failure to provide FAPE to KS.

- Provide THE PROVIDER with reimbursement for transportation costs related to drop-off and pick-up for school daily.
- Require JCPS to allow KS's private ABA therapy team to come to his school, observe, and train his teachers on how to appropriately work with him and allow the team to remain available on an as-needed basis.
- Adhere to the recommendations from the JCPS AT evaluation to provide KS with a board/page design through an AT device such as a Go Talk device to avoid device confusion and consider the use of the device as part of his transition goals and plan in a future IEP meeting.
- Similarly Situated Students:
 - Require JCPS to revise its LRE policies and provide additional supports and placements on its continuum of placements to meet the needs of students with autism in the LRE.
 - Require JCPS to review placements and LRE justifications for students with autism and determine whether an IEP revision or addendum to review placement is necessary.
 - Require JCPS to determine whether students with autism require additional supports to attend school for a full day or be placed in their LRE, such as new FBAs and revised BIPs:
 - Require JCPS to specifically notify and inform all parents of students with inadequate FBAs about the district's Independent Educational Evaluation (IEE) process.
 - Require JCPS to conduct a new FBA for all FBAs that DPI deems were created using insufficient data.
 - Require each new FBA to be completed by a qualified behavior expert who will use best practices, such as ABC data collection (formally collected data on the antecedents, frequency/intensity/duration, and consequences of the target behavior), contracting with an independent behavior expert if one is not available or DPI deems contracting with an outside provider appropriate under the circumstances.
 - Require JCPS to use (or contract with) a qualified behavior expert to revise the BIPs of any students who receive new FBAs.
 - Require JCPS revised BIPs to include peer-reviewed positive behavioral intervention strategies and supports, including restorative practices and trauma-informed approaches.
 - Provide appropriate compensatory services to all similarly situated students for truncated service times during virtual, homebound, and modified day placements as well as missed services during suspensions, either through direct

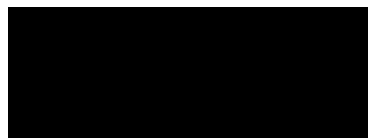
provision of services or by setting aside funds for families to access private compensatory services, as chosen by families.

- Training
 - Require all JCPS staff working in the Exceptional Children's program to undergo training on how to appropriately support students with autism in the LRE to include peer-reviewed positive behavioral intervention strategies and supports, restorative practices, and trauma-informed approaches by a qualified trainer with expertise in autism or trainer agreed upon by complainants.
 - Require all new JCPS staff in the Exceptional Children's program to undergo the training listed above where appropriate for the next three years (2025-26, 2026-27, and 2027-28 school years).
- Consider other remedies DPI may deem appropriate.

Sincerely,



Glynnis A. Hagins, Esq.
Attorney
Disability Rights North Carolina
glynnis.hagins@disabilityrightsnc.org



Jolona Kinlaw
Advocate
Disability Rights North Carolina
jolona.kinlaw@disabilityrightsnc.org